



EMPLOYMENT TRIBUNALS

Claimant: Miss B Lock

Respondent: Marks and Spencer Plc

JUDGMENT

1. It is ordered that the claimant's claims in case number 3331981/2018 are struck out in their entirety on the basis that the Tribunal has no jurisdiction to consider them as they are out of time and in relation to the generalised allegations of "fraud" the tribunal has no jurisdiction to hear such claims.

Reasons

2. The claimant brought claims of unfair dismissal under section 98 ERA, automatic unfair dismissal under section 103 ERA and that she suffered a detriment as a result of making a protected disclosure under section 43A ERA.
3. The claimant's employment ended on 28 November 2017. This is the effective date of termination.
4. Section 111(2) ERA sets out the time limits within which such claims must be presented at the employment tribunal. The standard period is 3 months though this can be extended as a result of the ACAS early conciliation scheme which is set out in detail in section 207B ERA.
5. The claim was presented at the employment tribunal on 13 August 2018 which is in excess of 3 months after the effective date of termination.
6. The claimant obtained an early conciliation certificate from ACAS which stated that the date of receipt by ACAS was 9 June 2018 and the date of issue of the ACAS certificate was 9 July 2018. As the period of early conciliation did not start within 3 months from the effective date of termination s207B ERA cannot operate to extend the time limit in this case.
7. Therefore I must consider whether or not it was not reasonably practicable for the complaint to be presented by the claimant before the end of the three-month period.
8. The claimant's evidence was that she initially contacted ACAS in October 2017

when she was on suspension. I asked the claimant what she was seeking from ACAS in October 2017 and she stated about the process as no reason had been given about her suspension. She thought she had been wrongfully suspended and ACAS said she needed a reason for her suspension. The conversations were about suspension as the allegations against her had changed.

9. I asked the claimant if she spoke to ACAS in October 2017 about unfair dismissal. To which she responded that she knew it was coming her way because she was being set up. I asked if she sought information from them about lodging employment tribunal proceedings to which she responded no, they said I had to go through internal procedures before ACAS could help.
10. I asked the claimant if she specifically enquired about time limits for bringing employment tribunal claims or the process for lodging a claim to which she responded "Not that I can recall. I felt I had to stay with the company as I was told I had to stay within the internal procedures."
11. I asked the claimant if she had made any other investigations about the employment tribunal limits to which she responded that she had looked these up at the time of her dismissal but felt she had to sit on it until the company processes were exhausted which occurred in June 2018.
12. The claimant's evidence was that around June 2018 she googled the ACAS and/or the employment tribunal website and the ACAS website said she needed to lodge the claim within 3 months. I asked claimant why she did not lodge the claim within 3 months and she said that she was waiting for internal measures to be exhausted. She recalled that she read on the ACAS website that the claim had to be lodged within 3 months of the wrongdoing not the dismissal.
13. Mr Green asked the claimant a series of questions about whether the claim had been presented within a further period which the tribunal considered reasonable. These questions centred about what the claimant did from June 2018 onwards. The claimant's evidence was that in an early conversation an ACAS adviser said that the claim might be out of time, but it was for the employment tribunal to determine that. It was put to the claimant that she did not take steps to find out more after that. To which she responded that she submitted her claim to ACAS.
14. Mr Green put to the claimant that even on her own evidence she contacted ACAS on 9 June 2018. Around that time ACAS had told that her that her claim was out of time but she still did not lodge her employment tribunal claim until 13 August 2018. The claimant said that she needed her ACAS conciliation certificate to lodge the employment tribunal claim and her conciliator had gone on holiday so she could not obtain that until 9 July 2018. she stated she could not afford legal advice and she had received a quote from the citizens advice bureau of £650 for an initial meeting with a solicitor which was beyond her means. In addition, at that time the claimant was trying to mitigate her loss by working.
15. It was put to the claimant that even after obtaining the ACAS certificate she still waited over one month to submit her claim to the employment tribunal. The claimant stated that she did not delay; she was preparing her claim whilst working and could not afford legal advice.
16. I find that the claimant laboured under a misapprehension about when the time limit for lodging employment tribunal proceedings commenced. The claimant tried to lay the blame for this on ACAS as a result of the advice she received

in October 2017. However, the claimant's evidence was that she had not spoken to them specifically about unfair dismissal and therefore I find that she did not enquire fully into the employment tribunal time limits that apply to her claims. I understand that this was a difficult time for the claimant. However, it is clear from the letter dated 28 November 2017 written by the claimant that she felt she was unfairly dismissed and the onus was on her to undertake research or take other steps to ensure that she complied with the employment tribunal time limits. I do not accept that it was not reasonably practicable for the claimant to lodge a claim within the 3 month time limit. The claimant may well have been confused however this does not mean it was not reasonably practicable.

17. Further, even if I was wrong on the above I find that the claim was not presented within such other further period as the tribunal considers reasonable. This is because on her own evidence she was told at the latest in mid June 2018 that her claim may be out of time and it was for the employment tribunal to decide. Even if the claimant had to wait until the issuing of her ACAS certificate on 9 July 2018 to lodge the employment tribunal claim she was free to submit her claim almost immediately thereafter. However she did not submit her claim immediately. She waited over one month to submit it. As can be seen from the above time line the claimant had been dismissed 9 months beforehand; she had had time to prepare her thoughts and prepare documents and therefore there can be no reasonable reason for her delay.
18. For all of these reasons the claims are out of time.

Employment Judge Bartlett

Dated 25/ 1 / 2019

4 / 2 / 2019
JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE