



EMPLOYMENT TRIBUNALS

Claimant:
Mrs S Sanderson

v

Respondent:
NHS Blood and Transplant

PRELIMINARY HEARING

Heard at: Watford

On: 12 November 2018

Before: Employment Judge Henry

Appearances

For the Claimant: In person

For the Respondent: Mr P Loftus (Solicitor)

JUDGMENT

The tribunal finds that:

1. The claimant's claim has not been presented to the tribunal within the requisite period of three months beginning with the effective date of termination
2. It was not reasonably practicable for the claimant to present her claim to the tribunal with the requisite period of three months beginning with the effective date of termination.
3. The claimant has presented her claim to the tribunal within a reasonable time thereafter.
4. The tribunal has Jurisdiction to entertain the claimant's claims

REASONS

1. The matter comes before the Tribunal on a preliminary question whether, pursuant to section 111 of the Employment Rights Act 1996, the claim has been presented within the period of three months beginning with the effective date of termination, and if not, whether it was reasonably practicable to have presented it within such time, and if not, whether it has been presented within a reasonable time thereafter.
2. The Tribunal heard evidence from the Claimant, whose evidence in chief was received by a written statement and on which she was subject to cross-examination.

3. The Tribunal had before it a bundle of documents (Exhibit R1). From the documents seen and the evidence heard, the Tribunal finds the following material facts.

Findings of fact

4. Following a disciplinary hearing, the Claimant was orally informed that her employment was terminated on 12 weeks' notice, to expire on 24 December 2017.

5. This was subsequently confirmed by correspondence of 6 October 2017 stating:

“Amanda and I advised you of the panel decision, via a telecom on Monday 2 October at 17:00 hours when it was confirmed to you that after careful consideration, its decision was to dismiss with notice with effect from Monday 2 October. As explained, you are entitled to 12 weeks' notice with your last working day being Sunday 24 December. There is no requirement for you to attend the workplace during this time.

You are advised of your right of appeal against this decision which must be in writing within seven calendar days of the date of this letter. Your appeal letter should be addressed to... Appeal Secretary, Human Resources.... Within 21 calendar days from the date of the outcome letter, you will be required to provide full details of your grounds for appeal, making clear what resolution you are seeking. This will then be provided to me for me to prepare my response to your grounds of appeal. This will be provided to you a minimum of 12 calendar days before the date of the appeal panel.

All details of this process under the disciplinary policy, should remain confidential and discussed only between those parties involved in the process.”

6. The Claimant subsequently presented an appeal, which appeal, having originally been proposed to be heard before 24 December, was extended and heard on 9 January 2018.
7. By the Respondent's procedures, there is nothing therein making reference to the continuation of employment or otherwise during the appeal process where an appeal against dismissal is raised.
8. The Tribunal has not been taken to any correspondence in respect of the appeal hearing not being heard before 24 December. The Tribunal has not been presented with any evidence relevant to any discussions had in respect of the date of termination of the Claimant's employment.
9. It was the Claimant's evidence that, having raised issue as to being bullied, which was then the subject of an investigation, she had been awaiting the outcome of that investigation, it being a ground on which her appeal was to be based. On the finding of the investigation taking longer than anticipated, the outcome being furnished on 20 December 2017 (recorded delivery to the Claimant on 22 December 2017), there was then no specific discussions had regarding the end of her employment, albeit she was concerned as to whether or not her employment was coming to an end in accordance with the notice of termination.

10. On 5 January 2018, the appeal hearing was heard, which upheld the Claimant's dismissal. It is noted that during the appeal hearing there was no discussion as to the Claimant's employment having ended.
11. At a reconvened appeal panel on 9 January 2018, the Claimant was informed of the decision that her appeal was not successful and that the dismissal was upheld, which was confirmed in writing on 16 January 2018, the correspondence providing:

“Having considered all of the evidence presented to us, the decision of the appeal panel is that your appeal is rejected and your dismissal remains in place.

...

In accordance with your contract for notice, your notice pay was due to expire on 24 December 2017, but it was not processed on that date. Technically, you have been paid more than your notice entitlement but we will honour this payment up to the finalisation of your appeal today...”
12. The appeal letter then advised of arrangements to be made to recover the Claimant's lease car, for the Claimant to collect personal belongings, and for her return of NHSBT equipment, ID badges, and other documents in her possession.
13. In respect hereof, it is not in dispute that the Claimant received her wages to 9 January 2018, and that she had, up to 9 January, equally been in receipt of childcare credit vouchers, retained her work mobile phone, and had been receiving calls from departments, and although she was then supposed to have been on garden leave, she had access to the Respondent's network, still receiving mail, and access to “Redfern” in respect of travel and indeed, on the Claimant raising issue as to travelling to meetings in London during this period, she had been informed that she should be using Redfern, and for which members of the Respondent's admin hub subsequently made travel arrangements for the Claimant via Redfern.
14. The Claimant received a P45 “Details of employee's leaving” which identified the Claimant's leaving date as 9 January 2018.
15. It is the Claimant's evidence that, on receiving the appeal decision outcome and on subsequently having her case referred to the Nursing and Midwifery Council for consideration, in relation to her nursing registration and the ability therefore to practice, after becoming depressed, albeit, she does not state being depressed to the extent that she was then unable to carry out her daily functions, but that she had prioritised her commitments, being in respect of; defending her claim against her nursing licence; seeking alternative employment where she was then the sole family breadwinner; chasing a reference from the Respondent, which had been promised in respect of the Claimant registering for bank (agency) nursing work; and presenting her complaint to the Tribunal.
16. It is the Claimant's case that, following the appeal hearing, she was informed of the requisite time limit for presenting a complaint to the Tribunal, being three

months less a day, albeit the specific date was not then identified, and that she learned of the provisions as to early conciliation and the limitation period clock being stopped during the process of conciliation, and having made efforts in obtaining legal advice from solicitors and Citizens Advice Bureau, but without funds unable so to do, and unable to get an appointment with the Citizens Advice Bureau before July 2018, the Claimant on her own, then calculated the time for presenting her complaint to the Tribunal from the date of her leaving employment, presented by the P45, - as the Claimant put it:

“As I was also in full receipt of all staff amenities and benefits, including travel, and a Greyfleet car lease, my understanding was that the original date of the 24th had been extended due to the ongoing investigation and the Christmas holidays. This belief was confirmed by my P45 that clearly states last day of employment as 9 January 2018. Up until this time, employee contributions were being deducted from my pay. I therefore was employed until 9 January and have complied with the rules regarding submission of claim.”

17. The Claimant states that, but for this understanding as to when her employment ended and therefore being the date from which the calculation of the time limit was to be made, there was no reason for her not then being able to present her claim earlier and that the date on which she presented her claim was within the time then calculated.

The law

18. The law has been succinctly set out by the Respondent's written submissions at paragraphs 3 to 12, which I adopt as if here more particularly set out.

Submissions

19. The Tribunal received written submissions from the Respondent who referred the Tribunal to the following authorities:

Wallace v Ladbrokes Betting & Gaming Ltd UKEAT/01684/15;
Fitzgerald v University of Kent at Canterbury [2004] EWCA Civ 143;
Reed in Partnership Limited v Fraine [2011] UKEAT/0520/10; and
Palmer & Saunders v Southend on Sea Borough Council [1984] IRLR 119.

The Tribunal further referred the parties to:

Savage v J Sainsbury Limited [1980] IRLR 109; and
Harwood v Lincolnshire County Council UKEAT/0462/11.

20. The Claimant presented oral submissions.
21. The Tribunal has given due consideration to the submissions and authorities.

Conclusions

22. It is not in dispute that the Claimant was, on 2 October 2017, informed that her employment was terminated on 12 weeks' notice, which was confirmed by correspondence of 6 October 2017, which unequivocally set out that the Claimant's employment was to come to an end on 24 December 2017. On

- there being no contractual provision or otherwise agreement varying this date, the Tribunal finds that the date of 24 December 2017, was the effective date of termination.
23. The Tribunal finds that in the absence of the issue of the continuation of employment being raised or otherwise considered, there was then no agreement or circumstance by which the employment contract could have endured beyond the date of termination notified to the claimant by the correspondence of 6 October 2017.
 24. The Tribunal accordingly finds that the effective date of termination was that as communicated to the Claimant on 6 October 2017, being 24 December 2017.
 25. On the Claimant presenting her complaint to the Tribunal on 17 May 2018, having entered early conciliation on 4 January 2018, for which a certificate was issued on 18 February 2018, a period of 46 days in conciliation, the Tribunal finds that the Claimant was to have presented her complaint by 8 May 2018, but instead has presented it nine days late.
 26. The Tribunal finds that in the circumstances, the Claimant being in receipt of all “staff amenities and benefits” which she enjoyed prior to dismissal, being 24 December 2017, which benefits were only sought to be removed from the Claimant following the appeal hearing on 9 January 2018, to be followed by her P45 evincing her date of leaving as 9 January 2018, the Tribunal finds that it was reasonable for the Claimant to then understand that her employment had come to an end on 9 January 2018, all practical circumstance indicating the same. The Tribunal finds that when the Claimant then acted thereon, in calculating the time limit within which to present her complaint to the Tribunal, it was not reasonably practicable for her then to have presented her complaint by 8 May 2018, in the reasonable knowledge; holding the reasonable belief from the conduct of the Respondent, that the employment relationship ended on 9 January 2018 and that she had until 24 May 2018 within which to present her complaint.
 27. The Tribunal finds that it not having been reasonably practicable for the Claimant to have presented her complaint to the Tribunal before the 8 May 2018, because of her understanding of circumstance controlled by the Respondent, the Tribunal is satisfied that the Claimant when she presented her complaint to the Tribunal on 17 May 2018, had then presented it within a reasonable time after the expiration of the time limit, where the Claimant was then reasonably operating on the understanding that she was then presenting her complaint some two weeks before the expiration of the time limit.
 28. The Tribunal accordingly finds that it has jurisdiction to entertain the Claimant’s claim.

Employment Judge Henry

Date: 30.1.2019

Sent to the parties on: 4.2.2019