



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs N Maston

v

Imaan Ltd (Trading as Bethune Avenue Pharmacy)

Heard at: Hull

On: 28 February 2019

Before:

Employment Judge Trayler

Appearance:

For the Claimant: Did not attend

For the Respondent: Mr W Haines, Consultant

JUDGMENT

1. The correct title of the respondent is Imaan Ltd (Trading as Bethune Avenue Pharmacy)
2. The claim fails and is dismissed as the Tribunal has no jurisdiction to hear it.

REASONS

1. The claimant is Mrs Nicola Maston. The respondent is Imaan Ltd (Trading as Bethune Avenue Pharmacy).
2. Imaan Ltd took over the pharmacy where the claimant worked in Bethune Avenue, Hull.
3. The claimant resigned her employment on 15 March 2018. Mrs Maston had worked at the pharmacy since 1 August 2003.
4. On 18 March 2018 Mrs Maston wrote a letter to the respondent in which she confirmed her resignation with effect from 15 March 2018.
5. On 18 April 2018 Mrs Maston complied with the requirements of section 18A Employment Tribunals Act 1996 by referring the subject matter of her claim to ACAS. An ACAS Early Conciliation Certificate confirming compliance with the 1996 Act was issued and dated 18 May 2018.
6. Mrs Maston presented her claim to the Tribunal on 16 July 2018. Mrs Maston complains of an unfair constructive dismissal on 15 March 2018.

7. A hearing of the claim was set for 28 February 2019. Notice of the hearing was sent to the parties on 17 December 2018.
8. Mrs Maston did not attend the hearing. Mrs Maston sent an email to the Tribunal at 01:23 hours on 28 February 2019. With the email is a letter to the Tribunal and a written personal submission. The latter is an amended version of the document explaining her claim attached to her ET1, claim to the Tribunal form.
9. In the letter Mrs Maston states that with deep regret she is “unable to attend the court proceedings today”. Mrs Maston states that she wants the Tribunal to go ahead in her absence and that just writing the letter is giving her palpitations. Mrs Maston continues that the previous 12 months had been a great strain on her and caused her much anxiety and stress. Mrs Maston says that she is not fit enough both mentally and physically to “deal with the court proceedings and that she does not have any strength left to endure any more hardship.” Mrs Maston says she is submitting a personal submission outlining her case and asking it be considered. Mrs Maston confirms that she had sent a copy to the respondent’s representative.
10. The claimant Mrs Maston has not prepared any witness statement of evidence. The respondent attended the hearing and provided two witness statements, one by Mr Ghulam Haydar and the other by Mr Matthew Norman Heaton which I read. The respondent also prepared a bundle of documents in which I read a copy of the letter of 18 March 2018 referred to above.
11. By section 111(2)(a) Employment Rights Act 1996 a Tribunal shall not consider a complaint of unfair dismissal unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination of employment.
12. Where a Tribunal is satisfied that it was not reasonably practicable to present the claim before the end of that period of three months the Tribunal may consider the claim if it was presented within such period as the Tribunal considers reasonable. This extension also applies when the time for presenting the claim is affected by early conciliation.
13. The effective date of termination of employment in a case where an employee resigns is the date the termination of employment takes effect.
14. By section 207B(3) Employment Rights Act 1996 when determining whether a time limit has been complied with the period beginning the day after an early conciliation request is received by ACAS up to and including the day when an early conciliation certificate is received is not counted.
15. Mrs Maston having resigned on 15 March 2018 she is required by section 111 of the 1996 Act to present a claim of unfair dismissal to the Tribunal by 14 June 2018. However, because of section 207(B) of the Act the period from 19 April 2018 (the day after the date ACAS received notice) to 18 May 2018 (the date the conciliation certificate was issued) is not counted when calculating the date for presenting the claim.
16. The period from 19 April 2018 to 18 May 2018 inclusive is 30 days. The time limit for presenting the claim is therefore 14 July 2018. The claim having been presented on 16 July 2018 was therefore presented out of time and the Tribunal has no jurisdiction to hear it.

17. There is no evidence from Mrs Maston as to why it was not reasonably practicable to present the claim in time. The Tribunal has no jurisdiction to hear the claim and it is dismissed.
18. Had the Tribunal not made this judgment it would have had great difficulty in finding in favour of Mrs Maston. Mrs Maston has given no detail of the allegations against the respondent. The respondent has provided statements of evidence and notes of investigation meetings. If the Tribunal had considered the claim there was little or no evidence from the claimant to enable the Tribunal to challenge the respondent's evidence. However, the claim fails because it was presented too late.

Employment Judge Trayler

Date: 7 March 2019

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