



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE K ANDREWS  
sitting alone

**BETWEEN:**

Mrs T Ogbummuo  
Claimant

and

Mission Care Management Ltd  
Respondent

**ON:** 17 October 2018

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mr M Jones, Solicitor

## **REASONS FOR THE JUDGMENT DATED 17 OCTOBER 2018 PROVIDED AT THE REQUEST OF THE CLAIMANT**

1. A preliminary hearing in this matter was held on 17 October 2018 to determine whether the Tribunal has jurisdiction to consider the claim of unfair dismissal taking into account the relevant statutory time limits. Having heard evidence from the claimant and considered the documents, I concluded that it does not and accordingly Judgment was entered against her. Oral reasons for that decision were given to the parties on the day. I also signed the short written Judgment that day which, due to delay within the Tribunal's administrative team, was not sent to the parties until 29 November 2019. The claimant requested written reasons on the same date and again, for the same regrettable reasons, that request was not passed to me until 19 January 2019 when I was absent from the Tribunal for 2 weeks.

### **Relevant Law**

2. A complaint of unfair dismissal must be submitted before the end of the period of

three months beginning with the effective date of termination or within such further period as the Tribunal considers reasonable if it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period (s111(2) of the Employment Rights Act 1996). That primary time period may be adjusted depending on the applicability of the early conciliation provisions.

3. The general starting point is that time limits are in the legislation for a reason and should be exercised strictly. The burden of satisfying the Tribunal that time should be extended is on the claimant.
4. Whether it was reasonably practicable for the claimant to submit the claim in time is a question of fact for the Tribunal to decide having looked at all the surrounding circumstances and considered and evaluated the claimant's reasons. In essence this test requires the claimant to demonstrate that it was not feasible to present the complaint within time (*Palmer v Southend on Sea Borough Council* 1982 ICR 372). An assessment of what further period may be reasonable, requires an objective consideration of the factors causing the delay and what period should reasonably be allowed (*Cullinane v Balfour Beatty* EAT 0537/10).

### **Findings of Fact**

5. I heard evidence from the claimant and considered a number of documents.
6. Having assessed all the evidence, both oral and written, I find on the balance of probabilities the following to be the relevant facts.
7. The claimant's employment ended on 8 September 2017. She first approached ACAS on 12 February 2018, outside of the primary time limit, and therefore that limit expired on 7 December 2017. The claim form was submitted on 6 April 2018, some five months later.
8. In particular the claimant relies upon a report from her GP dated 27 July 2018. The report is short and in its entirety says:

'Theresa is a patient at this practice. She has diagnoses of hypertension, diabetes and rheumatoid arthritis. She lost her job in September 2017. She was very distressed about this and felt very depressed from then until the middle of March. Theresa attended the surgery for her physical health problems.'

The respondent correctly points out that this document gives no diagnosis of any mental health problems but simply relates what the claimant has told to her GP.

9. The claimant told me that she has been prescribed medication for all of her physical health issues and that that medication has remained constant from when it was first prescribed in October 2017 to date. She has also described the impact of her physical health conditions and I have no reason to disbelieve her when she says that she has been suffering the consequences of those physical health conditions. I also accept her description that she was depressed as a result of losing her job. I find however that she is using the word depressed in its loose, everyday sense of feeling in a low mood rather than its clinical sense.

10. At no time since the claimant's dismissal has she been hospitalised although she has attended hospital for various appointments.
11. The claimant had access to union representation at the time of her dismissal but she did not contact them thereafter for any advice about her legal position.
12. The claimant told me that she first started thinking about applying to the Tribunal in February 2018. Her daughter, who lives with her, researched the position online. She contacted ACAS - with the assistance of her elder daughter - on 12 February 2018 and the early conciliation certificate was issued on 14 February 2018. It is clear therefore that at the latest in mid-February the claimant, albeit with the help of her daughters, was able to establish the steps she needed to take in order to bring a Tribunal claim and to start complying with these steps.
13. The claimant's evidence was that she started to look for work from February 2018 first going to various job centres in February and March. She says that she applied for one job in March, was not interviewed but was appointed. She produced payslips showing that she was working from week ending 8 April through to 22 July 2018.
14. Her claim form was submitted to the Tribunal on 6 April 2018.
15. The respondent has referred me to the claimant's schedule of loss signed by her on 22 June 2018. This indicates that at that date she had been in receipt of 8 months' net pay totalling £5,972. Clearly this suggests that she had started that work in about October/November 2017.
16. The schedule also refers to travel expenses for job interviews of £240 over the three months before she received a 60+ Oyster card. The claimant confirmed that she was 60 in December 2017. Again, the respondent says that this indicates that she was travelling for job interviews before December 2017 although the claimant says that she did not receive her 60+ Oyster card until March/April 2018.
17. There has been a dispute between the parties as to the disclosure of documents supporting the schedule of loss. On the evidence before me I do not feel able to conclude that the claimant is being untruthful in her evidence although I do note that her own signed schedule of loss does seem to indicate that she was working at an earlier period than she has told me today.

### **Conclusion**

18. I give the claimant the benefit of the doubt in relation to her ability to engage with the process necessary to submit a claim form as a result of both her physical health conditions and her mood, such as to make it not reasonably practicable for her to have put in her claim, before mid-February 2018. It is clear that in mid-February however she was, with the assistance of her daughters, able to start the ACAS process. There is no evidence to support an argument that she could not reasonably then submit her claim form until 6 April 2018. On the claimant's own evidence in February/March she was travelling to job centres and seeking alternative work. She had the benefit of assistance from her daughter who was clearly able to look up online what the claimant needed to do and to get that

process underway. For the claimant to have then waited a further seven or so weeks to submit her claim form was not objectively reasonable.

19. Accordingly, I find that the claim was submitted out of time and it is not appropriate for me to extend time in her favour and her claim is therefore dismissed.

Employment Judge K Andrews  
Date: 15 February 2019