



EMPLOYMENT TRIBUNALS

Claimant: Miss J Gillen

Respondent: Boots Management Services Ltd

Heard at: Watford

On: 19 March 2019

Before: Employment Judge McNeill QC

Appearances

For the claimant: No attendance

For the respondent: Ms Wood, Solicitor

JUDGMENT

1. The Claimant's application to postpone the hearing listed for 19 March 2019 is refused.
2. The Claimant's claim for unfair dismissal was presented outside the three month time limit in section 111(2)(a) of the Employment Rights Act 1996 and the Employment Tribunal is not satisfied that it was not reasonably practicable for the Claimant to present her claim before the end of the three month period, as required by section 111(2)(b) if the time limit is to be extended. The Claimant's claim for unfair dismissal is therefore dismissed.

REASONS

1. The Claimant was employed by the Respondent from 5 August 1996 until she was summarily dismissed on 22 June 2018. Her claim for unfair dismissal was presented to the tribunal on 3 October 2018.
2. By a letter from the tribunal dated 31 October 2018, the Claimant and Respondent were informed that the hearing of the Claimant's claim would be in Cambridge but that the tribunal might transfer her case at short notice to be at another hearing centre within the region. The Claimant did not at any time indicate that she might not be able to attend another hearing centre.
3. The Claimant's address, as recorded on the tribunal file, is in Milton Keynes.
4. On 12 January 2019, the parties were informed that today's hearing was converted to an open preliminary hearing to decide whether the Claimant's claim was presented out of time and whether the tribunal had jurisdiction to deal with her claim.

5. On 18 March 2019 at about 11am, the Claimant was called by Watford Employment Tribunal and informed that her case had been transferred to be heard at Watford. The Claimant indicated that she wanted to postpone and was advised to write to the tribunal accordingly.
6. By an email sent by the tribunal to both parties shortly after 3pm on the same day, the parties were notified that the hearing would be at Watford Employment Tribunal and were provided with the address.
7. Shortly before 8pm, the Claimant contacted the tribunal by email. Her email simply stated as follows: "I cannot attend this at such short notice".
8. I treated the Claimant's email as an application to postpone, even though the Respondent had not been sent a copy of the email. The Claimant did not attend the hearing. The Respondent attended the hearing by its solicitor and opposed the postponement.
9. No reasons for requesting a postponement were given by the Claimant, save that the change of venue was at short notice. The Claimant's address on the tribunal file is in Milton Keynes which is significantly closer to Watford than to Cambridge, whether by private or public transport.
10. The Respondent stated that the Claimant had not engaged in this litigation. She did not respond to or even acknowledge an email to which the Respondent's list of documents was attached, which was sent to her by the Respondent on 12 December 2018. Similarly, there was no response or acknowledgment when a soft copy of the bundle was sent to the Claimant on 27 December 2018. The Respondent had attended this hearing fully prepared to argue the time limit point.
11. I concluded that it would not be just to grant the postponement sought. Although proceeding without the Claimant meant that she had no opportunity to advance any evidence or arguments in relation to the time limit point, the Claimant should have realised that the venue might change at short notice. More importantly, she provided no reasons, other than short notice, why she was unable to attend the hearing in Watford. Nor, in a case where on the face of her claim form her claim was brought out of time, did she provide any information either on the claim form or elsewhere as to why she brought the claim outside the primary three month time limit. Given the Claimant's lack of engagement in preparing her case for hearing to date, as described by the Respondent, I had no confidence that the Claimant would engage with a future hearing if the matter were postponed. The Respondent incurred the expense of attending the hearing fully prepared and was, in all the circumstances, entitled to a determination of the matter listed without further delay.
12. I therefore refused the application to postpone.
13. As to the question of whether the claim was brought out of time, pursuant to s111(2) of the Employment Rights Act 1996 (ERA), a tribunal shall not consider a complaint unless it is presented "*(a) before the end of the period of three months beginning with the effective date of termination*".
14. In this case, the effective date of termination was 22 June 2018. There was no Early Conciliation notification to Acas until 3 October 2018 when the three month primary limitation period had already passed. The complaint was not

presented to the tribunal until that same date. Subject to s111(2)(b) of the ERA, the claim was therefore out of time.

15. Time may be extended for such period as the tribunal considers reasonable where the tribunal is satisfied that it was not reasonably practicable to present the complaint in time. In the current case, there was no information in the claim form itself or before the tribunal in any form that suggested that it was not reasonably practicable for the Claimant to present her claim in time.
16. In the circumstances, the Claimant's claim for unfair dismissal is dismissed. It was presented to the tribunal out of time and the tribunal is not satisfied that it was not reasonably practicable for the Claimant to present the claim in time.

Employment Judge McNeill QC

Dated: 19 March 2019

Sent to the parties on:

.....

For the Tribunal:

.....