EMPLOYMENT TRIBUNALS

Claimant
Miss T. Morrison

Respondent
Arriva London North Ltd

v

Heard at: Watford
On: 14 March 2019
Before: Employment Judge Heal

Appearances
For the Claimant: in person
For the Respondent: Mr. M. Noblet, solicitor

JUDGMENT

The complaint of unfair dismissal is dismissed.

REASONS

1. I provide written reasons at the request of the claimant.

2. By a claim form presented on 27 April 2018 the claimant made a complaint of unfair dismissal.

3. The claimant was employed from February 2004 to 7 December 2017. Time to present a claim would therefore have expired on 6 March 2018. Between day A (1 February 2018) and day B (16 February 2018) there are 15 days. Time to present a claim stopped running during those days. Time to present a claim therefore expired on 21 March 2018. That date did not fall between day A and day B +1 month (16 March 2018). Time to present a claim expired on 21 March 2018.

4. The claim form was presented 37 days after that date and is therefore out of time.

5. The issue before me is therefore whether it was not reasonably practicable for the claimant to present her claim in time. If the claimant succeeds in showing that it

was not reasonably practicable, then I have to ask whether she presented her claim within such time as was reasonable.

5. I have had the benefit of a bundle running to 45 pages. The claimant has also produced an email string from 28 February to 1 March 2018 and a letter from her union which is undated, but she has shown the respondent that it was dated 26 March 2018.

6. I have heard oral evidence from the claimant and she has been cross-examined by Mr Noblet for the respondent. I have also asked the claimant questions myself.

Facts

7. I have made findings of fact as follows on the balance of probability.

8. When the claimant was first dismissed, she had a union representative with her. That person advised her that the union would continue assisting her. Her union representative, Mr O'Neill, set up a meeting for the claimant with a Mr Murphy, the regional union representative. This was to talk about legal action. They discussed what had taken place at the dismissal and the appeal hearing and Mr Murphy told the claimant that he would get onto the union solicitor to discuss the next course of action. He said that they had to be mindful of timings to approach ACAS. He told the claimant that he would be in contact to tell her how the union will be handling things on her behalf.

9. The union did not send any documents to the claimant setting out the terms on which it was acting for her: she said that everything was verbal.

10. The claimant produced emails which showed Mr Murphy writing to her on 28 February 2018 apologising for the delay and hoping to give her the solicitor's advice in the next 'day or so'. Mr Murphy asked the claimant for a copy of the dismissal letter. The claimant did not have that letter but sent the appeal outcome letter to Mr Murphy on 1 March 2018.

11. The union did not tell the claimant the result of the advice until it sent her a letter on 26 March 2018. By this date, time had already expired.

12. As it turned out the advice was negative. The letter says that the claimant had been told on 31 January that she should register her claim with Acas for early conciliation, however the union did not know whether when this was done. (In fact, the claimant had contacted ACAS on 1 February 2018). The letter says that no tribunal claim had been lodged on the claimant's behalf and if she disagreed with the assessment of the merits of the claim and wished to pursue the matter herself then she should ensure that the tribunal claim was lodged. Mr Murphy for the union could not give her the latest date to lodge her claim and advised her to do so at the earliest opportunity if she wished to comply with the deadlines.

13. The letter goes on to say that the normal advice would be to 'set a claim' within 3 months less one day however the timeline would normally be extended by the time her claim was with ACAS early conciliation.

14. I find that when the claimant was dismissed she placed the matter of her legal dispute with the respondent in the hands of her union and her union accepted that responsibility.

15. Therefore, the claimant was aware from her dismissal that she had some legal rights and that there were some time limits applying to them, but she depended upon her union to advise her as to the correct steps to take and by when they should be taken. I have not seen any document disclosing the terms of the relationship between the claimant and her union, however I have seen the letter dated 26 March 2018, written after the expiry of the limitation period. This makes it clear that the claimant had been waiting for her union to provide legal advice about the possibility of a claim being brought on her behalf.

16. This strongly suggests to me that the union had not previously given the claimant this advice and – without checking the ACAS dates - it had waited until after time had expired before telling the claimant clearly of the risk of her claim being lodged out of time.

The law

17. If a professional adviser has been instructed by a claimant to advise or act for her, then any wrongful or negligent advice or conduct on his part which results in the time limit being missed will be attributed to the claimant with the result that he will not ordinarily be able to rely on the escape clause. In *Dedman v British Building and Engineering Appliances Ltd* [1973] IRLR 379, Lord Denning MR said (at page 381):

''*If a man engages skilled advisers to act for him — and they mistake the time limit and present [the complaint] too late — he is out. His remedy is against them*."

18. Lord Denning repeated this principle in *Wall's Meat Co Ltd v Khan* [1978] IRLR 499 as follows:

*"I would venture to take the simple test given by the majority in [*Dedman*]. It is simply to ask this question: had the man just cause or excuse for not presenting his claim within the prescribed time? Ignorance of his rights — or ignorance of the time limits — is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences.*"

19. The category of professional adviser for whose error a claimant is herself responsible includes trade union officials, on the basis that they were skilled advisers and were engaged (see *Times Newspapers Ltd v O'Regan* [1977] IRLR 101.)

20. Therefore, although it appears to me that the claimant was herself reasonably in a position in which she was waiting for her union to tell her what best to do, she had placed her case within the hands of skilled advisers: her trade union. It would have been reasonably practicable for skilled advisers to present this claim in time, had they

asked the right questions about when ACAS had been approached and when it issued its certificate, and then performed the calculations. Therefore, it was reasonably practicable for the claimant to do so, through her advisers. In those circumstances I dismiss the claim.

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Employment Judge Heal

Date: 19 / 3 / 2019

Sent to the parties on: 22 / 3 / 2019

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For the Tribunal Office