



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mrs D Grundy

Ridgeway Developments (Wessex) Ltd

Heard at: Bristol

On: 8 March 2019

Before: Regional Employment Judge Pirani

Appearances

For the Claimant: in person

For the Respondent: did not attend

REASONS

JUDGMENT having been sent to the parties on 12 March 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Background and issues

1. By a claim form received at the Employment Tribunal on 12 November 2018 the claimant, who was born on 17 May 1954, brought this claim against the respondent, her former employer, for notice pay and a redundancy payment. The claimant says she was employed by the respondent as a secretary/receptionist from 21 November 2007 until 30 June 2018. The dates on the early conciliation ACAS certificate are 16 October until 30 October 2018.
2. Notice of claim was sent to the respondent on 16 November 2018. It provided that if the respondent wishes to defend the claim their response must be received at the tribunal office by 14 December 2018. In the event, no response was received.
3. The notice pay due is for 10 weeks of which 3 weeks was paid. However, within the remaining 7 week period the claimant also worked and earned money totaling £78. This amount would therefore be deducted from the amount owing because the claimant mitigated her loss in the notice period.



4. In the absence of a defence to the claim the only substantive issue is whether the claim was brought in time. This is a jurisdictional issue. The claim for the notice pay, or breach of contract, should have been received at the tribunal by 29 September 2018. The claim for redundancy pay, which has a 6 month limitation period, is in time.

Documents and evidence

5. I had a file of documents from the claimant and she also gave oral evidence.

Findings of Fact

6. I made the following relevant findings of fact.
7. The claimant was employed by the respondent from 21 November 2007 until 30 June 2018 as a secretary/receptionist. She was paid £93.96 per week for 12 hours work and was provided with a written contract of employment. Verbal notice of termination of employment was given on 7 June 2018. The reason given was redundancy because the office was due to close in September 2018. The claimant received payment for the first 3 weeks of the notice period which she worked but not for the remaining period.
8. Following the verbal notice there were various discussions between Mr Brant, the director of the respondent, and the claimant regarding payments due to her for arising out of termination of her employment. During these discussions it was acknowledged by Mr Brant that the claimant was owed money. However, Mr Brant was of the opinion that monetary issues could be sorted out as he did not want the matter to go to tribunal.
9. Mr Brant invited the claimant to return to the office on an ad hoc basis throughout July and August 2018. The final date on which she worked at the respondent was 21 August 2018.
10. On 8 June 2018 the claimant wrote to Mr Brant confirming their discussion. She wrote again on 22 June 2018 saying she had checked a Government website as well as the ACAS advisory line about her entitlement to redundancy and notice pay. She emailed on 17 September 2018 again, asking Mr Brant to sort out issues relating to redundancy and notice pay.
11. Then, on 11 October 2018, the claimant emailed Mr Brant explaining that she had spoken to solicitors who indicated that it was too late to claim for notice pay. Also on that date the claimant received an email from ACAS with information about early conciliation.
12. In the event, on 26 September 2018 Mr Brandt attended the claimant's home to hand deliver her P45. Since then Mr Brant has made no contact with the claimant.



13. The claimant issued her claim on 12 November 2018.

Conclusions

14. Rule 21 of the Employment Tribunal Rules applies where on the expiry of the time limit for presenting the response no response has been presented. Among other things, the rule provides that to the extent that a determination can properly be made of the claim an Employment Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a judge alone. Because part of the claim was issued out of time a hearing was listed.
15. No issue arise as to the entitlement to redundancy pay. The claimant was employed for 10 full years. Accordingly, the redundancy pay, as calculated in accordance with section 162 Employment Rights Act 1996, is £93.96 x 10 x 1.5, which comes to £1,409.40.
16. The time within which the breach of contract or notice pay claim must be brought is set out in Article 7 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. It is three months from the date of termination. However, the Order also provides that, in certain circumstances, this time period may be extended.
17. There are two limbs to the extension of time formula. First, the employee must show that it was not reasonably practicable to present her claim in time. The burden of proving this rests firmly on the applicant (*Porter v Bandridge Ltd* [1978] IRLR 271 CA). Second, if she succeeds in doing so, the tribunal must be satisfied that the time within which the claim was in fact presented was reasonable.
18. The leading authority on the subject is the decision of the Court of Appeal in *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119CA. In that case, May LJ, who gave the judgment of the court, undertook a comprehensive review of the authorities, and concluded that the liberal construction was easier to state than to apply in practice. What he proposed was a test of “reasonable feasibility”. He explained his reasoning as follows ([1984] ICR at 384, 385): “[W]e think that one can say that to construe the words “reasonably practicable” as the equivalent of “reasonable” is to take a view that is too favourable to the employee.
19. The possible factors are many and various, and, as May LJ stated in *Palmer and Saunders*, cannot be exhaustively described, for they will depend on the circumstances of each case.
20. When considering whether or not a particular step is reasonably practicable or feasible, it is necessary for the tribunal, as the Court of Appeal said in *Schultz v Esso Petroleum Ltd* [1999] IRLR 488, to answer this question 'against the



background of the surrounding circumstances and the aim to be achieved'. This is what the “injection of the qualification of reasonableness requires”.

21. Within the 3 month limitation period the claimant viewed both ACAS and relevant Government websites. Even after she was expressly informed by solicitors that her claim was out of time, on or about 11 October 2018, she still did not issue until 12 November 2018, some 2 weeks after the end of the early conciliation period.
22. The reason given by the claimant for issuing the notice pay claim late was that she wanted to come to an amicable solution with her former employer rather than taking the claim to tribunal. In addition, the claimant says that she did not want to “appear grasping”. These are potentially laudable reasons. However, I am unable to say that it was not reasonably practicable for the claimant to bring the notice pay claim in time.
23. Accordingly, the tribunal does not have jurisdiction to consider the claim for outstanding notice. However, the claimant is due a redundancy payment as set out above.

Regional Employment Judge Pirani

Date: 12 April 2019