



THE EMPLOYMENT TRIBUNALS

Claimant: Miss N Renton

Respondent: EE Limited

Heard at: North Shields **On:** 28 February 2018

Before: Employment Judge Johnson

Representation:

Claimant: In person (assisted by her trade union representative Ms Shaftoe)

Respondent: Mr R Dunn of Counsel

REASONS FOR JUDGMENT ON PRELIMINARY ISSUES

1 These are the reasons, requested by the claimant, for the judgment on preliminary issues promulgated by the Employment Tribunal on 9 March 2018. Reasons were given to the parties at the conclusion of that hearing. By letter dated 21 March 2018 the claimant requested written reasons.

2 The issue to be decided by the Tribunal was whether the claimant's complaints of unfair dismissal and unauthorised deduction from wages had been presented at the Employment Tribunal before the end of the period of three months beginning with the effective date of termination of the claimant's employment, or if not then within such further period as the Tribunal considered reasonable, if the Tribunal was satisfied that it was not reasonably practicable for the complaints to have been presented before the end of that period of three months.

3 The claimant attended in person and was assisted by her trade union representative, Ms Shaftoe. The respondent was represented by Mr Dunn of counsel. The claimant gave evidence under oath and was cross-examined by Mr Dunn and also answered questions from the Employment Tribunal Judge. The respondent did not call any witness evidence.

4 The relevant chronology of material dates is as follows:-

- The claimant's employment began with the respondent on 26 January 2017.

- On 14 February 2017 the claimant was suspended pending an investigation into allegations of misconduct.
- The claimant attended a disciplinary hearing on 3 April 2017.
- The claimant was advised of her dismissal on 24 April 2017.
- The effective date of termination of the claimant's employment was 4 June 2017.
- The claimant was advised of the outcome of her appeal on 9 August 2017.
- The claimant commenced ACAS early conciliation on 18 October 2017.
- The ACAS early conciliation certificate was issued on 27 October 2017.
- The claimant presented her claim form ET1 to the Employment Tribunal on 16 November 2017.

5 The claimant accepted in her evidence that she applied for and obtained new employment with Sky TV, which employment began on 4 June 2017 and lasted until 1 September 2017. During that period she worked "two or three days a week for 9/10 hours per day".

6 The claimant's explanation for failing to present her claim form within the three months time limit was simply that she was mentally unable to cope with the situation which had been caused by her treatment at the hands of the respondent, namely investigation, disciplinary process, appeal process and the dismissal. The claimant's evidence was that she became so depressed that she was physically and mentally unable to function in any meaningful way. She had formed the view that the allegations raised against her were totally unfounded and that she had done little if anything different to that of other employees on a regular basis. The claimant was convinced that no one was willing to listen to her side of the story.

7 The claimant accepted that she had no medical evidence to put before the Employment Tribunal regarding these conditions. The claimant accepted that in paragraph 2 of the orders made by the Employment Tribunal on 12 January 2018, she was given the opportunity to "attach to her witness statement copies of any medical notes, records or letters from her GP or treating clinician". There was no such medical evidence before the Employment Tribunal today. In answer to questions in cross-examination she accepted that she had not consulted her GP, there had been no diagnosis by her GP, she had been prescribed no medication by her GP and there was no other documentary evidence from a counsellor or other treating clinician. The claimant had produced a letter from her GP dated 26 February 2018, only two days before this hearing. That was only produced to the respondent this morning. The claimant accepted in cross-examination that the contents of this letter were solely based on her own retrospective account of what had happened in the months between her dismissal and this hearing.

8 The claimant informed the Tribunal that she had been referred to a counsellor and had seen that counsellor "every two weeks for two months" up to December 2016. Meetings had lasted one hour approximately, depending on how depressed the claimant was at the time. The claimant at first consulted the counsellor in August 2016. The claimant confirmed that it had been necessary for the counsellor to call to the claimant's house to see her as the claimant was unable to leave the house to go and see the counsellor. The counsellor had been recommended to the claimant by a friend and the counselling had involved what the claimant described as "talking therapy". The claimant confirmed that this therapy had been helpful to her.

9 The claimant confirmed that she had effectively “shut down” during the period between her dismissal and presentation of her complaint. Her partner had to take her to work during the period since she obtained her new employment with Sky TV from 4 June to 1 September. The claimant confirmed that she had taken a number of days absence because of her condition and that eventually her employment had come to an end because of her poor attendance.

10 The claimant confirmed that she had worked for the respondent up to the initial investigation meeting and had been able to take part in three subsequent investigation hearings totalling 11½ hours. She had also attended the disciplinary hearing and presented her case to the respondent. The claimant insisted that she had made the respondent aware that she was “in a very low mood” throughout this process.

11 The claimant’s evidence was that from July 2017 she was in such a poor state of mind that she could hardly function. She managed to obtain some help from an employee representative in the respondent’s organisation and was eventually put in touch with a trade union representative.

12 The Tribunal found the claimant to be an honest and truthful witness, who genuinely believed that her mental wellbeing had deteriorated to such an extent that she was unable to deal with the process of commencing her Employment Tribunal proceedings. The Tribunal accepted the claimant’s evidence that for a lengthy period of time she was unable to leave the house and frequently did not get dressed, wash herself or apply any make-up. The Tribunal accepted that the claimant was unable to properly hold down a job with Sky TV. The claimant did however manage to obtain alternative employment with “More Than” on 22 October 2017.

13 In particular, the Tribunal accepted the claimant’s evidence that she only managed to continue to function at any level during this period, with the assistance of her partner. In the claimant’s own words, “I would not be here without him”. The Tribunal accepted the claimant’s evidence that from the date of dismissal up until approximately October 2017, the claimant was unable to address the question of presenting a complaint to the Employment Tribunal.

14 The Tribunal found that the claimant was by not later than 18 October 2017 aware of the Employment Tribunal procedure for bringing a complaint of unfair dismissal. That was the date when the claimant submitted her application to ACAS under the early conciliation procedure. The Tribunal was satisfied that by that date at the latest the claimant had the benefit of assistance from the EE employee representative and, more importantly, her trade union. The Tribunal found that the claimant was by this date aware of the three month time limit for presenting a complaint of unfair dismissal. The claimant knew that the three month time limit began to run from the effective date of termination of her employment.

15 The claimant was obliged to present her complaint to the Employment Tribunal by not later than 23 July 2017, that period of time being extended by application of the ACAS early conciliation process. It was accepted at today’s hearing by the claimant and Ms Shaftoe that the claim was undoubtedly out of time.

16 The claim was already well out of time when the claimant made her application to ACAS for early conciliation. I am satisfied that the claimant was aware that she would have to act urgently, if not immediately, once the ACAS early conciliation certificate was issued. That certificate was issued on 27 October 2017. I am satisfied that it would have been brought to the claimant's attention by not later than Friday, 19 October 2017.

17 The claimant was unable to provide any meaningful explanation whatsoever as to why she then delayed the presentation of the claim form ET1 to the Employment Tribunal until 16 November 2017. That is a further four weeks. Bearing in mind that the statutory time limit for presentation of a complaint is three months from the date of dismissal, a period of four weeks is a considerable delay. That delay must be examined in the light of the entire period of time from the effective date of termination and what had gone on in the meantime.

18 I am satisfied that it was not reasonably practicable for the claimant to have presented her claim form to the Employment Tribunal within the period of three months commencing with the effective date of termination of her employment. It was not reasonably practicable because the claimant's health amounted to a medical impairment which contributed in a material way to the claimant's inability to do so. However, I am not satisfied that the claim was thereafter presented within such further period as was reasonable in all the circumstances of the case. The burden of proof lies with the claimant to explain why it took a further four weeks from the issue of the ACAS early conciliation certificate in which to present the claim form. The claimant in this period had obtained new employment with "More Than" and had been able to go through the ACAS early conciliation process. In the absence of any meaningful explanation as to why the claim was not promptly presented after the issue of the ACAS early conciliation certificate, I am not satisfied that it was presented within such further period as I consider to be reasonable. The claim is therefore out of time. The Tribunal does not have jurisdiction to hear the claim and the claim is dismissed.

EMPLOYMENT JUDGE JOHNSON

REASONS SIGNED BY EMPLOYMENT

19 April 2018

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