



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss Maria Couto

AND

Respondent

360 Recruitment Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth

ON

8 April 2019

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Did Not Attend

For the Respondent: Did Not Attend

JUDGMENT

The judgment of the Tribunal is that the claimant's claims were presented out of time and are hereby dismissed.

REASONS

1. This is the judgment following a Preliminary Hearing to determine whether or not the claimant's claims were presented in time.
2. Neither the claimant nor the respondent attended at this hearing. There was no application by either party to postpone this hearing. I have considered the claimant's originating application, the respondent's notice of appearance, and the other copy documents which the parties have submitted to the tribunal. I have also considered any factual and legal submissions made by and on behalf of the respective parties. Based on this information, I make the following findings of fact.
3. The claimant is a Portuguese national who commenced employment with the respondent recruitment company on 23 May 2016. She was assigned to a client

of the respondent, namely Dawn Meats, and worked in an abattoir in Launceston, Cornwall, as a general operative. She was a valued and reliable employee.

4. By October 2018 the claimant was beginning to feel unwell. She submitted a Statement of Fitness for Work from her GP dated 15 October 2018. This records that the claimant's GP had assessed her case on 15 October 2018 and advised that the claimant was suffering from: "palpitations and dizziness, awaiting further investigations." The Statement did not say that the claimant was unfit for work, but rather that "you may be fit for work taking account of the following advice: amended duties" which were further explained to be: "no heavy lifting duties, for light duties/admin work only please". This statement was expressed to be for the duration of seven days until 21 October 2018. Although the claimant now suggests that there was a second Statement of Fitness for Work, the respondent asserts that it never received the same, and I have not seen a copy of any further Statement.
5. On 19 October 2018 the claimant attended at her place of work and informed the staff there that she was returning to Portugal. On 19 October 2018 the HR Department of Dawn Meats sent an email to the respondent stating: "Following a visit by Maria today we have decided to remove her from our books as a leaver. She is returning to Portugal for medical treatment for two weeks but we doubt that she will be fit to return to work after this amount of time and she appears quite unwell. I'm not sure if she has informed you of any of this?"
6. The claimant did not make contact with the respondent, and indeed did not do so until February 2019 after these proceedings were issued. The claimant states in her originating application that the last day of her employment was 19 October 2018. The respondent's notice of appearance also confirms that 19 October 2018 was the last day of her employment. This is also recorded in the claimant's Form P 45. Taking into consideration all of the above, I find that the claimant resigned her employment with effect from 19 October 2018, and that this was the effective date of termination of her employment.
7. The claimant appears to have returned to this country at some stage in November 2018 (without informing the respondent) because her GP continued to monitor her because of a suspected heart condition. The claimant then had to attend hospital in Plymouth for an (unspecified) operation between 28 November 2018 and 13 December 2018.
8. The claimant first made contact with ACAS in connection with a potential claim under the Early Conciliation provisions on 28 January 2019 (Day A). The Early Conciliation Certificate was issued by ACAS on 30 January 2019 (Day B). The claimant issued these proceedings on 30 January 2019, the same day she received the EC Certificate, claiming unfair dismissal, and for accrued but unpaid holiday pay.
9. The respondent denies the claims and says that the only communication which they received from the claimant after she resigned her employment and left for Portugal was an email dated 6 February 2019, which is one week after she presented these proceedings. That email from the claimant effectively complained

of the termination of her employment by the respondent, and their failure to support her during her ill-health.

10. The claimant has provided no information to suggest that it was not reasonably practicable for her to have issued these proceedings within three months of the termination of her employment. Even allowing for the period between 28 November 2018 and 13 December 2018 when she was in hospital, I have received no information as to why it was not reasonably practicable for the claimant to have issued these proceedings after she left hospital in mid-December 2018, and before the three month limitation period expired on 18 January 2019 one month later.
11. Having established the above facts, I now apply the law.
12. The relevant statute is the Employment Rights Act 1996 ("the Act"). Section 111(2) of the Act provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it is presented 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 in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
13. There are similar provisions for accrued holiday pay claims under Regulation 30(2) of the Working Time Regulations 1998.
14. I have have considered the following cases, namely: Palmer and Saunders v Southend-on-Sea BC [1984] ICR 372; Porter v Bandridge Ltd [1978] IRLR 271 CA; Wall's Meat Co v Khan [1978] IRLR 499; Dedman v British Building and Engineering Appliances [1974] 1 All ER 520.
15. In this case the claimant's effective date of termination of employment was 19 October 2018. The three month time limit therefore expired at midnight on 18 January 2019. The claimant did not make contact with ACAS under the Early Conciliation provisions until 28 January 2019 (Day A). At that time the time the three month limit for issuing these proceedings had already expired on 18 January 2019. Accordingly, the claimant does not benefit from any extension of time under the Early Conciliation provisions.
16. I have not received any information from the claimant to suggest that it was not reasonably practicable to have issued proceedings within the relevant time limit.
17. The question of whether or not it was reasonably practicable for the claimant to have presented his claim in time is to be considered having regard to the following authorities. In Wall's Meat Co v Khan Lord Denning, (quoting himself in Dedman v British Building and Engineering Appliances) stated "it is simply to ask this question: has the man just cause or excuse for not presenting his complaint within the prescribed time?" The burden of proof is on the claimant, see Porter v Bandridge Ltd.
18. The claimant has failed to discharge the burden of proof to the effect that it was not reasonably practicable for her to have issued these proceedings within time. Accordingly, I conclude that it was reasonably practicable for the claimant have

issued these proceedings within the relevant time limits. The proceedings were presented out of time and are therefore dismissed.

19. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 10; a concise identification of the relevant law is at paragraphs 12 to 14; how that law has been applied to those findings in order to decide the issues is at paragraphs 15 to 18.

Employment Judge N J Roper

Date: 8 April 2019