



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103447/2018

5

Held in Glasgow on 7 December 2018

Employment Judge: Iain F. Attack

10 **Natalia Chubar**

**Claimant
In Person by
video conference**

15 **Glasgow Caledonian University**

**Respondents
Represented by:
**Mr C McDowall -
Solicitor****

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgement of the Employment Tribunal is that under section 111 of the Employment Rights Act 1996 the Tribunal does not have jurisdiction to hear the claimant's complaints of unfair dismissal and breach of contract which are dismissed.

25

REASONS

Introduction

30

1. This was a preliminary hearing to decide the issue of time bar. The claimant resides in Ukraine and took part by videoconference from Kiev. The respondent was represented at the hearing by Mr McDowall.
2. The claims set out in the ET 1 are for unfair dismissal and breach of contract. The claimant did not tick the box in respect of any claim of discrimination at paragraph 8.1 of the ET 1 but did state in the form that her application related to "*a combination of several claims which, in my opinion, include breach of*

E.T. Z4 (WR)

work contract by my former employer, discrimination, incorrectly held disciplinary process, unfair dismissal, the entire strategy to which I was subjected prevented my professional development (is harassment), violation of copyrights law as part of the entire unfair activities during my employment at GCU".

5

3. At the commencement of the hearing I sought to clarify from the claimant if she was indeed making a claim of discrimination and if so what sort of discrimination was she complaining about. The claimant was not able to articulate the basis of any claim of unlawful discrimination and simply suggested a variety of possible discrimination claims including discrimination against her as a migrant worker. No notice was given in the ET 1 as to the basis of any discrimination claim other than the brief reference quoted above. As the narrative for the grounds of the application set out in the ET 1 related to claims solely for breach of contract and unfair dismissal I decided to proceed on the basis that those were the claims to be dealt with at this preliminary hearing.

10

15

4. The respondent produced an inventory of productions extending to 68 pages. The claimant relied at the hearing upon an email sent to the employment tribunal on 5 December 2018 extending to 18 pages together with an appendix. At the conclusion of the hearing she requested leave to submit a summation of her position and was allowed to do so. I advised the claimant that the summation should be just that and should not include new information. I also advised that the respondent would be given an opportunity to respond to her summation.

20

25

5. The claimant sent by email a summary of her arguments and followed that with further emails of 11 and 17 December. The claimant sent a further email to the employment tribunal on 28 December 2018. I did not consider that email to be relevant to the issues I had to decide at this stage. I have considered all these emails. Reference to documents will be by reference to the page number of the inventory of productions, preceded in the case of the

30

respondent by the letter R, and, in the case of the claimant's emails to the relevant email preceded by the letter C.

- 5 6. From the documents presented and the submissions put forward I found the following material facts.

Material facts

7. The claimant's employment with the respondent terminated with effect from 30 January 2017.
- 10 8. The claim, which was the subject of this Hearing, was presented to the employment tribunal on 20 March 2018.
9. The claimant had previously submitted a claim which was received by the employment tribunal on 2 January 2018. That claim was rejected because of
15 a failure to comply with the early conciliation requirements.
10. The claimant appealed the decision to reject her claim and that appeal was refused by the EAT on 23 February 2018, pages R3-4.
- 20 11. The claimant had also made an application to the employment tribunal for reconsideration of the decision to dismiss the claim. That reconsideration hearing took place on 5 March 2018. The decision was to affirm the previous decision and reject the claim.
- 25 12. The claimant appealed to the EAT against the decision in respect of the reconsideration and that appeal was dismissed on 30 May 2018, page R53.
13. The respondent had been unaware of the existence of that earlier claim until they received in March 2018 a letter from the EAT, relating to the appeal. It
30 had not been served upon them as it was rejected.
14. At that stage they contacted the employment tribunal and asked for a copy of the ET1.

15. The claimant is an academic engaged in research.
16. Following termination of her employment she returned to Ukraine, her home country. She applied for jobs in Ukraine but was not successful in obtaining employment there.
17. Throughout 2017 the claimant had hopes of obtaining a new job in Ukraine.
18. Had she been successful in obtaining employment in that country she would not have lodged a claim against the respondent in the employment tribunal.
19. In about October or November 2017 the claimant received a copy of her file from the respondent.
20. She considered that information in that file, relating to details of a disciplinary investigation against her whilst employed by the respondent, indicated that the respondent was contributing to her continued unemployment. She considered that someone from the respondent had told potential employers something about her employment with the respondent.
21. The claimant had been in correspondence with the respondent in July 2017 regarding the issue of a reference.
22. The claimant applied for an early conciliation certificate on 5 March 2018. The certificate was issued by ACAS on 20th of March 2018, page R27.

Submissions

Claimant

23. Ms Chubar submitted that she was trying to get another job and that this was tied to the academic year. It was therefore she claimed, reasonable for her to wait until the end of the academic year to see if that attempt could be fulfilled.
24. She stated that if she had found a new job she would not have submitted the claim to the employment tribunal. She did not want to fight with her for her

employer and was ready to move on but that would only be possible if she had found another job. She did not get another job. She referred to the written submissions she had made as set out in the email of 5 December.

Respondent

5 25. Mr McDowall submitted that both the claims for unfair dismissal and breach of contract were time-barred. It had been reasonably practicable to present the claim within the 3 month period.

10 26. It was his submission that the claimant had been notified of her redundancy at the end of October 2016 and that her employment would cease on 30 January 2017. The claimant was on notice from that point to look for alternative employment.

15 27. He submitted that there was more than sufficient time for the claimant to have submitted a claim and the fact that she was seeking alternative employment did not justify her failing to submit a claim in time. The claimant's suggestion that she would not have pursued the claim if she had got another job was not sufficient to make it not reasonably practicable for her to do so.

20 28. He also submitted that if the tribunal was not with him on that point, then the claim had not been presented within a reasonable time after the end of the period of 3 months.

25 29. What the claimant had referred to as new information which she received in about October 2017 was not relevant to this claim at this stage.

30 30. The claimant was a highly educated person and research was part of her role and it was easy for her to obtain information upon the time periods and there was no evidence that she had sought to find that out.

31. Mr McDowall referred to the following cases:-

- **Porter v Bandridge Ltd [1978] 1 WLR 1145**

- Director of Public Prosecutions and Another v Marshall [1998] ICR 518
- British Coal Corporation v Keeble and Others [1997] IRLR 336
- Bexley Community Centre v Robertson [2003] EWCA Civ 576
- 5 • Wall's Meat Co. Ltd v Khan [1978] IRLR 499
- Northamptonshire County Council v Entwhistle [2010] IRLR 740

Decision

32. In reaching my decision I took into account all that the claimant had stated at the Hearing and in the emails of 5,7,11 and 17 December.

10 **The Law**

33. Section 111(2) of the Employment Rights Act 1996 provides-

15 **“Subject to to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –**

(a) before the end of the period of three months beginning with the effective date of termination, or

20 **(b) 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 3 months.”**

34. The issues to be decided in this case were:-

25 (i) Was the claimant's complaint presented before the end of the period of three months beginning the effective date of termination?

(ii) If not so, was presentation in time not reasonably practicable?

(iii) If so, was the complaint presented within such further time as the tribunal considers reasonable?

30 35. These issues will be considered in turn.

Was the claimant's complaint presented before the end of the period of three months beginning the effective date of termination?

5 The effective date of termination of the claimant's contract of employment was 30th of January 2017. To comply with section 111(2) (a) of the 1996 Act the unfair dismissal complaint required to be presented by not later 29th of April 2017. The complaint was presented on 20th of March 2018. Accordingly, on the face of it the complaint is out of time.

10 Was presentation in time not reasonably practicable?

This is a question of fact and the onus is on the claimant. The concept of what is reasonably practicable is broadly similar to reasonably feasible, being somewhere between "reasonable" and "reasonably physically capable of being done" - **Palmer v Southend –on- Sea Borough Council 1984 ICR 372.**

20 The claimant's understanding of the words "reasonably practicable" as set out in her email of 5 December is misplaced. The legal test is set out in **Palmer.**

36. In the present case the claimant is an academic used to research. She had the ability to check and find out her rights. She was aware that she could bring a claim but her position was that she would not do so if she could have found another job. She considered it was reasonable to wait until the end of the academic year to see if she could find a job in Ukraine.

37. The correct test is not whether the claimant knew of her rights but whether that she ought to have known of them - **Porter v Bandridge Ltd** (above). She should have checked the question of time limits and presented her claim within the relevant time limit whilst still endeavouring to find a job.

38. The claim in this case was not presented until 20 March which was almost 14 months after the date of termination of employment. In my opinion the

claimant ought to have investigated her rights and presented her claim timeously. There was nothing physically to prevent her from doing so and no evidence was given that the claimant was physically not able to present a claim within the applicable time limits. The only reason given was her desire to see if she could gain alternative employment. Had she done so then, as she stated, she would not have presented the claim

5

39. If the claimant was ignorant of her rights, something she did not allege, then the question arises as to whether that ignorance was reasonable – **Wall’s Meats Ltd v Khan** (above) . I did not consider that any such inference would have been reasonable given that the employment had terminated and the claimant had abandoned her appeal against the decision to dismiss. In my opinion the claimant should have checked to ascertain what her rights were and she was fully able to have done so.

10

15

40. The new information which the claimant states was produced in about October or November 2017 is not information which made it in any way “not reasonably practicable” to present her claim. All that new information disclosed was that the details of her disciplinary hearing were contained in her file and she then had the suspicion that someone from the respondent had disclosed those details to potential employers in Ukraine thereby preventing her from gaining employment in that country. That assertion however simply reiterates that the claimant did not intend to present any claim to the employment tribunal if she had obtained another job. The information contained in the file and the conclusion drawn by the claimant does not make it not reasonably practicable to bring a claim in time.

20

25

41. The claimant’s further assertions in her email of 5 December and subsequent emails do not disclose any reason why her claim could not have been presented within the three-month period. Those assertions may, or may not, be relevant to the merits of the case, but they are not relevant to the issues I have to decide in this preliminary hearing. The claim could have been presented timeously but the claimant chose not to do so because she was waiting to see if she could find another job.

30

42. The provisions contained in sections 18A and 18B of the Employment Tribunals Act 1996 do not assist the claimant in this case as early conciliation was not sought in respect of this complaint until 5th of March 2018 with the certificate being issued by ACAS on 20 March 2018.

5

43. The claimant has not proved that it was not reasonably practicable for her to have presented the claim within three months of the effective date of termination of her employment with the respondent. I concluded that it had been reasonably practicable for the claim to have been presented within the time-limit contained in section 111(2) of the 1996 Act.

10

44. Having concluded that it was reasonably practicable to present the claim within the prescribed time-limit there is no need to consider whether the claim was presented within such further time-limit as the tribunal might consider reasonable under section 111(2)(b) of the 1996 Act.

15

45. The employment tribunal does not have jurisdiction to consider the claimant's claims of unfair dismissal and breach of contract which are dismissed.

Employment Judge: Iain F Atack
Date of Judgment: 09 January 2019
Entered in register : 10 January 2019
and copied to the parties

20