



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mrs D Kerekes

Sainsbury's Supermarkets Ltd

PRELIMINARY HEARING

HELD AT London South

ON 23 May 2019

EMPLOYMENT JUDGE BALOGUN

Appearances

For Claimant: Mr A Bachu, Counsel

For Respondent: Mr A Zovidavi, Counsel

JUDGMENT ON PRELIMINARY ISSUE

The unfair dismissal and disability discrimination claims are dismissed for want of jurisdiction as they were presented out of time.

REASONS

1. The matter that I have had to consider is whether the Claimant presented her unfair dismissal and disability discrimination complaints in time.
2. Although the hearing was listed to deal with the unfair dismissal time point only. The general consensus was that it made sense to deal with the unfair dismissal and discrimination time points together as they were presented on the same claim form and the Claimant's evidence relating to the presentation of her unfair dismissal claim, applied equally to the disability claim. As the parties had not received 14 days' notice, pursuant to rule 54 of the Tribunal Procedural Rules 2013, that this additional issue was going to be considered, I asked whether they were prepared to consent to notice being waived, which they both agreed to.
3. The Claimant provided a witness statement and gave oral evidence about the circumstances surrounding the presentation of her claim. There were also a number of documents appended to her statement, which were, in the main, correspondence between her and the tribunal.
4. The Claimant's counsel presented written submission which were spoken to. The Respondent's counsel made oral submissions. These have been taken into account.

The Law

5. By section 111(2) of the Employment Rights Act 1996 (ERA) a claim of unfair dismissal must be presented before the end of 3 months beginning with the effective date of termination or, if not reasonably practicable, by such further period after this date as the tribunal considers reasonable.
6. By section 123 of the Equality Act 2010 (EqA) a discrimination complaint must be presented within 3 months of the act complained of or such other period as the tribunal considers just and equitable.
7. In this case, time runs over the same period in respect of both claims as the last discriminatory act relied on is the dismissal. There is a dispute between the parties as to the effective date of termination. The Respondent says that it is the 26 February 2018, the date of the dismissal meeting, whilst the Claimant says it is the 6 March 2018, when she received her dismissal. In any event, this is academic, as the claim was not presented until 14 August 2018, so even on the later date, the claim is out of time as the last date for presentation, taking into account the ACAS extension, was 24 June 2018.

Findings of Fact

8. By way of background, at the time of her dismissal, the Claimant already had an extant ET claim in the London South tribunal for pregnancy and maternity discrimination. That claim was presented on 12 July 2017 by the Claimant herself, using the online portal and for the most part, she has acted in person in relation to that claim.
9. The Claimant's evidence to the tribunal was that on receiving her dismissal letter, she knew straight away that her dismissal was unfair. Although she did not say so, I find it more likely than not that she considered the dismissal to be discriminatory from the outset.

10. Shortly after dismissal, the Claimant contacted an organisation called Working Family Matters for advice on whether she had a potential claim against the Respondent. They were unable to advise and so directed her to some websites. From the Claimant's description, those websites were online forums where people exchanged views on matters, based on their own experiences rather than any expertise in Employment law. The Claimant was not directed to the Employment Tribunal website and did not seek it out herself.
11. On the 8 March 2018, the Claimant emailed the tribunal in the following terms:

"Having been dismissed by the Respondent (as evidenced in the attached letter) I believe that I must now issue a claim for unfair dismissal against Sainsbury's Supermarket Ltd. Given that the issues leading to my dismissal are related to the issue in my claim for pregnancy/maternity discrimination, I am writing to request the postponement of the hearing that is scheduled to take place over 4 days starting on 16 April 2018..."
12. The tribunal responded to that letter on 22 March 2018, postponing the hearing and instructing the Claimant to *"present any unfair dismissal claim as soon as possible"*. The Claimant's evidence was that she understood this to mean that she had to present her ACAS certificate and did not read it as meaning that she had to present a fresh claim. However, in my view, the meaning is clear on the face of the letter, especially when read together with the Claimant's email of the 8 March.
13. On 4 April 2018, the Claimant contacted ACAS in order to commence early conciliation. That process ended on 23 April 2018 and on an email on the same day, ACAS told the Claimant that it could not advise her when her tribunal claim should be submitted and that it was her responsibility to ensure that it was submitted on time.
14. On 9 May 2018, the Claimant contacted the tribunal to enquire as to whether she needed to present another ET1 form for her unfair dismissal claim. The matter was referred to a Judge and on 6 July 2018, the Claimant received a response to her query which was that a new claim form ET1 must be presented.
15. It was not until 13 July 18, that the Claimant attempted to present her claim. Instead of sending it through the online ET portal, as she had done with her first claim, she decided to download the form, complete it, print it off and then email it to the tribunal.
16. On 7 August 2018, the Claimant received a letter from the tribunal informing her that her claim had been rejected as she had not sent it by one of the prescribed methods.
17. On 14 August 2018, the Claimant re-presented her claim by delivering it by hand to the Tribunal office.

Conclusion on Unfair Dismissal claim

18. The Claimant's reason for presenting her claim late was that she was unsure whether or not she needed to present a further ET1 form given that she already had an existing and related claim. However, the Claimant knew that a possible outcome of her enquiry would be that she did have to present her claim. That is clear from her email of the 8 March, referred to above. That being so, instead of taking the precautionary step of lodging her claim, she decided to wait for an answer to her enquiry, just in case she did not need to. That was not a sensible approach to take, when faced with a strict time limit.

19. The Claimant told the tribunal that she was aware, generally, of the 3-month time limit for presenting claims. However, she took no proactive steps to find out when the time limit expired in her case, even though she was alerted by ACAS and the tribunal of her need to act promptly. The Claimant confirmed that she was proficient at using the computer and internet, so she could have easily done some research by logging onto the employment tribunal website, which she could have found through google or any other search engine. No adequate explanation was given for failing to do so.
20. In all the circumstances, I find that it was reasonably practicable for the unfair dismissal claim to have been presented in time.
21. However, if I am wrong about that, I also find that the claim was not presented within a reasonable time after the time limit had expired, for the following reasons:
 - a. Upon receiving the tribunal's letter of 7 July 2018 (which, by normal post would have been received on or around 9 July) there would have been no doubt in the Claimant's mind that she had to present a new claim. Knowing that there was a 3-month time limit, it should have been patently obvious to the Claimant that her claim was out of time and so needed to be presented urgently. In my view, a reasonable time for her to have done so would have been 10 July, at the latest. Instead she waited until 13 July before attempting to lodge the claim. No explanation has been given for the delay between 10-13 July.
 - b. It was submitted on behalf of the Claimant that the delay between 13 July and 7 August (when she was notified of the rejection of her claim) should not count as she genuinely thought that her claim had been presented. I disagree. It was unreasonable for her to send the ET by email, given that she could, and should, have sent it by one of the prescribed methods. There was absolutely no reason for her not to use the online portal given that she had successfully used this method for her existing claim.
 - c. Further, I find that the delay between 7-14 August 2018 was unreasonable. Knowing that her claim had been rejected, the Claimant should have realised, with the further elapse of time, that her claim was seriously late and needed to be presented as a matter of urgency. That being the case, it would have been prudent of her to use the fastest method available for its presentation, which was the online portal. Instead, the Claimant chose to deliver the claim form by hand even though she knew that, because of her domestic situation, the earliest opportunity she could do so was the 14 August 2018. It is clear from this that she was not treating the matter with the urgency that was warranted.
22. My decision is that the unfair dismissal claim is struck out.

Conclusion on Disability Discrimination Claim

23. The case of Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA makes clear that the discretion of the Tribunal to extend time on just and equitable grounds should be exercised exceptionally and that the burden is on the Claimant to satisfy the Tribunal that there are good reasons for exercising its discretion.

24. The Claimant relies on the same facts as for the unfair dismissal claim. For the reasons already stated, and having considered the factors in British Coal Corporation v Keeble [1997] IRLR 336 there is nothing in the Claimant's evidence that persuades me that there are just and equitable reasons to extend time.

25. My decision is that the disability discrimination complaint is struck out.

Employment Judge Balogun
Date: 24 May 2019