



EMPLOYMENT TRIBUNALS

Claimant

Mrs D Caviel

v

Respondent

Royal Mail Group Limited

Heard at: Bury St Edmunds

On: 10 June 2019

Before: Employment Judge Laidler

Appearances:

For the Claimant: In person

For the Respondent: Ms S Hobson, Solicitor

JUDGMENT having been sent to the parties on 1 July 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claim in this matter was received on 18 January 2019, bringing complaints of unfair dismissal and sex discrimination arising from the dismissal. The respondent pleaded that the claims were out of time and this hearing was listed to determine whether the claims should continue.
2. The claimant invoked ACAS Early Conciliation on 17 January 2019 and the certificate is dated the same date. As it was entered into after the expiration of the primary limitation period, it does not give any extension of time to the Claimant. It was not disputed at this hearing that the claims are on the face of them out of time.
3. There is a dispute between the parties as to the effective date of termination the respondent stating it was 12 October 2018 and the claimant 13 October 2018. It is not necessary to determine that for the purposes of today's hearing and the time limit therefore expired on 11 or 12 January 2019. In the dismissal letter the operations manager stated that his decision was to dismiss without notice for:

'Unauthorised absence from work after a request for annual leave was declined. Knowing the request was not granted you decided to go on holiday and text your line manager... to advised you would not be at work'.

4. The claimant had a trade union representative throughout her disciplinary

and appeal hearings. The appeal hearing decision was sent on 12 December 2018 and it is assumed received the following day or so.

5. The claimant, sadly, had been undergoing treatment for breast cancer and having been diagnosed in early November 2018, she had that diagnosis when she went through the appeal. This clearly impacted on her physical and mental health and her mental health deteriorated somewhat after the Christmas period.
6. After the receipt of the appeal decision the claimant waited until the 9 January 2019 the claimant contacted Mr Butts, her trade union representative, to find out what the next steps were. She did not hear back from him until 17 January 2019, when he told her that she had to apply to the Employment Tribunal which she did. He had not told her before that there was a time limit, but now did so, explaining that she was already out of time. He did not explain anything more to her. She asked why he had not contacted her to tell her of the 'pending end date' and he just said he was busy with lots of cases.
7. The trade union had advised throughout that the Claimant's next step was a tribunal but provided no further details than that.

RELEVANT LAW

8. S111(2) of the Employment Rights Act 1996 provides that a complaint of unfair dismissal must be presented to the tribunal:

'(a) 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'

9. The complaint of sex discrimination under the Equality Act 2010 must be brought within three months also,

'(a)...starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable'

Section 123(1)

Conclusions

10. Dealing firstly with the unfair dismissal complaint, whilst not in any way seeking to diminish what the claimant was going through, there is no evidence from her or medical evidence that she was prevented from bringing her claim. As stated throughout the time limit for the unfair dismissal claim is a much stricter one and the tribunal has to determine whether or not it was reasonably practicable to bring the claim. The claimant had her trade union representative throughout who had explained

if the claimant lost she could go to a tribunal. She had access to a representative who could advise on time limits. It does not appear she took any other steps to ascertain what she could do once dismissed, and her appeal not upheld. In relation to the reasonably practicable test it was reasonably practicable to lodge the claim in time.

11. No evidence has been provided as to why the claim was not issued in time other than the lack of advice of her trade union. If the trade union representative did not advise on time limits, that is a matter that the claimant must take up with her union.
12. It follows from those conclusions that the tribunal has no jurisdiction to deal with the unfair dismissal claim and that claim is dismissed.
13. Sex discrimination claim; the tribunal has a wider discretion to consider all relevant matters in determining whether it was just and equitable to extend time. Again, little explanation has been given for the delay. One of the factors is that the claimant did not receive the appropriate advice from her trade union and the tribunal can look at that in a different way to the strict test under reasonably practicable. It must also consider the treatment for breast cancer that the claimant was undergoing, although as already stated, there is no evidence before the tribunal and the claimant has not given evidence herself that she was actually unable to put the claim in during the relevant period for that reason.
14. However, in considering all the relevant factors, the tribunal may also consider how the claim is put. It is that a Mr Diggons, a fellow worker, was allowed one day off when the claimant is being criticised for taking her leave. This appears in the disciplinary report before this tribunal where it is stated his leave was for one day for him to move to a new house. The circumstances are not the same and he would not be an appropriate comparator for Equality Act 2010 purposes. An appropriate male comparator would be one who had also been denied leave but took the leave in any event and was treated differently to the claimant.
15. The claimant has also raised two other matters which were not in her ET1 which the tribunal has also considered. She stated at this hearing that the same male employee was granted three days' leave in the previous month to attend the World Cup. It is not known if he did attend when England did not make it to the final. It is however, again, not a like for like comparator as the claimant was dismissed for still going on leave when it was refused.
16. The claimant also raised the case of someone she complained about sexually harassing her. She has found out through a subject access request that that male was allowed to retire, yet she was dismissed for what she says is a lesser matter. The full circumstances are not known. Again, this is not a direct comparison and the claimant was dismissed for taking the leave when it had been refused.
17. The sex discrimination complaint appears to have no or little reasonable prospect of success and that is something that must be considered in deciding whether it is just and equitable to extend time as the Respondent should not be put to the expense of defending a claim without merit. The

claim of sex discrimination is therefore also dismissed as out of time it not being just and equitable to extend time.

18. Had the claim of sex discrimination been permitted to proceed, the tribunal would have exercised its discretion to order the payment of a deposit as a condition of the claimant continuing to advance that claim.

Employment Judge Laidler

Date:19.07.19

Judgment sent to the parties on

.....23.07.19.....

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For the Tribunal office