



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms S Foster

v

Princess May Primary School

Heard at: Watford

On: 24 June 2019

Before: Employment Judge Tuck

Appearances

For the Claimant: In person

For the Respondent: Nikolas Clarke, Solicitor

JUDGMENT

The claimant's claim for unfair dismissal is struck out as it has no reasonable prospect of success.

REASONS.

1. By an ET1, presented by the claimant acting on her own behalf, submitted on 1 January 2018, the claimant presented a claim of unfair dismissal only. The claimant had begun employment at the Princess May Primary School, which is within the London Borough of Hackney, on 22 January 2012 working as a teaching assistant.
2. On 26 May 2017, she was told by the then Head Teacher that her employment would end at the end of term on 21 July 2017. He was going to make enquiries as to whether or not she would be entitled to a redundancy payment. Meanwhile on 29 May, the claimant received the very sad news that her father had passed away and she was concerned in the immediate aftermath with making arrangements to go to Jamaica for his funeral and having discussions about organising to have time off work and the basis of that time off. On 11 September 2017 the claimant commenced early conciliation via ACAS. The impact of that communication led to the Respondent deciding to reinstate the claimant. On 22 September 2017, the claimant was told that her employment would be reinstated and her ET1 makes clear that she received a letter to that effect on 29 September 2017. That letter did not make clear that her continuity of employment would be preserved but it did make clear that she had a return to work date of 2

October at her usual reporting time and that she would “no doubt be reimbursed for any salary loss you have incurred as a result of this error”.

3. On 2 October, the claimant was too unwell to return to work. She has given me an oral account of the significant stress and distress she suffered in the period when told that her employment of over five years had been terminated, without, in her view, any thorough or proper procedures being followed. On 6 October 2017 Dot Com Solicitors Limited, instructed by the claimant, wrote to the respondent, setting out a proposed claim of unfair dismissal and saying that their client’s reinstatement did not deprive her of the right to claim unpaid salary, loss of a month’ notice period, loss of statutory rights, a basic award for unfair dismissal, an uplift on that and an award of £12,000 for injury to feeling. That claim also set out an allegation for a claim for unfair dismissal. It did say:

“our client says the Headteacher would always discriminate her (sick) and push her around for the wrong reasons”

It did not set out any cause of action under the Equality Act or any other form of action for discrimination.

4. On 19 October 2017, the claimant returned to work. On 15 November 2017, she received the backpay for the period from the end of July onwards. Some 11 months later, on 16 October 2018, she resigned.

Law

5. The respondent, as indicated in a letter dated 18 December 2018, has applied to strike out the claim of unfair dismissal on the basis that it has no reasonable prospect of success and relies on rule 37 of the Employment Tribunal Rules of Procedure.
6. The Employment Rights Act 1996 at section 95 provides that an employee has the right not to be unfairly dismissed. Section 111 provides that complaints can be presented to an Employment Tribunal within a period of three months, beginning with the effective date of termination or such further period as the tribunal considers reasonable, if it is satisfied that it was not reasonably practicable for the complaint to have been presented before the end of that period of three months. This three month period may be extended by the period when parties take part in ACAS early conciliation.
7. Section 219 of the Employment Rights Act deals with reinstatement or reengagement of dismissed employees and is an enabling provision under which regulations may be made. The Employment Protection Continuity of Employment Regulations 1996 provide essentially that continuity of employment will be preserved for all purposes including the period between dismissal and any reinstatement or reengagement.
8. Remedies for unfair dismissal may not include any compensation for injury to feelings: *Dunnachie v Kingston –Upon- Hull* [2004] UKHL 36.

Submissions

9. The respondent's application to strike out is set out essentially in its letter of 18 December 2018 and Mr Clarke has made oral submissions further to that today. He essentially raises three points: -
 - 6.1 Firstly that any claim relying on an effective date of termination of 21 July is out of time, allowing for an additional 30-day period due to the ACAS conciliation period going on. The time for presentation of any claim expired on 21 November 2017, so a claim of 1 January 2018 was out of time.
 - 6.2 He says that in any event, the dismissal of the claimant as of 21 July was extinguished by virtue of the offer of (he says reengagement, but means) reinstatement, which was clearly accepted by the claimant when she returned to work and continued there for a year.
 - 6.3 Thirdly, in any event he says that the claimant has suffered no loss because she has been paid throughout as if her contract had not terminated.
10. Ms Foster has represented herself and relies upon her letter of response sent to the Tribunal on 22 December 2018 to which she also added orally. She points out that she considers herself to have been unfairly dismissed and it was only when ACAS intervened that she was paid arrears of her salary and that she had suffered a great deal of stress and anxiety. She thought that the fact that she was reinstated on 2 October did not change the fact that she was unfairly dismissed and did not get the opportunity to appeal against that dismissal. The claimant agrees that she is complaining about a dismissal as of 21 July 2017 and agrees that she did not suffer financial loss because in November she received back pay but points out the stress and injury to her wellbeing that she sustained during that period.
11. In relation to why the claimant didn't lodge her claim after receiving the ACAS certificate on 11 October 2017, the claimant said that she was going via Dot Com Solicitors and that they had conduct of the matter until the end of December. It was when she took back conduct of the matter that she presented her ET1 on 1 January 2018. She agrees that she had returned to work before the November date which would have been the expiry of the primary limitation period.

Conclusions

12. The impact of the Employment Protection Continuity of the Employment Regulations at Regulation 3.2 is such that this claimant's continuity of employment was preserved when she was reinstated. As at the date she presented her ET1, on 1 January 2018, she was not an employee who stood dismissed, she had been back at work by that point for some time and indeed ticked that box on the ET1 form, making that clear. I find that this means that

she cannot bring a complaint that she has been dismissed in that her contract has been terminated by the employer given that it has essentially been revived by the reinstatement which followed.

13. I do find that this is akin to situations where an internal appeal is successful and an employee's employment continues as if there had been no dismissal.
14. However, in any event, I am entirely satisfied that any complaint relating to a dismissal on 21 July 2017 is out of time. The ET1 was presented on the 1 January 2018 and even with the additional period provided for by the ACAS early conciliation period, any claim ought to have been presented on or before 21 November 2017. I am afraid that putting matters in the hands of legal advisers does not provide an explanation as to why it wasn't reasonably practicable to present the claim earlier. Particularly when the claimant was well enough to engage with ACAS, as she very successfully did, in managing to get her job back, and was able to return to work. Consequently, I do find that this claim is out of time, as such that the tribunal does not have jurisdiction to consider it.
15. I have placed less emphasis on the fact that the claimant has not suffered any financial losses because generally a claimant is entitled to have a declaration of unfair dismissal if indeed they have been dismissed, regardless of any losses sustained or not. The claims set out by Dot Com Solicitors and then repeated by the claimant in various other documents before the tribunal essentially seek compensation for injury to feelings; this is a loss simply not within the tribunal's jurisdiction when considering claims of unfair dismissal.
16. In these circumstances I am satisfied that the respondents have met the hurdle set by rule 37, the Tribunal's Rules of Procedure, as such that there is no reasonable prospect of the Claimant succeeding in a claim for unfair dismissal.

Employment Judge Tuck

Date:.....01.07.19.....

Sent to the parties on: ...05.08.19.....

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For the Tribunal Office