



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss S Watton

v

Bewdley Youth Café

Heard at: Birmingham

On: 17 December 2018

Before: Employment Judge Broughton

Appearances

For Claimant: Mr P Dutton, lay representative

For Respondent: no appearance

JUDGMENT

All of the claimant's claims were presented out of time and are dismissed.

Employment Judge Broughton

Date: 17 December 2018

Sent to the parties on: 18 December 2018

REASONS

The Facts

1. The claimant brought numerous claims including for:

Unfair dismissal

Whistleblowing detriment and dismissal

Unpaid wages and expenses

Unpaid holiday pay

Breach of contract – notice pay

Discrimination – identified as discrimination on grounds of sex and/or religion or belief but actually alleged on grounds of her being a “Romany Gipsy”

2. Whilst the claimant had suggested in her claim form, probably due to a misunderstanding, that the effective date of termination of her employment was 31 December 2017, it transpired that she was dismissed by letter dated 15 December 2017 “with immediate effect”.
3. The claimant acknowledged that she had collected that letter from the post office on or before 22 December 2017.
4. The claimant confirmed that all of her claims related to matters up to and including that date.
5. I heard that the claimant took legal advice in January or February 2018 but further advice was prohibitive on grounds of cost.
6. It was unclear whether she received advice on time limits at that stage but she was advised about the need to proceed via the ACAS early conciliation process.
7. Mr Dutton, acting as her representative, contacted ACAS by telephone on 1 March 2018 and the early conciliation process commenced on that date.
8. Mr Dutton could not recall if there were any specific discussions about time limits at that stage.
9. He did, however, produce various email exchanges with ACAS.
10. Early conciliation ended on 1 April 2018 but communications continued with ACAS. Mr Dutton had produced a summary of the claimant’s claims and agreed that this could be forwarded to the respondent on 5 April 2018.
11. Mr Dutton chased a response on 24 April 2018 and acknowledged that he was advised that he should take advice in relation to time limits but that, generally, he only had 1 month after the end of early conciliation to submit a claim.
12. That left the claimant with 6 days in which to submit her claims.
13. Mr Dutton suggested that this was not enough time as he was often working away and the claimant was unwell throughout.
14. It transpired that Mr Dutton was working away on 24 and 25 April but not for the next few days up to the tribunal deadline.
15. In the absence of the respondent there was no challenge to the fact that the claimant was unwell. However, her evidence was that she was unwell throughout and, if anything, her health had been deteriorating, although no

specific medical evidence was provided. I was prepared to accept that she was, indeed, unwell.

16. It was agreed that no claim was submitted in time. Mr Dutton continued to email ACAS. He was, apparently, hoping for an offer of settlement prior to issuing proceedings. He confirmed this in an email to ACAS on 11 May 2018.
17. In reply on 14 May 2018 ACAS expressed concern that the claim was already out of time. It also confirmed the advice previously given (on 24 April 2018) about time limits, which Mr Dutton acknowledged he had received.
18. The following day Mr Dutton suggested that they would file the claim "immediately". The claim was ultimately received on 4 June 2018, over a month late.

The issues and the law

19. It was conceded that all of the claimant's claims related to matters arising on before 22 December 2017. It was further conceded that all of the claims needed to be presented by 1 May 2018, allowing for the extension of time provided by the early conciliation process.
20. The issue of whether to accept the claimant's claims needed to be assessed using the "reasonably practicable" test for the majority of the claimant's claims.
21. This test is laid out in s.111(2)(b) Employment Rights Act 1996 in relation to the claim of unfair dismissal but similar wording is used in relation to the other claims, other than those alleging discrimination.
22. I need to consider whether it was reasonably practicable for the claims to have been presented within time and, if not, whether they were presented in such further time as was reasonable.
23. In relation to the discrimination claims the time limit is the same but the claims may still be heard if it is "just and equitable" to do so (s123(1)(b) Equality Act 2010).
24. In my deliberations in that regard I may consider the following:
 - The length of and reasons for the delay
 - The potential prejudice to each party
 - Any effects on the cogency of the evidence
 - The promptness of the claimant's actions
 - Any failure to co-operate on the part of the respondent
 - The steps taken to obtain appropriate adviceAnd, potentially, the merits of the claim

Decision

25. As already stated it was admitted that the claims were presented over a month late. In relation to all claims the burden is on the claimant to convince me that they should be accepted late.
26. The claimant and her representative suggested that they were unaware of the time limits until expressly informed of them by ACAS on 24 April 2018. That still left them with a week in which to submit their claims.
27. It was suggested that there were some delays in responding to emails by ACAS both prior to 24 April and after the deadline, caused by brief industrial action in May 2018.
28. The issue for me was whether it was reasonably practicable for the majority of the claims to be presented in time and it seems to me that it was.
29. Once aware of the deadline the claimant had a week in which to present her claims.
30. Whilst Mr Dutton was working away for the next couple of days he was then in the midlands from 26 April 2018. There was no evidence that there was not time then to sit down with the claimant and prepare and present her claims.
31. Whilst I acknowledge that the claimant may well have been unwell there was no evidence that she was so incapacitated as to be unable to give instructions. Indeed, she had probably already given Mr Dutton sufficient information as this was needed to engage with ACAS.
32. Moreover, it was the claimant's evidence that she remained unwell, or her health was deteriorating yet she was able to give instructions on the first weekend in June such that her claims were presented on Monday 4 June 2018.
33. As a result there was no evidence before me that suggested that there was any reason that those instructions could not have been given on the last weekend in April 2018 and the claims presented on 30 April 2018. It may be that the claimant and her representative did not make time to meet sooner but there was no evidence that they could not have done so.
34. In fact, the contemporaneous evidence from the ACAS emails suggested that the real reason the claimant did not submit her claims sooner was because they hoped that the respondent would make an offer of settlement. That may well have been the case but that is not a valid ground for an extension of time. There was never any suggestion from ACAS that such an offer would, necessarily, be forthcoming.
35. As a result, it was reasonably practicable for the majority of the claimant's claims to be presented in time.

36. In addition, the claimant and her representative were well aware of the urgency of the situation and yet her claims were not presented for over a month after the deadline passed. That was so even after a further reminder of the urgency from ACAS and Mr Dutton stating that the claims would be submitted “immediately” on 14 May 2018.
37. The claims were not submitted for a further 3 weeks and the total delay of 5 weeks was, therefore, also not reasonable in all the circumstances.
38. In relation to the discrimination claims I was unaware of any evidence that would support the claimant’s assertion that any of her treatment was because of her stated status as a “Romany Gypsy”. Such a claim would not appear to work as a claim of discrimination on grounds of sex and/or religion or belief.
39. In any event, it was difficult to establish the potential prejudice of not being permitted to pursue her claims. There would clearly be prejudice to the respondent in having to defend claims that were presented late, albeit the length of delay was unlikely to affect the cogency of the evidence.
40. I have already explained how the reasons for not filing her claims sooner did not appear to justify the delay, nor did the mere fact that they were hoping for a settlement offer from the respondent.
41. I am reminded that permitting discrimination claims to proceed when presented late should be the exception rather than the rule.
42. The claimant did not act promptly when aware of the time limit, nor, indeed, when subsequently reminded of it.
43. In all of those circumstances, it would not be just and equitable for me to extend time for the discrimination complaints.
44. Accordingly, all of the claimant’s claims must be dismissed.