EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Dr Glaucia Pereira	**v**	**GFT Financial Ltd**

PRELIMINARY HEARING

Heard at: **London Central** **On: 26 July 2019**

Before:

Appearances
For the Claimant: In person
For the Respondent: Mr Thomas Kibling of Counsel

JUDGMENT

The application of the Claimant to amend her claim so as to add claims of

(i) pregnancy dismissal and

(ii) (ii) "automatic" unfair dismissal on the basis the Respondent infringed one or more of her statutory rights (s 104(1) Employment Rights Act 1996) (having raised a grievance)

is refused.

REASONS

1. The Claimant worked approximately five months for the Respondent as a Senior Data Scientist starting on 4 June 2018 and finishing on 9 November 2018. On 20 December 2018, she submitted an ET1 to the Employment Tribunal. On page 6 of that form when invited to indicate the type of claim she was making by ticking one or more of the boxes below, she ticked the appropriate boxes to show that she was making two claims, those being that she was unfairly dismissed and she was discriminated against on the grounds of sex. It is of note that she could have, but did not, tick the box that indicated she was discriminated against on the grounds of pregnancy or maternity.

2. On 11 February 2019, the parties were sent a Notice of a Preliminary Hearing (Case Management) on 24 April 2019 and a Notice of the Full Hearing to be held over 3 days starting 25 July 2019.

3. On that same day, the Employment Tribunal sent the Claimant a Strike Out Warning letter advising that, as she had less than the two years' service required by section 108 of the Employment Rights Act 1996 to be entitled to claim unfair dismissal, she had until 25 February 2019 to give reasons in writing why her complaint should not be struck out.

4. The Claimant did not respond to the Strike Out Warning letter until 5 April 2019 when she wrote setting out a list of 19 exceptions to the requirement that she have two years' service to claim unfair dismissal, the list being, I assume, copied from some online source. The list had three exceptions highlighted by shading. They were numbered 7, 8 and 11. Exception 7 was said to be:

> Where an employee is dismissed due to Sex, Race, Age or Disability Discrimination. An employee should bring a claim for discrimination, not unfair dismissal. If successful, they are likely to receive more compensation.

5. Exception 8 was said to be:

> Dismissal relating to an employee asserting their rights under employment laws.

6. Exception 11 was said to be:

> Dismissal relating to an employee asserting their rights under the Employment Relations Act 1999, section 10, the right to be accompanied to a disciplinary or grievance hearing.

7. The Claimant in her letter said:

> I referred to points number 7 and 8 below. Additionally, while point number 7 indicates that only claim of discrimination is required, because point number 8 also applies, I have presented two claims (i) gender discrimination and (ii) unfair dismissal.
>
> To clarify: Point 8 applies because I was dismissed following Grievance, meaning that this resulted from myself asserting my employment rights.

8. It is of note that she could have, but did not, highlight by shading point number 5 that applied:

> Where dismissal is linked to pregnancy or maternity rights.

9. At the Preliminary Hearing on 24 April 2019 before Employment Judge Mason, the Claimant sought to add claims of (i) pregnancy dismissal and (ii) "automatic" unfair dismissal on the basis the Respondent infringed one or more of her statutory rights (s 104(1) Employment Rights Act 1996) (having raised a grievance). As a result, Employment Judge Mason postponed the full merits Hearing to 18, 19 and 20 November 2019 and directed that a Preliminary Hearing should be listed for today to determine whether the Claimant should be allowed to amend her ET1 so as to add those claims, it being the case that such claims were out of time. For the record, her dismissal occurred on 9 November 2018: ACAS were engaged for the purposes of Early Conciliation for one month and one day so the latest that these claims had to be presented was by 10 March 2019. The application to amend was made on 24 April 2019 which is one month and 14 days out of time. At the hearing on 24 April, the Claimant asserted that, on 30 October 2019, she had informed Ms Sharleen Sira, the HR Manager who dealt with the Claimant during the latter's employment, that she was pregnant.

10. On 8 May 2019, the Claimant provided an 18-paged document entitled "Claimant's Response to Further Particulars" in which she asserted that her dismissal was linked to pregnancy because she had been dismissed nearly a week after notifying

the Respondent "about arrangements need for a medical appointment". In the body of the further information that she provided, the Claimant asserted that, when she was on holiday leave which lasted to about the middle of October 2018, she fell ill. She asserted that there were a number of possible causes of her illness, citing the emotional pressure she was under at the time, the fact she was allergic and the fact that, as it turned out, she was pregnant. She further asserted that she informed Ms Sira in an email dated 30 October 2018 that she was pregnant.

11. The Claimant also, on a date in May, made a Subject Access Request seeking to obtain a copy of the email she sent to Ms Sira on 30 October 2018.

12. Employment Judge Mason provided directions for the preparation of this hearing. She did not provide for the Claimant to provide a witness statement but I heard evidence from the Claimant in order to establish whether I should exercise discretion to extend time in respect of the claim that the dismissal was related to pregnancy or whether it was not reasonably practicable for the Claimant to have presented with the period of three months starting with the date of dismissal the claim for "automatic" unfair dismissal on the basis the Respondent infringed one or more of her statutory rights (s 104(1) Employment Rights Act 1996.

13. I also heard evidence from Ms Allison Smith who works for the Respondent as interim HR Manager covering for Ms Sharleen Sira who is the HR Manager who dealt with the Claimant during the latter's employment.

14. The Claimant's case is that she was tested positive for pregnancy at the end of October 2018. She says she informed Ms Sira she was pregnant on 30 October and then was dismissed 10 days later. The pregnancy did not survive to term.

15. The Claimant was not able to supply a clear and coherent explanation either for her failure, when filling in the ET1 form ahead of presenting it on 20 December 2018, to tick the box indicating that she was claiming pregnancy discrimination or for her failure, on 5 April 2019, to highlight by shading exception number 5 that she was claiming pregnancy discrimination. These failure were difficult to understand as the Claimant is academically gifted – she has a PhD – and she had done a considerable amount of research online to acquaint herself with the law in this area.

16. It would appear that between 5 and 24 April 2019, the Claimant consulted a lawyer in Bristol. The outcome of her discussion with the lawyer was her application to amend.

17. On 24 July 2019, that is, two days before this hearing, the Claimant sent to the Respondent a photograph of an email which she says is the email by which she informed Ms Sira on 30 October 2018. The email is address to Ms Sira and purports to form part of a thread of emails on the subject "Re: meeting with Colin". She told the Respondent that she was not able to provide the electronic version of this email because she did not have it.

18. Ms Allison Smith's evidence was that she was the person charged by the Respondent with responding to the Subject Access Request of the Claimant. With the assistance of Mr Rob Collins, the Group IT Infrastructure – Front End Manager, she had searched emails stored on the Respondent's email system for a host of terms relating to pregnancy that had produced no results. When they received the photograph of the email of 30 October 2018, they searched and unearthed the

thread on the subject "Re: meeting with Colin" but the latest email in that thread that they were able to discover was an email sent from the Claimant on 22 October 2018 at 1631 hours. On the photograph of the email of 30 October, the email that appears to be the preceding one in the thread is that sent from the Claimant on 22 October 2018 at 1631 hours. However, they were unable to discover the email that is the subject of the Claimant's photograph.

19. Ms Smith was also able to tell the Tribunal that she and Ms Siri had both been present at the Preliminary Hearing on 24 April 2019 when the Claimant asserted that she had informed Ms Sira on 30 October that she was pregnant. Ms Smith says that Ms Sira was "genuinely shocked by this allegation" because, as it happens, Ms Sira was in the first stages of her own pregnancy at that time (a pregnancy which was carried to term, the result of which has prevented her from attending this hearing). Given she was pregnant herself at that time, Ms Sira would have been very alive to a colleague who was announcing she was pregnant. However, the Claimant's assertion of having told Ms Sira about her pregnancy was news to her.

20. Mr Kibling has helpfully provided with a note that includes a section on the relevant legal principles, in particular, the guidance of the EAT in **Selkent Bus Co Ltd v Moore** [1996] ICR 836 which stress the importance of time limits being considered where an amendment is sought to plead a new cause of action. The two claims sought to be added by way of amendment have different tests to be applied to extend the time limit of 3 months. In respect of the "automatic" unfair dismissal claim the Claimant seeks to bring on the basis that the Respondent infringed one or more of her statutory rights (s 104(1) Employment Rights Act 1996) (having raised a grievance), the time limit can be extended if the Tribunal considers that it was "not reasonably practicable" for the complaint to be presented before the end of the deadline. And, while the claim was not presented before the end of the deadline, the claim was nevertheless presented within a reasonable period.

21. The time limit for the claim of pregnancy discrimination can be extended if the Tribunal is satisfied that it is just and equitable so to extend the time limit. In that respect, I remind myself of the guidance Auld LJ gave in Robertson v Bexley Community Centre [2003] IRLR 434 (CA) about time limits in this jurisdiction:

> It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule. It is of a piece with those general propositions that an Appeal Tribunal may not allow an appeal against a tribunal's refusal to consider an application out of time in the exercise of its discretion merely because the Appeal Tribunal, if it were deciding the issue at first instance, would have formed a different view. As I have already indicated, such an appeal should only succeed where the Appeal Tribunal can identify an error of law or principle, making the decision of the tribunal below plainly wrong in this respect.

Discussion

22. I could find nothing in the account that the Claimant provided to me of any reason why I should exercise discretion in her favour and extend the time limit on the basis that it is just and equitable so to do. I do not accept that a highly educated woman, recently finding herself pregnant but also losing her job some 10 days after disclosing that fact to her employer, would need the guidance of a lawyer before

being able to assert she had been discriminated against, if she actually thought the two events were connected. She was able to research her employment rights in August and she was able to find out about the early conciliation procedure and contact ACAS within 10 days of her dismissal. In the absence of facts establishing a case as to why it would be just and equitable to extend time, I follow the guidance of Auld LJ and accept the default position to be that the claim is out of time.

23. In respect of the "automatic dismissal" claim, it clearly was reasonably practicable for the Claimant to have brought the claim within the requisite time period because she was able to research and bring two other claims within that time.

24. I therefore rule that both new claims are out of time and refuse to allow the amendment.

25. The Respondent had also argued that, should it fail to persuade the Tribunal not to allow the amendment, it sought a deposit order on the basis that, as set out in Rule

DIRECTIONS

After delivering the judgment above, I made the following directions:

1. By consent, the full merits Hearing date, which had been set for 18, 19 and 20 November 2019 should be vacated and a new Hearing date be substituted of 2, 3, 4, 5 and 6 March 2020.

2. Further directions to be agreed between the parties and, in default of agreement by 31 August 2019, the parties (or one of them) to request a preliminary hearing (case management) to be conducted by telephone.

Employment Judge -Stewart
29 July 2019

Sent to the parties on:
29th August 2019

For the Tribunal:

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