



EMPLOYMENT TRIBUNALS

Claimant

Ms L Joseph

v

Respondent

London Borough of Haringey

PRELIMINARY HEARING

Heard at: Watford

On: 7 October 2019

Before: Employment Judge C Palmer

Appearances:

For the Claimant: In person

For the Respondents: Mr L Harris, Counsel

JUDGMENT

1. The tribunal has no jurisdiction to hear the claimant's claims as they are out of time. Time is not extended under the Employment Rights Act or the Equality Act.

REASONS

1. The claims and Early Conciliation

1.1 The claimant claims unfair dismissal, disability discrimination, race discrimination, other payments including notice, holiday, arrears of pay. The issue for this preliminary hearing is whether the tribunal has power to hear the claims as they appear to have been brought out of time.

1.2 The claims were lodged with the tribunal on 11 January 2019. The only ACAS certificate known to the respondent (and the tribunal) was one dated 19 October, which was more than 3 months after the claimant's dismissal, which was on 17 July 2018. The prospective respondent was Haringey Council, which was the correct name. The EC reference number was R330937/18/52 linked to R327848/18.

1.3 The claimant produced at the Hearing, for the first time, an ACAS certificate showing that she had filed with ACAS on 12 October against the school where she worked. She then filed with ACAS against on 19 October when she realized that she had named the wrong respondent. The hearing was adjourned for the respondent to consider this new certificate and whether the claims were still out of time.

2. The evidence and facts

2.1 I heard evidence from the claimant and she provided a bundle of documents. I took account of the documents referred to. I find the following facts.

2.2 The claimant was dismissed on 17 July 2018 without notice. Her appeal against dismissal was heard on 11 September and was dismissed.

2.3 The claimant took advice from her trade union about bringing a claim. She said she was aware of the time limits. The union advised her to file with ACAS and put forward the ET application. The claimant then filed with ACAS on 12 October 2018 naming the respondent as Welbourne Primary School. A certificate was issued on 12 November 2018. The tribunal and respondent were not aware of this certificate with the EC Reference R327848/18/14 until the date of this preliminary hearing.

2.4 After filing with ACAS naming Welbourne Primary School, the claimant realised that she should have named as the respondent Haringey Council. She filed again with ACAS against Haringey Council on 19 October 2018. This was more than three months from her dismissal so would make the claim out of time.

2.5 A certificate was issued on 19 November 2018. The respondent did not take any point about the wrong respondent being named, having adjourned to consider the matter.

2.6 In any event I find that the naming of the wrong respondent was a minor error and it would not be in the interests of justice to strike out the claim for this reason. It was an easy mistake to make as the claimant worked at the school and it was clear who was the correct respondent. This is in accordance with the EAT decision in *Chard v Trowbridge Office Cleaning Services Ltd UKEAT/0254/16/DM*.

2.7 This means that the relevant time limits are determined by the first filing with ACAS and certificate issued on 12 November so the claimant filed with ACAS within the time limit of three months from the date of dismissal.

2.8 The claimant then lodged her claim with the tribunal on 11 January 2019 naming the respondent, Welbourne Primary School. The EC certificate number was R330937/18/52.

- 2.9 The claimant said, and I accept, that the reason for not filing with the tribunal earlier was that she was waiting for the respondent and the union to get back to her. She also said that it was the holiday period so there was a lot going on. In addition, she said she was stressed by the process and under her doctor's supervision. There was no evidence about the claimant's health in 2018.
- 2.10 The respondent said, and I accept, that part of the claim referred to events in 2017, which would be out of time and there may need to be another Preliminary Hearing. In addition, the Chair of Governors, who heard the claimant's appeal, was not in the same position which would prejudice the respondent. Finally, the claimant had not complied with the tribunal order of 24 July to send to the respondent and tribunal a list of all events relied on for the discrimination claim. The time for compliance was 21 August.

3. The law

- 3.1 Section 111(2) ERA provides that a tribunal "shall not consider" an unfair dismissal claim unless it is presented in time, which is within three months of the effective date of termination, subject to any extension under Early Conciliation. The same time limit applies to discrimination claims.
- 3.2 Section 207B Employment Rights Act provides for an extension of time limits to facilitate conciliation before the institution of proceedings.
- 3.3 In order to determine how the limitation date will be extended by Early Conciliation, it is necessary to identify Day A and Day B.
- 3.4 Day A is the day on which the prospective claimant contacts Acas by telephone, or the day on which ACAS receives their EC form. Day B is the day on which the prospective claimant receives the EC certificate, which is when ACAS sends the certificate by email to the prospective claimant. The period between Day A and Day B is for conciliation.
- 3.5 The clock is stopped during the period in which the parties participate in EC. Subsection 207B(3) ERA provides that in working out when a time limit expires the period beginning with the day after Day A and ending with Day B is not counted. This applies in every case and then subsection 207B(4) should be applied if the limitation date, as extended by subsection 207B(3) falls in the period between Day A and one month after Day B. Thus, time may be extended further.
- 3.6 Section 207B(4) provides that if a time limit would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
- 3.7 In *Luton Borough Council v Haque* UKEAT/0180/17 the EAT held that the provisions were not alternatives but were sequential.

- 3.8 If the tribunal finds that it was not reasonably practicable for the claimant to present the claim in time, it will then consider whether the claim was presented within such further period as the tribunal considers reasonable.
- 3.9 Relevant factors include the manner of and reason for dismissal, the main reason why the claimant failed to comply with the time limit, whether the claimant was too ill to submit it, whether and when the claimant knew of their rights, whether the claimant had been advised by anyone and what they were advised.
- 3.10 The Court of Appeal in [*Marks & Spencer plc v Williams-Ryan \[2005\] EWCA Civ 470*](#) said that regard should be had to what, if anything, the employee knew about the right to complain to a tribunal and of the time limit for doing so and what knowledge the employee should have had, had they acted reasonably in the circumstances. Knowledge of the right to make a claim does not, as a matter of law, mean that ignorance of the time limits will never be reasonable. It merely makes it more difficult for the employee to prove that their ignorance was reasonable.
- 3.11 The test in discrimination cases is whether it is just and equitable to submit the claim in time, which is a wider test than for unfair dismissal. Relevant facts are the length of and reasons for the delay, the extent to which the evidence is likely to be affected by the delay, the extent to which the employer had co-operated with requests for information, the promptness with which the claimant acted once she knew of the possibility of taking action and the steps taken by the claimant to obtain appropriate professional advice once she knew of the possibility of taking action.

4. Conclusions

- 4.1 I find that the claim was filed out of time. The claimant should have lodged her claim with the tribunal on or before 12 December 2018 which was one month after the early conciliation certificate.
- 4.2 The unmodified deadline was 16 October 2018 (3 months less one day from the effective date of dismissal). Based on the first filing with ACAS, Day A was 12 October 2018 and Day B 12 November 2018. Day B plus one month was 12 December 2018. The gap between Day A and Day B was 31 days.
- 4.3 The modified time limit was 16 October plus 31 days, ie 16 November so the last day for filing under Section 207B(3) Employment Rights Act was 16 November 2018. However, following the decision in *Luton Borough Council v Mr M Haque [2018] UKEAT 0180 17 1204* the claimant can rely on s207B(4) which provides that

'If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending

one month after Day B, the time limit expires instead at the end of that period'

- 4.4 The deadline under s207B(4) ERA is extended to one month after Day B. The modified time limit of 16 November fell between Day A and Day B plus one month, so the time limit expires at the end of one month after Day B, which is 12 December 2018.
- 4.5 I now consider whether time should be extended.
- 4.6 The test for unfair dismissal claims is whether it was reasonably practicable for the claimant to file her claim within the time limit and if not whether she filed it within such period as the tribunal considers reasonable.
- 4.7 Having heard from the claimant I find that she has not shown it was not practicable to file her claim within the time limit. She was aware of the time limit and had advice from her trade union. The main reason she gave was she was waiting to hear back from the union and the respondent. There was no evidence about whether and when she chased them up. I find it was reasonably practicable for the claimant to file within the time limit which was 12 December 2018.
- 4.8 For the reasons set out above I find that it is not just and equitable to extend time in this case. I also take into account the prejudice to the respondent noting that the claimant was ordered by the tribunal no later than 21 August 2019 to send to the tribunal and the respondent a list of all the events which she asked the tribunal to decide were matters of race and/or disability discrimination. The claimant provided some details today, which was out of time, but not sufficient details for the respondent to be able to understand her claims of discrimination. I also note that some events in her summary go back to 2017 so may be out of time and it may be necessary to hold a further preliminary hearing.
- 4.9 For these reasons I find that the claims are out of time, that time is not extended in relation to any of the claims and that the tribunal has no jurisdiction to hear these claims and they are accordingly dismissed.
- 4.10 Written reasons are provided at the request of the claimant.

Employment Judge C Palmer

Date: 30 October 2019

Sent to the parties on:

.....30 October2019.....

For the Tribunal:

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