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## THE EMPLOYMENT TRIBUNALS

**Claimant:** Ms Debra Symonds  
**Respondent:** The Roachford Martial Arts Academy and Gavin King  
**Heard at:** East London Hearing Centre  
**On:** Thursday 4 April 2019  
**Before:** Employment Judge Burgher

### Representation

**Claimant:** In person  
**Respondent:** Mr R Chaudhry (Solicitor)

## JUDGMENT FOLLOWING PRELIMINARY HEARING (OPEN) SUMMARY

### Issues

- 1 The matter was listed before me to determine whether the claim has been issued within time and if so, whether the Claimant was employed by the Respondent.
- 2 The Claimant did not provide a witness statement for consideration of the employee status matter and it was apparent to me that she had not come prepared to deal with this issue properly. I therefore concluded that it was in accordance with the overriding objective to deal only with the time-limit issue.
- 3 The Claimant brings claims for unfair dismissal, arrears of pay and disability discrimination. The relevant time limits are set out in sections 111 and 23 of the Employment Rights Act 1996 and section 123 of the Equality Act 2010.
- 4 All of the statutory provisions require that proceedings are commenced within three months of the acts complained of. The Employment Rights Act provisions provide for an extension of the period for such time as the Tribunal considers reasonable in a

case where it is satisfied in that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

5 Section 123 of the Equality Act allows the Tribunal to extend time for a period that the Tribunal considered is just and equitable.

6 The Claimant gave evidence on her own behalf. Mr King gave evidence on his own behalf. I was also referred to relevant pages in an agreed bundle. The Claimant confirmed that the contents of the letter dated 11 February 2019 to the Tribunal were true and accurate. In it she states that the conciliation process started with Nicholas Portal on 19 July and then the case was given over to Elizabeth Ebejer. The Claimant stated that she received confirmation of early conciliation notification stating that during conciliation process the time to put in a claim pauses for at least one month.

7 The Claimant stated that she stopped working for the Respondent as an administrative coach on 23 April 2018. She subsequently visited a solicitor and had access to the ACAS website and had spoken to ACAS on at least three occasions.

8 The Claimant asserts that she was provided with the ACAS conciliation certificate number by telephone but could not specify the date of this. However, it is clear that she must have had a number prior to the time she presented her ET1 to the Tribunal on 24 September 2018.

9 Mr King stated that he received the ACAS certificate on 19 August 2018. The ACAS certificate, ending the conciliation period on 19 August 2018, was sent to both parties by email. This states that the ACAS certificate was issued on 19 August 2018. As such, using extension of time provisions, the Claimant's claim ought to have been presented to the Tribunal on the 19 September 2018 at the latest. Therefore, the Claimant's claim is out of time.

10 I then considered whether it was appropriate to extend time in accordance with the different statutory provisions.

#### Reasonably practicable

11 In relation to the Employment Rights Act time provisions, the issue is whether it was reasonably practicable to have presented the claim in time.

12 I consider the guidance in the case of Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, CA per May LJ at paragraph 35 in respect of the test of reasonable practicability. This is also construed as assessing what is reasonably feasible or what is reasonably capable of being done. I am aware that there are numerous factors that a Tribunal can properly consider when determining whether it is reasonably feasible.

13 When considering whether it is reasonably feasible to have been done, modern methods of obtaining information and communication mean ignorance of the law is no excuse.

14 In any event, the Claimant was vague and nonchalant in her approach to her evidence to me regarding the time limit and did not seem to acknowledge that the burden was on her to satisfy me that the claim was presented in such time as is reasonable. I did not accept the Claimant's evidence that ACAS was at fault for the delay. The Claimant stated that she was informed by her solicitor that she had three months 'to get the ball rolling'. On this assessment the Claimant would have had 3 months from 24 April and therefore the Claimant ought to have got the ball rolling by presenting a complaint and starting Tribunal proceedings by 23 July 2018. Whilst the Claimant did contact ACAS within that period and I find that she was aware that there was going to be a month extension given the ACAS pause and as such she should have presented her complaint within one month of the 19 August 2018. The Claimant did not do this.

15 I accept that the Claimant was suffering from depression prior to contacting ACAS, although there was no medical evidence to establish this. However, the Claimant was able to contact ACAS numerous times, she was able to continue running her wedding accessory business, and she was able to seek advice from the solicitor. I therefore find that it was reasonably feasible for her to have been able to present her claim to the Tribunal within the required period.

16 I consider paragraph 6 of the Claimant's letter to the Tribunal on 11 February 2019 inherently implausible. There is the lack of any correspondence, ACAS indicating that they were at fault, there is the content of the certificate that says it was emailed to the parties, there is the evidence of Mr King that he received it and the evidence from the Claimant that stated that the ACAS certificate must have gone to her email spam folder and she discovered this later.

17 I therefore considered that the Claimant's claim for unfair dismissal and arrears of wages have been presented out of time. These claims are dismissed.

#### Just and equitable

18 In respect of the Claimant's disability discrimination claims, I had regard to the summary of the law regarding time limits and extension of time at paragraphs 30-41 provided by Jackson LJ in the case of Aziz v FDA which sets out a helpful summary. I also considered the guidance of Robertson v Bexley Community Centre (t/a Leisure Link) that the extension of time is the exception rather than the rule.

19 I also considered the balance of prejudice between the parties when considering whether it is just and equitable to extend time and the factors in the case of British Coal Corp v Keeble where Mrs Justice Smith held:

*"The EAT also advised that the Industrial Tribunal should adopt as a check list the factors mentioned in Section 33 of the Limitation Act 1980. That section provides a broad discretion for the Court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, inter alia, to (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the*

*promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action. The decision of the EAT was not appealed; nor has it been suggested to us that the guidance given in respect of the consideration of the factors mentioned in Section 33 was erroneous.”*

20 The Claimant has done little to help herself in this matter. I do not accept her explanation that ACAS was at fault. Whilst ignorance of the law may be a relevant matter in this context, I conclude that she had ample opportunity to discover and comprehend the law through her solicitor, ACAS and ACAS web searches. The Claimant was at fault.

21 In relation to the ET1 there is a lack of any specific grievance that the Claimant presented to the Respondent to investigate at the relevant time in relation to the acts complained of for the Claimant to have been able to consider and the actual allegations made in the ET1 themselves are generic. I consider that the balance of prejudice to the Respondent outweighs that to the Claimant who ought to have properly presented her complaints within the statutory time limit. Her reasons for failing to do so do not make this case an exception to the rule of extending time.

22 In these circumstances, the Claimant disability discrimination and harassment complaints have been presented out of time and are dismissed.

Employment Judge Burgher

10 April 2019