



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss R Bannister

**Respondent:** Peopleplus Group Limited

**Heard at:** Manchester

**On:** 11 November 2019

**Before:** Employment Judge Ainscough  
(sitting alone)

## REPRESENTATION:

**Claimant:** Mr B Flanagan, Friend

**Respondent:** Mr S Foster, Non-practising Solicitor

# JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The claim for constructive unfair dismissal was not brought within the primary three month time limit in accordance with section 111(2)(a) of the Employment Rights Act 1996.
2. It was not reasonably practicable for the claimant to bring that complaint within the primary three month time limit, but the claimant did not bring her Employment Tribunal claim within a reasonable further period thereafter. The claimant's claim for constructive unfair dismissal is out of time and is dismissed.
3. The claimant did not bring her claim for discrimination on the grounds of pregnancy and/or maternity within the primary three month time limit in accordance with section 123(1)(a) of the Equality Act 2010. It is just and equitable to extend time to 12 March 2019 for the submission of this complaint.
4. The claimant's claim of pregnancy and/or maternity discrimination contrary to section 18 of the Equality Act 2010 will be dealt with at the final hearing on 4, 5 and 6 February 2020.

# REASONS

## Introduction

1. The claimant was employed by the respondent from 1 June 2010 until 14 September 2018 when she was made voluntarily redundant.
2. On 15 November 2019 the claimant started early conciliation proceedings with ACAS and received the certificate concluding that process on 19 February 2019.
3. On 12 March 2019 the claimant submitted her Employment Tribunal application form complaining that she had been subject to constructive unfair dismissal and discrimination on the grounds of pregnancy and/or maternity.
4. On 1 May 2019 the respondent submitted an ET3 form in response disputing the claims.
5. On 5 July 2019 Employment Judge Feeney ordered that there be a public preliminary hearing on 11 November 2019 to determine whether the claimant's claims were out of time and if so, whether time should be extended for the case to be heard at a final hearing which is currently listed on 4, 5 and 6 February 2020.

## Issues

6. The issues to be determined at this preliminary hearing are as follows:
  - (a) Whether the claim for constructive unfair dismissal was brought within the primary time limit set out at section 111(2)(a) of the Employment Rights Act 1996;
  - (b) If not, was it reasonably practicable for the claimant to bring that complaint within the primary time limit of three months?
  - (c) If not, did the claimant bring the claim within such further period as the Tribunal considers reasonable?
  - (d) Was the complaint of pregnancy/maternity discrimination brought within the primary three month time limit in accordance with section 123(1)(a) of the Equality Act 2010?
  - (e) If not, was the complaint brought within such other period as the Tribunal thinks just and equitable?

## Relevant Legal Principles

7. The time limit for an unfair dismissal complaint appears in section 111(2) of the Employment Rights Act 1996:

- (2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –
- (a) before the end of the period of three months beginning with the effective date of termination, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

8. Two issues may therefore arise: firstly whether it was not reasonably practicable for the claimant to present the complaint on or before 13 December 2018, and, if not, secondly whether it was presented within such further period as is reasonable.

9. Something is “reasonably practicable” if it is “reasonably feasible” (see **Palmer v Southend-on-Sea Borough Council [1984] ICR 372**, Court of Appeal). Ignorance of one’s rights can make it not reasonably practicable to present a claim within time as long as that ignorance is itself reasonable. An employee aware of the right to bring a claim can reasonably be expected to make enquiries about time limits: **Trevelyan (Birmingham) Ltd v Norton [1991] ICR 488** Employment Appeal Tribunal (“EAT”).

10. Illness too can make it not reasonable practicable to present a claim (e.g **Schultz v Esso Petroleum Co Ltd [1999] ICR 1202** Court of Appeal). In **University Hospitals Bristol NHS Foundation Trust v Williams UKEAT/0291/12** on 23 July 2012 the EAT upheld a Tribunal decision that a late claim was within section 111(2) even though the medical evidence “did not entirely support the Judge’s findings about the Claimant’s mental health” (EAT judgment paragraph 12) and even though the claimant had been able to move home and find a new school for her child during the period when the Tribunal found it had not been reasonably practicable to have presented a claim.

11. In **Marks and Spencer Plc v Williams-Ryan [2005] ICR 1293** the Court of Appeal reviewed some of the authorities and confirmed in paragraph 20 that a liberal approach in favour of the employee was still appropriate. What is reasonably practicable and what further period might be reasonable are ultimately questions of fact for the Tribunal.

12. The time limit for a discrimination complaint is set out in section 123 of the Equality Act 2010 as follows:

“[Subject to [sections 140A and [section] 140B],] proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.”

13. If a claim for discrimination is brought outside the primary three month time limit, a Tribunal must decide whether it was brought within such further period that was just and equitable.

14. In **British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT** the EAT suggested that Tribunals should consider the relevant factors outlined in section 33 of the Limitation Act 1980: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

15. However, in **Southwark London Borough Council v Afolabi 2003 ICR 800, CA**, the Court of Appeal determined that the principles of section 33 can only provide guidance to a Tribunal in the exercise of its discretion and should not be “slavishly” adhered to.

16. In **Department of Constitutional Affairs v Jones 2008 IRLR 128, CA** the Court of Appeal confirmed the position given on section 33 in **Afolabi** and reminded Tribunals that the relevance of the section 33 factors depends on the individual facts of case.

### **Evidence**

17. The respondent prepared a bundle consisting of 38 pages and whilst it was not agreed prior to the start of the hearing, the claimant conceded that she had seen all relevant documentation within the bundle and was content to continue with the hearing on that basis.

18. The claimant had not, as directed, submitted written statement of evidence because she found it too difficult to put into words the difficulties she had experienced which stopped her from submitting her claim prior to 12 March 2019. The claimant had in fact provided a “justification” document setting out the chronology of what had occurred prior to 12 March 2019 and sought to submit that as her statement of evidence. The respondent’s representative had seen that justification document and was content to continue with the hearing on that basis. The claimant was the only live witness before the Tribunal.

### **Relevant Findings of Fact**

19. The claimant worked as a Job Coach for the respondent from 1 June 2010 until 14 September 2018. In March/April 2018 the claimant informed the respondent that she was pregnant.

20. As late as September 2018, the claimant was asked to attend client homes alone to gain evidence for the company.

21. In September 2018, all members of the claimant's team were made redundant, leaving only the claimant in the department to service the contract.

22. On 13 September 2018 the claimant spoke with her line manager in regard to the possibility of voluntary redundancy. By 14 September 2018 the claimant had submitted her application for voluntary redundancy.

23. On the same date, the claimant's voluntary redundancy was confirmed and she received a statutory redundancy payment of £7,000 and payment in lieu of notice of approximately £1,822. The claimant left the respondent's employment on that date.

24. On 19 September 2018 the claimant contacted the respondent expressing unhappiness that she had not received her redundancy payment.

25. On 22 September 2018 the claimant was admitted to hospital because she was concerned about lack of movement from her baby.

26. At the beginning of October 2018 the claimant had contacted the respondent to say she was unhappy about the voluntary redundancy and felt she had been rushed into leaving the company.

27. On 15 October 2018 the claimant was admitted to hospital concerned about lack of movement from her baby. The claimant was re-admitted on 26 October 2018 for the same reason. The claimant's labour was induced and her baby was born on 27 October 2018, and the claimant and her daughter were discharged from hospital on 29 October 2018.

28. On 1 November 2018 the claimant and her daughter were re-admitted because the claimant was suffering from an infection and her daughter was suspected to be suffering from jaundice. The claimant's daughter was re-admitted on 6 November 2018 for the same reason.

29. On 9 November 2018 the claimant's daughter was diagnosed with cystic fibrosis. The claimant met with the cystic fibrosis medical team on 16 November 2018 and again on 6 December 2018.

30. On 13 December 2018 the primary time limit for submission of the claim for unfair dismissal and pregnancy/maternity discrimination expired.

31. The claimant attended further appointments on 18 December 2018, 3 January 2019 and February 2019.

32. On 15 February 2019 the claimant started the early conciliation process and spoke with ACAS. On speaking with ACAS the claimant was informed that her claim was out of time. The claimant told ACAS that she believed she had six months within which to lodge her claim.

33. The early conciliation certificate was provided to the claimant on 19 February 2019.

34. On 4 March 2019 the claimant started a phased return to work as a receptionist. The role had been created for her at the company where her partner was a senior manager.

35. The claimant submitted her claim on 12 March 2019.

### **Respondent's Submissions**

36. The respondent submits that it was reasonably practicable for the claimant to submit her claim for unfair dismissal within the primary time limit. The respondent reminded the Tribunal of the evidence it had heard that the claimant was able to communicate in writing and attend an appointment with her new employer in December.

37. The respondent submits that the medical evidence does not say the claimant's daughter is in poor health. The respondent submits that whilst the claimant places great weight on the state of her child's health, in fact the real issue for the claimant was her financial concerns following her termination of employment. The respondent submits that the real reason for the claim is that the claimant has been unable to secure a new job at a comparable wage and wants to challenge her voluntary redundancy.

38. Finally, the respondent submits that the claimant has not provided any medical evidence of her own health difficulties. It is submitted that because the claimant was fit to return to work she should also have been capable of submitting her claim.

39. The respondent submits that even the claimant has struggled at this preliminary hearing to remember facts of her own claim that should be at the forefront of her mind. The respondent submits that the respondent's witnesses would also struggle to remember and the respondent would suffer more prejudice than the claimant should the claim proceed.

40. The respondent contends that the Area Manager left in early 2018 and it would be difficult to obtain evidence from him due to the time that has elapsed. It is the respondent's case that there is more prejudice to the respondent given the claimant did not raise any grievances and cannot explain why the claim was not brought in time.

### **Claimant's Submissions**

41. The claimant submits that during the primary three month time limit, she was in and out of hospital with her daughter who had received a devastating diagnosis of cystic fibrosis.

42. The claimant submits that every day is a struggle and she does not have a structured routine and anything can happen when caring for her daughter.

43. The claimant further submits that she was only able to take a job at her partner's place of work because he was a senior manager and had been able to create a job which accommodated her on a phased return. The claimant was only able to meet with people because they were familiar to her.

44. The claimant submits that she still struggles to put into words what happened during the period before she submitted her claim due to the extreme stress she was under and the difficulties she has experienced date.

## Discussion and Conclusions

### Reasonably Practicable

45. The claim for unfair dismissal should have been submitted within three months from the date of dismissal - 13 December 2018. The submission of that claim on 12 March 2019 means the claim is out of time.

46. I have considered the case of **Schultz v Esso Petroleum Company Limited [1999] ICR 1202 CA** in which the Court of Appeal stated that whilst it was necessary to consider the whole of the limitation period the Tribunal's attention should be focussed on the closing stages.

47. The respondent concedes that from 15 October 2018 until that diagnosis on 9 November 2018 the claimant could not be reasonably expected to deal with the submission of the Employment Tribunal claim. However, the respondent is of the view that the claimant could have submitted her claim between 14 September 2018 and 15 October 2018. The claimant gave evidence that it was not until October 2018 that she became concerned about her departure from the company and by this time was dealing with difficulties in her pregnancy, the birth of her child and the subsequent diagnosis of cystic fibrosis. For these reasons I conclude that it was not reasonably practicable for the claimant to submit her claim for unfair dismissal within that primary time limit.

### Claim presented within reasonable further period

48. The claimant discovered on 15 February 2019 that she was mistaken in her belief that she had six months from the date of termination to bring a claim. The claimant gave evidence that she had spoken to friends and family about the applicable time limit and this was perhaps all she was capable of doing during an incredibly difficult period in her life.

49. However, on learning on 15 February 2019 that the claim was out of time and despite receiving the ACAS certificate on 19 February 2019, the claimant did not submit her claim until 12 March 2019.

50. The claimant's explanation for the delay between the 19 February 2019 and 12 March 2019 is that she had difficulty in particularising her claim. The claim form is brief, and I do not accept that the claimant was not in a position to submit that claim form on 19 February 2019. In evidence the claimant stated that she was waiting for a document from ACAS but could not remember specifically what that was. I find that the document she was waiting for would have been the certificate and she was in receipt of this on 19 February 2019.

51. Whilst I do accept that the claimant was still struggling with her daughter's diagnosis, it appears she was capable of contacting ACAS on 15 February 2019 and

therefore would have been capable of submitting the claim form on or around 19 February 2019.

52. The claimant did not present her claim within a reasonable further period. The claimant's claim for unfair dismissal is therefore dismissed.

Further period of time that is just and equitable

53. The primary time limit for the claimant submitting her claim of pregnancy/maternity discrimination expired on 13 December 2018. Therefore, the claimant's claim of pregnancy/maternity discrimination is out of time.

54. In accordance with section 123(1)(b) the Tribunal has the discretion to extend time if the claim was submitted in a further period that is just and equitable.

55. In the case of **Trusthouse Forte (UK) Ltd v Halstead EAT 213/86**, the Employment Appeal Tribunal confirmed that the discretion given to Tribunals under the Equality Act 2010 is wider than the legal test which must be satisfied under section 111 of the Employment Rights Act 1996.

56. It took the claimant another three months after the expiry of the primary time limit to submit her discrimination claim. From 13 December 2018 to 15 February 2019, the claimant was dealing with her daughter's diagnosis. However, it appears in February 2019 the claimant was capable of addressing her mind to a claim and spoke to ACAS. Therefore, the extent of the delay is from 15 February 2019 to 12 March 2019.

57. The claimant explained that she was unable to submit her claim until 12 March 2019 because she had difficulty in formulating the claim once she knew it had to be submitted. This is understandable given that the claimant was also caring for her sick daughter and trying to return to work.

58. The respondent made much of the fact that some of the medical records describe the claimant's daughter as "well". The claimant's daughter has cystic fibrosis and whilst she might be described as "well", this is in the context of suffering with cystic fibrosis. The claimant gave very cogent evidence in regard to the difficulties she experiences every day in looking after her daughter, and it is accepted that her daughter's care must take priority.

59. The respondent relies on the fact that one of the key witnesses to the claimant's claim has left the respondent's business. I understand this individual left the business in May 2018, before the claimant left the business, and the availability of this witness would have been the same had the claimant brought her claim within the primary time limit.

60. I do not consider the respondent will be prejudiced in any additional way by the fact the claimant has brought this claim out of time, but the claimant will be greatly prejudiced if this claim is not allowed to continue.

61. The claimant brought her claim as soon as she was capable of formulating the brief statement on the claim form. I conclude that the claimant brought her claim in



such further period as was just and equitable. The claimant's claim of maternity/pregnancy discrimination should continue and be dealt with at the final hearing listed for 4, 5 and 6 February 2020.

Employment Judge Ainscough

Date: 5 December 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
9 December 2019

FOR THE TRIBUNAL OFFICE

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