EMPLOYMENT TRIBUNALS

Claimant: Miss E Taylor

Respondent: Turtle Bay

Heard at: Manchester **On:** 6 December 2019

Before: Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Mrs R Davies, Solicitor

JUDGMENT

The claim was presented outside the time limit specified in section 111 Employment Rights Act 1996 when it was reasonably practicable for it to have been presented within time. The Tribunal has no jurisdiction to hear it and it is dismissed.

REASONS

Introduction

1. This was a preliminary hearing convened to determine whether the complaint had been presented within time. Before that matter could be addressed there were two issues to be clarified.

2. The first was the proper title of the respondent. The response form indicated that the respondent was "Turtle Bay UK". However, there does not appear to be a limited company by that name. Mrs Davies agreed that this would need to be clarified in the event that the claim proceeded. However, as I went on to dismiss the complaint that matter now falls away.

3. The second matter to be clarified was the claims being brought. I discussed the claim form with the claimant. She confirmed that there was no intention to pursue any complaint of discrimination under the Equality Act 2010. She had ticked the relevant box in section 9.1 in error. Her only complaint was of unfair dismissal. However, the claimant confirmed that she was saying that the reason or principal

reason for the treatment which made her resign was one or more protected disclosures which she made during the course of her employment. She provided some details of these disclosures verbally, and had the claim been proceeding I would have recorded these in a Case Management Order and granted the respondent permission to amend its response form. This reliance on an "automatic" constructive unfair dismissal under section 103A Employment Rights Act 1996 also meant that there was no need to consider whether the claimant had been employed for two years continuously at the date her employment ended. However, those matters became academic in any event given my conclusion on time limits.

4. Turning to the time limit issue, I proceeded on the assumption that the claimant was correct that her employment had ended on 3 October 2018, not 2 October as the respondent alleged. I heard oral evidence from the claimant, and oral submissions from both sides before making my decision.

Relevant Legal Principles

5. 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.**

6. Two issues may therefore arise: firstly whether it was not reasonably practicable for the claimant to present the complaint within time, and, if not, secondly whether it was presented within such further period as is reasonable.

7. Something is "reasonably practicable" if it is "reasonably feasible" (see **Palmer v Southend-on-Sea Borough Council [1984] ICR 372,** Court of Appeal). The court approved the statement in **Bodha v Hampshire Area Health Authority [1982] ICR 200** that the existence of a pending internal appeal does not of itself justify a finding that it was not reasonably practicable to bring a claim.

8. 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: **Trevelyans (Birmingham) Ltd v Norton [1991] ICR 488** Employment Appeal Tribunal.

9. 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.

Findings of Fact

10. The claimant resigned with immediate effect on 3 October 2018. She was not a member of a trade union and had no awareness of employment law or her legal rights.

11. She lodged a grievance the same day complaining about how she had been treated before her decision to resign. There was a meeting to discuss her grievance on 8 October 2018, and she was told that her grievance was rejected.

12. The claimant appealed on 10 October 2018. Her grievance was being dealt with by Michael Griffiths, a Human Resources Business Partner. The claimant was asked to provide further information about her appeal, and this led to an exchange of emails in October and November 2018. During this period the claimant was away on holiday for a while and her laptop was stolen. These factors caused some delay.

13. The appeal had not been resolved by the time Mr Griffiths left the respondent at the end of November 2018. He passed the matter to Francis Toal, who had made the initial grievance decision. The claimant emailed the Chief Executive Officer of the respondent on 7 December 2018 asking for a response to the grievance appeal as Mr Griffiths had not left. By a letter of 17 December 2018 she was informed that the appeal had concluded. The claimant was not happy about this because it appeared that the decision had been made by Mr Toal, against whose initial decision she was appealing.

14. The claimant's efforts to pursue the matter were then affected by a bereavement at the end of December 2018. She did not take up the matter again until mid March 2019. She contacted Mr Toal asking for copies of the statements taken in the course of the investigation which had been discussed on 8 October 2018. At the end of March Mr Toal confirmed that there was no further information to supply.

15. The claimant did not believe that this could be correct. She spoke to a friend whose mother was a Judge and received some information about her right to go to an Employment Tribunal. She researched the matter further on the internet and ascertained that she had to go to ACAS first of all. She contacted ACAS to initiate early conciliation on 5 April 2019, and the ACAS early conciliation certificate was issued on 25 April 2019. The claim form was then presented on 7 May 2019.

Submissions

16. For the respondent Mrs Davies argued that it was reasonably practicable for the claimant to have undertaken research and/or to have spoken to her friend’s mother in November and December 2018 even while she was pursuing her grievance. Although it was reasonable for her not to be expected to take any action for a period after the bereavement at the end of December, there was still unexplained delay prior to the claimant pursuing the matter once again in mid March. She submitted that the claim was out of time.

17. The claimant submitted that time should be extended. She had been trusting HR to deal with her grievance in the period before Christmas. When she realised that had failed she was affected by the bereavement and could not pursue the matter any further until mid March. She said that the possibility of bringing a claim was just not on her mind during that period.

Decision

18. From the evidence given by the claimant I was satisfied that there were two factors which meant that she did not go to ACAS to commence early conciliation and "stop the clock" before the time limit expired on 2 January 2019. The first factor was that she was not aware of her legal rights or time limits. The second was that she was pursuing her grievance and trusted HR to deal with matters and resolve the situation.

19. The lack of awareness of her legal rights did not in my judgment make it not reasonably practicable to present the claim within time. There was nothing to stop the claimant speaking to her friend's mother and/or carrying out some internet research in the period before the conclusion of her grievance. That is not to criticise the claimant: it is a common misconception that whilst an internal procedure is going ahead there is no need to bring a claim. However, it is reasonably practicable for a person considering bringing a claim to research her rights and ascertain from internet research that the existence of a grievance does not stop time limits running. In effect there was nothing to stop the claimant doing in October, November or December 2018 what she eventually did in early April 2019.

20. As for the fact that the grievance was still pending, this in itself does not make it not reasonably practicable to bring a claim. The Court of Appeal confirmed that in the **Palmer** case. It was still relevant, and I did not discount it, but I was satisfied that it was still open to the claimant to have researched the position and brought a claim even whilst her grievance appeal was outstanding, or even in the relatively short period after the rejection of her appeal arrived shortly before Christmas 2018.

21. Even if that had not been the case, and even though it would plainly be reasonable to allow the claimant some period to get over the bereavement at the end of December, there was still an unexplained delay during February and March 2019. Accordingly, even if I had been satisfied that it was not reasonably practicable for the claim to have been brought by 2 January 2019, I would have found that it had not been brought within a further reasonable period.

22. For those reasons I concluded that the unfair dismissal complaint was brought out of time and it was dismissed.

Employment Judge Franey

9 December 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

3 January 2020

FOR THE TRIBUNAL OFFICE