



EMPLOYMENT TRIBUNALS

Claimant: Miss E Striano

Respondent: Taormina Ltd

Heard at: Croydon

On: 19/12/2019

Before: Employment Judge Wright

Representation

Claimant: Ms E Connolly - solicitor

Respondent: Did not attend and did not send representations

JUDGMENT

The claimant's claim was presented out of time.

REASONS

1. Oral Judgment was given at the hearing, however the claimant's representative requested written reasons in accordance with Rule 62(3). The reasons have therefore been provided.
2. The claim was presented under the Employment Rights Act 1996 (ERA). It is acknowledged it is out of time and it was not presented within the primary three-month time limit as provided for in s. 111(2)(a) ERA.
3. The claimant seeks to rely upon s.111(2)(b) ERA:

111 Complaints to employment tribunal

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(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.
4. The question is therefore, whether it was not reasonably practicable to present the claimant within the primary three-month period and if so, whether it was presented within such further reasonable period.
 5. The claimant is an Italian national and she does not speak English. She came to the UK to work as a chef. She presents claims under the ERA for unfair dismissal, notice pay, holiday pay, arrears of pay and other payments.
 6. The claimant was dismissed on 2/6/2018.
 7. The claimant returned to the UK from a holiday in Italy on 21/6/2018. She found she had been dismissed. As a result, she had also lost her accommodation. She returned to Italy on 23/6/2018.
 8. The Tribunal was told that the claimant contacted the CAB and was told that it was possible to have an interpreter, but one was never arranged.
 9. The claimant then contacted Anglo-Italian lawyers in London. She instructed a European Registered Lawyer, who purported to assist her. It appears that the European Registered Lawyer did not advise the claimant of the time limit for presenting a claim under the ERA in the Employment Tribunal. It appears that the European Registered Lawyer was applying principles of civil litigation in that she drafted a letter before action.
 10. It was only when the claimant instructed her current solicitors, that the time limit issue was identified.
 11. Even then, matters were not straight forward. It proved impossible to submit the claim from electronically as the system would not 'accept' the claimant's 'post code', which was an Italian one. The claim form was therefore posted to Leicester from Italy and received on 18/10/2018. The claimant has proof of posting and proof of receipt. The claim form was then lost.
 12. After conversations with the Tribunal staff in Croydon, the claim form was resubmitted electronically on 22/11/2018. The Tribunal staff had given the claimant some form of 'dummy' post code to use in order to submit the form.
 13. Whilst the Tribunal has considerable sympathy for the claimant, the unfortunate situation she found herself in and the difficulties cause by the loss of the first claim form and the issues with submitting the form electronically; it considers itself bound by the authorities.
 14. Despite her difficulties, the claimant promptly sought legal advice and engaged a lawyer. The Tribunal was asked to find that the Registered European Lawyer should not be classed as a skilled adviser. As

ordinarily, incorrect advice from an adviser will bind the claimant

15. The authorities however suggest that incorrect advice from for example, the CAB or 'other professional advisers' is also to be treated as the fault of the claimant. As per Riley v Tesco Stores Ltd 1980 ICR 323 it is not material whether or not the adviser is 'skilled' or has been 'formally' engaged, the key factor is the claimant had taken advice. Her cause of action lies against that adviser (or their insurers).
16. The authority of Dedman v British Building and Engineering Appliances 1974 ICR 53 CA applies equally where the adviser is not a solicitor, but is a Registered European Lawyer.
17. There is no mistake over the termination date and nor has the claimant and her adviser been misled in respect of that date. It is simply a case of negligent advice and the provision of s. 111 and the authorities do not allow the Tribunal to go behind the considerable sympathy the Tribunal has for the claimant in these circumstances.
18. The Tribunal therefore has no jurisdiction to hear the claim and it is dismissed.

Employment Judge Wright

Date _____ 7/1/2020 _____