



EMPLOYMENT TRIBUNALS

Claimant

Mrs M Furtado Cabral Tavares

v

Respondent

(1) Cardinal Health Care, David Fairburn.

(2) Cardinal Health Care

Heard at: Bury St Edmunds

On: 2 December 2019

Before: Employment Judge Cassel

Appearances:

For the Claimant: In person.

For the Respondent: Mr T Brown, Counsel.

Interpreter: M Zavexskaya – Language: Portuguese.

JUDGMENT having been sent to the parties on 19 December 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In her claim to the Employment Tribunal which was received on 22 March 2019 the claimant complains of unfair dismissal, unlawful discrimination on the grounds of age and race, and unpaid wages. The respondents resist those claims and has submitted that the Tribunal has no jurisdiction to hear those complaints. The resistance is on the basis that the statutory time limit in which those claims are to be submitted have been exceeded by approximately 12 months.
2. The claim was listed for a preliminary hearing for today and orders were made for, among other things witness statement to be prepared, documents relied upon to be disclosed within 21 days. There was also an order for the preparation of a bundle of documents by the respondent to be prepared and forwarded to the claimant by 2 August 2019.
3. The claim was called at 2pm today and I established that although a bundle of documents had been prepared by the respondent no witness statement had been prepared by the claimant and, with the assistance of

the Portuguese interpreter the claimant was called to give evidence and I took a note of the evidence on which she relied.

The claimant's evidence

4. The claimant accepted that the employment with the respondents ended in December 2017. There was some dispute as to the precise date but it was certainly no later than 27 December 2017. Having left work she sought advice in January from the CAB and thereafter was referred ISCRE Law Centre with whom she spent in her words "quite a lot of time". She was advised about her employment rights and no later than January 2018 knew about her ability to bring claims in the Employment Tribunal. She continued to work in her other employment, although for a time felt depressed but was soon able to take other work similar to the one that she had left and worked at a number of different organisations. She accepted that she had made no contact with the respondent throughout 2018 save to send an email thanking them for the opportunity of working for them.
5. She accepted that it was only in 2019 that she made a complaint because the problems that she had experienced with former work colleagues continued and she received abusive phone calls, but she accepted that this was not from the respondent and she did not report it to the Police.
6. In cross examination she agreed that she knew she could submit a formal grievance to the respondent but did not do so. She also stated that she had received abuse from work colleagues at a sushi factory before starting work for the respondent.

Submissions

7. Mr Brown relied on his skeleton argument which I am grateful. The claimant made submissions in terms that she had had some health issues, she had no money to pay solicitors, that she did not know that she could submit claims online.

Decision

8. I announced that the Tribunal had no jurisdiction to hear the complaints and they were dismissed and in outline form I provided reasons. I explained that because of the language difficulties I would explain in some detail the conclusions that I had reached and why the Tribunal had no jurisdiction and would later prepare these reasons which were those that I gave in Tribunal.
9. Under s.23 and s.111 of the Employment Rights Act 1996, time limits are specified in which to present wages and unfair dismissal claims which are expressed as being 3 months as well as the provisions for an extension of time in which to do so. The employee must show that it was not reasonably practicable for the presentation of the claims in the time and the Tribunal must be satisfied that the time within which the claim was presented was reasonable.

10. Under s.123 of the Equality Act 2010, a claim must be presented within 3 months of the act of which complaint is made or such other period as the Tribunal thinks is just and equitable.
11. I explained to the claimant that the burden rests on her.
12. I explained to her that there are a number of matters which need to be considered including the length and reason for the delay, what evidence is available to consider why that delay had taken place, the conduct of the respondent after the cause of action arose including any prejudice to the respondent in granting any extension of time, whether there was any disability affecting the claimant, whether the claimant acted promptly and reasonably once she knew of her right to bring a claim before the Tribunal and any other relevant matters.
13. In finding the Tribunal had no jurisdiction there was simply no evidence to show that it was not reasonably practicable to submit the claim for unfair dismissal within the 3 month time limit, nor that it was just and equitable to extend the period of time in which to bring the claims of unlawful discrimination. In summary it was nothing more than choice that led to the delay and for reasons, which were not entirely clear, it was only in March 2019, following contact with ACAS, that the claimant decided to bring her claims.
14. For all those reasons the Tribunal has no jurisdiction and her claims are dismissed.

Employment Judge Cassel

Date: 10 February 2020

Judgment sent to the parties on

.....21/02/2020.....

.....
For the Tribunal office