EMPLOYMENT TRIBUNALS

Claimant Miss S Mehmood

Respondent: Domestic and General Group Limited

HELD AT: Sheffield **ON:** 6 March 2020

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: No attendance
Respondent: Ms C Jennings, Counsel

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The claimant's complaint of unfair dismissal was presented to the Tribunal outside the time limit provided for by section 111(2) of the Employment Rights Act 1996. There has been no evidence that it was not reasonably practicable for the claimant to have presented her claim within the relevant time limit. Therefore, there is no basis upon which for the Tribunal to extend time and the Tribunal has no jurisdiction to consider the claim.
2. The complaints of discrimination related to the protected characteristics of race and disability were presented to the Tribunal outside the time limit provided for by section 123 of the Equality Act 2010. It is not just and equitable to extend time to enable the Tribunal to consider the claims. Accordingly, the Tribunal has no jurisdiction to entertain them.

REASONS

1. The claimant presented her claim form on 3 January 2020. She claims unfair dismissal and discrimination. Her claim relates to her employment with the respondent for whom the claimant worked as a team leader. It is not in dispute that the claimant commenced her employment on 1 August 2013. The parties give different dates upon which the contract of employment ended. The claimant says that the contract ended on 1 February 2018. The respondent says that the employment ended on 5 March 2018. For today's purposes, and at the invitation of the respondent, the Tribunal will work upon the presumption that the respondent's date is correct (that being a date more generous to the claimant as it is later in time).

2. Before presenting her claim form, the claimant contacted ACAS. She was required to do this pursuant to section 18A of the Employment Tribunals Act 1996. She contacted ACAS on 2 January 2020 and received her certificate from ACAS on 3 January 2020.

3. The Claimant acknowledged that her claim form has been presented late: *(see the final sentence of the first paragraph upon page 7).* A complaint of unfair dismissal must be brought within three months of the effective date of termination of the contract of employment. This is the effect of section 111(2) of the Employment Rights Act 1996. A complaint of discrimination must be brought within three months starting with the date of the act to which the complaint relates. Conduct extending over a period is to be treated as done at the end of that period. This is the effect of section 123 of the Equality Act 2010.

4. Upon both the discrimination and unfair dismissal complaints, it is for the claimant to show why the complaints were not brought in time. The question upon the unfair dismissal claim is whether it was reasonably practicable (in the sense of being reasonably feasible) for the claimant to have brought the claim in time. Upon the respondent's case, the effective date of termination was 5 March 2018. Therefore, the claim needed to be presented by 4 June 2018. It was not presented until 3 January 2020. The complaint is therefore around 18 months out of time.

5. Time may be extended in order to enable the claimant to pursue the complaint of unfair dismissal if she can satisfy the Tribunal that it was not reasonably practicable for her to have presented the claim in time and that she presented the claim within a reasonable time.

6. In her claim form, the claimant refers to depression. I have no evidence or information as to the extent of the depression and whether that would have rendered it not reasonably practicable to have filed the claim with the Tribunal by 4 June 2018.

7. The claimant also alludes to being ignorant of her rights. Ignorance in and of itself cannot excuse the late presentation of the claim. If that were the position then it would significantly undermine Parliament's intention of imposing a limitation period in employment cases. Allowing claimants to plead ignorance without more would have that undesirable effect. Therefore, the ignorance must be reasonable. I agree with Ms Jennings that it is apt for the Tribunal to take judicial notice of the accessibility of information about employment rights generally and time limits in particular. Upon this basis therefore, I hold that it

was reasonably practicable for the claimant to have filed her complaint in time and the Tribunal therefore has no jurisdiction to entertain her claim for unfair dismissal.

8. I now turn to the discrimination complaints. I shall work upon the most generous interpretation in favour of the claimant to the effect that there was a continuing act of discrimination which ended on 5 March 2018. That being the case, then she needed to have presented her discrimination claim to the Tribunal by 4 June 2018. Again, the claim is 18 months out of time.

9. Time limits may be extended for the pursuit of discrimination claims where the Tribunal considers it just and equitable so to do. There is no presumption that time will be extended in discrimination cases. Time limits must be strictly adhered to. A Tribunal cannot hear a claim unless the claimant convinces the Tribunal that it is just and equitable to extend time. The exercise of discretion is therefore the exception rather than the rule. However, that does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds.

10. In weighing whether or not to extend time the Tribunal will consider the prejudice which each party will suffer as a result of the decision reached. The Tribunal will have regard to the length of and the reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay and the promptness with which the claimant acted once he or she knew of the facts giving rise to the course of action.

11. Counsel informed me that the two key witnesses for the respondent in this case are Jess Robinson and Jane Winfield. Each has left the respondent's employment. Miss Robinson departed in 2018 and Miss Winfield in March 2019.

12. There is much force, in my judgment, in Ms Jennings' submission that this is a significant prejudice to the respondent. No witness statements have been obtained from either of them prior to their departure (whether in connection with Tribunal proceedings or internal grievance proceedings or the like). Working upon the assumption that the respondent is able to contact the witnesses, then their recollection of events is bound to be prejudiced by the delay and the fact that witness statements have not been taken from them sooner. That would not have been the case of course had the claimant brought her complaint in time.

13. The fairness of a hearing has therefore been put in jeopardy by the delay. The respondent is able to point to a prejudice additional to that of simply having to meet the claim (which would not be sufficient in and of itself).

14. I acknowledge that refusing to extend time has a significant prejudice to the claimant in that she will not be able to pursue her claim. However, it is for the claimant to show a good reason why the claim was not brought in time. Based upon the information which I have before me no good reason has been shown. I acknowledge the claimant's ill health but that must be set against the fact that she has, happily, been able to seek and obtain alternative employment which she has been able to maintain. Therefore, the claimant could have attended today and produced evidence in support of her case that time should be extended and she could have made submissions in support of that contention.

15. In conclusion therefore, I hold that time should not be extended to enable the Tribunal to consider either the unfair dismissal claim or the discrimination claim. The Tribunal has no jurisdiction to consider either of them. This therefore brings the proceedings to a conclusion.

16. Upon being notified shortly after 10 o'clock this morning that the claimant had not attended I caused enquiries to be made as to the claimant's whereabouts. This is a requirement of Rule 47 of schedule 1 to the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013. This provides that, *"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the parties' absence".*

17. At my direction, the usher spoke to the claimant shortly after 10 o'clock. The claimant informed her that she (the claimant) was under the impression that the claim had been listed to take place on 20 March 2020. Upon being informed of this, I heard representations upon behalf of the respondent. The respondent wished to proceed today but was prepared to stand the case down in order that the claimant may attend at a later time today. The usher then telephoned the claimant a second time only to be informed that the claimant was at work and unable to attend today.

18. I carefully read through the file. There are two notices of hearing that have been issued in the case. The first of these is dated 8 January 2020. It notifies the parties that there was to be a case management preliminary hearing. This was listed for 10am on Friday 6 March 2020. It was emailed to the claimant on 8 January 2020. The second notice of hearing was issued on 24 February 2020 and emailed to the claimant that day. This notifies the parties that the first notice of hearing issued on 8 January 2020 was amended in that the matter was now to proceed in public in order to determine whether the claimant's claims were presented out of time and if so whether the Tribunal may consider them. Again, the date and time of the hearing is clearly given as Friday 6 March 2020 at 10am. There is nothing upon the file as far as I can see emanating from the Tribunal that could form the basis of the claimant's belief that the hearing would take place on 20 March 2020.

19. It is unfortunate that the claimant, having been given the opportunity of attending later on today, could not do so. I must balance the claimant's interest against those of the respondent. In my judgment, there is much force in Ms Jennings' submission that by application of the overriding objective it was appropriate to proceed with the hearing today in the claimant's absence.

20. The overriding objective may be found in Rule 2 of schedule 1 to the Rules of Procedure. This requires the Tribunal to deal with cases fairly and justly which includes so far as practicable dealing with cases in ways which are proportionate to the complexity and importance of the issue, avoiding delay and saving expense.

21. I was persuaded that proceeding today was more consistent with the overriding objective than simply adjourning the matter. Firstly, I can see no good reason for the claimant having formed the belief that the hearing was scheduled to take place on 20 March 2020. Secondly, the respondent would incur significant costs in having a legal representative appear for them on another occasion.

Thirdly, adjournment of the matter would incur delay. Fourthly, hardship and prejudice to the claimant may be ameliorated to some degree by the ability for the claimant to apply to the Tribunal for reconsideration of this Judgment. The overriding objective is served as the claimant may consider whether to make a reconsideration application in the light of the principles which apply around time limits in the Employment Tribunal (as explained in these reasons).

22. I informed Ms Jennings that I proposed drawing to the claimant's attention her right to have the matter reconsidered. Ms Jennings on behalf of the respondent had no objection to that course of action in the circumstances.

23. By Rule 70 of schedule 1 to the Rules the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any Judgment where it is necessary in the interests of justice to do so. An application for reconsideration shall be presented in writing and copied to all of the other parties. The application must be made within 14 days of the date upon which the written record of the decision (being the date set out below) was sent to the parties.

24. A Judgment will only be considered where it is necessary in the interests of justice to do so. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the original decision or Judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interests of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.

25. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application on paper is to act as a filter to determine whether that is a reasonable prospect of the Judgment being varied or revoked were the matter to go before the Employment Judge at a reconsideration hearing.

26. Therefore, it is open to the claimant to make an application for reconsideration. Should she do so then she will need to show:

    23.1. A good explanation as to why she did not attend today's hearing such that there is a reasonable prospect of me holding that it is in the interests of justice for the matter to proceed to a reconsideration hearing;

    23.2. That there is a reasonable prospect of her persuading the Tribunal that the time limits for consideration of her complaints ought to be extended. She will need to show the basis for that in order to persuade me that it is in the interests of justice to allow the matter to proceed to a reconsideration hearing.

27. Finally, I observed that the claimant having made contact with ACAS on 2 January 2020 does not serve to extend the time limit which, for all of her claims, expired on 4 June 2018. Contacting ACAS only serves to extend the time limit where that contact is made during the currency of the limitation

period. Where the first contact with ACAS is made outside the relevant limitation period then there is no scope for an extension of time by virtue of contact with ACAS.

Employment Judge Brain
Date 13 March 2020