



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms S Serafim**

**v**

**Parkcare Homes (2) Limited**

**Heard at:** Birmingham

**On:** 16 June 2020

**Before:** Employment Judge Broughton

**Appearances:**

For Claimant: In person

Respondent: Ms J Duane (Counsel)

## JUDGMENT

The correct identity of the respondent was agreed to be as above.

The Claimant's claim of constructive unfair dismissal was presented out of time when it was reasonably practicable for it to be presented within time and, in any event, the further delay was not reasonable.

Her claim is, therefore, dismissed.

Employment Judge Broughton  
17 June 2020

**REASONS**

The facts

1. The claimant brought a claim of constructive unfair dismissal against the respondent.
2. It was common ground that she had qualifying service and that her effective date of termination was 30 May 2019.
3. It was also common ground that the claimant entered Early Conciliation on 2 September 2019, 5 days outside the primary time limit.
4. EC ended on 16 October 2019 and the claim was issued on 26 October 2019, 10 days later.
5. The claimant acknowledged that she knew by the time that she issued proceedings that she was out of time although she had not attempted to offer any explanation or to apply for an extension until her oral evidence today.
6. The claimant had been living and working in the UK for 6 years. She acknowledged that in her country of origin that there was a mechanism, similar to that offered by ACAS, for resolving employment disputes.
7. It was her evidence, which I accept, that she was unaware of her employment rights and how to enforce them in the UK. Indeed, it had not initially been her intention to bring a claim until an issue arose about her reference.
8. Following her resignation from the respondent, the claimant immediately commenced new employment on similar pay.
9. She said she was working long shifts and, as a single mother, looking after her son. This was her focus and she did not research her rights or how to claim at the time, saying that she did not know where to look.
10. However, the claimant was discussing her previous employment with somebody on 25 August 2019 and was informed about ACAS. This resulted in her researching her rights on the internet although she did not actually contact ACAS until 2 September 2019.
11. She said that she had been working the first night but had no further explanation for not contacting ACAS between 26 and 29 August 2019, which would have meant that she started EC in time.
12. After 6 weeks in Early Conciliation the claimant was aware of the time limit issue. She researched her rights and employment tribunals on the internet and issued her claim 10 days later.
13. The claimant was unable to explain why this could not have been done sooner, save that she was busy and her focus was elsewhere.

The law and issues

14. The law on time limits is found in s.111 Employment Rights Act 1996.
15. To extend time I need to be satisfied that it was not reasonably practicable for the claimant to commence EC in time. That is quite a high hurdle and it is not a matter over which I have a wide discretion.
16. If, however, I am so satisfied then I also have to be satisfied that the claim was issued in such further time as is reasonable.

Decision

17. I accept that the claimant did not know of her rights or the relevant time limits and that, initially, her principal focus was on her new job and her son.
18. However, the claimant is clearly an intelligent individual and must have been aware that there was at least a possibility of some employment laws in the UK and a claim mechanism with time limits.
19. She had the ability to research her rights and the relevant processes once informed about ACAS and employment tribunals.
20. It seems to me, therefore, that she was clearly able to have at least attempted to research her rights sooner or, indeed, to attempt to seek legal advice, something which she admitted doing, albeit, again, much later.
21. Not being aware of the right to claim is only an excuse if that lack of awareness was reasonable.
22. In this case, I am satisfied that the claimant could have researched her rights and options sooner and, had she done so, she would have readily discovered what needed to be done. As a result, it would have been reasonably practicable for her claim to be submitted in time.
23. In any event, once aware of ACAS on 25 August 2019, the claimant still had 4 days to contact them but delayed until after the weekend by which time it was too late.
24. As previously mentioned, I accept that her principal focus was elsewhere but there was no suggestion that she could not have found a few minutes to call ACAS before the deadline or to research her rights and time limits in the few remaining days available.
25. Even then, therefore, it was reasonably practicable for the claimant to have commenced EC on or before 29 August 2019.

26. Moreover, knowing that she was out of time when EC concluded, to delay a further 10 days, on top of the earlier 5 day delay, before issuing her claim was not reasonable.
27. The claimant could have been further researching her rights and preparing her claim during EC but, in any event, could have done so in significantly less than 10 days.
28. For all of the above reasons, therefore, I do not have any discretion to extend time and the claimant's claims must be dismissed.