



**Case Number: 1405243/2019**

former colleagues namely Mr Watkin and Mr Kirby. Their evidence was not disputed so there was no need for them to be called. On the basis of that evidence and the various documents I was shown, I reached the following findings of fact.

5. At the time of the events leading to dismissal Mr Wallace was employed by the respondent as Commercial Director. In the course of 2018 the Company decided that there would be a restructure and that restructure was implemented in 2019.
6. On 31 January 2019, Mr Mitha had a redundancy consultation meeting with Mr Giles. Certain things were said at that meeting that are relevant to the issue of late presentation.
7. On 1 February, a first consultation meeting was held with Mr Wallace. He was told what the intentions were as far as the reorganisation was concerned. In particular, he was told that although his position would no longer exist - it would disappear in the reorganisation - some new positions would be created. There was one in particular, namely Chief Customer Officer (“CCO”) that interested him. He made an application for that position as indeed did Mr Mitha and he was interviewed for it but the role was actually given to a colleague of his, Ms Bonser, and as a consequence on 30 June 2019 his employment came to an end.
8. Clearly Mr Wallace was not happy with the termination of his employment but at that stage he took no further steps to challenge it. That situation changed as a consequence of a meeting on 3 November between himself and Mr Mitha at which Mr Mitha informed Mr Wallace of certain things that he said were said to him in the course of his meeting on 31 January.
9. As a direct consequence of what he was told, Mr Wallace decided that he had a claim. He commenced early conciliation a few days later, on 8 November, and presented a claim to the Tribunal on 11 November.
10. Under s111 of the Employment Rights Act 1996 a claim of unfair dismissal should ordinarily be presented to a tribunal within 3 months beginning with the effective date of termination. That period may be extended where early conciliation is undertaken within that 3 month period. S111 goes on to provide that that period may be extended if it was not reasonably practicable for presentation to have taken place within it.
11. In this case, since termination was on 30 June, Mr Wallace should have commenced early conciliation by 29 September 2019. In fact he did not do so until November. On the face of it therefore his claim was out of time but he said it was not reasonably practicable for him to have brought the claim in time because he had only acquired crucial information that led him to believe he might have a case after the three month period, in the course of the conversation with Mr Mitha on 3 November.
12. I was referred to the case of Cambridge and Peterborough Foundation NHS Trust v Crouchman, which essentially reviews the authorities that relate to this issue. In order for late-acquired information to render prompt presentation not reasonably practicable, there must be ignorance of a fact which is crucial or fundamental to a claim and it must be reasonable, firstly, to be ignorant of

that fact and secondly, to have changed position as a consequence of the acquisition of that information. It was therefore necessary for me to consider exactly what was said to Mr Wallace on 3 November.

13. In his witness statement Mr Wallace says that Mr Mitha told him that Mr Giles in the course of his consultation meeting had said that Fiona Bonser was a more suitable candidate. On the face of it, that might give rise to a suggestion that some sort of decision had already been taken as to the "ranking order" of Mr Mitha and Ms Bonser. Before me and to his credit Mr Wallace accepted that is not what Mr Mitha had said to him. It was a gloss on what Mr Mitha had said. It seemed to me rather more likely that what was said would have reflected the agreed minutes of the meeting between Mr Mitha and Mr Giles which are at page 134 of the bundle.
14. I believed Mr Mitha indicated to Mr Wallace that Mr Giles told him that Fiona Bonser was interested in the CCO role and that he felt she would be a good fit due to her experience. Indeed, according to the notes Mr Mitha had said that Fiona Bonser had a lot more experience and would be great for that role.
15. That is the extent of the factual information that Mr Mitha might have passed to Mr Wallace on 3 November. He may well have expressed a view himself to the effect that it was a "done deal" as far as the appointment of Ms Bonser was concerned but that was an opinion. It was hardly surprising that the Company should have in mind possible applicants for this new position. For Mr Giles to simply express the view that one in particular employee would be a good fit did not, in my view, give rise to a reasonable belief on the part of Mr Wallace that in some way effectively no competition was going to take place for the position. The note of the meeting at page 134 records Mr Giles saying the role is open for anyone to apply for, which again seems rather inconsistent with an expression that might sensibly be taken to convey a belief that she would definitely get the job.
16. It was certainly the case that Mr Wallace was reasonably ignorant of the information passed to him at the meeting with Mr Mitha. It was not until 3 November that he knew about it. But the change in his belief was from one in which he thought there was no valid claim to take forward to one in which he thought there was. For the reasons I have given it seemed to me that there was nothing in what Mr Giles said and of which Mr Wallace became aware on 3 November that was inconsistent with the intention on the part of the Company to hold a proper and fair appointment process.
17. In short I concluded that it was not reasonable for Mr Wallace to have changed his view in the way that he did. In those circumstances I was driven to conclude that it was reasonably practicable for the claim to have been brought in time. It followed that his claim was out of time and had to fail.
18. For the sake of completeness I go on to address the situation as far as the fairness of the dismissal is concerned had the claim been in time.
19. The dismissal was clearly potentially fair, being by reason of redundancy. The question for me was then whether the Company had acted reasonably in treating redundancy as warranting dismissal.

20. In essence in this respect Mr Wallace prayed in aid both at what Mr Giles had said at the meeting with Mr Mitha but also at certain internal documents One in particular demonstrated a possibility at the very least that Ms Bonser might be appointed into the CCO job. That document was an organisation chart prepared in June or November 2018.
21. That information did not lead me to conclude that fair competition for the CCO position would not take place. Speculating as to the possible set up of the Company after the reorganisation was something the Company was bound to do. It is inevitable when a restructure of this sort takes place that management will have ideas about how the restructure will pan out and who will fill the vacant positions.
22. I was also struck by Mr Wallace's evidence specifically on the appointment of Ms Bonser. As far as he was concerned there was nothing much between them if they were to compete for the CCO role and he believed that Mr Giles had appointed the person that he, Mr Giles, thought was best for the job.
23. If we had been analysing a situation where employees were vying to be retained in their existing roles, the tribunal would look closely at the actions of the Company – seeing that pools were properly identified, proper criteria for selection adopted etc In this case, however, Mr Wallace's role was disappearing and we were looking at recruitment into a separate position. Essentially, what the tribunal is looking for in that situation is to see that the Company acted in good faith. For the reasons set out above and in particular the evidence that Mr Giles gave and which was not seriously challenged by Mr Wallace, I concluded that the Company took appropriate and reasonable steps to appoint the best person into the job, notwithstanding that Ms Bonser herself was not actually at risk of redundancy whereas Mr Wallace was.
24. For all the reasons I have mentioned it seemed to me that the Company did act reasonably in treating redundancy as justifying the dismissal of Mr Wallace and therefore if the claim had been in time, I would have concluded that the dismissal was fair.

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Employment Judge Reed  
Date: 25 August 2020  
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