

**Case number: 2600540/2020**



# **EMPLOYMENT TRIBUNALS**

and

**Claimant: Ms T Rawson**

**Respondent: Primelife Ltd**

## **RECORD OF AN OPEN PRELIMINARY HEARING BY CLOUD VIDEO PLATFORM**

**Held at:** Nottingham

**On:** 26 August 2020

**Before:** Employment Judge P Britton (sitting alone)

### **Representation**

**For the Claimant:**

In person

**For the Respondent:**

Ms V Shaw, Workforce Development Director and Ms J Hairsine, Company Secretary

## **JUDGMENT**

1. The claims of constructive unfair dismissal and non-payment of wages are dismissed it having been reasonably practicable to have presented them in time and them not having been presented within a reasonable period thereafter.
2. The claim of disability discrimination is dismissed it not being just and equitable in all the circumstances to extend time, it having been presented out of time.
3. This means all claims presented by the Claimant are therefore dismissed for want of jurisdiction them having been presented out of time.

# REASONS

1. This hearing follows on from those which I held as telephone closed case management discussions (TCMPH) on the 4 May and 8 July 2020. In those I set out the issues and that the claims had been presented out of time and that accordingly this hearing was to be held to determine whether or not the claims should be struck out for want of jurisdiction. Before me I have had amongst other things the statements which the Claimant provided on 21 May 2020 and yesterday. I have also heard from her further today. I had also directed a bundle be prepared by the Respondent. Unfortunately, the Claimant was not sent a copy. But it does not prejudice her in that it contained very little not previously before me. The Claimant was able to fully put forward her explanation as to the late presentation and otherwise discuss issues particularly germane to the just and equitable approach viz extending time for the purposes of the Equality Act 2020 (EQA) disability based claim.
2. The overall claim (ET1) was, as already set out in particular in the record of the first TCMPH, presented considerably out of time. Whether it be the claims for unfair constructive unfair dismissal pursuant to the Employment Rights Act 1996 (the ERA) or the EQA disability discrimination claim, in either case there is a three month time limit for presenting the claim. This is extended by the period of ACAS Early Conciliation. Time started to run from the date her employment ended, namely 20 August 2019 (the effective date of termination (EDT)) and, allowing for the ACAS EC period, the last date for presentation was 20 December 2019. But the ET1 was not presented until 6 February 2020. Thus on presentation it was circa seven weeks out of time.

## THE LAW

3. As to the law s111(2) ERA provides:

*“...an employment tribunal shall not consider a complaint, unless it is presented to the tribunal-*

- (a) Before the end of three months beginning with the effective date of termination*
- (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 complain to be presented before the end of that period of three months”.*

4. The burden of showing that it was not reasonably practicable lies with the Claimant. This means showing that it was “*something like not reasonably feasible*”<sup>1</sup> in terms of the explanation provided.

---

<sup>1</sup> Palmer and anor v Southend on Sea Borough Council 1984 ICR 372, CA.

5. As to the disability based claim, the test is different: thus s123(1)(a) EQA provides: that the claim may not be brought after the end of
  - (a) *The period of three months starting with the date of the act to which the complaint relates, or*
  - (b) *Such other period as the tribunal thinks just and equitable.*
6. Again the burden is upon the Claimant *“to convince the tribunal that given her explanation and the circumstances that it is just and equitable to extend the time so the exercise of the discretion is the exception rather than the rule”*<sup>2</sup>.
7. As to the approach, as a guide to my evaluation of the explanation I have followed ***British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT***. And I remind myself that I may, if I consider it necessary, consider the merits of the claim albeit ensuring that in so doing I invite the parties to make submissions which I have done<sup>3</sup>. Essentially in that respect the Claimant having honestly conceded much as to which I shall come, simply asks that I nevertheless let her proceed. The Respondent says given those concessions that I should not.

## FINDINGS OF FACT

8. For my purposes and for reasons I have previously set out, in particularly as published viz the first TCMPH, I work on the premise that at the material time starting with the “demotion” issue circa October 2018, the Claimant was and remains a disabled person by reason of depression.
9. As to the demotion based part of the claim, the Claimant has as of yesterday withdrawn it.
10. Thus her case now primarily starts with period post her taking the role of cook with the Respondent in April 2019. But in the grievance she raised thereafter she has very fairly told me that it was about feeling isolated and disparaging remarks such that as a cook she was told her comments at such as team meetings were no longer relevant as she was no longer a carer. She did not raise disability as an issue. The same applies to her reasons for resigning to go to another job. Thus viz ***Lupetti*** this is relevant as a fall back so to speak because it means that on the face of it the disability claim does not engage post the demotion issue which has been abandoned because as I observed at the previous TCMPH's her case in that respect was in great difficulties as the reason for her demotion was because she could no longer comply with a fundamental term of her contract of employment, namely renewed accreditation to dispense medication. She has never asserted, including in the ET1 or the subsequent particularisation, that her failure to achieve accreditation was due to her disability.

---

<sup>2</sup> Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434,CA

<sup>3</sup> Lupetti v Wens Old Music House Ltd 1984 ICR 348 EAT.

11. This I observe because it means that in any event the residual disability claim appears in all the circumstances to be very weak if it relates to not adjusting her hours of work as a reasonable adjustment in the period prior to taking the cook role, bearing in mind that she honestly told me today that thereafter the need for reduced hours and the pressures of the carer role including handover and her complaints viz pay were no longer engaged.
12. Finally by the same token, on the pay front it also means that it is much further out of time than first thought because post the appointment to cook it was no longer engaged. Thus, time for presenting that claim would have started in April 2019.
13. Having so observed, I come to the issue of the late presentation of the ET1. The Claimant has explained that starting with her first grievance dated 6 November 2018, she had begun to acquaint herself with aspects of employment law. Hence the reference therein to the Working Time Regulations. And subsequently, I gather post her resignation,<sup>4</sup> she had explored the internet and visited the public library. Thus, she knew about applying to tribunal. And of course she engaged in early conciliation via ACAS between 18 October and 18 November 2019. Furthermore she told me that she did know about the time limits. So this is not a case of ignorance about being able to use the employment tribunal or the existence of time limits.
14. As to her disability, she was able to hold down her new job as a carer despite her disability. The absence she had in December 2019 was due to flu and an associated lung infection and not the disability. Thus she could have brought the claim to tribunal in the latter part of November 2019 post the end of ACAS EC and, of course, at any time in January 2020. Essentially why she did not do is because she was focussed on her new job. But, of course time limits to tribunal should be complied with. Presentation of the ET1 should take priority. And it is plain on her evidence today that her disability was something in this period that she was coping with. She worked at the new job throughout January. Thus there is nothing in her explanation for late filing which shows that it was not reasonably feasible for her to have brought the claims for unfair dismissal and non-payment of wages before she did. Thus it follows that applying s112 of the ERA she has not shown that it was not reasonably practicable to have presented the claim within the time limit and furthermore that it was not feasible to present it before she did. Thus, those claims remain out of time. Accordingly, they are dismissed for want of jurisdiction.
15. As to the EQA disability based claim, of course those findings in terms of that she could have brought the claim before she did also apply. But of course the issue now becomes is it nevertheless just and equitable to extend time. Applying the guidance in **Keeble**, of course the Claimant is prejudiced if she is excluded

---

<sup>4</sup> She resigned giving notice on 6 June 2019. She worked the notice period which ended on 20 August 2019 and started her new job as a senior carer on a higher wage the day after.

from the jurisdiction but conversely the Respondent is prejudiced if it has to go to the cost of defending the claim when it is out of time. The cogency of the evidence is unaffected. But of course weighing heavily in the balance, is that the Claimant delayed when there was nothing preventing her presenting her claim in the latter part of November 2019 or from January onward. Finally, there is that as to the merits of the disability based claim prima facie on the basis of the contents of the ET1; the discussions before me at the previous TCMPhs; and the two statements; that it relates to matters pre taking the cook role much of which has been abandoned and where prima facie the concept of “ continuing act” cannot come to her rescue as she did not raise disability discrimination after getting the Cook Role. Finally despite my previous orders for further particularisation by her, the basis of the disability claim still remains vague and unspecified. Thus applying **Lupetti** the merits of the claim are very doubtful. Thus in a case where the claim is out of time, and the explanation for lateness not being of assistance to the Claimant, this final factor means it adds further to the weight of the scales of justice against it being just and equitable to extend time. Thus I find that it is not just and equitable to extend time and accordingly the claim of disability discrimination is also dismissed.

## CONCLUSION

16. All claims are dismissed as being out of time.

Employment Judge P Britton  
Dated 26 August 2020

JUDGMENT SENT TO THE PARTIES ON  
1 September 2020

.....

.....

FOR THE TRIBUNAL OFFICE

### **Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.