



## EMPLOYMENT TRIBUNALS

Claimant  
Ms CM Tobin

v Respondent  
Southwater Parish Council – Clerk  
to the Council (Proper Officer)

### JUDGMENT AT PRELIMINARY HEARING

#### Considered on the papers

1. A preliminary hearing was held on 19 March 2020 to consider whether the Claimant's claim had been brought in time and whether the Tribunal should exercise its discretion to extend time on the basis that it was not reasonably practicable to bring the claim in time (unfair dismissal) or it was just and equitable to extend time (disability discrimination). Due to the Covid-19 pandemic it was not possible to have a hearing in person and by agreement it was decided that the best way forward was for the parties to send in written representations and for me to consider the matter on the papers.
2. The Claimant's statement was sent to the Tribunal on 19 April 2020 and the Respondent sent its comments to the Tribunal on 19 June 2020 in accordance with the previous case management orders.
3. The relevant dates for consideration are:
  - a. Effective date of termination **21 May 2019**
  - b. three-month limitation expired **20 August 2019**
  - c. time limit for presentation of claim (taking into account ACAS early conciliation) **20 September 2019**
  - d. claim presented **24 September 2019**
4. The Claimant's statement says that she first tried to submit her claim on 10 September, but this failed due to problems with her internet and computer connection. She then asked a friend to assist. On 11 September 2019, the Claimant says she telephoned the Tribunal office asking how to present the claim in another format as she was going on holiday, leaving at 10 a.m. that day. She says she was given the email address of the London South Employment Tribunal office. She sent her claim for by email and sent a hard copy by post to the London South Employment Tribunal. The Claimant received an automated receipt email from the Tribunal confirming that the email had been received.

5. The Claimant's union representative Mrs Shippen, who was a personal friend and with whom the Claimant was going on holiday, also tried to send the document online but also failed to do so although no details of the difficulties she encountered are set out.
6. On 16 September 2019, the Tribunal returned the claim form to the Claimant as it had not been submitted in the prescribed manner, setting out the three prescribed methods of presenting a claim which were: online submission, by post to the Employment Tribunal Central Office in Leicester or by hand to a designated Employment Tribunal Office. The Claimant had not used one of those methods.
7. The Claimant appears to have returned from holiday on 18 September 2019 (Wednesday) and she attended a grievance hearing on 19 September 2019. However, it was not until the evening of Friday 20 September 2019 (this being the date that the limitation period expired) that the Claimant opened post which had accumulated during her holiday. It was then that she saw the letter from the Tribunal dated 16 September 2019 returning her claim form.
8. The Claimant says she rang the London South Tribunal on Monday 23 September and was told that there was no record of her Claimant's claim being submitted. This is not surprising as it was not accepted and returned to her. She says she was advised by the Tribunal clerk to resubmit the documents immediately to the Leicester office with a covering letter. The Claimant posted her claim to the Leicester office for next day delivery. It was received on 24 September 2019. The covering letter does not indicate there was any problem with the Tribunal's online system.
9. The Claimant said that when she rang the Tribunal on 25 September 2019 she was told that the documents had been received and she would be notified whether or not the Claim had been accepted. On 10 October 2019, the Claimant received from the Tribunal service a letter which stated the Claim had been accepted and setting a preliminary hearing for 19 March 2020.

### **The Respondent's submissions**

10. The Respondent submitted that there was no evidence of Internet and computer connection problems and no reference to this in her email to the Tribunal. The Respondent points out that the difficulties with the computer appears to be at the Claimant's end as there was no suggestion that there was a problem with the government website.
11. The Respondent submitted that the government website is very clear and states that claims can only be submitted online via the link provided or by posting them to the employment Tribunal central office in Leicester and that the Claimant failed to follow this guidance. The Respondent submitted that it was reasonably practicable for the Claimant not to have posted the documents to the correct address which was easily found on an Internet search.

12. The Respondent further submits that it was not appropriate for the Claimant to rely on the auto response email from the London South employment Tribunal as evidence that the claim was successfully presented to the Tribunal.
13. It is submitted that the Claimant returned from a holiday on 18 September 2019 and attended a grievance in the 19 September 2019 at which he told the Respondent that she had submitted a claim. However, the Respondent suggests that it was not reasonable for the Claimant to wait until the evening of 20 September 2019 to review her post and that it was not unreasonable to assume that she would have checked her post immediately she returned to ensure all was well with her Tribunal claim particularly given the problems she had in submitting it.
14. Finally, the Respondent submits that the notice of claim indicating the Claimant's claim had been accepted did not mean that the Claimant's claim has jurisdiction to proceed but merely that the Tribunal has received and processed her claim.
15. The Respondent avers that there was clear guidance online in relation to the limitation for Claimant's in which to submit their claim which the Claimant was all reasonably ought to have been aware of.

### **My conclusions**

16. The time limits for presenting a claim in the employment Tribunal's is three months either from the effective date of termination for unfair dismissal claim or the act of discrimination complained of for a discrimination claim.
17. For a claim of discrimination, the following law is relevant:
  - a. Section 123 Equality Act provides for a 3-month limitation period from the date that the act complained of was done. This can be extended if there are just and equitable grounds to do so.
  - b. Marks & Spencer plc v Williams Ryan [2005] EWCA Civ 470. The onus was on the Claimant to take proactive steps to establish what those rights were and to act accordingly. Had the Claimant made reasonable enquiries, for example, research on the internet, she would have been aware of the Tribunal system and her right to complain, as well as the relevant time limits. I am therefore satisfied that it was reasonably practicable for the unfair dismissal and breach of contract claims to have been presented in time and they are accordingly dismissed for want of jurisdiction.
  - c. In Robertson v Bexley Community Centre t/a Leisure Link 2003 [IRLR] 434 CA, it was noted that, while Tribunals have a wide discretion to extend time in discrimination cases, it should only be exercised in exceptional circumstances. 'time limits are exercised strictly in employment and industrial cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion.'

- d. In *O'Brien v Department for Constitutional Affairs* [2009] IRLR 294, the Court of Appeal held that the burden of proof is on the Claimant to convince the Tribunal that it is just and equitable to extend time. In most cases there are strong reasons for a strict approach to time limits.
18. The test is different for a claim of unfair dismissal. The test is whether it was reasonably practicable for the claim to have been presented in time. This is a much stricter test than the just and equitable test described above.
19. In relation to the claim for unfair dismissal I find that it was reasonably practicable for the Claimant to have presented her claim in time. The Claimant had plenty of time to present her claim before departing on her holiday but left it until just before this date to try to present it. When she did try to present it, she first experienced in her evidence computer issues but she does not suggest there was any fault with the government site for presentation of claims. It would be possible for example, for the Claimant to have gone to a friend or elsewhere to get a better Internet connection. However, perhaps more crucially, the Claimant returned from holiday on 18 September 2019 having known that there had been issues with her claim being presented. For some reason which has not been explained by the Claimant, she chose not to open her post until the evening of Friday 20 September which was the date the limitation period expired.
20. I accept the Respondent's submissions that the information on the government websites about how to present a claim is very clear. There are three prescribed methods for presenting a claim and the Claimant did not use any of them until she posted her claim (out of time) to the Leicester office. Even when the Claimant was notified on 23 September 2019 that she needed to present her claim in the prescribed form she chose to post it to the Leicester office rather than using the online service or sending it by email.
21. There are several steps at the Claimant could have done and in my opinion should have done to ensure that her claim was properly presented within time. I note that the Claimant was in contact at all time with Miss Shippen, her trade union representative who is also a friend of hers with whom she went on holiday. In all the circumstances I find that it was reasonably practicable for her claim to have been presented in time on the Claimant's claim for unfair dismissal is accordingly dismissed.
22. There are no submissions from the Respondent as to why it would not be just and equitable to extend time for a discrimination claim. The test here is less stringent in the test for an unfair dismissal claim although I appreciate it is the exception rather than the norm for time to be extended, here the Claimant's claim was presented only a few days out of time and the Respondent has not made any submissions as to why it would not be just and equitable to extend time.
23. For example, the Respondent has not said that it would be prejudiced if

the claim proceeded or put forward any other factor for me to consider. The Respondent's argument is summed up by the final paragraph of the submissions which states: "as the Claimant submitted a claim after 20 September 2019, namely on 24 September 2019 the Respondent contends that the Claimant's claim is consequently time-barred and therefore the Tribunal does not have jurisdiction to hear the claim and it should be struck out." This rather misses the point that the Tribunal does have the discretion to extend time.

24. Whilst I find that it was reasonably practicable for the Claimant to have presented her claim in time, I appreciate that the Claimant had difficulties in presenting her claim and particularly, if what she says is right, that she was given erroneous advice by the Tribunal staff, then I find that it is just and equitable to extend time in relation to her claim for discrimination in the protected characteristic of disability in the absence of any submission on this point by the Respondent as to why it would not be just and equitable to extend time.
25. The discrimination claim will therefore proceed to a hearing. A preliminary hearing will be listed to identify the issues, list for the final hearing and give appropriate case management orders.

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Employment Judge Martin

Date: 20 August 2020