



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms A Grant

**Respondent:** Staffordshire County Council

**Heard at:** Nottingham                      **On:** Wednesday 2 September 2020

**Before:** Employment Judge Hutchinson (sitting alone)

## Representatives

**Claimant:** Mr D Jones of Counsel

**Respondent:** Mr Khal Mahmood, Legal Executive

## JUDGMENT

The Employment Tribunal Judge gave judgment as follows: -

1. The Tribunal does not have jurisdiction to hear the claim of unfair dismissal. The claim is dismissed.
2. The Tribunal does not have jurisdiction to hear the claim of disability discrimination. The claim is dismissed.

## REASONS

### Background to this hearing

1. The Claimant presented her claim to the Tribunal on 19 August 2019. She had been employed by the Respondent from 12 March 2001 until her dismissal on 4 April 2019. She was a Social Worker.
2. The claim form was presented by herself and in it she claimed: -
  - Unfair dismissal
  - Disability discrimination
  - Sex discrimination
3. At an earlier Preliminary Hearing the Claimant had confirmed that she was not pursuing any claim of sex discrimination and that the last act complained of in respect of the disability discrimination was her dismissal on 4 April 2019.
4. The date of receipt by ACAS of the early conciliation notification was 8 July 2019 and the date of issue by ACAS of the certificate was 11 July 2019.

5. It is accepted by the Claimant that her claims were presented out of time.
6. The issue for me is to consider in respect of each of the claims whether I have jurisdiction to hear the complaints.

7. In respect of the claim of unfair dismissal that is made under the Employment Rights Act 1996 (ERA). Section 111 ERA provides as follows:

“(1) A complaint may be presented to an Employment Tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an Employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal: -

(a) Before the end of the period of 3 months beginning with the effective date of termination, or;

(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 complaint to be presented before the end of that period of 3 months.”

8. In this case the Claimant accepts that she did not contact ACAS until 8 July 2019 by which time her claim was already out of time. I must therefore decide whether I am satisfied that it was not reasonably practicable for the complaint to be presented by 3 July 2019 (or at least that she should have contacted ACAS by that date). If I am satisfied that it was not reasonably practicable I have to determine whether it was presented within such further period as I consider reasonable i.e. a further period of 7 weeks.

9. In respect of the disability discrimination claim that is made under the provisions of the Equality Act 2010 (“EQA”).

10. Section 123 EQA deals with time limits and provides:

“(1) Proceedings on a complaint within Section 120 may not be brought after the end of: -

(a) the period of 3 months starting with the date of the act to which complaint relates, or;

(b) such other period as the Employment Tribunal thinks just and equitable.”

11. In this case because the last act complained of was 4 April 2019 it is accepted by the Claimant that the claim is presented out of time. I have a discretion to extend the time if I think it “just and equitable” to do so. It is fair to say that I have a broader discretion under discrimination law than I do in unfair dismissal cases but there is no presumption that I should do so. The burden is on the Claimant to convince me that it is just and equitable to extend time and exercise the discretion. The exercise of the discretion should be the “exception rather than the rule”.

## **Evidence**

12. I heard evidence from the Claimant only and there was an agreed bundle of documents. Where I refer to page numbers it is from that bundle.

## **The facts**

13. The Claimant was employed as a Social Worker by the Respondent since 2001. She says that she suffered from a disability relating to the menopause since 2017. There has been no determination of whether the Claimant was a disabled person for the purpose of the EQA. I have seen her doctor's notes for the period between March 2019 and September 2019 at pages 38-39. There is reference to her receiving hormone replacement therapy but there is no mention of any health issues which relate to it or any menopausal problems.

14. It is not in dispute that between March 2018 and June 2018 the Claimant was subject to an informal personal improvement plan. This related to the Claimant's performance and in particular the way in which the Claimant was undertaking and maintaining records of statutory visits to young people.

15. At a meeting on 7 August 2018 the Claimant was informed that she would be subject to a disciplinary investigation and on 4 April 2019 attended a disciplinary hearing at which she answered the following allegations: -

(1) That she had negligently failed to update and maintain accurate records in respect of statutory visits to young people.

(2) That she had failed to ensure personal education plans were in place in relation to a named child, resulting in neglect towards their education and a complaint from a third party.

(3) That she had failed to complete a statutory report in relation to a named child within time scale for statutory reviews, resulting in the reviews being cancelled.

16. It is not in dispute that the Claimant was interviewed on 2 occasions with a trade union representative at each and an investigation report had identified a case to answer and had been sent to the Claimant prior to the hearing.

17. The disciplinary hearing was conducted by the County Manager, Care Planning and Court Teams West and at the hearing the Claimant was represented by her trade union representative. She was aware prior to the hearing that dismissal was a possible outcome.

18. The hearing took almost 4 hours and the deciding manager decided that the Claimant had acted as alleged and that this amounted to gross misconduct based on her negligence. The dismissing officer decided that dismissal was the only course of action that was appropriate and informed the Claimant at the meeting of her decision.

19. A letter was sent to the Claimant confirming the decision on 17 April 2019 and the Claimant appealed on 29 April 2019. The basis of the appeal was that the correct procedure had not been followed and new evidence that had not been considered at the disciplinary hearing had come to light.

20. The appeal hearing was conducted on 22 May 2019 by the Respondent's County Manager, Prevention and Placements and the Claimant was again represented at the hearing by a trade union representative.

21. The decision not to uphold her appeal was sent by e-mail dated 5 June 2019.

22. The Claimant was then in further contact with her trade union and told me of a number of e-mails and telephone conversations that she had with her union representative although I have seen no evidence of this.

23. The Claimant tells me and I accept that the union wrote to her on 1 July 2019 and told her they would not be supporting her case. I have not seen that letter. She says and I accept that she did not receive this letter until 6 July 2019.

24. The Claimant notified ACAS in accordance with the early conciliation regulations on 8 July 2019 and a certificate was issued by ACAS on 11 July 2019.

25. The Claimant tried to present her claim on 16 July 2019 but it was rejected because the Respondent was not named correctly. It named her managers.

26. The claim was represented and finally accepted on 19 August 2019.

27. The Claimant tells me that the reason for the delays was because of unavailability of HRT. She has produced no medical evidence in support of this contention or that the lack of HRT was a reason for her delay..

## **The law and submissions**

### Unfair dismissal claim

28. The claim of unfair dismissal is made under Section 94 of the ERA and I have already set out the provisions of Section 111 ERA. It is right to say that most employees generally lose the right to claim unfair dismissal if they fail to present their claim to the Tribunal before the end of 3 months beginning with the effective date of termination. I have a discretion to extend the time limit but only if the Claimant can show that it was not reasonably practicable to present the claim in on time and that the claim was then presented within a reasonable period of time of it becoming practicable to present the complaint. I take into account that the time limit is extended to allow for early conciliation.

29. The case of **Palmer and another v Southend-on-Sea Borough Council** [1984] ICR 372 is still good law and I was referred to this by Mr Mahmood.

30. Mr Jones relied on the case of **Marks and Spencer Plc v Williams-Ryan** [2005] EWCA Civ 470. That case involved a claim of unfair dismissal which was presented nearly 4 months after the date of her dismissal.

In that case Lord Phillips, the Master of the Rolls, decided that the case of **Dedman v British Building and Engineering Appliances Limited** 1974 ICR 53 was still good law and that where the employee has retained a solicitor to act for him or her and fails to meet the time limit because of the solicitor's negligence the solicitor's fault will defeat any attempt to argue that it was not reasonably practicable to make a timely complaint to the Tribunal.

#### Discrimination claim

31. I have set out again above the provisions of Section 123 EQA and as Mr Jones says I have a broader discretion under discrimination law than I do in unfair dismissal cases.

32. Mr Mahmood referred me to the case of **British Coal Corporation v Keeble and others** [1997] IRLR 336 and **Southwark LBC v Afolabi** [2003] ICR 800. That reminded me that it is not an error in law to fail to consider the matters listed in Section 33 of the Limitation Act 1980 but that it is a useful guide for Tribunals.

33. I also referred myself to the case of **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434. In that case it said:

“There is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend the time so the exercise of the discretion is the exception rather than the rule.”

34. The burden of proof is on the Claimant to satisfy me that it is just and equitable to extend the time limit.

35. Mr Jones in his arguments makes much about the issue of prejudice saying that the claim was only presented a short period after time limit expired and that there was no prejudice to the Respondents but there would be a substantial prejudice to the Claimant who would not be able to present her claim. He says to me that the Claimant in this case has a strong case and it would therefore cause her considerable prejudice not to be able to present her arguments to a Tribunal.

#### **My conclusions**

##### Unfair dismissal claim

36. In this case the Claimant was dismissed on 4 April 2019 and her claim should have been presented to the Tribunal by 3 July 2019. The extension of time limits for early conciliation do not assist the Claimant in this case because she did not contact ACAS until 8 July 2019 when her claim was already out of time.

37. The burden of proof is on the Claimant to establish that it was not reasonably practicable to present her claim in time.

38. As can be seen by my fact finding the Claimant was advised throughout the whole process by Unison, her trade union representatives. Although it is suggested that the Claimant was ignorant of time limits unfair dismissal law has been here now for almost 50 years. The Claimant is an intelligent woman and was advised by a professional association. The fact that she did not receive a letter from her union saying that they would not support her in her claim until after the time limit expired does not assist her argument. It is not a reason for delay.

39. I am not satisfied that any mental health condition that she had as a result of her menopause had any effect on her ability to present her claim.

40. The case law all shows that time limits should be strictly applied in unfair dismissal cases unless a Claimant can satisfy me that it was not reasonably practicable to present her claim in time. She has not so satisfied me in this case and I therefore do not have jurisdiction to hear her complaint of unfair dismissal. The claim of unfair dismissal is dismissed.

#### Disability discrimination claim

41. As described above there is not a presumption that I should find that it is just and equitable to extend time. The burden of proof is on the Claimant to satisfy me that it would be just and equitable to extend time.

42. I am not satisfied that anything that she suffers from because of the menopause prevented her from presenting her claim in time. There is no evidence that it did.

43. In this case the Claimant was advised by her trade union throughout and they knew of the time limit and I am satisfied that the Claimant must have known of the time limit.

44. Mr Jones makes much in his submissions to me of the issue of prejudice submitting to me that the Claimant has a strong claim and that she will be prejudiced substantially by not being able to present that claim.

45. I am not so sure. I am not satisfied that this is a strong claim at all. On reading her ET1 and her further particulars of claim and considering what is said in the ET3 it is not apparent to me the Claimant has a strong case. My view is that it is a weak case. This is not a capability dismissal that she complains of. It was a conduct dismissal and although I have not heard any evidence on the papers it is hard to see how any disability, if indeed she suffers from one, had any bearing at all on her dismissal.

46. I am certainly not satisfied as Mr Jones contends that the "reason for dismissal is apparently unfair". On the papers would appear that the reason for the dismissal was that the claimant failed to do her job. That the Respondents undertook an investigation and there were lengthy disciplinary and appeal hearings at which the claimant was represented by her trade union and given a full opportunity to present her case. If I had been satisfied that I had jurisdiction to hear the claims, subject to any representations made, it is the sort of case where I would have considered making a deposit order.

47. Mr Jones says that the Claimant was just a few days late in submitting her claim but in fact she was 7 weeks late in submitting the claim. The Claimant has

not satisfied me that I should exercise my discretion in this case or that the issue of prejudice should give her an opportunity to present the claim out of time. Claimants will suffer prejudice i.e. they will not be able to bring their claims if they do not bring those claims within the required time limit unless they can convince a Tribunal Judge that it would be just and equitable to extend the time. The Claimant has not done that in this case and I am satisfied that I have no jurisdiction to hear the claim and the claim is therefore dismissed.

---

Employment Judge Hutchinson

Date 22 September 2020

**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.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877568/t426-eng.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877568/t426-eng.pdf)