



EMPLOYMENT TRIBUNALS

Claimant:
Ms J Isaac

v

Respondent:
B&Q Limited

Heard at: Reading (by CVP) **On:** 6 August 2020

Before: Employment Judge Anstis (sitting alone)

Appearances:

For the Claimant: No attendance or representation

For the Respondent: Mr D Piddington (counsel)

REASONS

1. These are the written reasons for my judgment of 6 August 2020, which was that the claimant's claims should be struck out. They are prepared following the claimant's request for written reasons (received on 10 September 2020, following promulgation of the judgment on 7 September 2020).
2. The claimant's claim as initially lodged was unclear. She had ticked the boxes on the ET1 for to indicate a claim of unfair dismissal, race discrimination and for notice pay, holiday pay and arrears of pay. It showed that her employment had ended on 7 March 2019, but contained no narrative explaining what her claims were. The tribunal asked for more details before serving the ET1. The claimant replied giving her work address and stating:

"July 2018 racial harassment ... I caught [named individual] rolling towards back of my hair making fun of my hair to the person in front of me ...

Victimisation under the regulations act as I was punished for making a complaint.

Unfair dismissal.

18 February 2019 withholding of witness statement which would have help my case."

3. The claim was subsequently issued, and the respondent filed a defence, including an allegation that the claimant's claim was out of time. The notice of hearing provides that this hearing is to determine:

“Whether the claim should be dismissed because the claimant is not entitled to bring it if the statutory time limit has expired.”

4. This hearing proceeded via CVP. The claimant did not attend the hearing, which started at 14:00 and was completed by 14:25. I understand that after the hearing had concluded and I gave my judgment the claimant has indicated that she had technical difficulties in attending the hearing. The claimant has not (as yet) made any application in respect of this, and I am preparing these reasons based on the position as I understood it at the time of giving judgment.
5. One aspect of the respondent’s case on time limits was straightforward. The other aspect was less straightforward.
6. The claimant’s claim set out a claim of racial harassment, and it is clear from the information she provided that the harassment she is complaining of occurred in July 2018. Her claim was presented on 13 August 2019 so this element of her claim is plainly well out of time, and in the absence of any basis on which I could conclude it was just and equitable to extend time, I decided that it should be struck out.
7. Mr Piddington went on to say that the respondent considered that the rest of the claimant’s claim was brought outside the necessary time limits as well. He said that he had outlined this in written submissions sent to the tribunal. I did not have a copy of those written submissions, but he talked me through them at the hearing.
8. Mr Piddington’s analysis was that whatever view one took of the scope of the claimant’s claim she was bringing no claims that arose or continued after the end of her employment, which occurred on 7 March 2019. I accepted this. Her claim form and subsequent correspondence gave no suggestion of a claim arising or continuing after this point.
9. Mr Piddington said that an unusual feature of this case was that there appeared to be two different ACAS early conciliation certificates bearing the same number (R503570/19/01). He said that in the version received by the parties the date of issue (“Day B”) was given as 12 July 2019 (a Friday). In the copy held by the tribunal, Day B was given as 14 July 2019 (a Sunday). In both cases, the date of notification to ACAS (“Day A”) was 30 May 2019. He said that the parties had received their copies of the early conciliation certificate by email on 12 July 2019.
10. Neither Mr Piddington nor I could explain how there could be two different early conciliation certificates with the same number but different “Day B”s, but it appeared that that had occurred in this case.
11. Mr Piddington pointed out that under s207B(2) of the Employment Rights Act 1996 (and any similar requirements for discrimination claims) “Day B” for the purposes of any extension of time is the date on which the early conciliation certificate is received and para 9(3) of the Schedule to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure)

Regulations 2014 provides that, if sent by email, this is the date on which it is sent. The definitive date for Day B is therefore the date on which the early conciliation certificate was sent by email to the parties, which in this case was 12 July 2019. He said that a later certificate giving Day B as 14 July 2019 was of no effect, as Day B was defined as being the date on which the early conciliation certificate was sent to the parties: 12 July 2019.

12. On his analysis, with Day B being 12 July 2019 and Day A being 30 May 2019, the deadline for the claimant to submit a claim arising no later than 7 March 2019 had been extended by one month after Day B to 12 August 2019, and the claimant's claim had been submitted one day out of time.
13. Having hearing Mr Piddington's submissions, I accepted his analysis that it was the date on which the early conciliation certificate was sent to the parties that was the definitive "Day B" for the purposes of any extension of time, and that as such the claimant had to submit her claim by 12 August 2019 at the latest in order for it to be within time. She had submitted it on 13 August 2019 and so was one day out of time. I did not see any basis on which I could consider it just and equitable to extend time, nor to find that it was not reasonably practicable for the claimant to submit her claim in time. I therefore accepted Mr Piddington's submission that the whole of the claim was brought outside the required time limit, that that time limit should not be extended and the whole of the claim should be struck out.

**Employment Judge Anstis
25 September 2020**

Sent to the parties on:1/10/2020.....

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For the Tribunal Office

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