



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Plonska
Respondent: Harvard Technology Ltd (In Administration)
Date 16 October 2020
Employment Judge Dr EP Morgan

Appearances

Claimant In Person (With Interpreter)
Respondent No Appearance.

“

JUDGMENT

1. The Tribunal being satisfied that it was not reasonably practicable for the Claimant to lodge her claim for unfair dismissal and/or protective award with the Employment Tribunal prior to **3 April 2020**, the time for lodging is thereby extended pursuant to section 111(2)(b) of the Employment Rights Act 1996 and section 189(5)(c) of the Trade Union & Labour Relations (Consolidation) Act 1992.
2. The Preliminary Hearing listed for 2pm on 16 October 2020 is hereby converted to a Final Hearing pursuant to Rule 48 of the Employment Tribunal Rules.
3. The Claim of unfair dismissal contrary to section 98 of the Employment Rights Act 1996 is not well founded and is dismissed.
4. The claim for a protective award succeeds.
5. The Respondent is ordered to pay to the Claimant remuneration for a protected period of 90 days beginning on 10 December 2018.
6. The Employment Protection (Recoupment of Benefit) Regulations 1996 do not apply to this award.

REASONS

1. This matter was listed before the Tribunal with the aid of an interpreter. The Claimant is Polish and was formerly employed by the Respondent in a production role. All of her immediate colleagues were migrant workers from Poland; with the result that in the conduct of her day to day duties, she was able to converse with them in her first language. The Claimant's facility in English is extremely limited and does not extend beyond social greetings.
2. The Claimant was employed by the Respondent of 8 months between April 2018 and December 2018. On 10 December 2018, the entire workforce was informed that the Respondent was in financial difficulty, Administrators had been appointed, and the workforce was being dismissed with immediate effect. This included the Claimant. She was not aware of any statutory time limit in which to bring a claim. However, prompted by her colleagues, she made contact with ACAS; securing an early conciliation certificate. Given the insolvency of the Respondent, ACAS were in a position to provide limited assistance only. Having conducted a hearing with the Claimant today (with the aid of an interpreter) the Tribunal has no difficulty in accepting that the Claimant had, at that stage, little or no understanding of the claims available to her, or, how to pursue them. These difficulties were exacerbated by the Claimant's extremely limited facility in the English language. However, they were soon further compounded by two matters: first the sudden and expected illness of the Claimant's mother, which required her to return to Poland and thereafter, her own ill health. These factors combined to preclude the Claimant from engaging with, or seeking support in relation to, the lodging of any claim with the Tribunal. It was only upon her return to the United Kingdom and becoming aware of the claims of her colleagues, that she was able to seek the necessary support and guidance, and, having recovered her health, lodge her claim with the Tribunal on 3 April 2020. In these circumstances, the Tribunal is satisfied that it was not reasonably practical for the Claimant to lodge her claim within the statutory period and further, that it was just and equitable to extend time for the lodging of the claim until 30 April 2020.
3. Having determined the question of jurisdiction, and in the light of the correspondence upon the Tribunal file received from the Administrators of the Respondent, the Tribunal concluded it was consistent with the overriding objective for the hearing to be converted to a final hearing. Before making this Order, the Tribunal satisfied itself that no prejudice would be caused to either party. Having made this order, it proceeded to determine the merits of the claims.

The Claims

4. The Claim Form makes reference to two claims: unfair dismissal and entitlement to a protective award for failure to consult in connection with collective redundancies.

Administrator Consent

5. The Administrators have in correspondence with the Tribunal confirmed their consent to the proceedings. They also confirm that no defence is asserted in

response to them. It is acknowledged that the workforce was dismissed by reason of redundancy and further, that there was no prior consultation.. The Respondent was not a party to any trade union recognition agreement and did not take any steps to elect relevant workplace representatives. No special circumstances are relied upon for the failure to consult with the affected employees.

Unfair Dismissal

6. As previously noted, the Claimant was employed with the Respondent for the period of 8 months. She does not seek to suggest otherwise. No additional complaint is made against the Respondent in connection with the reasons for the dismissal which occurred on 10 December 2018. Upon this basis, the Tribunal is satisfied that the Claimant lacks the necessary qualifying period to advance such a claim and, as such, it must be dismissed as not well founded.

Protective Award

7. The Tribunal concludes that the claim for protective award is well founded and succeeds. In the unchallenged circumstances to which reference has been made, the appropriate period is one of 90 days from the effective date of termination, namely: 10 December 2018.

Employment Judge Morgan

Date: 16 October 2020