



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L M Ladron de Guevara Macera

**Respondent:** Zephis Limited (part of the Bureau Van Dijk Group)

**Heard at:** Manchester

**On:** 27 October 2020

**Before:** Employment Judge Whittaker

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Wilson

# JUDGMENT

The judgment of the Tribunal is that:

1. The claims of the claimant for:-
  - (a) race discrimination;
  - (b) breach of contract in connection with not providing the claimant with health insurance cover; and
  - (c) alleged breaches of regulation 12 of the Working Time Regulations 1998;

are struck out because they were presented out of time.

2. In connection with the claims of race discrimination, the judgment of the Tribunal is that it would not be just or equitable to extend time to enable the claims of race discrimination to be accepted by the Employment Tribunal.

3. The claims of the claimant for unpaid holiday pay are struck out on the basis of the unreasonable conduct of the claimant at the conclusion of the Tribunal hearing held at the Manchester Employment Tribunal on Tuesday 27 October 2020.

# REASONS

1. In respect of the claims which were struck out because they were presented out of time relating to rest breaks and breach of contract, the Tribunal was fully satisfied that it was reasonably practicable for the claimant to have lodged her claims within the relevant three month time limit. The effective date of termination of her employment was 10 June 2019.
2. The claims were presented to the Tribunal on 10 October 2019, over one month out of time. To extend the time limit by reference to Early Conciliation the claimant would have needed to contact ACAS by no later than 9 September 2019 but she did not do so until 13 September. There were significant periods of time within the relevant three month time limit which the claimant failed/refused to explain the circumstances of. The first of these periods was between the end of July and 22 August 2019, and the second period of time was between 27 August and 13 September when the claimant finally engaged with ACAS through Early Conciliation. Those claims therefore were not presented within the three month limit.
3. The conclusion of the Tribunal was that in the absence of any explanation for those time periods it was perfectly reasonable for the claimant to have lodged her claims within three months. Even if Tribunal was wrong about that, the Tribunal believed that the relevant time limit expired on 9 September for engaging with ACAS. The claimant provided no explanation at all as to why she had not engaged with ACAS on 10, 11 or 12 September. The Tribunal was satisfied that it would have been reasonably practicable for the claimant to have engaged with ACAS during those three days, and that it was unreasonable for her to have waited until 13 September. It was not reasonable, therefore, for the claimant to have taken until 13 September in which to engage with ACAS through Early Conciliation.
4. So far as the claims of race discrimination are concerned, the points set out above are equally relevant to the claims of the claimant relating to race discrimination. The claims were presented out of time. Again, the claimant failed to provide any explanations for significant periods of relevant time during the relevant three month period. The Tribunal considered all the relevant legal principles. The burden of proof was on the claimant to satisfy the Tribunal that it was just and equitable to extend time. The claimant did not present any evidence which justified the Tribunal reaching that conclusion. The claims of race discrimination were therefore struck out as having been presented out of time and on the basis that it was not just or equitable to extend time. In any event, the claims of the claimant were not lodged with the Tribunal until 10 October in respect of all the claims of the claimant.
5. At the conclusion of the hearing on 27 October 2020, having announced its judgment in connection with the three claims which are referred to above, the Tribunal sought to engage with the claimant in making Case Management Orders to enable her claims relating to unpaid holiday pay to be managed to a final hearing. The claimant, however, repeatedly refused to engage in that process, packed up her belongings and left. However, before doing so there were discussions with the Employment Tribunal about the consequences of refusing to engage with the Tribunal and that such conduct may be considered to be unreasonable conduct justifying the strike out of the claims of the claimant. The claimant continued to refuse to engage with the Tribunal and as

she approached the door of the Tribunal, the Tribunal made its judgment in the oral presence of the claimant that the claims relating to holiday pay should be struck out on the basis of the unreasonable conduct of the claimant. The Tribunal was satisfied that the claimant had been given a fair and reasonable opportunity to engage with the Tribunal and to participate in case management. The claimant, however, refused to do so and made that very clear indeed to the Tribunal. Mr Wilson was present and prepared to engage in case management until the conclusion of the hearing.

Employment Judge Whittaker

Date: 30<sup>th</sup> October 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
9 November 2020

FOR THE TRIBUNAL OFFICE

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