



EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: Provident Personal Credit Limited

Heard at: Cardiff **On:** 17 December 2020

Before: Employment Judge S Moore

Representation

Claimant: Mr P Morris, Counsel

Respondent: Ms E Wheeler, Counsel

JUDGMENT on a preliminary issue having been sent to the parties on 18 December 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background and Introduction

1. The ET1 was presented on 7 May 2020. The Claimant brings claims of Unfair Dismissal. It was common ground the claim was presented out of time. The Preliminary Hearing was listed to determine whether it had been reasonably practicable for the Claimant to have presented her claim in time and whether to extend the time limit.
2. I heard evidence from the Claimant (in person) and the Claimant's daughter, referred to as AB by video link.
3. I make the following findings of fact on the balance of probabilities.
4. The Claimant was dismissed on 18 December 2019 giving a primary limitation date of 17 March 2020. The Claimant contacted ACAS on 23 March 2020 and was issued with a certificate on 7 April 2020 and the ET1 was presented on 7 May 2020.

5. The Claimant had appealed the decision to dismiss her on 7 January 2020 and at this point in time had instructed her own solicitors called EQ Solicitors.
6. There was an appeal hearing on 27 January 2020 and an outcome letter was sent to the Claimant on 7 February 2020 in which the Respondent confirmed that her appeal had been unsuccessful. On 11 February 2020 the Claimant contacted her legal expenses insurers, Admiral who confirmed that she had legal expenses cover and that she would be able to use her own solicitors. This policy was administered by a company called Arc Legal Assistance ("Arc") who are claims handlers on behalf of Admiral.
7. On the same day, 11 February 2020 the Claimant received an email from Lyons Davidson Solicitors who directed her to complete an insurance claim form via a web link. The form did not ask the Claimant any questions at all about when her employment was terminated, nor did it give her any advice on time limits. The Claimant submitted it the same day and received a text message and email on 13 February 2020 from Arc confirming that they had received her submitted claim.
8. On 18 February 2020 the Claimant received an email from Arc advising that contrary to what she had previously been informed she was not permitted to instruct EQ Solicitors, but they would provide funding provided she agreed to instruct their panel solicitors who were Lyons Davidson.
9. The Claimant telephoned Arc and agreed to use their nominated solicitors and she dis-instructed EQ Solicitors. I did not have any evidence about what advice if any had been provided to the Claimant by EQ Solicitors other than what set is out below in paragraph 18. The Claimant dis-instructed her solicitors just short of one month before the primary limitation date was due to expire.
10. The Claimant then had to embark on numerous attempts to chase Arc for a decision in respect of her claim for legal expenses insurance. During this time the Claimant had been due to go on holiday to Rome between 6 and 9 March 2020 but she had become unwell towards the end of February 2020 and later developed COVID-19. The Claimant was incapacitated between the 12 and 23 March 2020 to the extent she was not in condition to have taken further action in respect of her legal expenses claim.
11. Apart from this period the Claimant was actively pursuing Arc Legal for a decision on her claim for legal expenses. The correspondence showed she was chasing Arc for a decision about her claim on a frequent basis. The Claimant also at some point in February had attended a 5-day training course in Manchester in an attempt to retrain.
12. On 23 March 2020 following her recovery from COVID-19 the Claimant chased Arc Legal and Lyons Davidson again by telephone and also followed it up by email. Lyons Davidson had not received instructions from Arc to act for the Claimant, but on 23 March 2020 she received a telephone call later that day from someone in Lyons Davidson who informed her that they had not received her file, but she should immediately apply for an ACAS Early Conciliation Certificate which she did so that same day.

13. In the response to the Early Conciliation Certificate application the Claimant received an automatic email from ACAS which referred the Claimant to the existence of a strict 3-month time limit for submitting an Employment Tribunal claim. The Claimant further chased Lyons Davidson and Arc on 2 and 6 April 2020.
14. The Claimant's daughter had also contracted COVID around 23 March 2020 and was admitted to hospital on 10 April 2020 although discharged the same day. The Claimant's daughter does not live with the Claimant, nor did she have to take her to hospital however she was in constant contact with her daughter and was concerned for her wellbeing.
15. On 7 April 2020 Arc confirmed again that her case had not been allocated to solicitors and requested extensive further information from the Claimant for the first time. Again, Lyons Davidson had not been instructed at this point. The Claimant subsequently chased Arc for a decision about her claim on 14, 15 April and 16 April 2020. In the email of 14 April 2020, the Claimant, whilst chasing Arc, stated that she was concerned as the weeks had gone on whether she should be registering legal details within timescales but said that no-one was helping her. She made a similar comment in an email of 5 May 2020, where the Claimant acknowledges that she had registered the Tribunal and wondered if there was anything else she should be doing within guidelines, so it does not fall outside time limits again. By this time the Claimant was aware that there was a problem with her ACAS form with it being late because she had been told this by Lyons Davidson.
16. The Claimant was subsequently requested to forward extensive further information to Arc. At this point it should be noted that there was a lockdown within the UK due to the COVID pandemic. The Claimant did not have any way of printing the information that had been requested which extended to 100's of pages. She therefore tried to purchase a printer online, but they had all sold out and therefore she purchased a second hand one and had to travel to her local town to buy ink and paper. Eventually she was able to print all of these documents and send them recorded delivery on 29 April 2020. The Claimant still did not receive a reply and further chased Arc. Finally, on 7 May 2020 the Claimant received an email from Arc at 2.55pm advising her that they had received her post and they would be passing the file to the solicitors for the legal assessment very shortly. Arc's email correspondence contained a caveat which stated that due to the impact of the coronavirus the staff were working remotely, and they requested communication by email which they assured would therefore mean they could deal with correspondence promptly.
17. Therefore, as of 7 May 2020 Lyons Davidson had not been instructed by Arc to represent the Claimant. From the information the Claimant had to post on 29 April 2020 it was likely to have been the first time that the Claimant had been asked to (and it had not been provided before) provide her effective date of termination to Lyons Davidson. At 4.00pm on 7 May 2020 someone from Lyons Davidson telephoned the Claimant and instructed her to immediately lodge an ET1 which she duly did so after an explanation was provided as to what she should do, she lodged that ET1 at 21.29pm later that day.

18. I did not have any evidence before me, and the Claimant was not asked about what advice had been provided by EQ Solicitors. However, the Claimant's evidence, which I accepted, was that she had no knowledge of time limits and that she relied extensively on her advisors in respect of reliance on when the claim should have been issued. It must therefore follow that until she received the email from ACAS on 23 March 2020, she did not have knowledge on time limits regardless as to who had been advising the Claimant. I find that the first time the Claimant became aware of time limits was on receipt of the email reply from ACAS when she contacted them on 23 March 2020. I find this was an awareness there were time limits but not to the extent of how they applied to the Claimant's situation. I found the Claimant to be a highly credible witness who answered the questions in a straightforward manner. In addition, her conduct throughout the relevant period was not in accordance with someone who had either known about time limits nor someone who had not made extensive efforts to seek support in respect of lodging her claim.

19. The Claimant sought advice from her GP in December 2019 after she had been suspended and was prescribed anti-depressants. The dose was increased at some point prior to March 2020 but I do not find that the Claimant's mental health was as such that she was unable to manage her own affairs as can be evidenced by her actively pursuing her legal expenses insurance claim.

20. The Claimant says that she is going to be unable to obtain work due to her dismissal and the fact that she wishes to carry on continuing in the sector in which she has always worked, namely the banking sector.

21. The Law

S111 Employment Rights Act 1996 provides:

111 Complaints to employment tribunal

(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 three 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 three months.

22. The burden of proof is on the Claimant to show it was not reasonably practicable to have presented the claim in time. The Tribunal must go on to consider whether the further time in which the complaint was presented was reasonable. These are questions of fact for the Tribunal (*Palmer v Southend-on-Sea Borough Council [1984] IRLR 119*).

23. I was referred to a number of authorities by both Counsel in particular the authorities that deal with faults of advisors and ignorance of time limits.
24. If the Claimant has relied on bad or incompetent advice from professional advisors the remedy usually lies with a professional negligence claim against those advisors particularly if the advisor is a solicitor (*Wall's Meat and Trevelyans (Birmingham) Ltd v Norton [1991] ICR 488, EAT, Dedman v British Building & Engineering Appliances Ltd [1973] IRLR 379 CA*).
25. Ignorance by the Claimant of the right or procedure to bring a will not be grounds for an extension unless the ignorance was reasonable in the circumstances (*Wall's Meat Co Ltd v Khan [1979] ICR 52, C.A.*).
26. However, the Court of Appeal held in *Marks & Spencer plc v Williams-Ryan [2005] IRLR 562* that the *Dedman* principle was not an absolute bar and in that case on the facts did not extend to advisors from the CAB.

Conclusions

27. The Claimant was aware of the right to bring an unfair dismissal claim. She had instructed solicitors and initiated a legal expenses insurance claim to fund the Tribunal proceedings. I accepted the Claimant's evidence that up until the receipt of the email from ACAS on 23 March 2020 she was unaware there was a time limit at all. I found her evidence on this to be credible. This case really turns on the Claimant's ignorance of time limits throughout and whether that ignorance was reasonable although other factors were in play during this period which are in my Judgment relevant. These are the Claimant and her daughter's period of ill health due to COVID-19 and the effect of the lockdown on the Claimant's ability both to obtain legal advice and assistance through Arc and provide the necessary information that led to Arc instructing a firm of solicitors. In particular I have taken into account the difficulties in providing the information requested by Arc as a result of the inability to print large volumes of documents during the lockdown.
28. I have considered the requirement for the Claimant to seek information about time limits and whether she did do so. The Claimant made extensive enquiries upon Arc who were the legal expenses administrators and their failures to respond to those matters or refer her claim in a timely manner to instructing solicitors, demonstrated to me that the Claimant had undertaken reasonable steps and also steps that were reasonably practicable to have sought information in that regard. Therefore, I find that the Claimant was reasonably ignorant of the relevant time limits and it was therefore not reasonably practicable to have complied with them.
29. I also consider the Claimant should not be held to the same standards as if she had been represented by solicitors when considering the ignorance of the time limit. I consider the authority in *Marks & Spencer v Williams-Ryan* to be sufficiently analogous to the comparison with Arc who were claims handlers for the insurance company.
30. In conclusion, with the overall combination of the effects of the Claimant's attempts to avail herself of information to obtain advice on the time limits combined with the COVID pandemic and the Claimant's illness I find that it

was not reasonably practicable to have submitted the claim within the required period of time.

31. In regard to the further point in time at which the Claimant became aware, she took immediate action to present the claim within a few hours of being informed by Lyons Davidson to do so. Therefore, I have concluded that the Claimant did submit her claim within a further such period as was reasonable.

Employment Judge S Moore

Date 2 February 2021

REASONS SENT TO THE PARTIES ON

18 February 2021

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FOR THE TRIBUNAL OFFICE