



EMPLOYMENT TRIBUNALS

Claimant: Ms J Wood

Respondent Tyson Lighting Ltd

HELD AT: Manchester Employment Tribunal **ON:** 6th April 2021

BEFORE: Employment Judge Cronshaw (sitting alone)

REPRESENTATION:

For the Claimant: In person

For the Respondent: Andrew Gibson (CEO) Rachel Cowgill (Company Secretary)

JUDGMENT ON A PRELIMINARY HEARING

The judgment of the Tribunal is that:

The Claimant's claim was not presented to the Tribunal in accordance with the provisions of section 111 of the Employment Rights Act 1996 in circumstances where the Tribunal was satisfied that it was reasonably practicable to present the claim before the end of the period of three months. Accordingly, the claim is dismissed for lack of jurisdiction.

REASONS

1. This is a judgment on the preliminary issue of whether the claim for unfair dismissal was brought within the time limits.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was Code V, which means that the hearing took place by video conference using the Tribunal's CVP video

platform. A face to face hearing was not held because it was not practicable due to Covid-19 restrictions and no-one requested the same.

The applicable law

3. Section 111(2) of the Employment Rights Act 1996 contains provisions under which the time limit for presentation of a claim of unfair dismissal may be extended. Those provision are mirrored in section 7(c) of the Employment Tribunals extension of Jurisdiction (England & Wales) Order 1994 which governs claims of breach of contract brough in the Employment Tribunal.
4. Ordinarily, a claim has to be presented before the end of the period of three months beginning with the effective date of termination of employment. If not, the Tribunal must be satisfied it was not reasonably practicable for the complaint to be presented within three months, and, if so whether it was then presented within such further period as is reasonable.

Background

5. The Claimant was employed by the Respondent from October 1990 but, following concerns surrounding her conduct, she was dismissed on the grounds of gross misconduct on 7th February 2020.
6. The Claimant was advised during a disciplinary meeting on the 7th February that she was to be dismissed. This was confirmed by a letter from CEO Mr Andrew Gibson sent by post on 13th February 2020.
7. Following dismissal the Claimant received 1 month's pay, the Respondent explained, as a gesture of goodwill. As the Claimant was summarily dismissed there was no automatic right to any payment in lieu of notice within her contract.
8. The Claimant did not appeal her dismissal, although she confirms she was aware she was entitled to.
9. The Claimant made an application for early conciliation to ACAS on 7th June 2020. An Early conciliation certificate was issue on the 22nd June 2020 and the Tribunal Offices received the claim on the 7th July 2020.

10. The relevant date for consideration today is 7th June 2020 - the Claimant's application for early conciliation which is the first step to starting a claim.

Findings

11. The Claimant's immediate dismissal was conveyed to her within the meeting on the 7th February, followed up by letter. Indeed, the Claimant confirmed at the hearing she understood that to be her last day working for the Respondent.
12. Both parties agree, and I therefore find as a fact, that the effective date of termination is 7th February 2020.
13. I accept the Respondents' position that the one month's pay given to the Claimant at the termination of her employment was no more than a goodwill gesture towards the Claimant following her many years of service. The fact a payment was made does not impact the effective date of termination nor does the Claimant seek to suggest it does.
14. ACAS received the Claimant's application for Early Conciliation on 7th June 2020. This was 4 months after the effective date of termination. For clarity, 1 month and 1 day beyond the time limit for a claim for unfair dismissal.
15. At the hearing today the Claimant explained that following her dismissal she was in shock and unable to process what had happened. She believes she was delayed in seeking assistance due to the pandemic because no one was available for advice. She did try and get some advice from the Citizens Advice Bureau but she was unable to get through. She tried to contact them by phone a number of times but the waiting time was significant. She did not try and contact them by email. She did not seek assistance from any other source.
16. The Claimant eventually contacted ACAS via the application process on their website. She was not aware of the time limits until they told her.
17. The Respondent disagrees with the Claimant's assertion about delay. They submit that during the time available to her to make a claim the Claimant was able to seek and find alternative employment, request a reference and at all times had access to the phone and internet.
18. After considering all the factors I find that it was reasonably practicable for the Claimant to present her claim within the three months' time limit afforded to her.
19. Following her dismissal the Claimant was able to seek and find alternative employment and contact the Respondent for a reference as early as 26th

February 2020. Whilst I have no doubt she was upset and in shock at the loss of her job, a job she had held for many years, these actions indicate the presence of mind to move forward and thus the ability to make relevant enquiries.

20. The Claimant provided no other explanation for the delay in submitting her claim. She was ultimately able to contact ACAS and submit her application for early conciliation and no explanation over and above the impact of losing her job was provided.
21. I accept that the Claimant may not initially have been aware of the time limits relevant to the Employment Tribunal. Certainly, lack of knowledge of one's rights can make it not reasonably practicable to present a claim within time as long as that lack of awareness is, itself, reasonable.
22. The Claimant actively sought advice with a view to making a claim in advance of contacting ACAS.
23. I do accept that there was an impact due to the pandemic, but this is limited. The pandemic did not begin to significantly impact on daily lives until mid-March 2020, some 5 weeks following the Claimant's dismissal.
24. In any event this would not have prevented the Claimant from making enquiries regarding the process of making a claim, and, with that, the time limits attached. All this information is readily available without needing to seek legal or expert advice.
25. An employee aware of the right to bring a claim can reasonably be expected to make enquiries about time limits: *Trevelyan's (Birmingham) Ltd v Norton [1991] ICR 488*. In this case I consider that the Claimant could reasonably have been expected to make enquiries about time limits.
26. In all the circumstances, it was reasonably practicable for the claimant to have presented her claim within the applicable three month period. The test for an extension of time is not a vehicle for an Employment Judge simply to exercise their discretion to admit the claim. The Tribunal must look at whether there was a just cause of excuse for the delay and the failure. In this case the Tribunal decided that there was no just cause or excuse.

Conclusion

27. For the reasons set out above the claim is dismissed. The claim was brought out of time and the Employment Tribunal therefore has no jurisdiction.

Employment Judge Cronshaw
Date: 6th April 2021

JUDGMENT SENT TO THE PARTIES ON:
8 April 2021

FOR THE TRIBUNAL OFFICE

Note

Reasons for the Judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.