



EMPLOYMENT TRIBUNALS

SITTING AT: LONDON CENTRAL

BEFORE: EMPLOYMENT JUDGE F SPENCER

BETWEEN: Ms T Tgahane CLAIMANT

AND

Palladium International Limited RESPONDENT

ON: 29th March 2021

Appearances

For the Claimant: Did not attend

For the Respondent: Ms K Balmer, counsel

This was a remote hearing which had not objected to by the parties. The form of remote hearing was by cloud video platform (CVP). A face-to-face hearing was not held because the London Central Tribunal is shut, and all issues could be determined in a remote hearing. t

JUDGMENT

The Judgment of the Tribunal is that it has no jurisdiction to consider the Claimant's complaints which were presented out of time. The claims are dismissed.

The hearing listed for 8th to 10 June 2021 is vacated.

REASONS

Written reasons for this judgment are given as the Claimant did not attend.

1. By a claim presented on 20 August 2020 the Claimant brought the following claims:

- (a) unfair dismissal contrary to section 92 of Employment Rights Act 1996 (“ERA 1996”);
 - (b) breach of contract in relation to the manner of termination of her employment;
 - (c) breach of contract in relation to the non-payment of wages;
 - (d) whistleblowing, under either sections 47B or 103A of ERA 1996;
 - (e) failure to provide a written statement of reasons for dismissal, contrary to section 93 of ERA 1996;
 - (f) failure to provide a written statement of terms and conditions, contrary to section 11 of ERA 1996;
 - (g) failure to provide a guarantee sum, contrary to section 34 of ERA 1996; and
 - (h) failure to pay or unauthorised deductions from wages contrary to sections 13-27 of ERA 1996 or section 42 Colleges of Education (Compensation) Regulations 1975 (“the Colleges of Education Regs”).
2. The claims all relate to the withdrawal of an offer of employment made on 14 April 2020 and conditional on security clearance. The Claimant was informed on 28th April 2020 that the offer of employment had been withdrawn. The Claimant contacted ACAS on 13 August 2020 and her claim was presented on 20 August 2020. It is her case that there was a binding contract in existence and that the Respondent acted unlawfully in various ways in withdrawing her offer.
3. At a preliminary hearing on 4th January 2021 Employment Judge Snelson ordered a public preliminary hearing to be held today to determine whether the Tribunal had jurisdiction to consider the Claimant’s claims (or any of them) and/or whether the Claimant’s claims, or any of them, should be struck out or deposit ordered on the basis that her claims had no or little reasonable prospect of success.
3. The order of EJ Snelson provided that:
 - a. If the Claimant elected to give evidence at today’s hearing she should prepare a witness statement and send it to the Tribunal and the Respondent no later than 15 March 2021 but that, except with the special permission of the Tribunal, the Claimant would not be permitted to give evidence at the hearing today unless she had prepared a statement in accordance with his directions.
 - b. The Respondent was to deliver to the Claimant and the Tribunal a skeleton argument summarising their submissions no later than 22nd March 2021.
 - c. The Claimant had permission no later than 26th March 2021 to deliver a skeleton argument in reply.
4. The Respondent has prepared and delivered their skeleton argument in accordance with the directions. The Claimant has neither prepared a witness statement nor provided any skeleton argument in reply.

5. At 7:20 a.m this morning the Claimant emailed the Tribunal to say that she had been feeling very unwell “recently and thought it would go away by the end of the weekend”. However it had persisted and she was not well enough to attend the hearing. She asked for it to be rescheduled. No further details were given. The Claimant’s email was forwarded to me at 9.53. I emailed the Claimant immediately via my Skype account to ask the Claimant (as this was a remote hearing) to join the hearing in order to explain in more detail the circumstances in asking for a postponement and saying that, if the postponement was granted, she should provide medical evidence as soon as practicable.
6. When the Claimant did not join the hearing we adjourned briefly to allow the clerk to telephone the Claimant to ask her to join the hearing as directed. However, the Claimant did not do so and emailed back to say that she was unwell and unable to conduct the hearing and that she would provide a medical certificate.
7. On behalf of the Respondent Ms Balmer asked for the hearing to go ahead in the Claimant’s absence. Although the Claimant was not present, the directions of EJ Snelson already provided that, if the Claimant had not provided a witness statement by 15th March 2020, she would not be able to provide any evidence at the hearing save with the special permission of the Tribunal. The Claimant would not therefore be in any worse position by not attending today as in any event she would be unable to give any evidence.
8. In the light of the Claimant’s failure to provide a witness statement, any explanation for the late presentation of her claim, or to join the hearing to explain the circumstances of her illness, as directed, I agreed that the hearing would go ahead in relation to the time point only. If the Claimant subsequently provides a medical certificate to explain her inability to join the hearing to explain the circumstances of her illness, and considers that she has been disadvantaged by the hearing going ahead in her absence, (in the sense that there were matters relating to the time limits which she could have drawn to my attention which might have changed the outcome of the hearing) she may apply for a reconsideration of this Judgment.
9. It did not appear to be in contention that the claims were outside the primary time-limit. The Claimant’s claims all relate to the withdrawal of an offer of employment for a fixed term role providing temporary cover as an HR Business Support Officer. The Respondent notified the Claimant that the offer was withdrawn on 28 April 2020.
10. The various statutory provisions (as set out in the Respondent skeleton) in relation to the claims brought by the Claimant a tribunal all provide that the Tribunal will only have jurisdiction to hear such claims if they are presented within 3 months. The primary time-limit in this case therefore expired on 27 July 2020, unless the Claimant could benefit from an extension of time provided by section 207B of the Employment Rights Act 1996 (extension of time to facilitate conciliation through ACAS). This

extension is only provided if the Claimant has contacted ACAS within the primary 3 month period. As the Claimant did not contact ACAS until 13th August the extension does not bite. (This does not apply to the claim under the Colleges of Education (Compensation) Regulations 1975 in respect of which the Tribunal has no jurisdiction in any event.)

11. In addition, in relation to each claim, the Tribunal has a limited discretion to extend the time limit if it is satisfied that it was not reasonably practicable for the Claimant to have presented her claim in time. It is for the Claimant to explain why it was not reasonably practicable for her to have presented her claim in time. She has had the opportunity to do so, both in her claim form, or in a witness statement as directed by EJ Snelson. It has been clear from the presentation of the ET3 that time limits were in issue.
12. In the absence of any explanation from the Claimant as to why it was not reasonably practicable for her to have presented her claim in time the Tribunal has no jurisdiction. The claim form does not contain any explanation for the lateness. The Claimant did not provide a witness statement to explain the circumstances in which her claim was presented late and has not provided any document in reply to the Respondent's submissions. In the absence of any explanation from the Claimant as to why it was not reasonably practicable for her to have presented her claim in time the Tribunal has no jurisdiction, and the claims are dismissed.

Employment Judge Spencer
29th March 2021

JUDGMENT SENT TO THE PARTIES ON
30/03/2021.

FOR THE TRIBUNAL OFFICE's