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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105484/20

Hearing Held by Telephone Conference Call on 15 March 2021

Employment Judge A Jones

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Mrs S Orr

**Claimant
In Person**

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Bibbidi Boddibi Boo Boutique Ltd

**Respondent
Represented by
Mr Kilpatrick**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. It is the judgment of the Tribunal that it was reasonably practicable for the claimant to have presented her claim of unfair dismissal within the statutory time limit and therefore the Tribunal does not have jurisdiction to consider her claim.

REASONS

Introduction

1. A preliminary hearing on the question of time bar took place in this case by way of telephone conference call. The claimant appeared in person and the respondent was represented by Mr Kilpatrick. The claimant gave evidence on the circumstances leading up to the lodging of her claim and was briefly cross examined by Mr Kilpatrick. Having considered the claim form, response form and heard evidence from the claimant, the Tribunal found the following facts to have been established.

10 Findings in fact

2. The claimant was employed as a manager in the respondent company which operates a bridal boutique.
3. The claimant was dismissed on 9th March 2020.
4. The claimant contacted ACAS on 22 September 2020 and obtained a certificate on that date.
5. The claimant lodged a claim of unfair dismissal with the Tribunal on 12 October 2020.
6. The claimant had significant personal issues between the date of her dismissal and the lodging of her claim which were causing her anxiety. In particular, the claimant was involved with a court case which related to her young daughter. She was also involved in home schooling her children, some of whom had special needs.
7. The claimant was not under the care of her GP during this period and was not taking any medication related to her mental health.
8. The claimant did not appreciate that the time limit for presenting a claim of unfair dismissal was three months from the date of dismissal until the day of the hearing.

Relevant law

9. Section 101 (1) of the Employment Rights Act 1996 gives employees the right to pursue a claim of unfair dismissal in the Employment Tribunal. Subsection
5 (2) reads:

“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
10 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 practical for the complaint to be presented before the end of that period of three months.”

15 10. The test of reasonable practicability is one of fact and not of law and the burden of proof is on the claimant *Palmer and Saunders v Southend-on-sea Borough Council* [1984] IRLR 119.

20 11. Therefore the issue for the Tribunal to determine was whether, in the particular circumstances of the claimant’s case, it was not reasonably practicable for her to have lodged her claim in time. That requires the Tribunal to consider for instance, what actions the claimant took to determine what the relevant time limit for lodging a claim was, what circumstances might have limited the claimant’s ability to take steps to lodge a claim and whether in
25 general terms her actions were reasonable. The question is not whether it was possible or impossible for her to have lodged a claim, but whether it was reasonably feasible to have done so. That requires an analysis of the steps taken by the claimant and her particular circumstances during the relevant period.

12. The claimant indicated that she contacted ACAS by phone in the period before 22 September, but that her childcare responsibilities made it difficult for her to remain on hold during the required waiting times. The claimant did not make any attempt to contact ACAS by email, being of the view that she wished to discuss the matter with an advisor.

13. While the claimant gave evidence that she had lodged her claim as soon as she spoke to ACAS, the Tribunal concluded that she was mistaken in this regard. There was a delay of almost 3 weeks between the issuing of a certificate by ACAS and the registration of her claim. In addition, the Tribunal concluded that the claimant was mistaken when she said that ACAS had advised her that the statutory time limit for the lodging of a claim of unfair dismissal was six months.

14. The claimant did not take any steps to determine when a claim of unfair dismissal ought to be lodged until she spoke to a conciliator at ACAS. Indeed, the Tribunal was surprised to hear the claimant indicate at the hearing that she was still of the view that she had six months in which to lodge a claim of unfair dismissal.

15. While the Tribunal accepted that the claimant had issues in her personal life which would have made it difficult to focus her mind on presenting a claim to the Tribunal, it did not accept that it was not reasonably practicable to do so. The claimant did try and contact ACAS by phone but did not attempt to conduct any research online or email ACAS to check the position of time limits. The claim was lodged four months late. The Tribunal was of the view that the claimant could have taken steps to contact ACAS sooner and that her approach that she wished to speak to someone in person, in circumstances where she could not remain on hold in order to do so, was not reasonable.

16. The claimant may have been ignorant of the relevant time limit, but that ignorance is not sufficient to render it not reasonably practicable not to take steps to determine the time limit for herself.

17. In all these circumstances, the Tribunal concluded that it was reasonably practicable for the claimant to have lodged her claim within the statutory period and therefore the Tribunal does not have jurisdiction to consider her claim.

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Employment Judge: A Jones
Date of Judgement: 19 March 2021
Entered in register: 7 April 2021
and copied to parties

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