



EMPLOYMENT TRIBUNALS

Claimant: Ms N Armah
Respondent: Anchor Hanover Group
Heard at: In Chambers **On: Monday 1 March 2021**
Before: Employment Judge Matthews

Representation:
Claimant: Ms R Omar of Counsel
Respondent: Ms R Swords-Kieley of Counsel

JUDGMENT

Note: Judgment and Reasons in this case were given orally on 1 March 2021. These written Reasons are provided at the request of the Claimant.

1. Ms Armah's complaint of unfair dismissal by reference to sections 94 and 98 of the Employment Rights Act 1996 was not presented to an employment tribunal before the end of the period specified in section 111 of the Employment Rights Act 1996.
2. Ms Armah's complaint of breach of contract (for notice pay) by reference to article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 was not presented to an employment tribunal before the end of the period specified in article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
3. The Tribunal has no jurisdiction to hear those complaints which are, therefore, dismissed.

REASONS

INTRODUCTION

1. By a claim form presented on 6 August 2019 Ms Nancy Armah brought complaints of unfair dismissal (by reference to sections 94 and 98 of the Employment Rights Act 1996 (the “ERA”)) and for breach of contract (for notice pay, by reference to article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the “1994 Order”) against the Respondent.
2. The Respondent denies the claims.
3. This hearing was set down as a “full matters hearing” by Order of Employment Judge Mason sent to the parties on 4 September 2020. On or around 4 December 2020 the Respondent made an application that the claims be struck out as having no reasonable prospect of success including on time limitation points. That application was outstanding at the date of this hearing. This is unfortunate given that the parties attended the hearing fully prepared to deal with the substantive claims.
4. The case has a somewhat chequered procedural history. Originally presented to the Leeds Office of the employment tribunals, it was later transferred to the London South Office in Croydon. Progress was interrupted by a variety of factors including the lockdowns in response to Covid-19. This background, combined with the fact that the Respondent did not raise the subject in its Response in these proceedings, may explain why time limitation points were not earlier identified as issues.
5. On the face of it, the claims were presented nearly one month out of time. Since the limitation points go to the Tribunal’s jurisdiction to hear the claims, they should be dealt with first. To complete the picture, at this hearing, Ms Omar made an application on behalf of Ms Armah for time to be extended.
6. A statement was produced from Mr Marius Seaka, Senior Solicitor at Calices, Solicitors of London E1. Although Mr Seaka did not appear, his evidence was not challenged or disputed by the Respondent. The Tribunal heard from Ms Armah on the issue of time limitation. There was an “electronic” bundle of documentation in PDF format. As is unfortunately usual, the page numbers in the PDF bundle did not conform to those in the physical bundle. References to pages in this Judgment are references to pages in the physical bundle. There were written statements from Ms Armah, Ms Juliana Ahunanya and Ms Jane Darani together with skeleton arguments on the substantive

claims from Ms Omar and Ms Swords-Kieley. In the event, none of these were referred to, save in passing.

7. The hearing was a remote hearing using the Common Video Platform consented to by the parties. A face-to-face hearing was not held because of the constraints placed on such hearings by precautions against the spread of Covid-19. The Tribunal is satisfied that, in this case, the overriding objective of dealing with cases fairly and justly could be met in this way.

FACTS

8. The Tribunal confines itself to the fact finding necessary to address the time limitation issues which it must decide. There are no significant factual disputes for determination.
9. Ms Armah worked as a Catering Assistant at two of the Respondent's Care Homes in Peckham, London SE15 for several years. Ms Armah is of Ghanaian Nationality.
10. As a Ghanaian National, Ms Armah required permission from the Home Office to work in the United Kingdom. Evidence of this had been provided to the Respondent for some years. However, on 26 February 2019 the Respondent decided that Ms Armah had not produced acceptable evidence that she had continuing permission to work in the United Kingdom. Accordingly, the Respondent summarily dismissed Ms Armah.
11. The sequence and timing of events described in the next two paragraphs is not in dispute between the parties.
12. Ms Armah contacted ACAS on 10 May 2019. ACAS issued its Early Conciliation Certificate in relation to the claims on 9 June 2019 (page 1).
13. Ms Armah's claim form was presented to the tribunals on 6 August 2019 (page 2).
14. What had happened, in the background, between Ms Armah's dismissal and the presentation of her Claim Form is clear from Mr Seaka's witness statement.
15. Ms Armah had little, if any, knowledge of or information about the statutory time limits in which she had to present her claims. Ms Armah has gone to Calices, Solicitors, for help with her applications for permission to work in the United Kingdom and went to them again on the subject of her dismissal.

16. Calices entrusted Ms Armah's employment claims to one of their case workers, Ms Tendai Marimo. Ms Marimo made a diary entry that the deadline for presenting Ms Armah's claims to the employment tribunals was 8 August 2019. Mr Seaka speculates that Ms Marimo either miscalculated the deadline or wrote "August" for "July".
17. Ms Marimo presented Ms Armah's claims to the employment tribunals on 6 August 2019.

APPLICABLE LAW

18. Section 111 of the ERA, so far as it is relevant, 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.

(2A)" "section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2)(a)"

19. Article 7 of the 1994 Order, so far as it is relevant, provides:

"7 Time within which proceedings may be brought

Subject to articles 8A and 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented-

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or"

“(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.”

20. There are statutory provisions that, in many cases, will extend the time limits applicable to bringing claims for unfair dismissal and breach of contract in the employment tribunals where there has been a period of early conciliation under the auspices of ACAS. The relevant provisions here are section 207B ERA (unfair dismissal) and article 8B of the 1994 Order (breach of contract).
21. The Tribunal was referred to *Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53, *Porter v Bandridge Ltd* [1978] ICR 943, *Palmer & Anor v Southend-on-Sea Borough Council* [1984] IRLR 119, *London Underground v Noel* [1999] IRLR 621, *Theobald v Royal Bank of Scotland plc* [2007] AER (D) 04 (Jan), *Marks and Spencer PLC v Williams-Ryan* [2005] ICR 1293, *Cullinane v Balfour Beatty Engineering Services Ltd & Anor* EAT 0537/10, *Northamptonshire County Council v Entwistle* [2010] IRLR 740 and *Sterling v United Learning Trust* EAT 0439/14.

CONCLUSIONS

22. The effective date of termination of Ms Armah’s employment contract was 26 February 2019. Ms Armah contacted ACAS for early conciliation on 10 May 2019 and ACAS issued an Early Conciliation Certificate notifying the end of the conciliation period as 9 June 2019.
23. The “ordinary” three months’ time limits for the purposes of section 111 ERA and article 7 of the 1994 Order would have expired on 25 May 2019. However, the effect of section 207B ERA and article 8B of the 1994 Order is that the time limits are extended for a month beyond the date of the issue of the Early Conciliation Certificate, that is to 9 July 2019. Ms Armah presented her claim on 6 August 2019, nearly one month out of time. The claims were not, therefore, presented to the employment tribunals before the end of the specified periods.
24. The Tribunal must, therefore, decide whether or not it was reasonably practicable to present the claims in time and, if it was not, whether they were presented within such further period as the Tribunal considers reasonable. The onus, of proving that presentation was not reasonably practicable in time, is on the Claimant.
25. It is tolerably clear that Ms Armah did not know of the applicable time limits within which she had to bring her claims. What Ms Armah did

was to entrust the business of presenting her claims to Calices, Solicitors.

26. The Solicitors failed to present Ms Armah's claims in time. It is trite law that a failure of this sort by professionally qualified advisers will not save an out of time claim when applying the "*reasonably practicable*" test. The only possible qualification of this is where there are exceptional circumstances. Here there are none.
27. In argument, Ms Omar placed considerable weight on the apparent facts that the case worker at the Solicitors who had the conduct of Ms Armah's claims was not legally qualified and had probably made a clerical error. Assuming this was the case, the factors do not help the argument that time should be extended. A Solicitor's practice is responsible for the legitimate actions of all its employees and must exercise suitable oversight.
28. Ms Omar argued that Ms Armah had received no advice from ACAS as to time and had virtually no involvement in the presentation of her claims. Again, these factors do not assist Ms Armah's case in circumstances where the conduct of the claims has been entrusted to Solicitors.
29. Ms Omar also argued that time limitation had not been picked up as an issue by the Respondent or in case management until relatively late in the day. Again, this does not further Ms Armah's case. The jurisdiction conferred on employment tribunals is statutory. It is subject to any time limitation provisions contained in the statutes themselves. It is not open to the employment tribunals to ignore those limits at any stage of proceedings, nor is it open to the parties to reach their own accommodation on them or to waive them by their own actions.
30. Ms Armah has failed to show that it was not reasonably practicable for her to present her unfair dismissal and breach of contract claims within the period allowed by the legislation. Accordingly, an employment tribunal cannot consider those complaints and they are dismissed.
31. It is not, therefore, necessary for the Tribunal to decide whether or not the complaints were presented within such further period of time as was reas

Employment Judge Matthews
Date: 2 March 2021