



EMPLOYMENT TRIBUNALS

Claimant: Ms S O'Brien

Respondent: Holmes & Hills Solicitors LLP

Heard at: East London Hearing Centre (by Cloud Video Platform)

Before: Employment Judge Burgher

On: 1 July 2021

Representation

Claimant: In person

Respondent: Mr Mark Cornell (Solicitor)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

The Claimant has presented her complaint outside the statutory time limit provided by section 111 of the Employment Rights Act 1996. Therefore, the Tribunal does not have jurisdiction to consider the Claimant's claim which is dismissed.

REASONS

1. The matter was listed before me for an Open Preliminary Hearing to determine whether the Claimant's claims have been presented within the relevant statutory time limit.
2. Employment Judge Crosfill case managed the claim on 14 June 2021. It was determined that the Claimant does not have 2 years continuous employment to advance an ordinary unfair dismissal claim. She brings a claim under Section 100 of the Employment Rights Act 1996, namely that the reason or principle reason for her dismissal was that she had said that she would stay away from the

workplace because she had been advised to self-isolate. She says that that reason falls within sub-sections 100(1) (c) and/or (d) of the Employment Rights Act 1996.

3. No Equality Act 2010 claim is being advanced. No claim for a redundancy payment is being advanced.

Time limits

4. The effective date of termination in this matter was 17 March 2020. The Claimant contacted ACAS on 31 March 2020 and obtained an Early Conciliation Certificate on 14 April 2020.

5. The relevant statutory provisions are set out at Section 111 of the Employment Rights Act 1996 which states:

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 207A (3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purposes of subsection (2)(a).

6. In this matter the last date 'within three months' of the date of dismissal is 16 June 2020. The effect of subsection 111(2A) is to extend the last date for the presentation of the claim by 14 days that being 30 June 2020. However, this claim was not presented until 24 November 2020, 21 weeks late.

Evidence

7. The Claimant gave evidence under oath and was cross examined and asked questions by the Tribunal. The issues for determination were

7.1 whether it was not reasonably practicable for the Claimant to present her claim in time and

7.2 if so, that it was presented a reasonable time thereafter.

8. The Claimant states that in the weeks prior her dismissal her father in law had been hospitalised due to a stroke. Sadly her father in law died on the 24 March

2020 from COVID 19 pneumonia. The Claimant's partner was deeply upset by this and the Claimant's daughter who has autism responded adversely to these events. The Claimant states that in addition to this she had to feed and care for her three month old granddaughter, as her daughter-in-law at that time was living alone and suffering from mental health difficulties. The Claimant was required to provide emotional and practical support to all.

9. The Claimant gave evidence that the exceptionally difficult COVID-19 lockdown left her mostly exhausted and distracted which was exacerbated by the problems she was experiencing in her personal life.

10. The Claimant stated that she initially hoped that the Respondent would reconsider her dismissal but this did not transpire. She then attempted to contact several solicitors for advice and was advised that as she had not been employed for at least two years there was no claim. The Claimant decided to put the claim to the back of her mind. Before me she gave evidence that she was unaware that she could bring a claim herself and was seeking a solicitor to do it on her behalf. She felt overwhelmed, that all the odds were stacked against her and she was concerned of getting justice against a large firm of solicitors without being able to afford or obtain legal advice.

11. On 9th July 2020, after the time it had expired the Claimant spoke to an employment lawyer Sally Eastwood who indicated the Claimant may have a claim under the health and safety regulations act. Ms Eastwood required £500 on account of costs in order to proceed/ The Claimant could not afford this.

12. The Claimant then continued to care for her partner, her daughter and her granddaughter with their issues and stated that she did not have the time or energy to think about herself and her unfair dismissal claim. She stated she felt overwhelmed by the whole situation and was unable to revisit the issue of her dismissal because the main focus was her family.

13. Claimant stated that there were several occasions wish he tried to revisit the issue of unfair dismissal and get in the right frame of mind to deal with it and complete an ET1 but she felt totally incapable of doing so without money to obtain legal assistance and representation.

14. The Claimant did not seek any medical help for her stress, she pointed out the NHS is overwhelmed. However she was able to undertake daily functions of supporting her family and complete the functions of normal daily living.

15. The Claimant was able to undertake legal research between the end of the first lockdown and the start of the second on 5 November 2020 and read about 'special circumstances' of a Tribunal considering a late claim.

16. The Claimant alleged that there was no prejudice to the Respondent and denying her claim on technical grounds was unfair. She emphasised that the COVID pandemic and her personal circumstances were unprecedented special circumstances for her claim to be accepted late.

Case law

17. In Palmer and Saunders v Southend-On-Sea Borough Council [1984] IRLR 119 CA May LJ considered the test of reasonable practicability. This is construed

as assessing what is reasonably feasible or what is reasonably capable of being done. There are numerous factors that a Tribunal can properly consider when determining whether it is reasonably feasible. It was said that reasonably practical should be treated as meaning 'reasonably feasible'.

18. Further, when considering whether it is reasonably feasible to have been done, modern methods of obtaining information and communication mean ignorance of the law is no excuse.

19. Mr Cornell referred me to the case of Asda Stores v Kauser UKEAT/0165/07/RN where Lady Smith stated at paragraph 24 in respect of the time limit issue in that case:

The Tribunal appears to have relied, for that part of their considerations on her ignorance of time limits and her being very stressed; whilst I note that the Tribunal takes the view that the Claimant "must have been in some turmoil", the finding in fact is as I have stated it. The former does not, however, answer the question of why she did nothing at all. The latter is very general. There is no finding of illness or incapacity. The circumstances are not comparable, for instance, to those of the Claimant who fell ill seven weeks into the three month period, in the case of Schulz v Esso Petroleum Co Ltd [1999] ICR 1202. It cannot be sufficient for a Claimant to elide the statutory time limit that he or she points to having been "stressed" or even "very stressed". There would need to be more.

20. The Claimant referred me to the case of Norbert Dentressangle Logistics Limited v Hutton UKEATS/0011/13/BI where it was held that the claimant had bought his claim six weeks late because he was unable to function properly and could not bring himself to do it was accepted as reasonably practicable. This was notwithstanding the fact that he entered into detailed correspondence and pursued a grievance in respect of the matters during the time. The EAT expressed reservations but held that the conclusions was one of fact and it could not be said to be perverse.

Conclusion

21. The Claimant has had a number of very difficult personal circumstances that she has had to deal with both prior to the expiry of the time limit and after. However the time limit is a statutory gateway that is necessary to be complied with in order for the Tribunal to have jurisdiction to consider the claim. The consideration of reasonable practicable is construed narrowly as what was reasonably capable of being done.

22. This is not a case where the Claimant was incapable due to ill health to present her claim. She was able to contact ACAS and contact solicitors prior to the time limit expiry. Whilst she had a number of very difficult pressing personal issues, I conclude the Claimant was reasonably capable of presenting a claim within the required time limit by the 30 June 2020.

23. The Claimant was not ignorant of the time limits however she stated that she was ignorant of the fact that she could bring a claim herself without the assistance of a solicitor. I do not consider her ignorance in this regard as a reasonable ignorance. Indeed the Claimant subsequently undertook research prior to 5 November 2020 and subsequently presented her claim herself.

24. It is regrettable for the Claimant that she did not present her complaint within time. Her focus on seeking legal representation in order to proceed with her claim did not mean it was not reasonably practicable for her to present her complaint within the time limit.

25. Separately, and in any event, I would not have concluded that the Claimant has not presented her complaint within such period as was reasonable. There was no real explanation as to why the Claimant waited until the 24 November 2020 to bring her complaint when she attested to undertaking research when the first lockdown restrictions were easing and before the 2nd lockdown on the 5th of November 2021. It would have been reasonable for her to have presented her complaint far sooner than she did.

26. In these circumstances the Claimant has not established that it was not reasonable practicable for her to present her claim within the statutory time limit (or such period as was reasonable thereafter).

27. Therefore, the Tribunal does not have jurisdiction to consider the Claimant's claim which is dismissed

Employment Judge Burgher

1 July 2021