



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100575/2020 (V)

Held via Cloud Video Platform (CVP) on 24 September 2020

Employment Judge: M Sutherland

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Miss Louise Crowhurst

**Claimant
In person**

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Leisure Employment Services Limited

**Respondent
Represented by:
Mr O Holloway -
Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claim for unfair dismissal is dismissed because it was not lodged within the time limit in circumstances where it was reasonably practicable to do so.

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REASONS

1. The Claimant's employment with the Respondent was terminated by them on 26 August 2019. The date of receipt of the ACAS Early Conciliation Notification was 4 November 2019 and the date of issue of the Early Conciliation Certificate was 4 December 2019. On 30 January 2020 the Claimant lodged a complaint of unfair dismissal. The complaint had accordingly been presented after the end of the primary limitation period (of three months beginning with the effective date of termination plus a 1 month extension for early conciliation). The issue to be determined at today's hearing was whether the tribunal was satisfied that it was not reasonably practicable for the complaint to be presented within the primary limitation period and if so whether the complaint was brought within such further period as the tribunal considers reasonable.

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2. The Claimant appeared on her own behalf. The Respondent was represented by Mr O Holloway of Counsel.
3. The Claimant gave evidence on her own behalf. The Respondent did not call any witnesses.
- 5 4. Parties had prepared a joint bundle of documents.
5. Both parties gave oral submissions. Following discussion, it was agreed that the Respondent would give their submissions first to allow the Claimant whose representative was not legally qualified an opportunity to consider and respond accordingly.

10 Findings of Fact

6. The Claimant was employed by the Respondent as a Leisure Manager at a Holiday Park from 1 February 2012 until the termination of her employment by the Respondent effective 26 August 2019. The Claimant was dismissed for stated reason of gross misconduct. The Claimant disputes both the reason
15 for the dismissal and the fairness of the procedure adopted.
7. At the time of her dismissal, the Claimant was aware of her right not to be unfairly dismissed and was aware of her right to bring a complaint of unfair dismissal to an employment tribunal but she was not aware that such a complaint must be presented to an employment tribunal within 3 months of
20 the termination date. The Claimant has access to and regularly uses the internet. The Claimant did not take steps to determine the time limit in which to lodge a claim until she contacted solicitors (see below).
8. The Claimant secured alternative employment out with the leisure industry and worked in that role from 19 until 30 September 2019. She then suffered
25 a mental breakdown and returned home to be looked after by her mother. She visited her GP in November 2019 and was diagnosed depression and anxiety for which she received medication and counselling for about 6 weeks. She has not subsequently visited her GP.
9. The Claimant secured alternative employment within the leisure industry from
30 mid-November until 30 January.

10. On 4 November 2019 the Claimant commenced ACAS early conciliation. On 4 December 2019 the Claimant received the ACAS Early Conciliation Certificate. The certificate advised that the process of early conciliation had concluded and that she needed to institute employment tribunal proceedings.
- 5 11. Towards the end of December 2019/ early January 2020 she contacted no-win/no-fee solicitors for advice. She completed an online enquiry form and was contacted by telephone within 24-48 hours. She was advised that she needed to raise her claim with an employment tribunal within 1 or 2 days and they did not have capacity to assist her within that timescale.
- 10 12. The Claimant felt that she was unable to commit to the new role she had secured with her usual drive and passion. She intimated her resignation on 23 January 2020 which was effective on 30 January 2020. Around this time the Claimant resolved to pursue her claim for unfair dismissal which she lodged on 30 January 2020. She is proud of her work in the leisure industry and wanted the opportunity to clear her name.
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The Law

13. Section 111(2) of the Employment Rights Act 1996 ('ERA 1996') provides that "an employment tribunal shall not consider a complaint [of unfair dismissal] 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
- 20 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".
14. Section 97 of the ERA 1996 provides that the effective date of termination "(a)
- 25 in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires, (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and (c) in relation to an employee who is employed
- 30 under a limited term contract which terminates by virtue of the limiting event

without being renewed under the same contract, means the date on which the termination takes effect”.

- 5 15. Section 207B(3) of ERA 1996 provides that if ACAS early conciliation is commenced within the three month time period, “in working out when a time limit...expires the period beginning with the day after Day A and ending with Day B is not to be counted”. Day A is the date of receipt by ACAS of the EC notification and Day B is the date of issue of the ACAS EC certificate. Section 207B(4) provides that “If a time limit...would (if not extended by this section) expire during the period beginning with Day A and ending one month after 10 Day B, the time limit expires instead at the end of that period”.
16. The onus is on the Claimant to prove that it was not reasonably practicable to comply with the time limit and to convince the tribunal it was lodged within such further reasonable period (*Porter v Bandridge Ltd 25 [1978] IRLR 271, CA*).
- 15 17. “Reasonably practicable” does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something akin to “reasonably feasible” (*Palmer and Saunders v Southend on Sea Borough Council [1984] IRLR 119, CA*). The tribunal should determine what was possible in the 20 circumstances and whether it was reasonable to expect that to have been done in those circumstances (*Asda Stores Ltd v Kauser UKEAT/0165/07, EAT*).
18. If the Claimant did not know of their right to claim unfair dismissal, the tribunal should determine whether they took reasonable steps to ascertain that right 25 (*Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA*) Once the Claimant knows of their right, the tribunal should determine whether they took reasonable steps to ascertain how to enforce that right (*Trevelyan (Birmingham) Ltd v Norton 1991 ICR 488, EAT*)
19. In considering whether a physical or mental illness rendered it not reasonably 30 practicable for the claim to be submitted in time, the tribunal should focus on

the closing stages of the limitation period (*Schultz v Esso Petroleum Co Ltd 1999 ICR 1202, CA*)

20. The claim must be brought within a reasonable period once the impediment has been removed. The assessment of what is reasonable must be made against the general background of the primary time limit and the strong public interest in claims being brought promptly (*Cullinane v Balfour Beatty Engineering Services Ltd and anor EAT 0537/10*)

Respondent's Submissions

21. The Respondent's submissions were in summary as follows –

- 10 a. The Claimant was fully aware of her right to bring a claim for unfair dismissal to an employment tribunal
- b. The Claimant ought reasonably to have made enquiries as to how to enforce that right including the time limit for doing so
- 15 c. Once she knew of the time limit it was reasonably practicable for her to have raised proceedings within that time limit
- d. If it was not reasonably practicable for her to do so (which is denied) it was not reasonable for her delay by a further period of nearly 4 weeks

Claimant's Submissions

22. The Claimant's submissions were in summary as follows –

- 20 a. She did not know about the time limit for bringing a claim until 2 days beforehand and by then it was too late
- b. The dismissal took its toll upon her mental health and her application went in late due to her mental state of mind

Discussion and decision

- 25 23. The effective date of termination was 25 August 2019. The date of receipt of the ACAS Early Conciliation Notification was 4 November 2019 (Day A) and the date of issue of the Early Conciliation Certificate was 4 December 2019

(Day B). Applying Section 207B(4) ERA 1996 to Section 111(2) the primary time limit expired on 4 January 2020. The Claimant was lodged on 30 January 2020 (26 days after the primary time limit).

24. Following her dismissal from the Respondent the Claimant struggled with her
5 mental health but she received medication and counselling. By mid-November her mental health had improved sufficiently such that she contacted ACAS to commence early conciliation and started and retained a new job. The Claimant was aware of her right to claim unfair dismissal and despite the sustained improvement in her mental health from mid-November,
10 she did not take any steps to investigate how to enforce that right on the internet or otherwise, steps which it would have been both reasonable and practicable for her to take.

25. Once the Claimant received the ACAS Early Conciliation Certificate on 4
15 December 2019 she was aware that she needed to institute employment tribunal proceedings but she delayed making any enquiries on the internet or otherwise about how to commence those proceedings (which it would have been both reasonable and practicable for her to make). Having made those enquiries towards end December/ early January she was advised that she required to commence employment tribunal proceedings within 1 or 2 days.
20 She did not take any steps to do so in circumstances where it would have been reasonable and practicable for her to do so notwithstanding the short timescale if she had considered the issue to have been of sufficient importance.

26. In the circumstances it was reasonably practicable for the Claimant to make a complaint to an employment tribunal within the primary time limit. Having made that determination it is not necessary to consider whether the complaint was brought within such further period as the tribunal considers reasonable and the claim for unfair dismissal falls to be dismissed.

Employment Judge: Michelle Sutherland
Date of Judgment: 29 September 2020
10 Entered in register: 29 September 2020
and copied to parties