



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Rooprai
Respondent: Loram UK Ltd
Heard at: Nottingham Employment Tribunal
On: 7 July 2021
Before: Employment Judge Phillips (sitting alone)

Representation

Claimant: Mr D Bheemah, Counsel
Respondent: Mr J Bryan, Counsel

RESERVED JUDGMENT

1. The Claimant presented her claims of unfair dismissal and unauthorised deduction from wages (for a single day's unpaid holiday pay) outside the statutory time limits provided.
2. It was reasonably practicable for her to have presented her claims within the primary time limits.
3. All of the Claimant's claims are limitation barred and cannot proceed. The Employment Tribunal has no jurisdiction to hear the claims and they are both dismissed.

REASONS

Background

1. The Claimant worked for the Respondent as an accounts assistant from 3 April 2007 until 28 September 2020, when she was dismissed for the reason of redundancy (on the Respondent's case.)
2. The Claimant presented her Claims for unfair dismissal and unauthorised

deduction from wages on 6 March 2021. An ET3 was received at the Tribunal on 7 April 2021 in which the Respondent denied the Claims entirely and raised the question as to whether the Claims had been brought outside the statutory time limits provided.

3. By order of Employment Judge Butler on 18 May 2021, the matter was listed for an open preliminary hearing to consider whether the Employment Tribunal had jurisdiction to hear the claims as they appeared to have been presented out of time. It is that question to which this judgment relates.

Issues & The Law

4. The timeline of events is set out below. This was not in dispute between the parties.

Date of disputed holiday for unpaid wages claim	26 March 2020
Limitation date for unauthorised deduction from wages claim	27 July 2020
Claimant's effective date of termination	28 September 2020
Acas is notified by the Claimant (Day A)	26 December 2020
Acas certificate is issued (Day B)	4 February 2021
Limitation date for unfair dismissal claim	4 March 2021
Claimant's ET1 Claim Form received by Tribunal	6 March 2021

5. The parties agreed that the Claimant had brought both of her claims out of time. In respect of the unfair dismissal claim, the limitation date was 4 March 2021 and Counsel for the Claimant accepted that the limitation date for the unauthorised deduction from wages claim was 27 July 2020.
6. A claim of unfair dismissal must be presented before the end of the period of three months beginning with the effective date of termination as per s111(2)(a) Employment Rights Act 1996 ('ERA 96'). Where a prospective Claimant has contacted ACAS for early conciliation, s111(2A) provides that as per s207B ERA 96, the period of time during which this process occurs is not to be counted towards that three month period.
7. In this case, the expiry of the initial three month period in which a claim for unfair dismissal could ordinarily be brought was 27 December 2020. Where the initial time limit expires during the period of ACAS early conciliation (as in this case,) s207B(4) ERA 96 provides that in such cases the relevant time limit shall be one month from the end of early conciliation. In this case, that date is 4 March 2021.
8. Section 111(2)(b) ERA 96 provides that the Tribunal may consider claims

outside of these periods if it is satisfied that the claim has been brought in such further period it considers reasonable where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of those periods.

9. Similarly, the time limit in respect of the claim for unauthorised deduction from wages claim, as per s23(2)(a) ERA 96, is also before the end of the period of three months beginning with date of payment of the wages from which the deduction was made. Where the Tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented within the three month time limit, the Tribunal may consider the complaint if it has been presented within such further time limit as it considers reasonable.

10. I must therefore consider whether or not it was reasonably practicable for the Claimant to present her claims on or before the dates set out above. And if not, within what further reasonable period of time the claims could have been presented. If I find that the claims as presented satisfy neither of those conditions, the Tribunal has no jurisdiction to hear them and they cannot proceed.

11. Mr Bheemah for the Claimant, helpfully set out the Claimant's position in his skeleton argument. Essentially, for the reasons discussed in the facts section below in this judgment, the Claimant's case is that she was advised by the employees of both Acas and CAB that she had a period of 30 days to submit her claim in respect of unfair dismissal from the issue of the Acas certificate. She duly submitted her claim to the Tribunal on the 30th day. As such, given that advice, which the Claimant had no reason to disbelieve, and having relied upon it, she should not be penalised by not being allowed to bring her claim. Accordingly, the two days lateness in submitting her claim were clearly within a further such reasonable period.

12. In respect of the unauthorised deduction from wages claim, the Claimant's position is that whilst the limitation date for a payment made in April 2020 wages was July 2020, the Claimant was not actually aware that she had been marked as having taken a days annual leave on 26 March 2020 until she received a letter, on 13 November 2020, from the Respondent setting out the dates on which they had recorded her as being on leave. As such, having communicated to the Respondent her concerns and not having been provided with the pay, she brought her two claims together and as such, this claim too was brought within such further reasonable period of time.

13. Mr Bryan for the Respondent also helpfully set out his submissions in a skeleton argument. The Respondent's submissions centred on the implausibility of the Claimant's explanation as to why she had not brought her claims within the requisite time period. Mr Bryan set out that it would be highly unlikely for the Claimant to have been given the wrong information by two largely expert organisations on the same day in respect of the time limit for the unfair dismissal case. He further sought to distinguish that it might be that the

Claimant truly believed her explanation but it is likely that her recollection may well be wrong. In such circumstances, the Tribunal should be cautious in accepting such implausible evidence without the benefit of further corroborating evidence and in this case none had been provided.

14. In respect of the unauthorised deduction from wages case, Mr Bryan submitted that the documents in evidence showed that the Claimant must have known about the day's annual leave recorded for her on 26 March 2020 in early April 2020. This is because there is an email from the Respondent's HR team to the Claimant's former managers which sets out that the 26 March had been recorded as an annual leave day following a discussion which the managers had had with the Claimant herself in early April. Given that evidence, he submitted that the Claimant was fully aware that the 26 March 2020 had been recorded as a days annual leave very shortly after and accordingly even had it not been reasonably practicable for the Claimant to bring her claim sooner (which the Respondent did not accept) it clearly had not been issued within a further reasonable period of time.
15. Both Counsel referred me to a large number of authorities in their skeleton arguments regarding the well-known case law concerning reasonable practicability for the purposes of my determination. I considered their application.

Evidence

16. The Tribunal heard from the following witnesses:
 - i. Mr Duhra-Grundy, the Respondent's HR Director; and
 - ii. The Claimant herself.
17. Mr Duhra-Grundy was a credible witness, although for the most part, his evidence was not determinative to the issues in this case.
18. I did not find the Claimant to be a credible witness. I set out my findings of fact below, but it is suffice to say here, that the Claimant's evidence in respect of the information she was provided by employees of both Acas and CAB was highly implausible and unsupported by any other contemporaneous evidence. In addition, her written statement gave the impression that she had wholly relied upon the advice she recalls receiving from Acas and CAB but under questioning confirmed she had actively researched her case on the internet, specifically including the time limits for bringing claims in the Employment Tribunal.

Facts

19. The key dates in this case are as set out above and are largely uncontroversial.
20. The Claimant's evidence regarding why she had issued her unfair dismissal claim two days late was that she had received telephone advice from an advisor at Acas over the telephone on 4 February 2021. This was immediately

after she received her early conciliation certificate from Acas. She recalls using her husband's old phone to do so. She set out that the female advisor was very helpful and had told her she now had '30 days' (as opposed to one month) to present her claim for unfair dismissal to the Employment Tribunal. She then goes on to set out that she had her phone in front of her and together they counted through the days and both agreed that the 6 March 2021 was the last day upon which she could submit her claim.

21. In addition, she describes a further phone call shortly afterwards on the same day with an advisor from CAB. Again she describes using her husband's mobile telephone to make this call. During this call she describes being informed about what she would need to include in her ET1 form and how to structure the information. She then sets out that the advisor told her she had 30 days from the date of when the Acas certificate was issued to submit the ET1 claim form.
22. In cross examination, the Claimant confirmed she had asked the Acas advisor what the time limit was for her to submit her claim. She also said that she had not asked the CAB advisor regarding time limits, rather it was the CAB advisor who had volunteered the 30 days information to her.
23. My view on the Claimant's evidence is that it is highly implausible that two advisors (whilst not necessarily expert) would have both provided the incorrect information of 30 days on the same day in quick succession. In cross examination, the Claimant denied that she had been told one month and confirmed her evidence was that she definitely been told 30 days by both advisors.
24. When questioned about whether the Claimant had any contemporaneous note of the information she was provided or any evidence which confirmed this, she replied that she did not. Her husband had since changed his phone, she said, and she had been unable to provide records of the call logs.
25. To my mind, the Claimant's evidence was too convenient. It might be plausible for one advisor to have provided the wrong information but for two advisors, who are likely to be very well versed in employment law and specifically time limits, to have provided the same wrong information on the same day is, in my view, highly unlikely.
26. When one considers this in the context of no further evidence being provided by the Claimant regarding the calls or the information she recalls being told, I find it more likely than not that her recollection of being told 30 days was incorrect. For the purposes of my decision, I need not go any further than that.
27. Another aspect of the Claimant's evidence which I found troubling, centred on her own knowledge and the research she had conducted prior to submitting her claim. In cross examination, the Claimant had confirmed that she had used

google to search for employment matters. I further enquired whether she had specifically researched the time limits for bringing a claim to the Employment Tribunal and she replied that she may have done so after she had received the notice of termination letter.

28. In re-examination by her Counsel, she recalled finding a lot of literature, advice and videos. She further confirmed that she understood the material she had read. When asked whether she had read anything on time limits, she replied that she had read about when she could submit her claim and the very strict time frames to do so. When asked what the time limit she had discovered was she replied that for unfair dismissal and unauthorised deduction from wages the time limit was three months less one day.

29. Given this evidence, the Claimant was clearly actively researching her case with a view to progressing it. She understood the information that her internet searches revealed. I therefore conclude that she was aware of the date by which she had to submit her claim to the Tribunal.

30. Consequently, given those findings, I find that the Claimant was not provided with incorrect information by the advisors from Acas and CAB and that she was aware of the correct time limit for presenting her case. It was therefore reasonably practicable for her to have presented her claim in time.

31. Turning next to the question of the wages claim. The Claimant's evidence to the Tribunal was that she had been unaware of an extra day's annual leave being owed to her, until she received a letter from the Respondent's HR manager on 13 November 2020 after her employment had ended.

32. The factual dispute as to the annual leave day of 26 March 2020 is as follows. Whilst the Claimant avers that she had not booked the day as leave because she had worked from home at the onset of the first period of 'lockdown', the Respondent's case was that for the entire week of 23-27 March 2020, the Claimant had been unable to work from home. As a result, the Respondent had initially required (and told) the Claimant to take the whole week as annual leave. However, following a meeting between the Claimant and her managers, the parties had agreed that just the 26th March 2020 would be required to be booked and taken as annual leave.

33. The Claimant denied that any such conversations took place. The Respondent pointed to an email from its HR team to the Claimant's managers on 3 April 2020 included in the bundle at page 61. It records a meeting having taken place on 2 April 2020 between the Claimant and her managers where it was agreed that 26 March 2020 would be taken as annual leave by the Claimant.

34. I find that it would be highly unlikely for the Respondent's HR team to have sent an email about such a discussion unless it had actually taken place.

35. Given my findings about the credibility of the Claimant’s evidence generally and especially in light of the contemporaneous email detailing the discussions regarding the Claimant taking annual leave on 26 March 2020, it is difficult to reach any other conclusion than the Claimant knew about the annual leave in early April 2020.

Determination

36. When one considers both my findings as to the likelihood of the wrong advice being given and that it appeared, through her own research, the Claimant had read up on the time limits for submitting a claim, it is difficult for the Tribunal to conclude anything other than the Claimant was aware of the time limit in which she had to submit her claim to the Tribunal. Given this finding, along with those set out above, and in the absence of any pertinent reason as to why having known the correct time limit, she failed to ensure she submitted her claim before it expired, the Tribunal cannot conclude that it was not reasonably practicable for her to have submitted her claim on time.

37. Accordingly, the Claim could have been presented in time by the Claimant and the Tribunal does not have the jurisdiction to hear it. It is therefore dismissed.

38. Turning next to the unpaid wages claim, this too given my findings of fact has been brought out of time when it was reasonably practicable for the Claimant to present it in time. The Claimant was aware of the one day’s annual leave being taken for 26 March 2020. As such, the Tribunal does not have the jurisdiction to hear the Claim and it too must be dismissed.

Employment Judge

Date: 25 July 2021

JUDGMENT SENT TO THE PARTIES ON

5 August 2021

.....

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.