



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Ms M Mikula

Corr Recruitment Ltd

PRELIMINARY HEARING

Heard at: Watford in public by CVP On: 31 August 2021

Before: Employment Judge O'Neill

Appearance:

For the Claimant: Mr A Lukomski (Representative with Concilium)

For the Respondent: Ms K Chrustowska (HR manager with the Respondent)

Strike Out Decision – Rule 37

The claims of unfair dismissal and the money claims (for holiday pay, arrears of pay and other payments namely failure to pay overtime) are struck out, as having no reasonable prospect of success because they been lodged out of time and the Claimant has failed to show that it was not reasonably practicable to lodge the claim in time.

REASONS

1. The claimant makes claims of unfair dismissal and monetary claims for holiday pay arrears of pay (under payment of wages in September 2020) and other payments namely failure to pay overtime.
2. All these claims are governed by the time limits imposed by section 111 ERA 1996. (Regulation 30 of the Working Time Regulations 1998 is drafted in the same terms).
3. The ET1 form was lodged at the Tribunal on 29 March 2021. It was submitted on line. The parties have given different dates for the EDT on their Tribunal forms. ACAS early conciliation began on 15 January 2021 and the certificate issued by email on 26 February 2021.

4. I consider that a tribunal is likely to find that the date of dismissal was 19 October 2020 as set out in the claimant's ET1. I am told that she was dismissed on one month's notice at a disciplinary hearing on 21 September 2020. The letter of dismissal gave the termination date as 19 October 2021. I find that the claimant was entirely reasonable in relying on this to be the date of dismissal.
5. Mr Lukowski has suggested that the dismissal date should be taken as 30 October 2020, being the date on the P 45. That is clearly not the view of the claimant who entered 19 October 2021 on the ET1 and the date given in the dismissal letter is likely to be more reliable, and in any event, it makes no difference to the time limit issue in this matter.
6. Given the date the claim form was presented and the dates of early conciliation the claim form has been lodged out of time as S111 (2) of ERA1996 provides that 'an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination' as extended by S207B purposes of early conciliation. The time limit under S111 would have expired on 18 January 2021 but for S207B. I note that 18 January fell within the early conciliation period, which began on 15 January 2021 and ended when the certificate was issued. The time limit is therefore extended under section 207 B by a month after the issue date of the Acas certificate ie 26 February 2021, to 26 March 2021. The claim was not lodged until 29 March and was thus still late notwithstanding the extension.
7. S 111 (2) (b) gives the tribunal a discretion to admit a claim form as being within time where firstly 'the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months' (as extended by S207B) and secondly if it has been presented 'within such further period as the Tribunal considers reasonable'.
8. The claimant was not present but her representative told me that the claimant had submitted the application through him online on 29 March 2021. He confirmed that he had been advising her throughout the ACAS conciliation period, and I find that the claimant was therefore in a position to know the time limits and the effect of ACAS early conciliation. I am told that the claimant attempted to submit a paper application at an earlier date but it was rejected by the tribunal for some reason (the representative did not know why). Following the rejection, the claimant contacted her representative who submitted the form online on 29 March 2021. Her representative did not know when the paper ET1 was submitted but confirmed that it was well within time and if that was the case I infer that the Claimant had time to correct the form and submit it in time.
9. In the circumstances I am not satisfied that it was not reasonably practicable for the claimant to present the claims in time and I strike them out under rule 37 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. For the avoidance of doubt the claims are unfair dismissal and the money

claims (for holiday pay, arrears of pay and other payments namely failure to pay overtime).

Employment Judge O'Neill

31 August 2021

Sent to the parties on:

16 September 2021

For the Tribunal:

S. Bhudia