



# EMPLOYMENT TRIBUNALS

## Claimant

Miss Stefania Ziembinska

v

## Respondent

The Daughters of Divine Charity

**Heard at:** Watford by CVP

On: 20 August 2021

**Before:** Employment Judge Allen sitting alone

## Appearances

**For the Claimant:** Mrs Black, workplace colleague  
The claimant did not attend

**For the Respondent:** Ms Broughton, Solicitor

## COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

“This has been a remote hearing on the papers which was not objected to by the parties. The form of remote hearing was video. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 33 pages, and written submissions of 42 pages the contents of which I have recorded.

## JUDGMENT

This claim was filed out of time and is struck out in accordance with Rule 21.

## REASONS

1. The claimant did not attend the hearing today; Mrs Black, her friend and workplace colleague identified in the claim form as the claimant's representative; was in attendance.

2. Today's hearing is to deal with the preliminary issue of jurisdiction, the claim having been filed 13 months after the relevant date.
3. On 23 December 2020 the claimant was ordered to show cause why her claim should not be struck out. On 6 January 2021 the respondent wrote to the court asserting the order had not been complied with and no cause had been shown. This matter was set down to be heard as a preliminary issue in June 2021, that hearing being postponed to today.
4. I have been careful not to use the terms 'worked' or 'employed' in this case. The respondent argues neither apply to the claimant and consequently is not covered by the Employment Rights Act 1996. Such questions are not for me to decide today but would have been for a full merits hearing once it was established the claim had been filed within statutory time limits or reasonable extension of them and the tribunal had jurisdiction to hear it.

### **Background**

5. Between 1996 and 2019 the claimant was a member of a religious community and teaching order and fulfilled the role of teaching and boarding house assistant at a boarding school operated by the respondent. The school premises have since been handed over to the local authority. The school included primary and secondary education facilities. The primary facilities continue to operate, the secondary facilities having been closed at the end of the academic year on 31 August 2019.
6. The claimant took her vows in 1986 having joined a religious community in 1983. In 1996 she was sent to the school in question where she performed the role as described above in the secondary school.
7. Following the closure of the secondary school the claimant continued to live on the premises as part of the religious community housed there. It was her hope that she could transfer her service to the junior school and that her order would negotiate this for her. It did not. In January 2021 the claimant notified the order that she wished to leave and did so on 1 March 2021.

### **The Claim**

8. In her claim filed with the tribunal on 28 September 2020, some 13 months after the closure of the secondary school, the claimant asserts she was unfairly dismissed, made redundant and suffered unauthorised deductions from wages because in the 23 years she was at the school she received no salary nor has she since received a redundancy payment or P45.

### **Jurisdiction - The law**

#### Statutory Time Limits

9. S111 Employment Rights Act 1996 (**ERA**)

- (1) a complaint may be presented to an [employment tribunal] against the 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.

10. S164(2) ERA provides an employee is not deprived of his right to a redundancy payment by subsection (1) if, during a period of six months immediately following **the period** mentioned in that subsection, the employee-

- (a) Makes a claim for the payment by a notice in writing given to the employer,
- (b) Refers to an [employment tribunal] a question as to his right to, or the amount of, the payment, or
- (c) Presents a complaint relating to his dismissal under S111,

And it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

- (3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an [employment tribunal] shall have regard to-
  - (a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and
  - (b) all the other relevant circumstances.

- (5) S207B applies for the purposes of subsection (2).

*(the period - where there is no notice the relevant date is identified; by S145ERA; as the date on which termination takes effect).*

11. S23 ERA

- (1) (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18 (2)),
- (2) ERA provides an [employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
  - (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made,
- (3) Where a complaint is brought under this section in respect of-
  - (a) A series of deductions or payments, or  
The reference is in subsection (2) to the deduction or payment all to the last deduction or payment in the series or to the last of the payments so received
- (4) Where the [employment tribunal] is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.
- (4A) unemployment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the pay date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

12. 207B ERA extension of time limits to facilitate conciliation before institution of proceedings.

### Conclusion

13. The relevant question for the purposes of jurisdiction in this instance is “what is the relevant date”? The claimant asserts in her particulars of claim she was made redundant on 31 August 2019. The respondent challenges her employee status but not this date. In the absence of evidence to the contrary I take **31 August 2019** to be the relevant date for the purposes of calculating all statutory time limits in this case.
14. Taking each head of claim in order and applying S111(2)a as set out above:
  - 14.1. Unfair dismissal – the statutory time limit expired on 30 November 2019.

14.2. Unauthorised deductions from wages – the statutory time limit expired on 30 November 2019.

14.3. Redundancy - the statutory time limit expired on 30 November 2019

Applying S164 the time limit for the employee to comply with actions required by (2)(a) &(b) expired 29 February 2020 (2020 being a leap year).

15. Applying section 111(2)b as set out above is less straightforward. It provides the employment tribunal with the power to exercise discretion in determining what further period is reasonable where it was not reasonably practicable for the complaint to be presented before the end of that period of three months. I am assisted in this regard by the caselaw provided by the respondent none of which assist the claimant. Of particular assistance is the case of British Coal Corporation v Keeble to be found on page 37 of the respondent's submissions bundle. This case includes a helpful check list arising primarily from S33 Limitation Act 1980 which, whilst it does not deal with employment law sets out a structure to be followed when considering whether to exercise discretion in extending statutory time limits generally.

15.1 The length of the delay and the reasons for it:

15.1.1 The claims were filed some 13 months after the relevant date. Mrs Black indicated the claimant was ignorant of the law but did seek advice. The delay was as a result of waiting for the local authority to take her on in the primary school. She did not directly pursue the authority but hoped her religious order would make the necessary negotiations on her behalf. They did not.

15.2 Extent to which cogency of evidence will be affected by delay.

15.2.1 Because of the claimant's position as a member of a religious community there are no records of employment. Consequently, evidence the respondent relies upon is dependent on the recollection of its witnesses. We are now two years on from the relevant date and if this matter were to proceed to a full merits hearing; similar cases currently being listed in early 2022 a further six months delay would have elapsed before a hearing with an inevitable detrimental effect to the cogency of the evidence the respondent relies upon.

15.3 Extent to which respondent has cooperated with requests for information.

15.3.1 The respondent was not aware of any such requests from the complainant pertaining to these proceedings but was able to confirm when the claimant had raised issues relating to her departure from

the religious community the respondent had not delayed in its responses.

15.4 The promptness of the claimant's actions once she knew of the facts giving rise to the cause of action.

15.4.1 Mrs Black had limited information but did confirm the claimant was not proactive and instead relied on her religious community to act in her best interests.

15.5 Steps taken to achieve professional advice.

15.5.1 Mrs Black tells me advice was sought from a variety of sources including ACAS; Citizens Advice Bureau and others although it became apparent on further probing that much of this related to the claimant's current situation as far as accommodation and activities of daily living are concerned. Mrs Black did confirm the claimant consulted a solicitor who declined to take her case.

16. I am satisfied having taken all of the above into account that there are no reasonable grounds on which I could exercise my discretion to extend the statutory time limits in this case. The claim is out of time consequently this tribunal has no jurisdiction to hear these claims and I strike out them out.

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Employment Judge Allen

Date: 24 August 2021

Sent to the parties on: 21 September 2021

S. Bhudia

For the Tribunal Office