



EMPLOYMENT TRIBUNALS

Claimant

Ms J Carlton

v

Respondent

Diocese of Norwich Education Multi Academy Trust

Heard at: Norwich

On: 25 August 2021

Before: Employment Judge Postle

Appearances

For the Claimant: In person.

For the Respondent: Mr Ludlow (Counsel).

JUDGMENT

The claimant's claim for unfair dismissal is dismissed it being reasonably practicable to have issued the claim within the 3 month period plus the extension of time allowed for early conciliation.

REASONS

1. This is an open preliminary hearing to determine whether the claimant's claim for unfair dismissal it was reasonably practicable for the claimant to have issued within the 3 month period plus any period of time extending that period under the early conciliation pursuant to the Employment Rights Act 1996. The Act makes it quite clear under s.111 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 3 months beginning with the effective date of termination or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonable or practicable for the complaint to be presented before the end of that period of 3 months. There is an extension of that 3 month period in relation to the time covered by early conciliation.

2. It is common ground in this case that the claimant was dismissed on 13 December 2019. She was aware that she needed to contact ACAS to obtain a certificate before any proceedings were to be issued before an Employment Tribunal and that certificate commenced on 27 January 2020 and concluded on 27 February. The claim was filed by the claimant on 7 July 2020 and the time expired for filing a claim after allowing for ACAS conciliation was the 13 April 2020.
3. The burden of proof of establishing whether or not it was reasonably practicable to have issued the claim within 3 months rests entirely with the claimant. That imposes a duty upon her to show precisely why it was that she did not present her complaints. Porter v Bandridge Ltd [1978] ICR 943 accordingly says that if a claimant fails to argue that it was not reasonably practicable to present the claim in time the Tribunal will find that it was reasonably practicable.
4. What is the meaning of reasonably practicable? Palmer & Another v Southend on Sea Borough Council [1984] ICR 372, the Court of Appeal conducted a general review of the authorities and concluded that 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 like reasonably feasible. Lady Smith in Asda Stores Ltd v Kauser an EAT case in 2007 explained in the following words:

“The relevant test is not simply a matter of looking at what was possible but to ask whether on the facts of the case as found it was reasonable to expect that which was possible to have been done.”
5. In this tribunal we heard evidence from Ms Carlton who had not provided a witness statement but we heard oral evidence. That evidence was that she put the matter in the hands of her Trade Union representative and thought that ACAS was also sorting the matter out and that there was discussions ongoing between those parties and the claimant sat back and did nothing.
6. The claimant did contact solicitors on 3 June but she says she was not told about time limits. She says she contacted ACAS and the Trade Union on 27 May prior to contacting the solicitors and had no reply. She then says she started looking at her laptop within a week, possibly looking at the Government website on Employment Tribunal. Prior to that we know that the claimant had been sent the link from ACAS when the early conciliation started and the claimant acknowledges that having clicked on the link she scanned and briefly saw that there were time limits of 3 months but did not really take it on board and was leaving it to the Trade Union/ACAS. The claimant says that thereafter in June she still sat back thinking that the Trade Union were going to do something and then realised there was a problem sometime in July and issued the claim some 4 months late.

7. It is incumbent upon any claimant who feels that their dismissal is unfair as the claimant clearly did who has the benefit of a Trade Union representing them from an early stage of the investigation process and who attended at the appeal stage and seems to have been in some contact with the claimant in the earlier stages around January for the claimant not to sit back and just hope that everything will be alright. A claimant must take reasonable and prudent decisions herself in order to protect her position. The claimant simply did nothing to protect her position and therefore I conclude on the facts that it would have been reasonably practicable for the claimant to have realised in April had she made further enquiries about issuing a claim that a claim had to be filed as soon as possible and she sat back and did nothing to enquire or protect her rights.

8. In those circumstances it is and was reasonably practicable to have issued the claim within the 3 month period and therefore the Tribunal has no jurisdiction to hear the claim and the claim is thereby dismissed.

Employment Judge Postle

Date: ...6 September 2021.....

Sent to the parties on:

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For the Tribunal Office