



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Ms L Fox

British Airways plc

PRELIMINARY HEARING

Heard at: Watford in public by CVP and telephone On: 1 September 2021

Before: Employment Judge O'Neill

Appearance:

For the Claimant: In person assisted by her friend Mr T Wyatt

For the Respondent: Mr Hollebon (Solicitor with Harrison Clark)

Strike Out Decision – Rule 37

The claims of unfair dismissal and monetary claims for holiday pay and wrongful dismissal and failure to provide a statement under section 1 of the Employment Rights Act 1996 (ERA) are struck out as having no reasonable prospect of success because they have been lodged out of time and the claimant has failed to show that it was not reasonably practicable to lodge the claim in time and I have declined to allow an extension

REASONS

1. The claimant makes claims of unfair dismissal and monetary claims for holiday pay wrongful dismissal and failure to provide a statement of terms and conditions under section 1. All these claims are governed by the time limits imposed by section 111 ERA 1996.
2. The parties agree that the ET1 form was lodged at the tribunal online on 4 April 2021. ACAS early conciliation began on 20 January 2021 and the certificate issued by email on 3 March 2021, the effective date of termination was 22 October 2020. The parties also agree that the limitation period, as extended by S 207B ERA ended on or before 3 April 2021 and the claim is therefore one day out of time.

3. Section 111 (2) (b) ERA 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 section 207B) and secondly, if it has been presented within such further period as the Tribunal considers reasonable. It is agreed by the respondent that the claimant satisfies the second limb of the test, but not the first.
4. The claimant was aware of her right to go to a tribunal as early as November 2020 and she and Mr Wyatt, (who was a friend assisting her) knew or should have known of the time limit. If it was within their capacity to locate rule 4 of the Employment Tribunal rules of procedure, then I infer that they could have ascertained at an early stage the time limit for making a Tribunal claim
5. I do not accept that the claimant psychological condition prevented her from submitting her claim form in time. The letter of 24 August 2021 from her analyst Dona Hartnett, does not help me find that the claimant was incapacitated from lodging a claim form in the months leading up to 3 April 2021. She had been capable of making her application to ACAS following a long internal procedure at. At the time the time limit expired the claimant was managing a team of 12 people. I find that if she was in a position to undertake that degree of responsibility it is simply not credible that she was unable to lodge the ET1 in time. She only just missed the deadline and there is no evidence that she was lost or disempowered within a long period of mental ill-health.
6. The reason that the claim is out of time is because the claimant left it very late to submit the claim form. She had had about five months since her dismissal to do so, even if she was reluctant to make the claim while the internal appeal was going on, she had at least four weeks following the ACAS certificate, in which time her friend Mr Wyatt was already on board to help her. Mr Wyatt is a layperson friend and the responsibility for ensuring that the claim was lodged in time lies with the claimant herself.
7. This was an online application, and could have been made at any time before midnight on 3 April 202.
8. Although I understand how rule 4 (2) Employment Tribunal Rules 2013 may well be misinterpreted by a layperson as extending time because of a bank holiday, the time limit under section 111 is jurisdictional and not procedural ie: it is not a deadline set by the rules or by the tribunal, but is a deadline set out by Parliament in the Act itself.
9. However, more importantly, it would appear that the claimant's misunderstanding of rule 4 was not the reason for the late application. Their research into rule for only took place after 1 April 2021 when they were up against the time limits and after they have been specifically advised by a solicitor to ensure that the form was submitted by 3 April 2021.

10. I find the real reason for the late application is that the claimant simply ran out of time, notwithstanding the fact that she had had ample time to prepare it and have been specifically told by a Solicitor to submit it by 3 April 2021.

11. The test under section 111 is not framed in terms of justice and equitability and although I note the claimant argument as to the relative impact of a strike out decision on the parties that is not a factor in determining reasonable practicability.

Conclusions

In the circumstances I find that it was reasonably practicable for the claimant to have lodged her claim by 3 April 2021 but she did not do so and I strike out her claim of unfair dismissal and the monetary claims referred to above as having no prospect of success because it has been lodged out of time and I decline to grant an extension.

Employment Judge O'Neill

1 September 2021

Sent to the parties on:

11 October 2021

For the Tribunal:

THY.....