



EMPLOYMENT TRIBUNALS

Claimant: Ms M. Davies-Brown

Respondent: Family Friends (formerly Family Friends for 5's to 11's)

HELD AT: Mold **ON:** 6th January 2020

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: None – absence not explained, attendance not excused

Respondent: Ms M. Williams, Vice Chair of Trustees

JUDGMENT

The judgment of the Tribunal is that the claimant's claims that she was unfairly dismissed by the respondent and that the respondent discriminated against her in relation to the protected characteristic of sex were presented to the tribunal out of time and they are dismissed.

REASONS

1. **The Issues:** It appears on the face of the papers that the claimant presented her claims to the tribunal late and I had to decide whether that was the case. Regarding the claim of unfair dismissal, in the event of it being presented late, I would have to consider whether it was not reasonably practicable for the claimant to have presented her claim in time. Regarding the claim of sex discrimination I would have to decide whether it would be just and equitable to extend time to the date of presentation.

2. **The Facts:**

2.1. The claimant's employment with the respondent terminated on 10 August 2018 such that it was then incumbent upon her, if she wished to pursue a claim to the tribunal, to enter early conciliation via ACAS on or before 9th November 2018.

- 2.2. The early conciliation period commenced on 9 November 2018 and an early conciliation certificate was issued by ACAS on 26 November 2018. The effect of that conciliation period was to stop the clock running on the primary time limit until one month after the date of issue of the certificate.
- 2.3. The time for presentation of the claimant's claims was therefore automatically extended to 26 December 2018.
- 2.4. The claimant presented claims of unfair dismissal and sex discrimination on 2 January 2019.
- 2.5. The claimant presented a written submission relating to her claim subsequent to a telephone conference call Preliminary Hearing held on 18 March 2019, entitled "Exceptional Circumstances May 2018" in which she provided further background details of events in April 2018, and following but predating termination of her employment. She describes events which she says were extenuating circumstances justifying her entitlement to sick pay.
- 2.6. The claimant has not adduced any evidence showing that it was not reasonably practicable to present her unfair dismissal claim in time. She has not provided any information or evidence to suggest that she presented the claim within a reasonable time after the expiry of the time limit.
- 2.7. The claimant has not adduced any evidence on which I could base the exercise of my discretion in considering whether it would be just and equitable to extend time the presentation of the sex discrimination claim to 2 January 2019.

3. The Law:

3.1. Unfair Dismissal:

- 3.1.1. s111 Employment Rights Act 1996 (ERA) provides that a complaint of unfair dismissal must be presented to the tribunal before the end of the period of three 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 reasonably practicable for the complaint to be presented before the end of that three-month period.
- 3.1.2. S207B ERA provides for an extension of time to facilitate conciliation before the institution of proceedings, the effect of which is that early conciliation via ACAS must be commenced before the end of the period of three months beginning with the effective date of termination (subject as before) and doing so effectively "stops the clock". A claim ought then be presented within one month of the issue of an early conciliation certificate if the primary time limit has elapsed.

- 3.2. **Sex Discrimination:** s123 Equality Act 2010 provides that a complaint to the tribunal of discrimination may not be brought after the end of the period of

three months starting the date of the act to which the complaint relates or such other period as the employment Tribunal thinks just and equitable.

4. Application of law to facts:

- 4.1. The claimant's employment ended on 10 August 2018 such that she was required to commence early conciliation on or before but no later than 9 November 2018; she commenced conciliation via ACAS on 9th November 2018 which was in time.
- 4.2. The effect of early conciliation was to stop the clock and the early conciliation certificate was issued on 26 November 2018. This allowed the claimant an additional month within which to present her claims that is on or before, but no later than, 26 December 2018. One would have expected presentation in the available time subject to personal circumstances making that, at least, difficult.
- 4.3. The claimant presented her claim to the employment Tribunal on 2 January 2019 which was out of time. Thursday 27th December and Friday, 28 December 2018 and Monday, 31 December 2018 were not public holidays; even after expiry of the claim those days appear to have been available to the claimant to take required action if she wanted to present a claim.
- 4.4. In the absence of any explanation from the claimant as to why she did not present a claim in time and why she did not present it sooner than 2 January 2019 there is no information before me to suggest that it was not reasonably practicable for the claimant to comply with the applicable time limit for her claim of unfair dismissal or that she presented the claim within a reasonable time after expiry of the time limit.
- 4.5. Furthermore there is nothing before me on which I could base a decision that it would be just and equitable to extend time in respect of the sex discrimination claim.
- 4.6. In the circumstances the claims are dismissed for non-compliance with statutory time limits. The tribunal does not have jurisdiction to consider the claimant's claims.

Employment Judge T.V. Ryan

Date: 06.01.20

JUDGMENT SENT TO THE PARTIES ON 8 January 2020

FOR THE TRIBUNAL OFFICE Mr N Roche