



## EMPLOYMENT TRIBUNALS

Claimant: Ms B Sullivan

Respondent: Computershare Investor Services PLC

Heard at: Bristol (via CVP video On: 4<sup>th</sup> November 2021 hearing)

Before: Employment Judge P Cadney

Representation:

Claimant: Ms R Hodgkin ( Counsel)

Respondent: Ms H Coutts (Solicitor)

## PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claims of unfair dismissal is dismissed as having been presented out of time.

### **Reasons**

1. By a claim form dated 4<sup>th</sup> January 2021 the claimant brings a single claim of unfair dismissal arising out her dismissal for redundancy. The respondent contends that the claim was presented out of time and that the tribunal has no jurisdiction to hear it.
2. This hearing was listed to determine whether the claim was presented in time; and if not whether it was reasonably practicable for it to have

been presented in time, and if not whether it was presented within a reasonable time thereafter (s111 Employment Rights Act 1996).

3. There are essentially three factual issues the tribunal needs to consider, each of which in turn affects the issues of time and the extension of time:
  - i) Whether the claimant's employment terminated on 31<sup>st</sup> July 2020 or 10<sup>th</sup> August 2020;
  - ii) Whether the claim was presented on 3<sup>rd</sup> January 2021 or 4<sup>th</sup> January 2021;
  - and/or iii) Presented on 17<sup>th</sup> April 2021.

#### Background Facts

4. The claimant was employed by the respondent from 1<sup>st</sup> May 2015. It is not in dispute that she was given notice of dismissal by reason of redundancy by letter dated 6<sup>th</sup> July 2020, with notice expiring and her employment terminating on 31<sup>st</sup> July 2020 (although the effect of the letter and the date of termination are in dispute). The dates of ACAS early conciliation are 6<sup>th</sup> November 2020 (date A) and 3<sup>rd</sup> December 2020 (date B). In her witness statement she contends that the ET1 was submitted on 3<sup>rd</sup> January 2021, although in evidence accepted that it may have been 4<sup>th</sup> January 2021. The claim form was not accepted by the tribunal because she had not made a claim for unfair dismissal in Box 8.1, but had given details of an apparent claim for unfair selection for redundancy. She was asked clarify her claim by an email of 26<sup>th</sup> January 2021. She overlooked this and only replied confirming that her claim was for unfair dismissal on 1<sup>st</sup> April after the tribunal sent a reminder on 26<sup>th</sup> March 2021. The claim was accepted on 17<sup>th</sup> April 2021.

#### Effective Date of Termination

5. The respondent submits that it is clear that the effective date of termination was 31<sup>st</sup> July 2020. The relevant section of the dismissal letter dated 6<sup>th</sup> July states:

“You are entitled to 5 weeks’ notice under your contract of employment and your final day of employment shall be 31<sup>st</sup> July 2020 (“the Termination Date”). The first four weeks of your notice will be worked as Garden Leave and you shall receive £480.77 pay in lieu of 1 weeks’ notice in accordance with your contract of employment, subject to normal deductions of tax and National Insurance.”
6. In addition it relies on the fact that the contract of employment expressly provides that the respondent was entitled to terminate the

contract earlier than the end of the notice period and to pay in lieu of notice. As a result it submits that to give notice short of the full notice entitlement was not in breach of contract, and that even if it were, that would not alter the fact that it had expressly terminated the claimant's employment on 31<sup>st</sup> July 2020.

7. The claimant does not accept this and asserts that given that it is not dispute that she was entitled to five weeks' notice (as the letter expressly states), and that five weeks' notice from 6<sup>th</sup> July 2020 expired on 10<sup>th</sup> August 2020 her employment cannot have ended prior to that date and, irrespective of the contents of the letter, cannot have ended on 31<sup>st</sup> July 2020.
8. There are theoretically three possible dates on which the claimant's employment could have terminated. Firstly 31<sup>st</sup> July as set out in the letter; secondly 3<sup>rd</sup> August which is in fact four weeks from 6<sup>th</sup> July if the claimant was (as the letter states) being given four weeks' notice; or 10<sup>th</sup> August 2020 when five weeks' notice expired. The respondent asserts that it terminated on 31<sup>st</sup> July, and the claimant 10<sup>th</sup> August. Neither party asserts that 3<sup>rd</sup> August 2020 is the correct date and even if it were that would not assist the claimant in this case as the primary limitation period would still have expired (on 2<sup>nd</sup> November 2020) prior to commencing the ACAS EC process on 6<sup>th</sup> November 2020. Put simply the claimant's claim will only even arguably have been presented in time (subject to the issues below) if she is correct as to 10<sup>th</sup> August 2020 being the effective date of termination.
9. Section 97(1) Employment Rights Act 1996, which defines the effective date of termination for the purposes of this part of the Act, provides that where the employment is terminated by notice that it is the date notice expires (s 97(1)(a)), and where dismissal is without notice it is the date on which the termination takes effect (s97(1) (b)). This is not affected by the fact that the notice given is less than any statutory or contractual entitlement, or to put it another way there is no statutory provision having the effect of extending the effective date of termination for these purposes. That this interpretation is correct is confirmed by a long line of authorities (See for example Robert Cort and Sons v Charman 19821 816 ICR and Feltham Management Ltd v Feltham and others EAT 0201/16). It follows that in my view the respondent must be correct and the effective date of termination must have been 31<sup>st</sup> July 2020 as is expressly set out in the termination letter. .
10. That has a number of consequences. Firstly it means that the primary limitation period expired on 30<sup>th</sup> October 2020; and as a result that the claimant does not get the benefit of the extension of time provided

by entering ACAS early conciliation as the conciliation period only began after the expiry of the primary limitation period. It follows that irrespective of any of the other issues that a claim that was submitted on either the 3<sup>rd</sup> or 4<sup>th</sup> January 2021 is necessarily out of time.

11. That conclusion is sufficient to determine whether the claim was submitted out of time. However for the sake of completeness I will deal briefly with the other two factual disputes.

#### Presentation on 3<sup>rd</sup> / 4<sup>th</sup> January 2021

12. In her witness statement the claimant contended that she had submitted her claim via email shortly before midnight on 3<sup>rd</sup> January 2021. The significance is that if she had been correct about being dismissed on 10<sup>th</sup> August, and if she had thereby obtained the ACAS EC extension of time 3<sup>rd</sup> January 2021 would have been the last day for submitting the claim. However, in evidence in chief she explained that she believed that she had attempted to present it before midnight on 3<sup>rd</sup> January, but the only record she had been able to find (which is not in the bundle) showed that it had been submitted about an hour after midnight on 4<sup>th</sup> January 2021. It is testimony to her honesty that she did so, and as a result in her submissions Ms Hodgkin accepted that the claim had been presented out of time on 4<sup>th</sup> January 2021 even if there had been an attempt to present it before midnight (See *Miller v Community Links Trust Ltd* EAT 0846/07).

#### Presentation on 17<sup>th</sup> April 2021

13. The assertion that the claim was not in fact presented until 17<sup>th</sup> April 2021 is based on the fact that the tribunal did not immediately accept the claim but wrote to the claimant asking her to clarify whether she was in fact bringing a claim for unfair dismissal. She did not respond until 1<sup>st</sup> April 2021, having overlooked the or missed the original email, with the result that it was not finally accepted by the tribunal until 17<sup>th</sup> April. Given my conclusion that the claim was already out of time by some two months when it was submitted on 4<sup>th</sup> January 2021; and the claimant's acceptance that it was in any event out of time at that point, for the purposes of this hearing I will assume that it was presented on the date that it was received (4<sup>th</sup> January 2021) and not the date that it was finally accepted.

#### Reasonable Practicability

14. As the claim was, in my judgement submitted out of time the question is whether an extension of time will be granted. This has to

determined firstly against the question of whether it was reasonably practicable for it to have been presented in time.

15. The claimant's evidence was that there had been a delay in hearing her appeal against dismissal, but she accepted that she had received the outcome on or about 2nd September 2020, leaving almost two months of the primary limitation period in which to submit the claim. In addition she was focused in the early part of the period on her appeal and attempting to find work. From approximately 20<sup>th</sup> September 2020 she had been able to find work on the night shift at Amazon. She had some three hours travel, and worked a twelve hour shift, initially five and then six days a week, and was physically exhausted.
16. However she accepted that from an early stage she had been assisted by her trade union and had received legal advice. I have not heard any evidence about any advice given, but there is no suggestion before me that any advice was incorrect or that her advisors were in some way at fault, or that the claimant misunderstood the time limits or process for bringing a claim; but she remained of the view that 10<sup>th</sup> August was the effective date of termination, and the reason that she had contacted ACAS on 6<sup>th</sup> November 2020 was that she believed that her contract had terminated on 10<sup>th</sup> August 2020 and that  
  
she was still in time. She has not advanced any argument that there would have been any impediment to her contacting ACAS a week or more earlier which would have extended time, and/or submitting the claim in time either then or thereafter.
17. Similarly there was no impediment to her submitting the claim at any point prior to 3<sup>rd</sup> January 2021 other than the fact that she believed she was in time. She had started a new and demanding job in December 2020 and had not begun to draft the ET1 until her return from work late in the evening of 3<sup>rd</sup> January 2021, but there is no evidence there was any impediment to her doing it earlier
18. In the circumstances, and sympathetic as I am that the claimant may be excluded from bringing what may be a meritorious claim because of a misunderstanding as to the effective date of termination, in my judgement it is impossible to hold that it was not reasonably practicable to have presented the claim within time either by reference to the primary limitation period (which for the reasons given above is in my judgement the correct date to assess it against); or even to the 3<sup>rd</sup> January 2021 had she been correct about the effective date of termination and had obtained the benefit of an extension.

19. In those circumstances I am bound to hold that the tribunal has no jurisdiction to hear the claim

Employment Judge P Cadney

Dated: 8 November 2021

Amended Judgment sent to parties: 15 December 2021

FOR THE TRIBUNAL OFFICE