



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Detain

**Respondent:** Nottinghamshire County Council

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Nottingham (via CVP)      **On:** 27 January 2022

**Before:** Employment Judge Fredericks

### Appearances

For the claimant: In person

For the respondent: Miss A McFadyen

## DECISION ON PRELIMINARY ISSUE

The claimant's claim for constructive unfair dismissal is dismissed because the tribunal does not have jurisdiction to hear the claim (it is premature).

## REASONS

1. The claimant brought a claim for constructive unfair dismissal following a restructure of the department she worked in at the respondent. The respondent resists the claimant's claim. I had the benefit of hearing submissions from the parties, reading a skeleton argument prepared by Miss McFadyen for the respondent, and also access to a bundle of documents which ran to 68 pages. Page references in these reasons refer to pages in the bundle.
2. There was a closed telephone preliminary hearing on 14 September 2021 at which it was identified that the claimant's claim might have been prematurely presented. This preliminary hearing was listed to determine "*whether the claim has been presented prematurely or within the correct time period as required by section 111 Employment Rights Act 1996*".

### Facts

3. The claimant considers a work restructure which led to her role being downgraded to have been carried out unfairly and in a manner which gave rise to her termination of the contract and claim for constructive unfair dismissal. She raised her complaints about the process internally in a complaint letter dated 25 June 2020 (pages 5 to 10). The claimant drew my attention to the passage in that email which reads:

*“Demotion is the only choice presented to us; there has been no redundancy or redeployment option made available. I am unable to take a pay cut. This means that as things stand, inevitably I will have to seek new employment and resign from my post – the decisions that have been made are forcing me out of my job...”*

4. The claimant continued her employment with the respondent following the submission of her complaint and put her mind to other possibilities to remain in employment, highlighting that the respondent has a pay protection policy which might apply to her (pages 11 to 13). The claimant says that a ‘last straw’ incident then occurred at a meeting on 3 August 2020 when the respondent informed the claimant that the complaints made would not alter the outcome of the restructure.
5. The claimant’s ET1 form was received by the Tribunal at 18:01 on 25 August 2020 (page 23-24). The claimant e-mailed the respondent at 19:07 on 25 August 2020 to submit her resignation (page 37). The claimant worked her notice period following her resignation. The claimant does not dispute that she submitted her employment tribunal claim prior to sending her resignation e-mail to the respondent.

#### Law

6. Section 111 Employment Rights Act 1996 sets out the period of time within which a claim relating to dismissal can be brought if the tribunal is to have jurisdiction. The date upon which this period begins is usually the effective date of determination, but s111(3) provides that:-

*“Where a dismissal is with notice, an employment tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of determination”.*

7. Notice can be given by either party, and s111(3) applies equally whether the notice is given by the employer or the employee (see *Presley v Llanelli Borough Council [1979] IRLR 381*). This means that the tribunal has jurisdiction in dismissal with notice cases only after the notice is given, whichever party gives notice, and does not have jurisdiction prior to the giving of notice (see *Capek v Lincolnshire County Council [2000] IRLR 590*). This is apparent simply from the wording of s111(3).
8. Section 111(2) is the mechanism by which an employment tribunal can consider a complaint presented out of time, with reference to the end of the three months’ limitation date, but where it is considered reasonable in a case where it was not reasonably practicable for the complaint to be presented *“before the end of that period of three months”*. Section 111(2) is intended to deal with late claims, not premature ones.

#### Submissions

9. The claimant accepted that her resignation e-mail was sent after she had presented her claim to the employment tribunal. She said that, had she known this was an issue, then she would have done things in the correct order. She pointed out that the time difference is only a matter of an hour, and referenced her e-mail of 26 June 2020 where she indicated that she might need to resign in response to the respondent's actions.
10. In reply, the respondent submitted that the claim was presented prior to notice being given and so, simply, the tribunal has no jurisdiction to hear it given the applicable authorities. Miss McFadyen observed that the 26 June 2020 email did not serve to terminate the claimant's employment, that it was caveated in terms of being an outcome to a situation which might yet have changed, and that it was predicated on the claimant finding alternative employment first. She noted that the claimant continued to engage with the respondent on the dispute and continued to work in employment for the respondent. In short, the respondent did not accept that that email constituted notice, and argued that it was not intended to be a notice to terminate the contract.

*Decision*

11. I must find for the respondent on this preliminary issue. The tribunal has no jurisdiction to hear the claimant's claim where the claim was presented before the notice to terminate the employment contract was given. The parties accept that this is what happened in this case. In my judgment, the claimant only intended to give notice, and only did actually give notice, when she submitted her clear, un-caveated and unambiguous resignation e-mail at 19:07 on 25 August 2020. Although there is only one hour and seven minutes between these events, I do not consider that I can ignore the order of those events.
12. Consequently, the claimant's claim is dismissed.

Employment Judge Fredericks

Dated: 27 January 2022

Sent to the parties on:

For the Tribunal Office: