



EMPLOYMENT TRIBUNALS

Claimant:

Mrs H K Basram

v

Respondent:

Shipleys Foodservice Limited

Heard at:

Reading (by CVP)

On: 14 January 2022

Before:

Employment Judge Anstis (sitting alone)

Appearances:

For the Claimant: Mr J Singh (solicitor)

For the Respondent: Ms I Mardarescu (solicitor)

JUDGMENT ON A PRELIMINARY HEARING

The claimant's claims of unfair dismissal and age discrimination are dismissed.

REASONS

Introduction

1. These written reasons are provided at the request of the claimant, made at the hearing.
2. This is an open preliminary hearing to determine whether the tribunal had any jurisdiction to consider the claimant's claims of unfair dismissal and age discrimination. The basis on which it is said that the tribunal has no jurisdiction is that the claims are brought outside the appropriate time limit for such claims.
3. Mr Singh accepts that both the unfair dismissal and age discrimination claims are brought outside the primary time limit, but argues that time should be extended in both cases.
4. In the case of an unfair dismissal claim, I must consider whether it was reasonably practicable for the claimant to bring her claim in time and, if not, whether it was brought within a reasonable time thereafter. For the age discrimination claim the question is whether it is just and equitable to extend the time limit.

Chronology

5. I would normally expect in a hearing such as this to hear evidence from the parties, but both sides elected to proceed on the basis of legal submissions alone.
6. The parties agree that earliest date that could apply for the termination of the claimant's employment is 2 March 2020 (which is there or thereabouts the last day she was actually at work) and the latest date that could apply is 18 April 2020 (when she received her P45).
7. The next relevant date is when the claimant obtained legal advice – 20 October 2020. It is said by Mr Singh in his submissions that the claimant was not able to obtain legal advice earlier due to difficulties with the English language and difficulties in obtaining legal advice during the Covid-19 lockdowns. Ms Mardarescu says that the claimant lives with her son (who speaks good English) and points out that the initial Covid-19 lockdown was in the process of being lifted during summer 2020.
8. The next day, 21 October 2020, Mr Singh commenced early conciliation on behalf of the claimant. The eventual early conciliation certificate was issued on 5 December 2020. The claim was submitted on 5 January 2021. In his written submissions, Mr Singh says that this was within a 30-day period of the end of the early conciliation period. This may suggest that he thought that the early conciliation had allowed his client an extension of the time limits, but during the course of the hearing he correctly accepted that early conciliation would not extend time if it only started after the end of the primary limitation period.

Decision

9. Taking the claimant's claim at its highest, she was dismissed on 18 April 2020 and had a good explanation for her failure to then seek advice until 20 October 2020. However, there appears then to be no good explanation as to why the claim was not issued until 5 January 2021. Mr Singh pointed to some personal difficulties he had had, along with pressure of work and the general difficulties that were caused to law firms in the second lockdown period.
10. It does appear that this was a difficult period for Mr Singh, but having taken on the claimant as a client and immediately commenced early conciliation I do not see that there is then any valid excuse for why the claim was not issued until 5 January 2021. This delay means that even if I find that it was not reasonably practicable for the unfair dismissal claim to have been brought within the primary time limit, I cannot find that it was brought within a reasonable time thereafter. The tribunal does not have jurisdiction to consider the unfair dismissal claim, and it must be dismissed.
11. The test for extension of time for a discrimination claim – “just and equitable” is typically seen as more generous for claimants. The primary matter to be considered when addressing a just and equitable extension of time is the balance of prejudice. However, an aspect of this remains the reason for the delay in submitting the claim. In the circumstances of this

case I find that time should not be extended on a “just and equitable” basis. The respondent is substantially prejudiced by having to face an out of time claim, particularly where that will involve consideration of the fact-sensitive question of whether the claimant resigned or was dismissed. There is no adequate explanation of the delay in submitting the claim in the period October 2021 to January 2022, and on that basis I find that it is not just and equitable to extend time.

Post-script

12. This hearing had been listed to address matters only in relation to unfair dismissal and age discrimination. The claim also includes claims for notice pay and holiday pay. Those were not listed to be dealt with today, so must continue. However, it appears to me that the analysis on time limits for those claims would be the same as for the unfair dismissal claim. A separate “unless” order has been issued in respect of these claims.

**Employment Judge Anstis
14 January 2022**

Sent to the parties on: 12/2/2022.

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For the Tribunal Office

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