



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr C van den Anker

**Respondent:** The University of the West of England

**Heard at:** Cardiff (in public; hybrid)      **On:** 11 February 2022

**Before:** Employment Judge Brace

## Appearances

For the Claimant: In person (supported by her support worker)

For the Respondent: Mr D Mitchell (Counsel)

## JUDGMENT

1. The claims of unfair dismissal and breach of contract were presented out of time.
2. Time is extended on the basis that the Tribunal was satisfied that it was not reasonably practicable for the unfair dismissal complaint to be presented in time and it was presented within such further period as the tribunal considers reasonable.

## REASONS

1. The commencement of the hearing was delayed:
  - a. for the Claimant's support worker to join the hearing by video;
  - b. for the Tribunal clerk to obtain a copy of the 39 page electronic bundle submitted by the Claimant (the "Bundle") that could not be located by Tribunal administration prior to the start of the hearing; and
  - c. for a copy of the ET1 and Particulars of Claim to be photocopied for the Claimant, as she had not retained or brought a copy to the preliminary hearing.
2. In order to assist the Tribunal and the Claimant in terms of a chronology of events Mr Mitchell, counsel for the Respondent, also suggested that the letter to the Claimant of the decision of the Board of Governors Appeal Panel dated 11

November 2020, be added to the Bundle. This was agreed to by the Claimant, a copy was emailed to the Tribunal and a hard copy was provided to the Claimant by the Tribunal. References to page numbers in the Bundle are shown by [ ].

3. I also had before me an unsigned witness statement from the Claimant that she had emailed to the Tribunal on 4 February 2020, containing the evidence that she wished to rely on in relation to the time issues and a copy of the Respondent's skeleton argument.
4. The preliminary hearing had been listed to consider a number of issues and, at the outset of the hearing, it was confirmed to the parties that the issue of whether the Claimant had presented her unfair dismissal and breach of contract claims on time (and if not, whether time should be extended,) would be considered initially and these written reasons are in relation to that issue.
5. The Claimant gave live evidence and as her witness statement was very limited I considered it in accordance with the overriding objective to ask additional questions of the Claimant before the Respondent's representative had the opportunity to cross-examine the Claimant. The Claimant was also given the opportunity to clarify any responses she had given to the questions from the Respondent's representative.
6. The Claimant had stated in Box 5.1 of her ET1 claim form, that her employment had ended on 14 July 2020. This was also the date that the Respondent had asserted, in its ET3 response form, that the Claimant's employment had ended.
7. Early conciliation had been entered into by the Claimant on 12 October 2020 which had ended on 6 November 2020 [21].
8. On that basis, the last date for presenting a claim to the Employment Tribunal for unfair dismissal and/or breach of contract was therefore 6 December 2020 and the claims were outside the primary limitation period.
9. At this preliminary hearing, the Claimant agreed that her claims for unfair dismissal and breach of contract had been presented outside of the primary limitation period. This had also been recognised by the Claimant in her ET1 claim form at Box 15, in which she stated that the claim was '*slightly later than the deadline stated*'. Within that section. She also referred to the outcome of her appeal against dismissal not being sent until 11 November 2020 and that the reason for her not submitting her complaint until 8 December 2020 was her Parkinson's, IT issues and her anxiety. She wrote of problems with deadlines, difficulty prioritising and sequencing.
10. However after agreeing that her claim had been submitted out of time she then suggested that her employment had not ended on 14 July 2020, but on 14 October 2020, due to the reference to notice in the letter of dismissal dated 14 July 2020 letter [10].
11. It was agreed by the Claimant that she had been emailed and had received that 14 July 2020 letter on that date. This letter informed her that her employment was terminated on notice but further confirmed that her employment terminated

on 14 July 2020 and that she was not entitled to notice pay by the operation of sections 86-91 Employment Rights Act 1996, in particular s87(4) Employment Rights Act 1996.

12. There was no application to amend the claim from by the Claimant and the date of termination was taken to be 14 July 2020 for the purposes of determining whether the claims were brought in time.
13. The Claimant had filed her claim in the Bristol Employment Tribunal, by hand-delivering her ET1 Claim form at the Bristol Civil Justice Centre. The Claimant asserted that she had done this on 8 December 2020 and it was noted that the Claimant had referred to this date within Box 15 of her ET claim form.
14. On the Tribunal file however, a copy of the Claimant's handwritten ET1 claim form had been date stamped 16 December 2020 as being the date that the ET1 claim form had been received by the Employment Tribunals.
15. Whilst the Claimant has provided phone records to evidence, she says, when she was contacting ACAS and the Tribunal on 8 December 2020, the date stamp from the Tribunal clearly shows the ET1 being stamped by the Tribunal on 16 December 2020.
16. That is the date that I take as the date that it was filed by the Claimant and not 8 December 2020. The Claimant was therefore 10 days out of time for filing her complaints of unfair dismissal and breach of contract.
17. After receiving the letter from the Respondent of 14 July 2020, the Claimant appealed the termination of her employment by way of letter dated 3 August 2020.
18. She had been assisted at the dismissal hearing and in the preparation of her letter appeal by Morin Adesano – her TU representative. The Claimant could not recall if Morin Adesano had accompanied her at the appeal hearing on 3 September 2020 but I found that they had, their attendance being referred to in the letter dated 11 November 2020 confirming the outcome of the appeal.
19. The Claimant also confirmed in live evidence that she was aware of the time limits for bringing claims, from as early as 2018/2019 having been advised of this by Avon and Bristol Legal Centre and from her own perusal of guidance issued, including guidance from ACAS and was aware that time limits 'should not be taken lightly' as she termed it, having been advised of this by her union representative. The Claimant was therefore aware of the time limits for bringing claims within time and the potential consequences for failing to do so.
20. I accepted the Claimant's evidence, given in response to questions from me, that she was advised to aim for a form of settlement with the Respondent and not to make a claim to an Employment Tribunal before and until she had exhausted the internal appeal.
21. That appeal hearing took place on 3 September 2020 and the following day, the appeal panel requested further information from the Claimant in order to reach

its decision. Additional time was given by the appeal panel to the Claimant to provide that additional information. The normal procedure would be for the appeal panel to request information to be provided within 5 working days but the appeal panel had considered that it was a reasonable adjustment to extend that time to 10 working days i.e. to 2 October 2020. That time period was extended several times by the appeal panel until 30 October in order for the Claimant as a reasonable adjustment for the Claimant's disability of early onset Parkinson's.

22. Prior to that date, on 12 October 2020, the Claimant had contacted ACAS as part of the early conciliation process and, on 6 November 2020, ACAS issued the EC certificate.
23. The Claimant's internal appeal process was exhausted when the appeal panel under stage 4 of the UWE conduct procedure reported their decision to the Claimant by way of letter dated 11 November 2020.
24. At that point the Claimant was a litigant in person and had no assistance from her union representatives. The Claimant had, prior to hand-delivering a hard copy of the ET1 claim form, attempted to submit the claim form online but had failed to do so due to technical difficulties. She lost versions of her drafts and the claim forms were 'skipping' when she tried to complete them. Whilst she tells me that her device, a tablet, was not powerful enough to deal with applications such as PDF, in the days leading up to the 6 December 2020, the Claimant's problems in losing versions of her claim form drafts caused her to become stressed and anxious.
25. She also had physical difficulties with the process, due to her having to type with one finger. She has explained to me further about the symptoms of and the impact of her Parkinson's indicating that the physical symptoms were not separate from the cognitive issues arising. Her Parkinson's condition make her energy go and sometimes made her clumsy and experience difficulty with motor skills. She spoke of her 'life being delayed' and having anxiety and difficulty prioritising deadlines, which made it hard for her to stick with them. She tells me that her executive disorder, which she says arises and interacts with her Parkinson's, impacts on her ability to manage processes resulting her starting again with a process which was a 'grandiose' ideal which she then cannot manage.
26. She gave evidence which I accepted, albeit not contained in her witness statement, of the emotional impact of losing her appeal which had been made it particularly hard for her to process in the context of her disability,

#### The Law

27. s111(2)(b) ERA 1996 applies to complaints of unfair dismissal and Article 7 Employment Tribunals (Extension of Jurisdiction (England and Wales) Order 1994 applies to the breach of contract claim which provide that a tribunal may only extend time for presenting a claim where it is satisfied that:

- a. it was not reasonably practicable for complaint to be presented in time;  
and
  - b. The claim was nevertheless presented 'within such further period as the tribunal considers reasonable
28. When a Claimant tries to excuse late presentation of his or her ET1 claim form on the ground that it was not reasonably practicable to present the claim within the time limit, three general rules apply:
- a. S.111(2)(b) ERA (and its equivalents in other applicable legislation) should be given a 'liberal construction in favour of the employee' — **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53, CA
  - b. what is reasonably practicable is a question of fact and thus a matter for the tribunal to decide; and
  - c. The onus of proving that presentation in time was not reasonably practicable rests on the claimant '*That imposes a duty upon him to show precisely why it was that he did not present his complaint*' — **Porter v Bandridge Ltd** 1978 ICR 943, CA

### Conclusions

29. Whilst I concluded that it was possible for the Claimant to have filed her complaint by 6 December 2020, I was satisfied that the Claimant had demonstrated that it was not reasonably practicable to present her complaint in that time.
30. Whilst the Claimant knew the time limits for bringing such complaints, I took into account the advice that the Claimant had received from her union to focus on her appeal, an appeal that did not result in an outcome for the Claimant until 11 November 2020. That left the Claimant with just over three weeks to complete and file her ET1 claim form, which I considered to be a relevant consideration in the context of a lengthy appeal process.
31. If the Claimant had not been a disabled person, with the adverse impact and difficulties that the Claimant has spoken of and which I accepted, in terms of both cognitive and motor skills causing her practical difficulties in filing the claim form online, I may not have been persuaded by her explanation of the technical difficulties that she has faced.
32. However, the Claimant is a disabled person by reason of her Parkinson's and in this case, in respect of the specific issue of filing the ET1 claim form on time, I was persuaded that the Claimant had tried, but failed, to file her claim in time and that a mix of technical difficulties and her anxiety and symptoms of her Parkinson's impacted on her ability in this instance to comply with the time limits,
33. Whilst I accept that the Claimant presented no medical evidence to support her live evidence, I also took into account that the Respondent had conceded

disability and, as a reasonable adjustment, had extended its own time periods to enable the Claimant to comply with its own internal processes.

34. I therefore concluded that the Claimant had demonstrated that it was not reasonably practicable for her to file her claim in time on 6 December 2020.
35. I then turned to the question of whether the Claimant had filed her claim in a reasonable time thereafter. The Claimant maintained in her evidence, despite my finding that the claim form was filed on 16 December 2020, that she visited Bristol Civil Justice Centre on 8 December 2020, two days later, filing her claim form by hand. She explained that due to the COVID-10 arrangements she had to leave it in a postal box.
36. Taking into account again the physical and cognitive difficulties that I accept that the Claimant experiences and lives with as a result of her disability, exacerbated at periods of stress, I further concluded that whilst 10 days is not an insignificant period of time, in the circumstances of this case I was satisfied that the Claimant submitted her claim within a reasonable period thereafter on 16 December 2020 and extended time.

Employment Judge Brace  
Dated: 14 February 2022

Sent to the parties on 15 February 2022

For the Tribunal Office Mr N Roche