



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mrs Anna Stelmach

v

Armscare Management Limited

**Heard at:** Norwich

**On:** 16 March 2022

**Before:** Employment Judge Bloom

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Mr K Bhatt, Solicitor

**Interpreter:** Ms Monika Dubiel, Polish speaking

## PRELIMINARY HEARING JUDGMENT

1. The Claimant's claim is one of constructive dismissal. No other claims were presented by the Claimant.
2. The Claimant's claim of constructive dismissal was presented to the Employment Tribunal outside the statutory time period. I am not satisfied that it was not reasonably practicable for the claim to be presented before the end of the statutory period.
3. The Claimant's claim of constructive dismissal is dismissed.

## REASONS

1. The Claimant was employed by the Respondent as a Healthcare Assistant. Her employment began, according to her case, in January 2016. The Respondents state that it was one month later in February 2016. The commencement date is not material to these proceedings. However, what is material is the termination date. The Respondent's case is that the Claimant resigned with immediate effect on 8 June 2020. The Claimant accepts that she submitted a resignation on that day but believes the effective date of termination of her employment was in fact 17 June 2020 when she received a P45. ACAS were notified as part of the Early Conciliation process on 13 September 2020. If the Respondents are right

that the effective date of termination was 8 June 2020, the claim of constructive dismissal is out of time. The provisions of Section 111 and 207B Employment Rights Act 1996, determine that any claim of constructive dismissal must first go through an ACAS Early Conciliation process whereby notification of the claim must be undertaken within three months of the effective date of termination. If the claim has been presented out of time, I must go on to determine whether or not it was not reasonably practicable for the claim to be presented within the statutory time period, pursuant to the provisions of Section 111(2) Employment Rights Act 1996.

2. It was noted that at an earlier aborted Preliminary Hearing on 10 January 2022, Employment Judge Postle had Ordered the Claimant provide further information of her claims, on or before 9 March 2022. The Claimant accepted before me that she had received that Order and had failed to comply with it. However, it soon became apparent that the Claimant's claims were those that constituted her Grievances which were raised in a series of emails to the Respondent in March 2020. They are fully summarised in the Respondent's letter dated 16 March 2020 which summarises the Grievances. I do not propose reciting them further in this Judgment. The letter of 16 March 2020 is in the Preliminary Bundle before me (pages 63 – 67). The Claimant accepted that her claim was one only of constructive dismissal. She confirmed that she brought no other claims of any kind.
3. I heard evidence from the Claimant. She was assisted throughout the proceedings by an Interpreter in the Polish language.
4. The facts as I find them are as follows.

### **Findings of Fact**

5. The Claimant resigned with immediate effect on 8 June 2020. Her letter of resignation (pages 73 and 74) makes that clear. She undertook no further work for the Respondent after that date. The resignation letter did not give notice of resignation and I determine that the resignation was with immediate effect. The Claimant's P45 confirmed the termination date of 8 June 2020. On that basis, notification of any potential claims should have been made to ACAS on or before 7 September 2020. ACAS were notified of the potential claim on 13 September 2020. I determine therefore that the claim subsequently presented to the Employment Tribunal on 6 October 2020 was presented outside the statutory time period.
6. The Claimant gave further evidence concerning the circumstances as to why there was a delay in notifying ACAS of the potential claim. She stated that she had contracted Covid in April 2020 and although she recovered, she felt some symptoms of "*long Covid*" thereafter. However, the Claimant produced no medical evidence to that effect. I am not satisfied that the Claimant's medical condition was such that it was not reasonably

practicable for her to have notified ACAS within the three month statutory time period. On 25 June 2020 (only two or three weeks after her employment with the Respondent had terminated) the Claimant obtained a full time job working 48 hours per week. She was doing cleaning. These were the same hours she undertook when working for the Respondent. She went to Poland to see family in August 2020. She continued to undertake household chores and in fact admitted cooking for her husband and 27 year old son throughout that period. In my judgement, she has produced no satisfactory evidence upon which I could determine that it was not feasible for her to have notified ACAS within the three month period following the effective date of termination.

7. As a consequence, the Claimant's claim of constructive dismissal has been presented to the Employment Tribunal out of time. The Claimant's claim is dismissed.

### **Application for Costs**

8. Having given Judgment the Respondents made an Application for Costs. That Application was made pursuant to Rule 76 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The Respondent submitted that in continuing to bring the claim knowing that the claim had been presented out of time, was unreasonable. The Respondent's Solicitors had sent a letter to the Claimant warning her that in the event of the claim being dismissed, a Costs Application would be made. That letter is dated 21 September 2021 and was repeated in a similar email dated 10 January 2022. The Order for costs sought is in the sum of £2,160 plus VAT. However, I am satisfied that the Claimant has a very limited ability to understand English. In addition, she was unable to take legal advice. She had tried to do so but the Solicitors that she approached wanted payment for the advice and she was unable to afford it. This is not a case where the Claimant has continued with the claim having received advice that it was doomed to fail. I have also taken into account, pursuant to Rule 84 of the 2013 Regulations, the Claimant's ability to pay those costs or even a contribution towards them. The Claimant has limited income. She continues working as a cleaner. Her husband is a factory worker. They rent their home. They have all the usual expenses and in addition to maintaining their home, they have outstanding loans in the sum of £7,000. I am not satisfied that the Claimant has the ability to pay any award for costs and consequently the Respondent's Application is refused.

18 March 2022

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Employment Judge Bloom  
Sent to the parties on: 28 March 2022

For the Tribunal Office