



EMPLOYMENT TRIBUNALS

Claimant

T Greenhalgh

v

Respondent

Oxford University Hospitals NHS
Foundation Trust

PRELIMINARY HEARING

Heard at: Reading Employment Tribunal via CVP

On: 31 March 2022

Before: Employment Judge Forde

Appearances:

For the Claimant: In person
For the Respondents: Ms Harris, Solicitor

JUDGMENT

1. The claimant's claim of unfair dismissal was presented outside the time limit in section 111 of the Employment Rights Act 1996.
2. There being no grounds for extending time, the Tribunal does not have jurisdiction to hear the claimant's claim and it is dismissed.

REASONS

Procedural history

1. By way of a claim form dated 7 September 2020 the claimant pursues a claim of unfair dismissal against her current employer. The respondent resists the claim.
2. Following a review of the Tribunal file, I could see that the Tribunal wrote to the claimant on 19 December in the following terms:

“EJ Gumbiti-Zimuto requests further information:

“The claimant states that her case concerns unfair dismissal from her role 15 months ago. The claimant is ordered to provide the following further information by 2 January 2021

1. What was the role from [sic] the claimant was dismissed?
 2. When was the claimant dismissed?
 3. Why was the dismissal unfair? (setting out briefly the matters on which the claimant will rely.)”
3. The file showed that there was no recorded response from the claimant in respect of the Tribunal’s request. It followed that the Tribunal wrote to the claimant on 2 March 2021 indicating that the tribunal had of its own initiative determined that a hearing should be listed to decide whether the claimant’s claim should be struck out because it appeared that the claimant had not complied with the request for further information dated 19 December 2020 and that it appeared that the claim had no reasonable prospect of success. The claimant was told that if she wished to object to the Tribunal’s proposal, she should give her reasons in writing or request a hearing and that she do this by no later than 16 March 2021.
 4. The tribunal did not hear from the claimant by 16 March 2021 and so the matter was listed for a preliminary hearing to consider the issue of striking out the claimant’s claim.
 5. Aside from the Tribunal’s file I had a bundle prepared by the respondent’s representative which enclosed the documents common to both parties in terms of Tribunal documents including the ET1, ET3 and the documents which I have referred to above. There were no witness statements to be considered.

Discussion

6. At the outset of the hearing I sought to establish from the claimant whether or not she had seen the Tribunal’s letters dated 19 December 2020 and 2 March 2021. It was the claimant’s position that she had seen the first letter but had not seen the second letter which contained the strike out warning. Further, it was her position that she had responded to the letter dated 19 December 2021, explaining that a response had been sent to the Tribunal by email during the course of the Christmas period, and she indicated that it was likely to have arrived before the beginning of the New Year in 2021. Following that, the claimant stated that she had not received any further correspondence from the Tribunal and was concerned as to what was happening with her claim. Her concern prompted her to write to the Tribunal on 2 April 2021 to seek an update as to the progression of her claim. That email identifies that she had provided the information required as requested by the Tribunal on 19 December 2020. As I have already said, there was no record on the tribunal file of the claimant’s response.
7. When asked whether or not she had provided copies of the correspondence sent to the Tribunal to the respondent, the claimant was at first adamant that she had done so. However, the respondent’s representative, Ms Harris, explained that save for initial correspondence at the beginning of the claim and some contact in advance of today’s hearing there had been no correspondence received from the claimant and therefore Ms Harris’s view that the correspondence had not been sent to her. Upon seeking further clarification from the claimant, she expressed

the view that she had not in fact copied the respondent's representative into correspondence sent to the Tribunal and apologised for not doing so.

8. The Tribunal turned its attention to the questions asked of the claimant in the Tribunal's letter dated 19 December 2020. I asked the claimant whether or not she was able to say when in fact she had been dismissed. The reason why this question was important was because the claimant had omitted to state the date of her dismissal in the ET1 and it was one of the two questions asked of her by the tribunal in its letter dated 19 December 2020 and which remained unanswered. The claimant stated that she had been dismissed in either June or July 2019.
9. I asked the claimant whether or not she was sure that dismissal took place across this period. The claimant confirmed that it had. The claimant explained that she had been removed from her role and provided the tribunal with a factual narrative consistent with that set out in her ET1. Having heard what the claimant had to say I was satisfied that the dismissal for the purposes of the claim had occurred in either June or July in 2019 some 14-15 months before the claim form was presented to the tribunal.
10. I asked the claimant whether she had been aware of the 3 month time limit that applies in respect of presenting an unfair dismissal claim to the tribunal and claimant explained that was not. Further, the claimant was unable to provide an explanation as to why she had waited for as long as she had before presenting her claim other than she had been unaware of the time limit for presenting a claim of unfair dismissal.
11. Accordingly, the Tribunal turned its mind to the issue of jurisdiction and whether or not the claimant had presented her claim in time. After seeking further clarification and confirmation from the claimant as to the date of her dismissal, I formed the view that the Tribunal was not in a position to hear the claimant's claim because it lacked the jurisdiction to do so.
12. I considered whether time should be extended for the claimant. The claimant's explanation amounted to her ignorance of the time limits that apply to a claim of unfair dismissal. Cases such as **Trevelyan's (Birmingham) Ltd v Norton 1991 ICR 488, EAT** make clear that ignorance of the time limit will rarely be acceptable as a reason for delay. The principle is such that it is taken as read that a claimant is generally aware of his or her rights then they will be taken to be aware of the time limit. The obligation falls on the claimant to either seek advice or information about that right. A failure to do so will usually lead the tribunal to reject the claim. I found that to be the case here and that there was no lawful reason under which I could extend time for the presentation of the claim in this case.
13. As the law makes clear, claimants who had the right to claim unfair dismissal will lose that right if they fail to present their claim in time to a Tribunal, i.e. before the end of the three month period beginning with the effective date of termination pursuant to s.111(2)(a) of the Employment Rights Act 1996. Even allowing for the period of early conciliation which commenced on 29 June 2020 it was clear that the claimant's claim was substantially out of time, by almost 15 months, and

therefore it was not a claim that could be entertained by the Tribunal. Accordingly, I ordered that the claimant's claim be dismissed.

Employment Judge Forde

Date: 5 May 2022

Sent to the parties on:

6 May 2022

For the Tribunal: