



EMPLOYMENT TRIBUNALS

Claimant: Ms R Parker

Respondent: Tin Arts Ltd

Heard at: via Common Video Platform

On: 23rd March 2022

Before: Employment Judge Pitt

Representation

Claimant: In Person

Respondent: Mr G Price, Counsel

JUDGMENT

1. It was reasonably practicable for the claimant to present her unfair dismissal claim before the expiry of the time limit.
2. It is not just and equitable to extend the time limit for the disability discrimination claim.
3. Accordingly, all claims are dismissed.

REASONS

Background

1. This is a hearing to determine whether the claimant's claims for unfair dismissal, disability discrimination and unauthorised deductions from wages can proceed as they were presented outside the relevant time limits.
2. All of the claims as they currently stand are out of time and the claimant will have to rely upon the escape clauses in the relevant acts in order to proceed with them. There are different criteria for each of the claims.

3. The claimant represented herself, the respondent was represented by Mr Price of Counsel. I had before me an agreed bundle which included the pleadings, medical evidence and a letter from a firm of solicitors. I read a statement from the claimant, and she gave evidence on oath.

The Facts

4. The respondent is a not for profit social enterprise which delivers dance and training programmes for a range of people including those with learning disabilities and autism. The claimant who is 24 years of age has been involved with the respondent organisation since 2016. The claimant maintains she was an employee from January 2016, whilst the respondent's case is she was a participant at the centre and a volunteer but that is not an issue which I have to determine today.
5. The claimant participated in dance teaching and also in developing projects for the respondent. She was able to rely upon her participation at the centre as a 'placement' for the purposes of obtaining a degree. During the time she was involved with the respondent the claimant makes a number of complaints with regard to the behaviour of the other employees and managers from as early as 2015 when promises were made for paid work and in 2018 feeling humiliated and degraded because she was not properly paid for work carried out in Birmingham when other staff were. In August 2020 the claimant was asked to carry out some work for the respondent; she agreed if it was on a freelance basis. She requested a contract in an accessible format for her to read due to her autism, but never received it. It was agreed she could undertake the work without the contract being signed.
6. The claimant was invited to take part in the respondent's programme called The Talent Hub. In her statement, the claimant states she was treated in a discriminatory manner by the respondent when involved with this project.
7. The claimant had support from an organisation called MAIN, which assisted her with regard to her autism. In 2018, acting on her behalf it sought reasonable adjustments for the claimant.
8. In 2019 the claimant's mother assisted her in relation to her prospects within the respondent organisation and attended a meeting with her.
9. On 25th February 2021, the claimant claims she was ignored by employees of the respondent during a zoom meeting. She relies on this as a discriminatory act.
10. In March 2021 the claimant contacted HMRC and was informed that the respondent were submitting information in relation to monies paid to her every month. Following this, the respondent issued her with both a P60 and a P45.

11. For a period of time between November 2020 and April 2021 the claimant was living in cramped conditions with her mother.
12. The claimant alleges that the last act of discrimination was on 9th July 2021. This was an email from the respondent asking the claimant to be involved in a project they had received funding for. If she was involved, she would need to share her journey publicly. It is not clear the basis upon which this would be a discriminatory act.
13. Having been undergoing tests she was formally diagnosed with functional neurological symptoms a neurological disorder in or around May 2021. Her evidence was that recalling the events during her time with the respondent caused her considerable difficulties. In a report from a consultant neurologist, Dr Maxwell, dated May 2021 he states the claimant's symptoms were recurring and it was advised that she undertake talking therapies.
14. The claimant had undertaken some online therapy in late 2020 and was supposed to undertake further work in April 2021, this did not happen. She has since received treatment including CBT which I am happy to say gave her the tools to assist her in dealing with her recall of those events of which she now complains.
15. She was discharged from the care of the CBT team in August 2021. In a report sent to the claimant's GP dated 27 August 2021 it is confirmed that the claimant had undertaken 10 sessions of high-intensity CBT to help her manage her symptoms. The letter indicates that she was discharged because she had completed the sessions and made significant progress and achieved her goals. Although not a cure she was given tools to utilise in order to allow her to overcome her anxieties. It was during the course of these CBT sessions that the claimant spoke of her dealings with the respondent and the therapist suggested that it may be helpful to her situation if she was able to confront the matter.
16. In July 2021 the claimant made a search via an Internet search engine for lawyers who might be able to help with her situation. She waived her right to privilege and provided the tribunal with a copy of the letter from a firm of solicitors dated 29 July 2021. The letter does not set out the basis upon which the advice is given but specifically addresses the issue of a personal injury claim if the claimant was able to establish a duty of care between her and the respondent.
17. The claimant commenced a new position while still with the respondents in January 2020 and has worked for that organisation for 11 hours per week since that time. She has had time off recently to cope with her mental health

conditions. She is able to work flexibly which assists her in coping with any issues of anxiety as a result of her work.

18. In this employment, the claimant was in contact with a lady named Sanchita Hosali. Ms Hosali advised her to contact the Northeast Law Centre. The claimant did this via an email on 13 December 2021. She received a reply from the law centre dated 18 December which set out her possible rights if she were an employee or a worker. It was pointed out however that the biggest issue would be the time limit. She was advised that she should fill out an ET 1 if she wanted to proceed with her claim. She submitted her claim on 21 December 2021.
19. The claimant acknowledges in her statement she was late submitting her claim and points to her impairments as an explanation. She has been diagnosed as having autistic spectrum disorder and functional neurological symptoms. The symptoms recur and are exacerbated by stress. She struggles to make decisions and her concentration is impeded as a result of depression and anxiety.
20. The time for presenting a claim for unfair dismissal is three months from the date of dismissal. The claimant's case is she was dismissed on 26th March 2021, therefore on the face of it, the unfair dismissal claim is out of time by six months. The claimant does not benefit from the conciliation extensions.
21. In relation to the unauthorised deductions from wages the time limit is the same. The last deduction is 26th March 2021. In addition, the claimant can only claim for two years from that date of presentation of the claim so that is December 2019.
22. In relation to the disability claims again the time limit is three months so anything prior to 19th September 2021 is out of time and the claimant will have to rely on the escape clause in section 111 Equality Act 2010. The claimant alleges the last act of discrimination was July 2021 which would be two or three months depending on the exact date out of time. The act prior to that is February 2021 which would make that claim 10 months out of time. In relation to other acts of discrimination, the claimant in her statement and in her evidence said that she had decided to leave the respondent in February 2019. This was because of their behaviour up until that date. Following that there is a complaint in June 2019 in relation to the promise of a job if she stayed with them. And then there's nothing else until January 2020. One of the issues in determining an extension of time for the disability claim will be the question of the merits of the claim.

THE ISSUES

Disability Discrimination

23. Given the date, the claim form was presented and the dates of early conciliation any complaint about something that happened before 19th September 2021 may not have been brought in time
- i. Were the discrimination claims made within the time limit in section 123 EQA? The Tribunal will decide
 - ii. Was the claim made to the Tribunal within three months plus an early conciliation extension to the act to which the complaint relates
 - iii. If not was there conduct extending over a period
 - iv. If so was the claim made to the Tribunal within 3 months plus an early conciliation extension of the end of that period
 - v. If not were the claims made within a further period that the Tribunal thinks just and equitable? The Tribunal will decide
 - vi. Why were the complaints not made to the Tribunal in time
 - vii. In any event, is it just and equitable in all the circumstances to extend the time?

Unfair Dismissal and Unauthorised Deductions Claims

24. Were the Unfair Dismissal and unlawful deductions from wages complaints made within the time limits ins section 111 and section 23 Employment Rights Act 1996. The Tribunal will decide:-
- i. Was the claim made within three months of the EDT or date of payment of the wages from which the deduction was made unlawful deductions?
 - ii. If not was there a series of deductions and was the claim made to the Tribunal within three months?
 - iii. If not was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - iv. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Submissions

25. The claimant relies on her poor health, confusion concerning her status at the respondents, the deterioration in her mental health, confusing legal advice and her inability to find information in an accessible format in relation to her potential claims via the internet.
26. Mr Price on behalf of the respondent submits that there was no feasible reason why the Unlawful Deductions claim, and Unfair Dismissal claim were not submitted within the three month time limit. If the date of dismissal and the last date of the last deduction is 26th March These claims should have been presented by 26th June 2021. He reminded me that ignorance of the law although a possible factor is not itself determinative in a time limit case.

26.1 In relation to the claimant's health, he points to the fact that by May 2021 during the CBT sessions she was progressing and that confronting the underlying issue with the respondent may help her recovery.

26.2 In relation to the discrimination claim, he submits that considering the merits of the claim is a factor to be taken into account. He asks me to conclude that in July 2021 there was no discriminatory act and the alleged discrimination in February 2021 was being deliberately ignored by employees at the respondent.

26.3 I must consider the issue of prejudice to the parties and delay as a factor especially when the complaints date back many years and are in the main based on oral evidence only. It will be difficult for witnesses to recollect the events clearly, if at all.

The Law

27. The statutory provisions in relation to time limits are contained in section 111 Employment Rights Act 1996 for unfair dismissal and Section 23 of the same act for Unlawful Deductions from wages. The test is similar in both sections.

27.1 The time limit under section 111 is three months from the effective date of termination of employment. Where it was not reasonably practicable to present a claim within that period the 'or within such further period as the Tribunal considers reasonable.

27.2 The time limit under section 23 is three months from the date of the alleged deduction. If it was not reasonably practicable for the complaint to be presented within that period 'the Tribunal may consider the complaint if it is made within such further period, the Tribunal considers reasonable.

27.3 It is for the claimant to establish it was not reasonably practicable. There is no definition of reasonably practicable so the words are given their ordinary meaning but should be interpreted in a liberal way.

28. The time limits in relation to discrimination claims are contained within section 123 Equality act 2010. A claim must be presented within three months of the last act of discrimination complained of OR such other period as the employment tribunal considers reasonable.

28.1 In the case of Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR D5, CA it was pointed out that whilst the Tribunal may take into account the checklist listed in Section 33 Limitation Act 1980, it should not follow the list slavishly and use it as a guide. In particular that following a checklist may lead to a mechanistic approach in the exercise of judicial discretion.

Discussions and Conclusions

29. The time for presenting a claim for unfair dismissal is three months from the date of dismissal. The claimant's case is she was dismissed on 26th March 2021, therefore on the face of it, the unfair dismissal claim is out of time by six months. The claimant does not benefit from the conciliation extensions.
30. In relation to the unauthorised deductions from wages, the time limit is the same and this claim is also out of time. In addition, the claimant can only claim for two years from the date of presentation of the claim so that is December 2019.
31. In relation to the disability claims again the time limit is three months so anything prior to 21 September 2021 is out of time and the claimant will have to rely on the escape clause in section 111 Equality Act 2010. The claimant alleges the last act of discrimination is July 2021 which would be two or three months depending on the exact date out of time. The act prior to that is February 2021 which would make that claim 10 months out of time. In relation to other acts of discrimination, the claimant in her statement and in her evidence said that she had decided to leave the respondent in February 2019. This was because of their behaviour up until that date. Following that there is a complaint in June 2019 in relation to the promise of a job if she stayed with the respondent. There are no other complaints until January 2020. One of the issues in determining an extension of time for the disability claim will be the question of the merits of the claim.
32. As there are different tests to be applied to the claims under the Employment Rights Act 1996 and the Equality Act 2010. I will deal with them in turn.

The Unfair Dismissal and Unauthorised Deduction from Wages

33. In order for the claimant to proceed with these claims, she must, first of all, satisfy the tribunal that it was not reasonably practicable for her to put forward her claim within the relevant time limit. For both claims, the ET1 should have been submitted by 26th June 2021.

31.1 I am satisfied from the evidence I have heard that the claimant has a disability of autism, this is agreed by the respondent. In addition, the claimant was also suffering from recurring symptoms in her neurological function. Both of these, especially the latter will have hampered her ability to process and deal with her complaints concerning the respondent.

31.2 In considering the issue of reasonable feasibility I have considered the disability and the neurological functioning symptoms. The autism makes it difficult for the claimant to process information and she needs

to take time to do that. The neurological issues made it difficult for her to recall the events in relation to the respondent. I note however that whilst undertaking the CBT the claimant was advised that confronting the issues with the respondent may help with closure. Although it is not possible to date when this conversation occurred, the CBT appointments were between 28th May 2021 and 16th July 2021. However, I balance that against the claimant's ability to continue working.

31.3 I considered the state of the claimant's knowledge of her employment rights. I am satisfied that the claimant was aware that as a disabled person she had rights from as early as 2018, because of the intervention of Main when she requested reasonable adjustments from the respondent. Further the claimant wished to make a complaint about the behaviour of her colleagues in 2019. I concluded that it is reasonable to infer that the claimant was aware that she had rights as an employee.

31.4 The issue of knowledge arises in relation to her status as an employee or worker. It is not clear when the claimant asserts, that she was aware of her rights. I note in the GP letter date March 2022 there is a statement as follows.

'Rebecca would like it known that a few years ago she was entirely ignorant of the legal process and how to proceed to a tribunal' I have interpreted this to mean that the claimant was aware of her rights prior to the relationship with the respondent ending.

31.5 Taking the information of the claimant's knowledge of her rights as a disabled person, along with the issuing of a P45 and P60 and the claimant contacting HMRC for information I concluded that it was reasonable for the claimant to have been aware of her rights and her possible status as an employee or worker prior to 26th June 2021.

31.6 I note that during this period the claimant was working from home. She was able to work flexibly approximately 11 hours per work.

31.7 I concluded that the greatest obstacle for the claimant was autism and neurological functioning symptoms including being able to deal with the issues she raises. However, I concluded that it was reasonably feasible for her to submit her claim for the following reasons; she had ongoing medical support and support from her mother. She had previously had support from MAIN and there was no reason why she could not contact them again. She was able to continue working in her new employment. She was aware of her rights. She had access to the internet and was able to use it.

31.8 I concluded that it was reasonably feasible for the claimant to submit her claim within the relevant time limit

Further period as Tribunal considers reasonable

34. Even if I am wrong in that regard, I considered whether the claimant submitted her claim within such further period as was reasonable. The claim was not submitted just short of 6 months after the time limit expired.

32.1 The pivotal point is the contact with the solicitors in July 2021. The claimant was clearly well enough to discuss her situation with a lawyer who was then able to send her a detailed account and advise on her situation.

32.2 Two matters flow from this, the claimant was able to use a search engine to identify a suitable solicitor to assist her. She was able to discuss her complaints with the solicitor. Although it may be that the claimant was seeking advice on another area of law, such as personal injury. This contact shows her ability to carry out the search and engage in conversation with the respondent.

32.3 I have heard no specific reason following that why the claimant could not present her claim between the period July 2021 and December 2021. It was not until December when she contacted Sanchita Hosali at the British Human Rights organisation that there was any urgency in her pursuing this claim.

35. I take account of the fact that the ET1 was not presented for further 6 months after the initial time limit.

36. Having taken all those factors into account I concluded the claim was not presented within such further period as was reasonable after the primary time limit closed.

Disability time-limit

37. The test for this claim is 'if the claim was not submitted within three months from the act complained of was it submitted in such other period as the employment tribunal considers just and equitable.'

31.1 Not only must I look at why the claimant did not present the claim in time I am also entitled to look at the merits of the claim. In doing that I take the claim at its highest.

- 31.2 The last act complained of by the claimant's July 2021. If I accept this the claim should have been submitted by no later than October 2021 possibly November dependent upon the ACAS conciliation period.
- 31.3 The act complained of in July is that the respondents contacted her in order to engage her in some work. The claimant was unable to explain to me why she considered that to be an act of discrimination. Even taking the case at its height therefore I do not consider that that claim would pass the test of a reasonable prospect of success and would likely be struck out.
- 31.4 The last act prior to that was in February 2021. Mr Price on behalf of the respondent concedes that it is possible that ignoring a person at an online meeting may amount to a discriminatory act. I am not entirely convinced by that argument although for the purposes of this hearing I will accept that it is potentially an act of discrimination. There were acts in January 2020 and before those other acts date to prior March 2019, this is the date when the claimant was thinking about leaving the respondent and was persuaded to stay.
- 31.5 The difficulty here is twofold; first, it may be that the claimant would have to argue that the historic acts of gas lighting and harassment that she speaks of form a series of acts. If at any time a tribunal were to conclude that they did not and there was a break, then those acts would fall away. In any event, the primary time limit will have expired for all of those claims prior to September 2021.
- 31.6 In reality, I concluded that the last act of discrimination is likely to be in January 2021, when she last worked for the respondent or before that. That makes the claims substantially out of time.
- 31.7 In considering the just and equitable extension I have also taken account of the claimant's personal circumstances and all the matters referred to in relation to the question of reasonably practicable above.
- 31.8 I considered her disability of autism as a barrier and she tells me that one of the issues is her cognitive ability that is to say her ability to process information. In particular in a timely and swift manner. I can accept that that is the case there is evidence of that in the bundle.
- 31.9 However she was able to instruct a solicitor in July 2021, she had the knowledge and the ability to use the Internet to find a suitable lawyer to deal with her issues it may well be that she didn't explain the situation properly but as we don't have a full record and not able to say
- 31.10 I also acknowledge the neurological functional disorder, which the claimant tells me makes it difficult for her to discuss the

events to which the claim relates. She has been able to do so today although with some emotion I take that on board. However I repeat, she was able to instruct a solicitor in July 2021 and talk through these issues with them.

31.11 It seems to me that no later than July 2021 the claimant was recovering and able to confront the issues and events. This is borne out by the letter from the discharge letter from the talking therapies.

31.12 The difficulty I have is the period from July/ August 2021 until December 2021 when the claim was presented. I have concluded that she ought to have knowledge of this because she can use the Internet search feature on a computer, I am satisfied that she was well enough no later than July to instruct a solicitor, and I am unaware of another reason why it then took her until December to make contact with somebody who advised her to go to Northeast law centre.

31.13 I must also consider the prejudice to both parties. The clear prejudice to the claimant is that if I do not extend the time limit she loses her ability to proceed with the claim and therefore bring an action and resolution to her situation.

31.14 One of the matters Mr Price relies on is that many of the matters upon which the claimant relies are verbal or actions and are not supported by documents. In addition as these, some of these go back already some three or four years it will be difficult for the respondent's witnesses to have a proper recollection. This will cause prejudice to the respondent. Against that the claimant says she has in excess of 200 emails which sets out some of the discriminatory acts she complains of.

31.15 On the basis that the last act of discrimination was February 2021, and I am by no means convinced of that claim, the claim is 11 months out of time if the tribunal were to conclude that that act in 2021 was not an act of discrimination then the allegations go back much further in time.

32 Ultimately, I concluded taking all those factors into account it was not just and equitable to extend the time for the presentation of the disability claim.

The Issues

Unfair Dismissal and Unlawful Deductions

38. Were the unfair dismissal and unlawful deductions from wages complaints made within the time limits in section 111 and section 23 Employment Rights Act 1996. The Tribunal will decide: -

38.1 Was the claim made within three months of the EDT or date of payment of the wages from which the deduction was made unlawful deductions?

No

38.2 If not was there a series of deductions and was the claim made to the Tribunal within three months?

No

38.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

Yes

38.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

38.5 No

Disability Discrimination

38.6 Were the discrimination claims made within the time limit in section 123 EQA? The Tribunal will decide;-

38.7 Was the claim made to the Tribunal within three months plus an early conciliation extension to the act to which the complaint relates?

No the last act complained of was July 2021 but it probable that did not amount to a discriminatory act.

38.8 If not, was there conduct extending over a period?

The claimant alleges discrimination over a number of years, the last allegation of merit was February 2021.

38.9 If so was the claim made to the Tribunal within 3 months plus an early conciliation extension of the end of that period

No

38.10 If not were the claims made within a further period that the Tribunal thinks just and equitable? The Tribunal will decide

38.11 Why were the complaints not made to the Tribunal in time? As stated above there were a number of reasons but for the period between July – December 2021 no reason was forthcoming.

38.12 In any event, is it just and equitable in all the circumstances to extend the time?

No

39. All claims are dismissed

Employment Judge AE Pitt

17th May 2022

Date