



EMPLOYMENT TRIBUNALS

Claimant

Ms B. Ahluwalia

v

Respondent

Cobalt Ground Solutions Limited

Heard at: Reading (by CVP)

On: 14 June 2022

Before: Employment Judge S Matthews

Appearances

For the Claimant: Mr D Fox (Counsel).

For the Respondent: Ms A Esmail (Solicitor).

JUDGMENT

The claim for unfair dismissal was issued out of time. It was reasonably practicable for the claimant to issue the claim in time. The Tribunal has no jurisdiction to hear the claim and the claim is struck out.

REASONS

1. The case was listed for a preliminary hearing to consider the following issue: 'whether the complaint of unfair dismissal should be dismissed because the claimant is not entitled to bring it if the statutory time limit has expired.'
2. At the outset of the hearing there was an agreed bundle of documents of 87 pages. References in brackets are to page numbers in the bundle. The tribunal was provided with statements from the claimant and from Sukhjit Ahluwalia (SA).
3. The issues for the Tribunal to consider were discussed and agreed at the outset of the hearing. There is a reference to a claim for redundancy in the Tribunal correspondence. The reference was in response to the claim being initially rejected by the Tribunal for being out of time for unfair

dismissal (exhibit to SA statement). The claimant's representative confirmed that the claim was for unfair dismissal and not for redundancy.

4. It was agreed at the outset of the hearing that the effective date of termination was 23 October 2020 and not 31 August 2020 as stated in the claim form. The claimant's representative conceded that the claim for unfair dismissal was issued outside the statutory time limit. The claim should have been submitted on or by 5 April 2021 and it was submitted on 27 April 2021. The claimant's case is that it was not reasonably practicable for the claim to be brought within the time limit and it was issued within a reasonable further period.
5. At the beginning of giving her evidence the claimant became visibly distressed. She was describing panic attacks. A short adjournment was taken so that the claimant could consider whether she was able to continue to give evidence. On her return to the hearing she confirmed that she wished to continue. The primary consideration was that a fair hearing should take place and reasonable adjustments were made to the process to ensure that the claimant could participate fully in the hearing. It was explained to the claimant that if she wished to take a break she could ask for one at any stage. If she felt herself becoming distressed and wished to pause she could raise her hand. She was to ask if there was anything she did not understand. The respondent's representative was requested to carry out cross examination clearly and slowly, breaking down the questions.

Findings of Fact

6. The claimant was employed by the respondent as a Passenger Services Agent from 27 July 1987. Her effective date of termination of employment was 23 October 2020.
7. The claimant was invited to an individual consultation meeting regarding redundancy on 31 July 2020 (37-39). She was accompanied by a union representative. By letter of 3 August 2020 (40-41) she was informed that she had been selected for redundancy. The claimant appealed the decision, and her appeal was heard on 1 September 2020 (61-64). On 21 September 2020 the respondent wrote to her to confirm that her appeal had been rejected (70).
8. The claimant presented a claim for unfair dismissal on 27 April 2021. Day A for the purpose of s.207B(2)(a) Employment Rights Act (ERA) 1996 was 22 January 2021. Day B for the purpose of s.207B(2)(b) ERA 1996 was 5 March 2021. The date by which the claim was to be issued pursuant to the combined effect of the conciliation provisions and s.111 ERA 1996 was 5 April 2021.

9. The claimant's brother, Sukhjit Ahluwalia (SA), is a Solicitor. He first sent a letter to the respondent saying that he was instructed on behalf of the claimant on 6 August 2020 (42), shortly after she was informed that she would be made redundant. He asked for all correspondence concerning the claimant's case to be sent to his firm from 10 August 2020 (46). He refers to himself as her Solicitor in emails to the respondent over a period of time to 4 November 2020 (42,45,46,48, 51,57,74) and is named as her representative on the claim form which was issued on 27 April 2021. Some of the emails forward detailed letters from the claimant (53,65).
10. SA and the claimant denied that SA was acting as the claimant's Solicitor. SA stated that it was 'pro-bono ad hoc legal assistance' (SA statement, paragraph 6) and he was not giving her full advice or guidance (SA statement, paragraph 7). He discussed the claimant's employment situation with her on various occasions from the time she became aware of the redundancy to the issue of proceedings. Sometimes the claimant would contact him and sometimes he would contact her. When SA contacted the claimant he found she was not able to focus to give instructions. SA declined to give details of the retainer in evidence, saying it was private information. The claimant confirmed that she relied on him for ad hoc legal assistance and that she asked him to submit the claim on her behalf (claimant statement, paragraph 12). She cannot remember when she asked him to submit the claim but SA said he issued it a couple of days after she contacted him. Although I do not have details of the retainer I find that she had access over the relevant period of time to her brother who was a Solicitor. He held himself out as acting for her and gave her legal advice.
11. SA was informed by the ACAS conciliator that the time limit for redundancy claims is six months. SA appeared to be under the impression that the claim was for redundancy and not unfair dismissal (exhibit to SA statement). SA passed this information onto the claimant (SA statement, paragraph 9). This was likely to have been early in the ACAS conciliation period in January or February 2021. This gave the claimant the mistaken impression that she had six months from her effective date of termination to submit her claim. In evidence the claimant said she was late 'due to not realising dates at that moment or understanding the deadlines' (claimant statement, paragraph 10). SA emailed the tribunal after the issue of proceedings stating that he should have ticked the redundancy box on the claim form and the time limit was six months (exhibit to SA statement). I conclude that the claimant continued to be misled about the time limit and to believe that it was six months even after the claim was issued. I find that the main reason the claimant was late in submitting her claim was the mistaken belief that the time limit was six months.
12. In evidence the claimant said that the main reason that she did not instruct SA to submit the claim form until late in April 2021 was her mental health. She has been suffering from panic attacks since she was informed that she would be made redundant. She did not experience attacks every day

and she was able to apply for jobs and attend work; she said the attacks occurred when there were gaps in her working day. Her mind would start to race. Thinking about the case could bring on an attack and after an attack she felt very tired. She said it was only when she was in a good frame of mind that she would call her brother to talk about the case. I find that this was a factor in her failing to progress the claim but was not the main reason for the failure to bring the claim within the time limit. The main reason was the belief that the time limit was six months.

13. There is an email from Dr. Pabari dated 13 June 2022 exhibited to the claimant's statement which states that she has been diagnosed as suffering from anxiety, depression, and panic attacks. It does not refer to her condition at the time the claim should have been issued in March or early April 2021, or whether her condition would have impacted her ability to issue the claim. There is no indication that there was any change in her condition that enabled her to issue in late April 2021 but not in March or early April 2021. She stated that she was able to look for work every day and was successful in obtaining temporary work on more than one occasion, albeit temporary jobs (claimant's statement, paragraph 13). She was in work from January 2021 (81/82). I find that, on a balance of probabilities, she would have been able to issue proceedings at some stage before 5 April 2021.

The Law

14. The relevant legislation is set out in the Employment Rights Act 1996 as follows:

“111 Complaints to employment tribunal

- (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
- (2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—
 - (a) before the end of the period of three months beginning with the effective date of termination, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

15. Section 207B (4) of the Employment Rights Act 1996 extends the time limit in sub-section 2(a) to one month after Day B of the conciliation period.

16. The issue of whether it was not reasonably practicable for the claimant to present the complaint within three months (or the period extended by the conciliation provisions at s. 207B) is a question of fact for the tribunal. The onus is on the claimant to show why she did not present the claim in time and the tribunal will apply a liberal interpretation to the words 'reasonably practicable' in favour of the claimant.
17. The representatives for the claimant and respondent referred me to case law concerning the extent to which a Tribunal can find that it was not reasonably practicable for a claimant to issue within the time limit when the claimant has taken legal advice which has misled them. The principle was set out by Lord Denning as follows in Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA: 'If a man engages skilled advisers to act for him — and they mistake the time limit and present [the claim] too late — he is out. His remedy is against them.'
18. I was also referred to Wall's Meat Co Ltd v Khan 1979 ICR 52, CA; Marks & Spencer PLC v Williams-Ryan [2008] ICR 193 and Northamptonshire County Council v Entwistle 2010 IRLR 740, EAT. In the latter case Mr Justice Underhill accepted that there could be exceptions to the Dedman principle, such as where the adviser's failure to give the correct advice was itself reasonable. This could happen, for example, where the employee and his or her solicitor had both been misled by the employer on some factual matter, such as the date of dismissal.
19. The case of T-Mobile (UK) Ltd v Singleton EAT 0410/10 concerned advice which was given as part of a free consultation. It was held this did not detract from the Dedman principle.
20. Claimant's counsel also referred me to University Hospitals Bristol NHS Foundation Trust v Williams EAT 0291/12 where the tribunal judge held that it was not reasonably practicable for the claimant to bring her claim in time owing to serious mental health problems. The EAT did not interfere with the tribunal Judge's decision which was based on findings of fact which were open to him on the evidence.

Submissions

21. Claimant's Counsel submitted that the over-arching reason for the claimant's failure to issue in time were the panic attacks and the tiredness she suffered after an attack. He conceded that she did not suffer from attacks every day but thinking about the case could bring on a panic attack. This made it not reasonably practicable for her to issue within the time limit. Further reasons for delay were the lack of a formal Solicitor and client retainer with her brother and the misleading information provided by ACAS about the time limit.
22. The Solicitor for the Respondent submitted that the Dedman principle referred to in the case law above applies, even if the advice was given to the claimant by her brother on an ad hoc basis. SA held himself out as the

claimant's Solicitor in correspondence to the Respondent and she argued that this is not consistent with the informal advice that is alleged. There is no medical evidence to suggest the claimant was incapacitated to the extent that she was unable to give instructions or that stopped her proceeding with the claim. She was able to write detailed letters for her appeal and make her views and wishes known.

Conclusions

23. I will now set out my reasoning and conclusions. Under the combined effect of s.111 ERA 1996 and the conciliation provisions the limitation period expired on 5 April 2021. I will examine whether it was reasonably practicable for the claimant to bring a claim within the time limit by reference to the advice she received from her brother, the mistaken impression that a time limit of six months applied and the claimant's mental health.
24. Advice from the claimant's brother. I find that the extent to which the claimant was able to discuss the case with her brother over the relevant period of time and the fact that he held himself out as acting for the claimant in correspondence and on the claim form falls within the concept of engaging skilled advisers within the Dedman principle. The fact that the advice may have been free and ad hoc does not detract from the Dedman principle.
25. Incorrect advice about time limit. I find that the claimant was misled by SA into thinking that she had six months from the date of her redundancy to bring proceedings. SA had been told by the ACAS conciliator that the time limit for a redundancy claim was six months. This is not a redundancy claim but an unfair dismissal claim. The Dedman principle applies. I distinguish this situation from Northamptonshire County Council v Entwistle where both the Solicitor and the claimant were misled by the employer on a factual matter. SA was not misled on a factual matter but he was himself mistaken on a point of law in that he was under the mistaken impression that the claim was for redundancy and not unfair dismissal.
26. Mental health. In evidence the claimant said that the mistake about the time limit was not the main reason she was late in presenting her claim; the main reason was that she could only discuss the case and give instructions to progress it when she was in the right state of mind. I find that the main reason was the mistaken advice that the time limit was six months. However, even if that were not the case, I find that her state of mind and mental health did not mean that it was not reasonably practicable for her to bring a claim in time. I have taken into account that she could discuss the case when she was in the right state of mind and that some days were better than others. She was able to apply for and find alternative jobs. The medical evidence and her oral evidence indicate that she is still suffering from panic attacks and no explanation was put forward

as to why she was able to put in her claim in late April 2021 and not early April 2021. She has not established on a balance of probabilities that her mental health prevented her from issuing within the time limit.

27. I therefore find that the claim for unfair dismissal has been issued out of time and the tribunal has no jurisdiction to deal with it.

Employment Judge S Matthews

Date: 14 June 2022

Sent to the parties on: 30/6/2022

N Gotecha

For the Tribunal Office