



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104731/2020 & 4104733/2020

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Held in Glasgow on 24 June 2022

Employment Judge F Eccles

10 **Mrs E Thomson**

**First Claimant
In Person**

15 **Mr D Thomson**

**Second Claimant
In Person**

20 **CCR Catering**

**Respondent
Represented by:
Ms C Clark-
Robinson -
Business Owner**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that (a) the Tribunal has jurisdiction to consider the first claimant's claim for a redundancy payment & (b) the Tribunal does not have jurisdiction to consider (i) the first claimants' claims of unfair dismissal and notice pay and (ii) the second claimant's claim of unfair dismissal, notice pay and holiday pay.

REASONS

Background

35 1. Both claims were presented to the Tribunal on 3 September 2020. The claims were combined by Order dated 27 November 2020. The claims brought by the first claimant are for unfair dismissal, redundancy payment and notice pay.

The claims brought by the second claimant are for unfair dismissal, holiday pay and notice pay. The claims are defended. The preliminary issue of time bar was identified.

2. The claims were listed for a preliminary hearing to consider whether (i) the claims are time barred and (ii) the claimants have qualifying service to proceed with a claim of unfair dismissal. At the preliminary hearing the claimants represented themselves and gave evidence. The respondent was represent by Ms C Clark-Robinson, Business Owner. The claimants provided the Tribunal with Productions (C1-3). The Productions included HMRC records of the first claimant's taxable income from 20 February 2018 to 27 March 2020 (C3). The respondent was permitted to lodge a written statement (R1). The Tribunal informed the parties of its decision at the hearing. Reasons were given orally. The respondent requested written reasons.

Findings in fact

3. From the available evidence, the Tribunal found the following material facts to be admitted or proved; the Puttery is a restaurant on the premises of Tulliallan Golf Course, Alloa. The first claimant was employed as Front of House at the Puttery by Tulliallan Golf Club from on or about 20 February 2018 to on or about 10 April 2019 and by Barry Finlayson from on or about 11 April 2019 to on or about 2 January 2020. From 6 January 2020, the respondent took over operation of the Puttery. The claimant continued to work as Front of House for the respondent until 23 March 2020 when her employment was terminated by the respondent. The second claimant worked at the Puttery as a Waiter from on or about 7 May 2019. He was also employed by Barry Finlayson until on or about 2 January 2020 after which he was employed by the respondent until 23 March 2020 when his employment was terminated. The claimants' employment was terminated by the respondent at the time of lockdown due to the covid pandemic.
4. The claimants contacted ACAS in June 2020 after they noticed on social media that the Puttery had re-opened. They were concerned that they had not been contacted by the respondent about returning to work. ACAS advised the

claimants about time limits for starting early conciliation and presenting a claim. The claimants understood that they were close to the three-month time limit for starting early conciliation should they wish to present a claim. They decided that they did not wish to pursue early conciliation at that time. The first claimant felt anxious about not working and the prospect of Tribunal proceedings.

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5. Both claimants changed their mind about presenting a claim and started early conciliation through ACAS on 8 July 2020. They presented their claims to the Tribunal on 3 September 2020.

10 **Issues**

6. As referred to above, the issues to be determined by the Tribunal were identified as;
- (i) are the claims time barred? &
- (ii) do the claimants have qualifying service to proceed with a claim of unfair dismissal?
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Discussion & Deliberations

Time Bar

7. In terms of Section 111 (2) of the Employment Rights Act 1996 (ERA), an Employment Tribunal shall not, subject to any extension of time limits to facilitate early conciliation, consider a complaint of unfair dismissal 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.
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8. The effective date of termination of the claimants' employment with the respondent was 23 March 2020. Early conciliation started on 8 July 2020 and the claims were presented on 3 September 2020. Both dates are more than three months after the effective date of termination. The Tribunal therefore

had to consider whether it was not reasonably practicable for the claimants to have presented their claims before the three-month time limit expired on 22 June 2020. From the evidence before it, the Tribunal was not satisfied that it was not reasonably practicable for the claimants to start early conciliation or present their claims within the three-month time limit. They were informed about time limits when they contacted ACAS in June 2020. This was within the three-month period to start early conciliation or bring a claim of unfair dismissal in time. The claimants decided against starting either procedure at that time knowing that they were close to the expiry of the time limit of three months. The second claimant gave evidence that the first claimant had experienced anxiety and stress following the termination of her employment. The Tribunal accepted the second claimant's evidence but was not satisfied that this was sufficient to show that it was not reasonably practicable for the first claimant to start early conciliation or present a claim within the three-month time limit.

9. Similar provisions apply in relation to the time scale for presenting a claim for notice pay under Article 7(a) of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 and for presenting a claim for holiday pay under Regulation 30(2) of the Working Time Regulations 1998. For the reasons given above, the Tribunal was not satisfied that it was not reasonably practicable for the claimants to start early conciliation or present their claims for notice pay or holiday pay within the three-month time limit.

10. The claims for unfair dismissal, notice pay and holiday pay are therefore time barred and the Tribunal does not have jurisdiction to consider them further.

11. The first claimant has also brought a claim for a redundancy payment. The applicable time limit for presenting this claim is six months from the effective date of termination under Section 164 of ERA. On the basis that the effective date of termination was 23 March 2020 and the claim was presented on 3 September 2020, the first claimant's claim for a redundancy payment was presented in time.

Qualifying service

12. In terms of Section 108(1) of ERA, the right not to be unfairly dismissed does not apply unless the employee has been continuously employed for a period of not less than two years ending with the effective date of termination.
13. The second claimant did not dispute that he does not have qualifying service to present a claim of unfair dismissal.
14. The first claimant's length of service was in dispute. Having considered all of the evidence before it, the Tribunal was satisfied that the first claimant's contract of employment transferred to the respondent on 6 January 2020 when the respondent began to operate the Puttery. The Tribunal accepted the first claimant's evidence that within a matter of days after Barry Finlayson stopped trading she was employed by the respondent and continued in her position as Front of House. The Puttery was referred to by the respondent as a business and it was not in dispute that the claimant was employed as Front of House immediately before the business transferred to the respondent and began to operate the Puttery. In terms of Regulation 4 of the TUPE Regulations 2006 the Tribunal was satisfied that the first claimant's contract of employment with the transferor – Barry Finlayson – did not terminate when the Puttery transferred to the respondent and by the date of her dismissal, the claimant had been continuously employed for over two years.

15. For the reasons given above, the first claimant's claim of unfair dismissal is time barred. The claim for a redundancy payment is not time barred. In addition, the claimant has sufficient qualifying service – two years - to apply for a redundancy payment and accordingly, this part, of the claim, if settlement cannot be agreed between the parties, will proceed.

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Employment Judge: F Eccles
Date of Judgment: 22 July 2022
Entered in register: 25 July 2022
and copied to parties

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