



EMPLOYMENT TRIBUNALS

Claimant

Miss H Lor

Respondent

Booking.Com Customer
Service Centre (UK) Ltd

v

Heard at: Cambridge

On: 16 August 2022

Before: Employment Judge S Moore

Appearances

For the Claimant: No appearance

For the Respondent: Ms L Harris, counsel

OPEN PRELIMINARY HEARING

JUDGMENT

- (i) The claims for statutory redundancy pay and breach of contract are struck out because the Claimant failed to undertake Early Conciliation and the Tribunal therefore has no jurisdiction to hear them.
- (ii) The Tribunal further has no jurisdiction to hear the claim for breach of contract because it has been brought out of time.
- (iii) The claim for statutory redundancy pay is further struck out on the ground it has no reasonable prospect of success.

REASONS

Introduction

1. This was a Preliminary Hearing to determine whether the Tribunal has jurisdiction to determine the claims for statutory redundancy pay and breach of contract.

2. Miss Harris for the Respondent contended that it did not have jurisdiction because the Claimant had failed to undertake Early Conciliation, the claims had been brought out of time (breach of contract) and in any event had no reasonable prospect of success (statutory redundancy pay).
3. The Claimant did not attend the hearing nor inform the Tribunal of any reason for her non-attendance despite plainly being aware of the hearing date since she engaged with the Respondent regarding its skeleton argument only a few days earlier.

Facts

4. The Respondent is a wholly owned subsidiary of Booking.com Holdings B.V., (“Booking.com”) a company incorporated in the Netherlands which is a subsidiary of Booking Holdings Inc. The Respondent is responsible for Booking.com’s customer service operations in the UK, based across two sites in London and Cambridge.
5. The Claimant commenced employment with the Respondent on 14 April 2009 as a Customer Services Team Leader at its Cambridge site.
6. On 9 September 2020, as a result of the impact of the Covid-19 pandemic, the Respondent announced the proposed closure of its Cambridge and London sites to all affected employees and entered into a period of collective consultation.
7. As a result of this consultation, the Respondent agreed it would pay employees affected by the redundancies an enhanced redundancy package equivalent to 10 weeks’ salary plus 1.5 weeks’ salary per completed year of service, where weekly pay would be calculated by reference to the employee’s average earnings received over a 12-week period prior to termination.
8. Following the completion of the collective and individual consultation process, the Respondent confirmed its decision to terminate the Claimant’s employment by reason of redundancy by letter of 16 November 2020. Together with this letter the Claimant was provided with a Redundancy Statement, setting out a breakdown of the payment that would be made to her. That payment was specifically stated to be “inclusive of statutory redundancy pay”. Further the Redundancy Statement provided a separate box itemising the Claimant’s “Statutory Redundancy Payment” and her “Ex Gratia Package”. The statement provided her statutory redundancy payment was £5,918.00 and her ex-gratia payment was £11,727.78, making a total redundancy package of £17,645.78.
9. On 19 November 2020 the Respondent identified a number of mistakes in the calculation of the ex-gratia package and on 26 November 2020 provided the Claimant with a corrected Redundancy Statement. The statutory redundancy element remained the same at £5,918.00, however the ex-gratia element had been corrected downwards to the sum of £10,249.58 so that the Claimant’s total redundancy package was reduced to £16,197.58.

10. On 27 June 2021 the Claimant lodged a claim form in which she ticked the box, "I am claiming a redundancy payment", although she appeared to be claiming by way of breach of contract the difference between the ex-gratia redundancy payment notified on 16 November 2020 and the reduced, corrected figure on 26 November 2020.
11. Notably, no ACAS Early Conciliation certificate number was provided in box 2.3 and in response to the question, "why don't you have this number?" the Claimant ticked the box stating, "My employer has already been in touch with ACAS".
12. The Respondent submitted that it had not been in contact with ACAS in relation to the Claimant's claim, therefore the exemption from Early Conciliation did not apply and the Tribunal had no jurisdiction to hear the claims. Further the claim for breach of contract had been brought out of time and any claim for a statutory redundancy payment plainly had no reasonable prospect of success because the Claimant had been paid this sum.

Conclusions

13. As regards Early Conciliation, from 6 May 2014, most prospective Employment Tribunal Claimants have had to undertake ACAS Early Conciliation. Section 18A of the Employment Tribunals Act 1996 (inserted by section 7 of the Enterprise and Regulatory Reform Act 2013) provides: "Requirement to contact ACAS before instituting proceedings:

"18A(1) Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter. ..."

....
(8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4). ...
14. A claimant may be exempted in limited circumstances from the obligation to undergo Early Conciliation as set out in regulation 3 of the Early Conciliation Regulations 2014. Further, these exemptions include the circumstance where the claimant is able to show that the respondent has contacted ACAS in relation to a dispute, ACAS has not received information from the Claimant (under s. 18A(1) of the Employment Tribunals Act 1996) in relation to that dispute, and the proceedings on the claim form relate to that dispute.
15. However, the Respondent asserts that at no point has it had contact with ACAS regarding the Claimant's claim and there is no evidence before me to suggest otherwise.

16. Accordingly, I must have regard to rule 12(2) of the Employment Tribunals Rules of Procedure 2013 which provides that “the claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in subparagraph ...(d) of paragraph (1)”. Subparagraph (1)(d) refers to a claim which is made on a claim form which contains confirmation that one of the early conciliation exemptions applies and an early conciliation exemption does not apply. That obligation to reject the claim is not limited to a particular stage in the process but arises at whatever stage the relevant judicial consideration is undertaken (**E.ON Control Solutions Ltd v Caspall [2020] ICR 552**) and cannot be ignored as a matter of judicial discretion and/or in the interests of justice (**Cranwell v Cullen UKEATPAS/0046/14** (as referred to in at E.ON Control at paragraph 49)).
17. It follows that the Tribunal has no jurisdiction to hear the claim because the Claimant has failed to undertake mandatory Early Conciliation.
18. Further and in event, the claim for breach of contract has been made out of time. Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that an employment tribunal shall not entertain a complaint in respect of an employee’s contract claim unless it is presented within the beginning of three months beginning with the effective date of termination of the employment contract and the Tribunal only has discretion to extend that time limit where it considers it was not reasonably practicable for the complaint to have been presented in time.
19. In this case the Claimant’s employment terminated on 16 November 2020, (which meant the 3-month time limit expired on 15 February 2021) but she did not present her claim until 27 June 2021. The only reason the Claimant has given for not presenting her claim in time is that ACAS advised her against making a claim but that she subsequently learned some colleagues had pursued claims successfully. In fact, the evidence before me is that no such claims have yet succeeded against the Respondent, rather they have either been dismissed on the papers or following a preliminary hearing. In any event, the reason advanced by the Claimant does not satisfy the test of showing it was not reasonably practicable for her to have submitted her claim in time. Accordingly, it follows the Tribunal has no jurisdiction to hear the claim for breach of contract for the additional reason it has been brought out of time.
20. Finally, and in any event, any claim to statutory redundancy pay is plainly misconceived and has no reasonable prospect of success because the Respondent has already paid the Claimant her statutory redundancy. It follows the claim for statutory redundancy pay should also be struck out for this additional reason under rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013.

Employment Judge S Moore

Date: 16 August 2022

Sent to the parties on:1/9/2022

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For the Tribunal Office