



EMPLOYMENT TRIBUNALS

Claimant
Mrs S Butt

v

Respondents
Travelex UK Ltd (in
administration) (1)
Travelex Foreign Coin
Services Limited (2)

Heard at: Reading (by CVP)

On: 31 May 2022

Before: Employment Judge Hawksworth (sitting alone)

Appearances

For the claimant: In person
For the first respondent: No attendance or representation
For the second respondent: Mr T Goodwin (counsel)

JUDGMENT dated 31 May 2022 was sent to the parties on 18 June 2022. Written reasons for the judgment were requested by the claimant on 18 June 2022 in accordance with rule 62(3) of the Employment Tribunal Rules of Procedure 2013. The reasons for the judgment are set out below.

REASONS

Introduction

1. The claimant was employed as a foreign currency consultant from 3 October 1998 to 6 August 2020. Her claim form was presented on 13 January 2021. Acas early conciliation started on 19 November 2020 and ended on 20 November 2020.
2. The first respondent became insolvent in around August 2020 and was placed into administration. The claim is about the dismissal of the claimant for redundancy at the time the first respondent went into administration. The claimant's claim is for a protective award (for failure to consult on collective redundancy) and for breach of contract (in respect of notice pay).
3. The administrators of the first respondent have consented to the claim proceeding but are not taking an active part in proceedings and were not represented at the hearing before me.

4. Mr Goodwin represented the second respondent at the hearing. The claimant says that her employment transferred to the second respondent. The second respondent denies this. It was not necessary for me to make any findings or decision about this point.
5. The claim was previously part of a multiple claim against the respondents and related companies. At a preliminary hearing for case management on 12 May 2021 before EJ R Lewis, this claim was separated from the multiple and listed for a separate hearing to decide the preliminary issue of whether the claim had been submitted within the required time limit. That separate hearing was the hearing before me; the issue for me to decide at the hearing was therefore, as a preliminary issue, whether the claim had been submitted within the time limit and if not whether time could be extended. Notice of the date for the hearing before me was sent to the parties on 22 March 2022.
6. The second respondent's representative had prepared a bundle with 47 pages and Mr Goodwin had prepared a written submissions document dated 30 May 2022.
7. The claimant had not prepared a witness statement. She sent an email to the tribunal on 12 May 2021 which explained the reasons for the delay in submitting her claim. I directed that this would be treated as her witness statement.
8. I heard evidence from the claimant and closing comments from both parties. I gave judgment at the hearing. I decided that the claimant's claim had been presented outside the time limit and could not proceed. I gave my reasons for this decision, explaining my findings of fact, a summary of the legal principles, and the conclusions I had reached. Judgment was sent to the parties on 18 June 2022. These written reasons are provided at the claimant's request.

Findings of fact

9. This section explains what happened (the facts). There is not much dispute between the parties about what happened. Where there is a dispute, I decide what I think is most likely to have happened, by reference to the evidence I have heard and read.
10. Mrs Butt and her colleagues were dismissed on 6 August 2020. That means Mrs Butt's claim for a protective award for failure to consult during redundancy and for breach of contract regarding notice ought to have been started by 5 August 2020, that is three months less one day after the dismissal date. Both of those complaints have the same three month time limit. The time limit runs from the date of the last dismissal in relation to the protective award claim and the date of the claimant's dismissal in relation to the breach of contract claim.

11. Mrs Butt notified ACAS for early conciliation after the 5 November 2020 deadline: she notified ACAS on 19 November 2020 and the early conciliation certificate was issued on 20 November 2020. By the time Mrs Butt had contacted ACAS, the claim was 14 days out of time.
12. Mrs Butt was not aware of the procedure to start an employment tribunal claim until a former colleague mentioned it to her on 13 January 2021. She submitted her claim form on the same date. The claim form included a section in which she explained that she thought that she may have missed the date. She gave her reason for this, which was that she had been occupied with trying to sort out the notice pay and annual leave pay owed with the Redundancy Payments Office, as they had the wrong figures, and she had also had to speak to the insolvency practitioner to sort things out.
13. The time after her redundancy was a very difficult time for Mrs Butt. It took her some time to sort out her correct redundancy payment and other payments and she had had to chase these up and contact the redundancy payments office and insolvency practitioner at the same time as applying for Jobseekers Allowance and applying for new jobs. I accept Mrs Butt's evidence that this was a very difficult time for her although she fairly accepted that these activities did not take up all of her time. I also accept that she was having some personal problems and that these came to a head in January 2021.

Legal principles

14. The time limit to present a claim for a protective award is set out in section 189(5) of the Trade Union and Labour Relations (Consolidation) Act 1992, which says:

“An employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

 - (a) before the date on which the last of the dismissals to which the complaint relates takes effect, or
 - (b) during the period of three months beginning with that date, or
 - (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of three months, within such further period as it considers reasonable.”
15. The wording of the extension provision is the same as that in relation to unfair dismissal which is contained in section 111 of the Employment Rights Act 1996. The provision should be given a ‘liberal construction’ in favour of the claimant (Dedman v British Building and Engineering Appliances Limited [1974] ICR 53 CA), but the burden of showing that it was not reasonably practicable to present a claim in time is on the claimant, and what is reasonably practicable is a question of fact for the tribunal to decide.
16. In respect of lack of knowledge of rights, the test to be applied is not whether the claimant knew of her rights, but whether the lack of knowledge was reasonable, or whether she ought to have known of her rights (Porter v

Bandridge Ltd [1978] ICR 943, CA). To assess that test, the tribunal must ask, “What were her opportunities for finding out that she had rights? Did she take them? If not, why not? Was she misled or deceived? (Dedman v British Building and Engineering Appliances Limited [1974] ICR 53 CA).

17. In respect of Acas early conciliation, section 189(5A) says that the time limit is subject to provisions relating to early conciliation which are contained in section 292A. Section 292A(3) says that:

“In working out when a time limit ... expires the period beginning with the day after Day A and ending with Day B is not to be counted”.

18. Day A is the day on which Acas is notified for early conciliation, and Day B is the day on which the claimant receives the early conciliation certificate.
19. The time limit for a complaint of breach of contract in the employment tribunal is in Article 7 of the Employment Tribunals Extension of Jurisdiction Order 1994. That says that the claim must be presented ‘within the period of three months beginning with the effective date of termination of the contract giving rise to the claim’, or:

“where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within [that period], within such further period as the tribunal considers reasonable.”

20. At the hearing, I gave a summary of these legal principles, saying that the legal tests that I have to apply to consider whether the claim is in time, and if not whether time should be extended, are broadly the same for both the protective award and the breach of contract claims. Where the claim has been started outside the initial three month time limit, I have to consider two questions: first of all, whether it was reasonably practicable (which means something like reasonably feasible) to start the claim in that three month period. If it was reasonably practicable to do that, I have no power to extend time, but if it was not, I must go on to consider the second question, which is whether the period of time between the three month time limit expiring and the date of the claim being started was a reasonable one.

Conclusions

21. I have explained above that the deadline for both complaints was 5 August 2020. The claim was presented after that date, on 13 January 2021, after Acas early conciliation from 19 November 2020 to 20 November 2020.
22. I have started by looking at the first question, which is whether it was reasonably practicable (or reasonably feasible) to start the claim in the period from 6 August to 5 November 2020. The burden in relation to this question is on Mrs Butt to show that it was not reasonably feasible to present a claim in that time. I have to ask myself whether it was reasonably feasible for Mrs Butt to start her employment tribunal claim in that period.

23. Mrs Butt has said it was not reasonably feasible for her to do so, mainly because she did not know about the procedure for starting a claim. I have accepted that she did not. However, the case law says that is not the end of the questions I have to ask where people are unaware of time limits or their rights more generally. What I have to look at is whether that lack of knowledge was reasonable. In other words, I have to consider whether Mrs Butt ought to have been able to find out about her rights, including the time limit.
24. I have taken into account that Mrs Butt has been representing herself and that she was having a very difficult time after her redundancy. However, during the period from 6 August to 5 November she was able to contact the Redundancy Payment Office and the insolvency practitioner. There was no reason put forward in evidence as to why, during this period, she could not also have made efforts to find out about her employment tribunal rights and the time limits. As she has accepted, this is not a case where all of her time was taken up with other activities. This is not a case the claimant was so incapacitated by what was happening in her personal life that she was unable to make any calls or investigations. Mrs Butt could have sought information online or legal advice about her rights during this time. She knew her colleagues were bringing claims and she could have asked them about it.
25. I have concluded for these reasons that Mrs Butt could have investigated her rights earlier and that would have enabled her to bring her claim in time. That means she has not shown that during the period from 6 August to 5 November 2020 it was not reasonably practicable for her to have brought the claim in time. She could have made efforts to find out about the procedure so that she knew about the time limit and she could then have presented her claim in time. That conclusion means I do not have the power to extend time, because I have found that it was reasonably practicable for her to bring her claim in the initial three month period.
26. If I had had to consider whether the claim was brought within a further reasonable period, I would have concluded that, in the context of claims with a three month time limit and in the circumstances of this case, a nine week delay was not a reasonable period.
27. My conclusions mean that the claim was presented out of time and that I do not have the power to extend time. This means that the claim cannot proceed.

Employment Judge Hawksworth

Date: 24 August 2022

Sent to the parties on: 8/9/2022

N Gotecha
For the Tribunal Office