



EMPLOYMENT TRIBUNALS

Claimant: Miss E Ottway

Respondent: Thames Reach

OPEN PRELIMINARY HEARING

Heard at: London South – Croydon (by video) **On: 14 July 2022**

Before: Employment Judge C M Macey

Representation

Claimant: Did not attend

Respondent: Ms Jennings (counsel)

JUDGMENT

The Claimant's claim for unfair dismissal is dismissed. The tribunal does not have jurisdiction to consider the Claimant's claim of unfair dismissal having regard to the appropriate statutory time limits.

REASONS

Preliminary matters

1. The Claimant did not attend the hearing. I noted the following matters before proceeding with the hearing in the Claimant's absence under Rule 47 of the Employment Tribunal Rules of Procedure 2013:
 - a. The Notice of Hearing dated 14 June 2022 was sent to the correct contact details provided by the parties.
 - b. The letter from the Tribunal converting the hearing to a preliminary hearing dated 1 July 2022 was sent to the correct contact details provided by the parties.
 - c. The Claimant emailed the Tribunal on 6 July 2022 acknowledging the letter dated 1 July 2022 from the Tribunal.

- d. The Respondent's solicitors emailed the Claimant on 8 July 2002 explaining the purpose of the preliminary hearing and enclosing the Respondent's bundle of documents.
- e. The Claimant was contacted by telephone on the morning of the hearing at 10 am and at 10.30 am by the Tribunal. Both times the voicemail message stated, "this phone is switched off".
- f. The Tribunal contacted the Claimant by email on the morning of the hearing and there was no response prior to the hearing starting.
- g. No reason was provided by the Claimant in advance of non-attendance.

Background and Issues

- 2. The Claimant was a Relief Worker – Receptionist at the Respondent, until the Respondent stopped offering her shifts. The Claimant's last day at the Respondent was 14 June 2021. The Claimant entered into Early Conciliation with ACAS on 28 October 2021 and the certificate was issued on 1 November 2021 [1]. The claim was presented on 16 November 2021.
- 3. This hearing was therefore listed to determine, as a preliminary issue, whether or not the Tribunal had jurisdiction to consider this claim.

The Law

- 4. The statutory test, in respect of the claim of unfair dismissal, is set out in Section 111(2) of the Employment Rights Act 1996, namely:

(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.*

- 5. The effect of early conciliation by ACAS ("Early Conciliation") on this time limit is set out in Section 207(B) subsections (2) – (4) of the Employment Rights Act 1996, namely,

(2) In this section-

- (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of Section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*
- (b) Day B is the day on which the complainant or the applicant concerned receives or, if earlier, is treated as receiving (by virtue of*

regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this section) expire during the period beginning with Day A and ending one month after Day B, the time limit expires at the end of that period.

6. I referred myself to the guidance in the cases of **Wall's Meat Co Ltd v Khan [1979] ICR 52, EWCA**, as to the Tribunal's discretion in such matters and also that as stated in **Porter v Bandridge Ltd [1978] ICR 943, EWCA**, the burden of proof is upon the Claimant and that in respect of ignorance of rights, the correct test is not whether the Claimant knew of his or her rights but whether he or she *ought to have known of them*.

The Facts

7. **Submissions**. I heard submissions from the Respondent summarised as follows:
- a. Ms Jennings stated that it was reasonably practicable for the Claimant to submit her claim within the time limit. She made the following submissions:
 - i. The Claimant's ET1 [2-13] states that the Claimant worked for the Respondent until 14 June 2021 [5]. The primary time limit is, therefore, 13 September 2021.
 - ii. The Claimant did not present a claim or commence Early Conciliation within the primary time limit.
 - iii. The claim is two months late.
 - iv. The Claimant commenced Early Conciliation on 28 October 2021 and ACAS issued the certificate on 1 November 2021.
 - v. There was no extension of time by the Early Conciliation because ACAS were contacted after the primary time limit had expired.
 - vi. The Claimant appealed on 17 August 2021 and was mindful that she had been dismissed and was challenging it.
 - vii. There was no physical restriction on the Claimant preventing the claim form being presented in time.
 - viii. That I should take judicial notice that a Google search of unfair dismissal indicates the time limit and signposts the user to ACAS.

- ix. That even if it had not been reasonably practicable to submit the claim in time the Claimant did not submit it within such further time as was reasonable.
 - x. The Claimant contacted ACAS on 28 October 2021, six weeks after the primary time limit expired.
 - xi. After ACAS issued the Early Conciliation certificate on 1 November 2021 the Claimant waited a further two weeks before submitting her claim on 16 November 2021.
8. **Finding.** I find that it was reasonably practicable for the Claimant to present her claim by 13 September 2021, for the following reasons:
- a. The Claimant's last day working for the Respondent was 14 June 2021 according to her ET1 [2-13] and this date was her effective date of termination.
 - b. The burden is on the Claimant to prove that it was not reasonably practicable to present her claim by 13 September 2021 and the Claimant has not presented any evidence to the Tribunal.
 - c. Applying **Bandridge**, the Claimant ought to have known of the three-month time limit, for the following reasons:
 - i. because a Google search of unfair dismissal does indicate the time limit for the claim of unfair dismissal.
 - ii. The Claimant's appeal in August 2021 demonstrates that she did have some awareness that she had been dismissed and that she was challenging that dismissal.
9. **Within such further period as was reasonable.** As I have found that it was reasonably practicable for the Claimant to meet the primary time limit, I do not, strictly speaking, need to consider the issue of the claim being presented within such further period as was reasonable, but nonetheless find that even if I were incorrect to consider that it was reasonably practicable to meet the time limit, the Claimant clearly did not present her claim within such further period as was reasonable. I conclude this for the following reasons:
- a. She delayed a further 2 months in total after the primary time limit.
 - b. After ACAS issued the Early Conciliation certificate the Claimant did not submit her claim for a further two weeks.
 - c. There is a strong public interest in claims being brought promptly, against a background where the primary time limit is three months (**Cullinane v Balfour Beatty Engineering Services Ltd** **UKEAT/0537/10**).

Conclusion

1. For these reasons, therefore, the Claimant's claim of unfair dismissal is dismissed, because the tribunal does not have jurisdiction to consider the Claimant's claim of unfair dismissal having regard to the appropriate statutory time limits.

Employment Judge Macey

Date: 1 August 2022

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