



## EMPLOYMENT TRIBUNALS

Claimant: Dr A Rani

Respondents:

1) Ms N Meakin

(2) University of Southampton NHS Foundation Trust

Heard at: Southampton

On: 14 September 2022

Before: Employment Judge Dawson

Appearances

For the claimant: In person

For the respondent: Mr Ross, counsel

## JUDGMENT

1. The claimant's claims are dismissed.

## REASONS

1. These claims were listed for hearing by Employment Judge Livesey on 4 May 2022. He listed them for the following matters to be determined and addressed:

1.1 Whether the claims were brought in time and, if not, whether the Claimant is entitled to an extension of time under the legislative provisions which apply to her complaints;

1.2 Whether any of her allegations have no reasonable prospect of success and ought to be dismissed under rule 37;

1.3 Whether any of her allegations have little reasonable prospect of success and whether a deposit order ought to be made, limited to £1000 in respect of each allegation, under rule 39.;

1.4 Whether a final hearing ought to be listed and, if so, when and what further directions might be necessary in that respect

2. At paragraph 10 of his order Employment Judge Livesey directed
  10. The Claimant may prepare a witness statement for use at the hearing which ought to deal with the jurisdictional time points only; why her complaints were brought out of time and/or why the Tribunal ought to exercise its discretion to extend time to enable her to pursue her complaints to a final hearing.
3. The claimant sent a witness statement to the tribunal on 11 July 2022 but it did not deal with jurisdictional time points, instead reiterating the claimant's case on liability.
4. There are 2 claims before the tribunal,
  - a. 1404259/2021, against Nicola Meakin, presented on 3 November 2021, claiming unfair dismissal, discrimination on the grounds of race, sexual orientation, sex and religion and belief and also claiming notice pay, holiday pay and other payments;
  - b. 1404488/21, against University Hospital Southampton NHS Foundation Trust, presented on 22 November 2021 and claiming unfair dismissal, discrimination on the grounds of race, sexual orientation, sex and religion and belief and also claiming a redundancy payment, notice pay and other payments and "abuse of personal information".
5. At the outset of the hearing I sought to clarify a number of matters with the claimant. The claimant agreed that her employment terminated without notice on 5 July 2021, as set out in her claim forms and as apparent from the letter of dismissal. She also confirmed that all of her complaints had arisen by that date at the latest. In the course of the hearing the claimant confirmed that insofar as she was claiming sums in respect of unauthorised deduction of wages, her point was that she should not have been dismissed and, as a result of her dismissal, she had suffered a loss of wages. Thus she is not asserting that the amount of wages paid to her on a particular date was less than the sum she was due to be paid, she is really asserting that a consequence of her dismissal was that she lost earnings.
6. In terms of early conciliation, in respect of the first claim, date A is 29 October 2021 and date B is 2 November 2021. In respect of the 2<sup>nd</sup> claim, date A is 2 November 2021 and date B is 19 November 2021.
7. I also attempted to confirm, throughout the hearing, whether the claimant was seeking to assert that, if the claims were presented outside of the relevant 3 month time limit, it was not reasonably practicable to present the claims within 3 months or that they were presented within such period as the tribunal should consider just and equitable. I was

concerned as to whether the claimant fully understood this point and so discussed it in terms of;

- a. whether she was seeking to persuade the tribunal to extend the time for presentation,
  - b. using the express statutory language (that is, whether she was saying it was not reasonably practicable to present the claim within 3 months or she had presented the claim within such period as was just and equitable) and
  - c. whether she was seeking to assert that there was a good reason why she did not present her claim within 3 months.
8. The claimant's initial position was that the claim was presented in time and that was all that it was necessary to consider. She indicated that she believed she had an absolute right to bring her claim because it was possible for her to have been discriminated against on the first day of her employment. Whilst accepting that, I explained that, even then, Parliament has determined that claims should be brought within the time limits which I explained to her. Initially she told me that even if I found that the claim was not presented within 3 months she did not want an extension of time. She told me that she did not want to ask for an extension, she had presented her claim in time and she was dismissed on the basis of racial discrimination. I explained that if the claimant did not seek an extension, and I found that the claim was not presented within the initial 3 months time limit, I would be bound to dismiss her claims because they had been presented out of time.
9. Subsequently, following further discussion, the claimant indicated that if I were to determine that the claim was presented outside the period of 3 months then that was because it was not reasonably practicable to present the claim within 3 months and it was presented within such period as was just and equitable. When I endeavoured to explore with her the reasons for that position, I noted that her witness statement did not address those issues and although the claimant repeatedly referred to a bundle of documents which she had compiled for this hearing running to over 200 pages, that had not been copied to the respondent and the claimant only had one copy of the bundle.
10. In an attempt to simplify matters further I indicated that I would decide the question of whether the claim was presented within the initial 3 month period first and then move on to consider the question of whether it was reasonably practicable to present it within that period, or the claim was presented within such period as tribunal considered just and equitable. I did not make a ruling at that stage as to whether I would admit the claimant's additional bundle in respect of the latter questions, or how those questions would be dealt with to ensure fairness to both sides.

11. I heard submissions from both parties on the question of whether the claim was presented within 3 months of the date of dismissal, that being the date by which the claimant accepts that all of her claims had arisen.

**Were the claims presented within a 3 month time period?**

Submissions

12. For the respondent, Mr Ross submitted that the 3 month period expired on 4 October 2021. The claimant had not contacted ACAS by that point and he relied upon *Pearce v Bank of America Meryl Lynch* UKEAT/00 67/19 in support of the proposition that the early conciliation extension provisions only have effect if ACAS is contacted within the primary time-limit.
13. Dr Rani told me that she had presented a claim form on 30 September 2021, which was rejected but which meant that she had presented the claim within a 3 month time limit. She also submitted that because of a failure in the respondent's internal processes on 30 September 2021, she should be given an extra 3 month period. The claimant did not say what the internal failure was.
14. I was able to view the tribunal file in respect of the claim presented on 30 September 2021. The file showed, and the claimant agreed, that the claimant did present a claim on that date and it was given case number 1403858/21. The claimant had ticked the box on the claim form to say that she did not need a conciliation number because ACAS did not have the power to conciliate on some or all of her claim. The claimant confirmed to me that she had not applied to ACAS at that time and only applied to ACAS for conciliation on 29 October 2021. On 26 October 2021, the claim was rejected because of the lack of a conciliation number.
15. The claimant did not re-present claimant 1403858/21 but instead presented the two claims listed today.
16. In the course of her submissions the claimant also said the failure lay with the employment tribunal because the website was not clear that it was necessary to have a conciliation number.
17. After the hearing was concluded, the claimant handed a bundle of documents to the clerk but I have not considered it given that it was not referred to in the hearing (save as aforesaid), the respondent had not been given a copy and I had given judgment without reference to it.

The issues

18. The issues are
- a. whether the presentation of a claim form within 3 months of the acts complained of, where no early conciliation has taken place, means that a subsequent claim, presented more than 3 months

after those acts, should be treated as if it was presented within 3 months of the date of the acts complained of; and

- b. whether a mistake in an internal process by an employer means that a claim which was presented after 3 months from the date of the acts, complained of should be treated as if presented within 3 months; and
- c. whether confusion caused by the employment tribunal website means that a claim which was presented after 3 months from the date of the acts complained of should be treated as if presented within 3 months.

### The Law

19. In respect of a claim for unfair dismissal, section 111 Employment Rights Act 1996 provides

(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.

20. There are equivalent provisions in relation to a claim of unauthorised deduction of wages.

21. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides at article 7 “an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

(b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or

(ba) where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b).

- (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

22. In respect of holiday pay, regulation 30 of the Working Time Regulations 1998 provides

- (2) Subject to regulations 30A and regulation 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented—

- (a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

- (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 or, as the case may be, six months.

23. In respect of the claims under the Equality Act 2010, section 123 provides

- (1) Subject to sections 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of-

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or

- (b) such other period as the employment tribunal thinks just and equitable

24. As well as the case referred to by counsel, I referred the parties to *Pryce v Baxterstorey Ltd* and, in particular, paragraph 10 thereof which provides “It follows that when Ms Pryce presented her claim on 23 August 2019 without a certificate, there was indeed no jurisdiction to consider it and that what she sent to the tribunal was in effect a nullity and should have been rejected immediately”.

25. I also referred the parties to rule 13 of the Employment Tribunal Rules of Procedure and in particular subparagraph (4) which provides that if the judge decides that an original rejection of a claim form was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.

**Conclusions on Whether the Claims were presented within 3 months of the Relevant Acts/ Date of Termination**

26. The 2 claim forms which are before this tribunal were presented more than 3 months after the date of the matters complained of. All matters complained of had arisen by 5 July 2021 but the claim forms were not presented until 3 November 2021 and 22 November 2021. The claimant had not engaged in early conciliation before the 3 month period expired on 4 October 2021 and therefore the extensions of time limits in that respect do not apply.
27. I am unable to accept the submission that the fact that the claimant presented a claim to the tribunal on the 30 September 2021 assists her. That claim form was a nullity because she had not obtained an ACAS certificate. She did not present a claim at all on that date. Moreover, even if she had presented something which could be regarded as a claim form, the fact that it was properly rejected means that it was not presented on that date. That much is clear from rule 13(4) which shows that where a claim form is properly rejected, it is not treated as presented until the defect is rectified. In fact, in this case, the claim form was never re-presented, instead a new one was presented, but the point remains that a claim form which is defective is not presented on the day when it is sent to the tribunal.
28. I am also unable to agree with the claimant that some defect in the respondent's process (if such there was) means that she presented a valid claim. Such a defect might give rise to an argument that it was not reasonably practicable to present the claim within 3 months, or that the claim was presented within such period as was just and equitable, but it does not mean that the claims were presented within 3 months.
29. The claimant's assertion that the fault lies with the tribunal because its guidance is unclear also does not assist her on this point. If the tribunal's guidance is unclear (and it is not obvious to me in what respect it is said to be unclear) then that does not mean that the claim form was presented in time. It may provide a basis for arguing that it was not reasonable practicable to present the claim in time or that the claim was presented within such period as the tribunal should think just and equitable.
30. In those circumstances I decided, and gave an oral judgment, that the claim was not presented within 3 months.

**Was it reasonably practicable to present the claims in time/ were the claims presented within such period as just and equitable**

31. Having given that decision I then sought to deal with whether it was not reasonably practicable to present the claims in time or the claims were presented within such period as was just and equitable. The claimant, at that point, told me that she was not seeking to argue that, she said "no, no, I presented the claim within 3 months".

32. I reminded the claimant that earlier in the hearing she had said to me that it was not reasonably practicable to present the claims within 3 months. I told her that I was willing to go on and decide that point if she wanted me to. The claimant indicated that she did not want me to do so. I checked by asking her whether she was asking me to find that there were good reasons why she did not present the claims within 3 months and she replied "no, no way it was presented within 3 months."
33. I invited the claimant to take 10 minutes to consider her position. The claimant refused to take 10 minutes saying that she did not need to because she was confident that the claim was presented within 3 months.
34. The tribunal cannot force a party to assert that it was not reasonably practicable to present the claim in time or that the claim form was presented outside of 3 months but within such period as the tribunal should consider just and equitable. I was satisfied that Dr Rani had consciously chosen not to make those arguments.
35. I do not know what I would have decided if the claimant had chosen to make those arguments since the claimant's case on those points remained unclear to me and the respondent had not been put on notice of the arguments which the claimant was seeking to make.

### **Final Conclusions**

36. The burden of proof is on the claimant to show that it was not reasonably practicable to present the claim within 3 months or that the claim form was presented in such period as is just and equitable after the 3 month time limit and the claimant has presented no arguments or evidence to attempt to persuade me of those matters.
37. In those circumstances the claims are dismissed because the tribunal lacks jurisdiction to consider them because, in respect of the discrimination claims, they were not presented within 3 months or such other period as the tribunal thinks just and equitable and in respect of the other claims they were not presented within 3 months of the date of dismissal and I am not satisfied that it was not reasonably practicable to present the claim within that period.
38. As submitted by the respondent during the course of argument, to the extent that the 2<sup>nd</sup> claim also presented a claim for abuse of personal information, that is not a claim which the tribunal has jurisdiction to consider and so is also dismissed since it has no reasonable prospect of success.

Employment Judge Dawson  
Date: 26 September 2022

Judgment sent to the Parties: 17 October 2022  
FOR THE TRIBUNAL OFFICE



Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recoupment

The recoupment provisions do not apply to this judgment.