



EMPLOYMENT TRIBUNALS

Claimant: Ms Sabina Yevugah and Others

Respondent: Osbon Ltd

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: London South by CVP **On:** 2 September 2022

Before: Employment Judge Rahman sitting alone

Appearances

For the claimant: Ms Sabina Yevugah attended in person

For the respondent: Ms Rebekah Page

JUDGMENT

It is ordered:

- 1. The claim for unfair dismissal is dismissed.**
- 2. The claim for holiday pay is dismissed.**

The judgment of the Tribunal is that:

The claimant's claim was not presented to the Tribunal in accordance with the provisions of section 111 of the Employment Rights Act 1996 in circumstances where the Tribunal was satisfied that it was reasonably practicable to present the claim within three months. Accordingly the claim is dismissed for lack of jurisdiction.

The claim for holiday pay is dismissed by agreement.

**Employment Judge Rahman
02 September 2022**

Useful information

1. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
2. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
3. The Employment Tribunals Rules of Procedure are here:
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
4. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here:
<https://www.gov.uk/appeal-employment-appeal-tribunal>

JUDGMENT

5. Ms Yevugah (hereafter 'the claimant') was employed by the respondent, as a pharmacist, from 1 August 2019 until 24 September 2021. Early conciliation started on 3 April 2022 and it ended on 8 April 2022. The claim form was presented by the claimant on 18 April 2022.
6. The claim is about unfair dismissal and holiday pay. The respondent's defence is it challenges the claimant was dismissed and states all holiday pay owing to the claimant was paid.

The Complaints

7. The claimant is making the following claims:
 - 7.1 Unfair dismissal;
 - 7.2 Holiday pay.
8. The issues the Tribunal will decide are set out below.

1. The Parties and Claim

- 1.1 The claimant included within her claim reference to a further claim by Ms Mamme Konadu Baffoe of the same address. Ms Baffoe did not attend today and there is no separate claim or ET1 regarding any claim by her although there is a separate claim number (2301309/2022) that was provided by the Tribunal, given there was reference to Ms Baffoe within Ms Yevugah's claim.
- 1.2 Ms Yevugah confirmed there was no separate claim by Ms Baffoe and that the only claims by Ms Baffoe that Ms Yevugah referenced in the original claim form (2301308/2022) were for holiday pay. Ms Yevugah confirmed that all owing holiday pay to the claimant and Ms Baffoe had been paid.
- 1.3 It was therefore agreed that the claim for holiday pay should be dismissed.
- 1.4 The only claim before the Tribunal was therefore Ms Yevugah's claim for unfair dismissal.

2. The Time limits

- 2.1 Given the date the claim form was presented and the dates of early conciliation, the Claimant's claim for unfair dismissal may not have been brought in time.
- 2.2 Was the unfair dismissal claim made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:
 - 2.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
 - 2.2.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 2.2.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
- 2.3 The Tribunal heard from the claimant. She indicated that she resigned on 24 September 2021 and it then took time for the respondent to pay her holiday pay. The agreement to pay this was only in March 2022 and then payment followed in May 2022. The claimant did not know there was a time limit for her unfair dismissal claim. She started the case in April 2022 after the issue of holiday pay was addressed by the respondent.
- 2.4 The respondent argued the claim was made out of time and there was no real reason to extend the time bar. This is not a case where the claimant is raising grounds such as being in an internal appeal process or having been told by the respondent she would have additional time to present a claim or

having been given defective legal advice or having been advised to delay by ACAS which were some reasons where a tribunal may extend time.

- 2.5 The Tribunal agrees with the respondent that the claim was made out of time and there was no adequate reason advanced to extend the time bar.
- 2.6 It is clear the claim is out of time – 3 months less one day meant the claimant should have contacted ACAS by 23 December 2021. There was a delay of over 3 months with the claimant only contacting ACAS on 3 April 2022.
- 2.7 Was it reasonably practicable for the claim to be made to the Tribunal within the time limit? The Tribunal listened carefully to the matters raised by the claimant and also had regard to the overriding objective. The claimant's ignorance of the time limit is not sufficient in the Tribunal's view to satisfy a test to extend the time limit – the claimant could and should have made enquiry of the appropriate time limit. The fact that the parties were in an ongoing dialogue about holiday pay did not stop the claimant from presenting her claim for unfair dismissal. The claimant has not set out any reasons that the Tribunal would consider appropriate to extend the time bar. Accordingly this Tribunal finds that it was reasonably practicable for the claim for unfair dismissal to be presented in time.
- 2.8 It follows that the claim, as presented, is time-barred and the Tribunal has no jurisdiction to consider the same.
- 2.9 The claim for unfair dismissal is therefore dismissed.