



THE EMPLOYMENT TRIBUNAL

Claimant Holly Farrier

Respondent: Janet Sinden & Co

REASONS **Requested by Respondent**

1. These are the reasons for the preliminary hearing judgment, sent to the parties on 9 August 2022, extending time for presentation of the unfair dismissal and sex discrimination claims.
2. By a claim form presented on 3 March 2021, the claimant brought complaints of unfair dismissal and sex discrimination against the respondent.
3. The claimant's effective date of termination was 31 July 2020. The primary time limit expired on 30 October 2020. The ACAS certificate was issued on 1 March 2021. As this was more than 3 months after the dismissal, the claimant did not obtain the benefit of an ACAS extension. The claim was presented nearly 5 months out of time.

The issues

4. Whether it was reasonably practicable to present the unfair dismissal claim in time and if not,
5. Whether time should be extended as it was presented within a reasonable time after the expiry date.
6. Whether there are just and equitable reasons to extend time for presentation of the sex discrimination claim

The Law

7. Section 111(2) of the Employment Rights Act 1996 provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it is presented within 3 months of the effective date of termination or 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 the 3 months.

8. Section 123 of the Equality Act 2010 provides that a discrimination complaint must be presented after the end of 3 months starting with the act complained of or such other period as the tribunal considers just and equitable.
9. The case of Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA makes clear that the discretion of the Tribunal to extend time on just and equitable grounds should be exercised exceptionally.
10. In O'Brien v Department for Constitutional Affairs [2009] IRLR 294, the Court of Appeal held that the burden of proof is on the claimant to convince the Tribunal that it is just and equitable to extend time. In most cases there are strong reasons for a strict approach to time limits.
11. The reasons relied upon for the late presentation of the claim are set out in an email from the claimant's lay representative dated 16 June 2021. The claimant relies on the matters set out therein and also gave evidence expanding on these. I also had written submissions from the respondent, which were supplemented orally; and oral submissions on behalf of the claimant. These have all been taken into account.

Findings of Fact

12. The claimant was made redundant with effect from 31 July 2020. At the time she was 7½ months pregnant.
13. On 17 July, a pregnancy scan revealed that the claimant had a low lying placenta. This was abnormal and the claimant was concerned about the health of her unborn child. Also around this time, a close family friend was diagnosed with an inoperable brain tumour and the claimant was providing him with support. He died in January 2021. These matters took the claimant's focus away from her dismissal.
14. The claimant's daughter was born on 23 September 2020. The birth had been traumatic for the claimant. She was rushed to hospital by ambulance as both she and the baby were thought to be at risk. Fortunately, the claimant gave birth to a healthy baby but she lost a lot of blood in the process and had to have a blood transfusion. She was discharged from hospital 2 days after the birth.
15. At the time, the country was in lockdown due to the covid pandemic. As a result, the claimant did not have access to the normal post-natal support as midwives and health visitors could not do home visits. There was also no face to face support from friends and family, who were also prevented from entering her home because of the covid restrictions. The claimant's partner,

- was a key worker and so away from the house between 7am and 6pm. This meant that the claimant was on her own during the day, recovering from a traumatic birth while looking after her new baby.
16. Advice centres were closed to the public at this time with contact only possible by phone. Call wait times were extremely long and often ended with a recorded message advising to try again later. This was difficult for the claimant to do while coping with a new baby on her own.
 17. The claimant told the tribunal that she was suffering from stress and anxiety at this time. Although no medical evidence was produced in support, I accept the claimant's evidence. It is entirely plausible that the circumstances that the claimant found herself in, coupled with the deteriorating health of her terminally ill close family friend, caused her anxiety and increased stress. I also accept her evidence that it was difficult to get a doctor's appointment at that time and that she did not want to take any medication while she was breastfeeding.
 18. Tragically, on 22 February 2021, the claimant's partner died from a sudden cardiac arrest, aged 23. By this time the covid restrictions had been relaxed and the claimant was able to rely on the practical and emotional support of her family.
 19. On 1 March 2021, the claimant contacted ACAS and on the 3 March, she issued her claim online.

Conclusions

20. The respondent concedes, and I agree, that any delay in submitting the claim form following the death of the claimant's partner was reasonable in the circumstances.
21. A week before the ET1 was due, the claimant had had a traumatic birth during which both she and her baby had been at high risk. I am quite satisfied that, having been discharged from the hospital on 25 September, no doubt still in recovery from these traumatic events, it would not have been reasonably practicable for her to present her claim 5 days later.
22. The real issue is in relation to the period 31 October 2020 to 21 February 2021. It was submitted on behalf of the respondent that the claimant's situation was no different from any new mother and that it was not exceptional. However, that ignores the very unique circumstances the country was in at the time because of the covid pandemic and the effect that it had on day to day life. Many norms that we took for granted such as inviting people into our homes were forbidden. That restriction, in particular, had a huge impact on the claimant, for the reasons referred to above, and left her effectively isolated, unsupported and unable to function normally.

23. In all the circumstances, I am satisfied that it was not reasonably practicable for the claimant to present her unfair dismissal claim in time. I am also satisfied that the claim was presented within a reasonable time after expiry of the time limit.
24. Further, I am satisfied there are just and equitable reasons for extending the time for presenting the sex discrimination complaint.

Employment Judge Balogun
Date: 7 November 2022