



EMPLOYMENT TRIBUNALS

Claimant: Ms R Doolub

Respondent: London Borough of Enfield

Heard at: Watford (via CVP)

On: 17 October 2022

Before: Tribunal Judge J E Plowright acting as an Employment Judge

Appearances

For the Claimant: In Person

For the Respondent: Mr G Menzies (Counsel)

JUDGMENT (ON AN OPEN PRELIMINARY HEARING)

The Judgment of the Tribunal is that:

1. The claim for unfair dismissal is dismissed.
2. The claim for unauthorised deduction of wages (arrears of pay and holiday pay) are dismissed.
3. The claim for breach of contract (failure to pay notice pay) is dismissed.
4. The claim for emotional distress is dismissed because the tribunal has no jurisdiction to hear a claim for emotional distress.

REASONS

Claims and Issues

1. The claimant worked as a social worker for the respondent, the London Borough of Enfield, from 14 April 2015 until 10 August 2020.
2. On 28 October 2021 the claimant submitted a Claim Form to the Employment Tribunal complaining that she had been unfairly dismissed.
3. On 01 March 2022, the respondent submitted the ET3 form disputing the claim and asserting that the claim had been brought out of time.
4. The case was listed for an open preliminary hearing to determine whether the claims had been brought out of time. The issues to be determined were identified as follows:
 - 4.1 Were the claims made to the Tribunal within three months of the effective date of the termination?
 - 4.2 If not, was it reasonably practicable for the claims to be made to the Tribunal within the time limit?
 - 4.3 If it was not reasonably practicable for the claims to be made to the Tribunal within the time limit, were they made to the Tribunal within a reasonable period?
 - 4.4 If the Tribunal agrees to extend the time limit for making the claims, should the claims be struck out in any event on the basis that they have no reasonable prospects of success or alternatively should a deposit order be made?

Procedure, documents and evidence heard

5. In terms of documentation, I had before me the Claim Form and an attachment to that Claim Form, a Response Form and an attachment, a preliminary bundle of 35 pages and a witness statement of Bindi Nagra. I was also provided with the case of **Riley v Tesco Stores Ltd** 1980 ICR 323 CA and a letter to the claimant from the Royal Brompton Hospital, dated 14 February 2022, which states that the claimant is under the care of the Severe Asthma Service.
6. The claimant explained that she suffered from asthma and although she wanted to proceed with the hearing, I ensured that throughout the hearing regular breaks were taken. There was no witness statement from the claimant but I heard oral evidence from the claimant and oral arguments from both the claimant and Mr Menzies.

The Facts

7. On 14 April 2015, the claimant began work as a social worker for the respondent.

8. On 23 July 2020 the claimant was arrested along with one other for firearms offences. She was remanded in custody pending trial.
9. On 24 July 2020, the claimant's sister left a message on the phone of Deborah Morgan, the claimant's line manager.
10. On 25 July 2020, details of the arrest and charge of the claimant were published on the Metropolitan Police Service's twitter feed.
11. On 27 July 2020, a letter was written to the claimant, addressed to her at her home address, suspending her from her employment.
12. On 28 July 2020, the claimant's sister left a message for the respondent stating that the claimant had been transferred from police custody to HMP Bronzefield and would be remanded there until trial. The claimant's sister said that she had received a brief call from the claimant when she arrived at HMP Bronzefield. The reason for her call was firstly to notify the respondent of the claimant's arrest and secondly to request that no action be taken against the claimant as she had not been found guilty.
13. On 29 July 2020, the claimant was written to and advised that a disciplinary hearing would be held on 05 August 2020. That letter was received by HMP Bronzefield on 30 July 2020.
14. On 30 July 2020, Social Work England wrote to the respondent indicating that they proposed to conduct an investigation into the claimant's conduct.
15. On 05 August 2020, a disciplinary hearing was heard in the absence of the claimant or any representative on her behalf.
16. On 07 August 2020, a decision letter was sent to the claimant in prison informing her that her employment was to be terminated. That letter was received by the prison on 08 August 2020.
17. On 10 August 2020, the claimant's employment was terminated.
18. On 27 September 2021, the claimant was acquitted of all offences and released from prison.
19. On 21 October 2021, the claimant commenced the early conciliation process.
20. On 25 October 2021, the early conciliation process was completed.
21. On 28 October 2021, the claimant submitted a Claim Form to the Employment Tribunal complaining that she had been unfairly dismissed.
22. On 01 March 2022, the respondent submitted the ET3 form disputing the claim and asserting that the claim had been brought out of time.

The Claimant's Oral Evidence

23. The claimant explained that whilst in prison, she could not simply pick up a telephone and call someone. She was allowed twenty named people who she could call. However, to make a phonecall she had to put in a request and it could take between three days and two weeks for that to be authorised. The claimant did have contact with her sister and it was her sister who arranged for her criminal solicitor to take over her criminal case.
24. The claimant had no direct access to the internet whilst in prison. She did receive correspondence, although it might be two days after the prison received it before she received it. She would forward any paperwork that she did receive to her criminal solicitor. She also had a caseworker called Ben Moorehouse who would take care of her correspondence, although she explained that he would only actively work on her case if she were convicted.
25. The claimant stated that she was aware that she could bring a claim before the Employment Tribunal. She also explained when she worked as a social worker, she was aware of a statutory process in mental health which was 28 days. However, she was not aware of any time limits relating to criminal proceedings and was not aware that there was a three month time limit for bringing an employment claim.
26. Whilst in prison, the claimant had numerous meetings with her criminal solicitor. Although she cannot remember when this was said, she said that her criminal solicitor did tell her that she should wait to deal with her employment issues until after the criminal proceedings were concluded. The solicitor did say that the respondent had 'jumped the gun' by terminating her employment. However, the focus of her conversations with her criminal solicitor was with her criminal case and her wellbeing in prison. No more than a few minutes were spent discussing her employment issues. Her criminal solicitor did tell her that she would need someone to deal with her employment matters. She initially stated that she did not know when he said this, although she later said that this was closer to the trial date and that he told her that she should get employment advice when she came out of prison.
27. Once she was released from prison, the claimant had to change accommodation six times in just over six weeks. She also had to sort out her finances and all the other matters involved in being released from prison. She did speak to her friend Vicky and her Aunty Rita, both of whom she discovered worked in Human Resources. They both explained to her that there were time limits for seeking a claim.
28. The claimant attempted to seek advice from the pro bono unit, from the Citizen's Advice Bureau and ultimately from ACAS.

The Law

Time Limits for Unfair Dismissal

29. Section 111 of the Employment Rights Act 1996 provides that the Tribunal should not consider a complaint of unfair dismissal 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.”

Time Limits for Unauthorised Deduction of Wages (Holiday Pay and Arrears of Pay)

30. Section 23(4) of the Employment Rights Act 1996 reads as follows:

(4)Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

Time Limits for Breach of Contract (Notice Pay)

31. Article 7 of the Industrial Tribunals Extension of Jurisdiction (England and Wales) Order 1994 reads as follows:

7. An industrial 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

(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.

32. Something is “reasonably practicable” if it is “reasonably feasible” (see **Palmer v Southend-on-Sea Borough Council** [1984] ICR 372). Ignorance of one’s rights can make it not reasonably practicable to present a claim within time as long as that ignorance is itself reasonable. An employee aware of the right to bring a claim can reasonably be expected to make enquiries about time limits (see **Trevelyan (Birmingham) Ltd v Norton** [1991] ICR 488). The determination of what is reasonably practicable is a question of fact for the tribunal (see **Miller v Community Links Trust Ltd** UK EAT /0486/07).

33. In the case of **Walls Meat Co Ltd v Khan** [1979] ICR 52 Brandon LJ stated the following:

The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him.

...

With regard to ignorance operating as a similar impediment, I should have thought that, if in any particular case an employee was reasonably ignorant of either (a) his right to make a complaint of unfair dismissal at all, or (b) how to make it, or (c) that it was necessary for him to make it within a period of three months from the date of dismissal, an industrial tribunal could and should be satisfied that it was not reasonably practicable for his complaint to be presented within the period concerned.

For this purpose I do not see any difference, provided always that the ignorance in each case is reasonable, between ignorance of (a) the existence of the right, or (b) the proper way to exercise it, or (c) the proper time within which to exercise it. In particular, so far as (c), the proper time within which to exercise the right, is concerned, I do not see how it can justly be said to be reasonably practicable for a person to comply with a time limit of which he is reasonably ignorant."

34. I was also referred to the case of **Riley v Tesco Stores Ltd** 1980 ICR 323 CA which quotes, with approval Lord Denning's remarks from the case of **Walls Meat Co Ltd v Khan** [1979] ICR 52:

"The cases which have given rise to some difficulty have been those where a man is dismissed for stealing or some other criminal offence. He is charged with it before the magistrates: and does not make a claim for unfair dismissal for some time. Perhaps not until after he has been acquitted. In these circumstances, I would myself be in favour of the view taken by the Employment Appeal Tribunal in Norgett v. Luton Industrial Co-operative Society Ltd [1976] I.C.R. 442; by Phillips J. in the present case; and by the majority of the Court of Appeal in Porter v. Bandridge Ltd. [1978] I.C.R. 943, and against the view taken by the Employment Appeal Tribunal in Union Cartage Co. Ltd. v. Blunden [1977] I.C.R. 420. It seems to me that the reaction of the ordinary man who is so charged with theft would be: 'It's no good my claiming for unfair dismissal whilst this charge is still outstanding against me. I

will wait and see what happens to it before making a claim.' If that be his state of mind, then he is time-barred as soon as the three months have elapsed without his presenting a claim. It was reasonably practicable for him to present his complaint of unfair dismissal within three months. His only reason for not doing so was because of the outstanding charge. That is not an acceptable reason for saying that it was not 'reasonably practicable' to present his claim within the three months.

" I would venture to take the simple test given by the majority in Dedman's case [1974] I.C.R. 53, 61. It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time? Ignorance of his rights—or ignorance of the time limit—is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences. That was the view adopted by the Employment Appeal Tribunal in Scotland in House of Clydesdale Ltd. v. Foy [1976] I.R.L.R. 391 and in England in Times Newspapers Ltd. v. O'Regan [1977] I.R.L.R. 101—decisions with which I agree."

Emotional Distress

35. I have no jurisdiction to make an award of compensation for emotional distress that arises out of claims for unfair dismissal, unauthorised deduction of wages or breach of contract.

Conclusions

36. The claimant's employment was terminated on 10 August 2020. Subject to the early conciliation process, the claims ought to have been lodged by 09 November 2020. The claimant did not begin early conciliation until 21 October 2021 and the certificate was issued on 25 October 2021. The Claim Form was lodged on 28 October 2021. The claims were therefore almost a year out of time. In the attachment to her Claim Form, the claimant acknowledges that the claims are out of time but asks for her claims to be reviewed on the basis of exceptional circumstances.

Was it reasonably practicable for the claim to be lodged within the original time limit

37. The claimant's case is that she was in custody from 23 July 2020 until 27 September 2021. In her Claim Form, the claimant states that she did not have the options or means during that time to lodge a Claim Form and therefore it was not reasonably practicable for her to lodge her claim within the original time limit.
38. In oral evidence, the claimant made it clear that she was aware that she could bring a claim in the Employment Tribunal but stated that she was not aware of the time limits for bringing a claim.
39. The claimant then made four points.
40. Firstly, she stated that she was in the prison system, which made life difficult for her, not least because the administrative systems there are slow.

41. Secondly, she stated that the legal advice she was given was to deal with the criminal matter first.
42. Thirdly, she stated that she was not in a fit medical condition to deal with her employment matter.
43. Fourthly, she stated that she was concerned about the safety to her life because she was a social worker which made her vulnerable in prison.
44. I deal with each of these matters in turn.

The Prison System

45. Whilst in prison, the claimant had restricted access to the telephone, correspondence and no direct access to the internet. However, she was able to make telephone calls, albeit not as and when she would have liked. She did receive correspondence. She had access, albeit restricted, to both her criminal solicitor and her caseworker, Ben Moorhouse. She also had contact with her sister. The claimant's sister was supportive and on 28 July 2020 had telephoned the respondent when she requested that no action be taken against the claimant.
46. Therefore, although I have no doubt that life was difficult for the claimant in prison and that the administrative systems were slow, the claimant was in a position to deal with issues that affected her outside of prison.

The Legal Advice

47. The claimant was aware that she could bring a claim but states that she was unaware of the time limits for bringing a claim. If she were not in prison it would have been relatively straightforward for her to check on this but she did not have access to the internet. She said that she did have a brief discussion with her criminal solicitor about this and he explained that the respondent may have jumped the gun. However, she states that he also told her that she should wait until her criminal matters were resolved before she dealt with her employment issues. On her own account, this was no more than a brief discussion. I also have no doubt that during her discussions with her criminal solicitor, the claimant was primarily focused on issues relating to the criminal charges against her rather than any claim against the respondent. This would also have been an emotionally distressing time for the claimant. The claimant stated that her criminal solicitor was concerned for her wellbeing and he was most likely trying to reassure her during their conversations and to focus on the criminal charges against her. I find that, whilst a brief conversation did take place about her employment, that is not a conversation that extended to a discussion about her employment claim and any time limits involved. The claimant acknowledges that her criminal solicitor later told her, closer to her trial date, that she would need employment advice when she came out of prison and I find that if the claimant had discussed the prospect of bringing a claim against the respondent at an earlier point of time, then he would have given her the same advice.

48. The claimant did have access to her sister by telephone, although she could not call her whenever she wanted to. She also had access to her caseworker, Ben Moorhouse. I acknowledge that the resources available to her were limited but, she could have made enquiries regarding a claim against the respondent, and in particular whether there were any time limits, but did not. Making those enquiries were not as straightforward given she was in prison, but they were possible, given that she did have access to people, including her sister, outside of prison.
49. Instead of actively pursuing her employment claim, the appellant has instead simply waited until the conclusion of her criminal proceedings before deciding what action to take. In light of what was stated in the case of **Riley v Tesco Stores Ltd** 1980 ICR 323 CA, the consequence of this is that she is time-barred as soon as the three months have elapsed without her presenting a claim. Whilst I acknowledge that the claimant was in prison rather than on bail, the claimant could nevertheless have made further enquiries about the time-limits for making a claim by asking her sister, her caseworker or her criminal solicitor to check for her.

Medical Condition

50. I have no doubt that the claimant must have been incredibly distressed to find herself in prison and that at the time of her initial incarceration her mind would have been primarily focused on adjusting to life in prison and dealing with the criminal charges that she faced which were serious firearm offences.
51. However, even in the distressing circumstances in which she found herself, the claimant had three months in which to present a claim and during that period of time in prison, could have made enquiries about the time limits for presenting a claim. She did not do this and the reason for this was because she had decided to wait until the conclusion of the criminal proceedings before considering what steps to take in respect of her employment. Therefore, although I accept that this was a distressing time for her, it was her distress that prevented her from presenting a claim within the three month time limit. Rather, it was the fact that she had decided to wait until the conclusion of the criminal proceedings before deciding what to do about her employment issues.
52. Even if I accept that her anxiety was such during the initial three months of her imprisonment that she was incapable of presenting a claim because of her inability to cope with her situation, she did nothing until after her release from prison on 27 September 2021, which was more than a year after she was imprisoned and her employment terminated. The fact that she did nothing until after her release from prison is further support for my conclusion that the claimant was waiting for her criminal proceedings to be concluded before presenting a claim.

Safety to her Life

53. The claimant stated that she was concerned about the safety to her life because she was a social worker which made her vulnerable in prison. I have no doubt that the claimant was anxious about many things whilst in prison and that it was a

distressing experience for her. However, I do not accept that the delay in presenting her claim was owing to concerns about the safety of her life, nor down to her anxiety and the distressing circumstances in which she found herself. The delay in presenting the claim was owing to the fact that she had decided to wait until the criminal proceedings were concluded before presenting a claim.

54. In these circumstances I find that it was reasonably practicable for the claimant to present her claim within the original time limit.

55. I therefore dismiss all of the claims.

Date: 26/10/22

Tribunal Judge J E Plowright acting as an Employment Judge

Sent to the parties on:

11/11/2022

For the Tribunal:

N Gotecha