



EMPLOYMENT TRIBUNALS

Claimant: Ms K Tzanidou
Respondent: Lewisham and Greenwich NHS Trust
Heard at: London South Employment Tribunal
On: 9 November 2022
Before: Employment Judge Ferguson

Representation

Claimant: In person
Respondent: Ms D van den Berg (counsel)

JUDGMENT having been sent to the parties on 10 November 2022 and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION

1. This was an open preliminary hearing to determine the issue of the Tribunal's jurisdiction to consider the claim in light of the applicable time limits.
2. The Claimant was dismissed on 6 November 2018. By a claim form presented on 2 March 2022, the claimant complains of unfair dismissal. Early conciliation took place between 21 January 2019 and 21 February 2019.
3. The hearing had been listed as an in-person hearing in Croydon, but was converted to a video hearing the day before. The parties were informed and the Tribunal sent instructions for joining the hearing. On the morning of the hearing the Claimant attended the Tribunal in person, saying to the clerk that she was unable to take part in a video hearing, partly for medical reasons. The Respondent, who had attended by video, said that they could attend the Tribunal in person by 12 noon. The Tribunal agreed that the hearing would take place in person and would start at 12 noon. The Claimant then informed the clerk that she could not continue with the hearing and would need to go home

because she was suffering from anxiety. Unfortunately the Tribunal lift was out of order and the Claimant said she could not go up the stairs because of her anxiety. I went to the foyer to speak to the Claimant and agreed that if necessary I would hear an application to postpone the hearing in the lobby once the Respondent's counsel arrived. In the event, by the time the Respondent's counsel arrived the Claimant was feeling better and said she was happy to go upstairs and continue with the hearing. At the start of the hearing I asked the Claimant if she required any adjustments. She said she did not need any, but may need to take a short break if she became stressed and was unable to answer questions. I agreed that such breaks would be allowed and asked the Claimant to let me know if she wanted one. The Claimant confirmed she was happy to proceed with the hearing.

4. I heard evidence from the Claimant and submissions from both parties.

THE LAW

5. Complaints of unfair dismissal are subject to a three-month time limit, pursuant to s.111 of the Employment Rights Act 1996. This period may be extended if early conciliation is commenced within the primary three-month period. Where the ordinary time limit expires during the early conciliation period, the deadline is extended to one month after the end of the early conciliation period. The Tribunal only has jurisdiction to consider a complaint presented outside the time limit if it was "not reasonably practicable" to bring the claim in time and it is brought within a further reasonable period.
6. The burden is on the claimant to establish it was not reasonably practicable to present the claim, or to commence early conciliation, within the three-month period, but the phrase "reasonably practicable" should be given a liberal interpretation in favour of the employee.
7. It is well established that ignorance or mistaken belief as to rights or time limits will not render it "not reasonably practicable" to bring a claim in time unless that ignorance or mistaken belief is itself reasonable. It will not be reasonable if it arises from the fault of the employee in not making inquiries that he or she should have made (Wall's Meat Co Ltd v Khan 1979 ICR 52).

FACTS

8. The Claimant commenced employment with the Respondent as a physiotherapist from 5 October 2015. She was dismissed on capability/performance grounds on 6 November 2018.
9. The Claimant's evidence is that she was contemplating bring a claim in early 2019. She took advice from a solicitor on 15 January 2019. She waived privilege and said in her claim form, and in her evidence today, that she was advised that a claim would have poor prospects and there was a risk of costs. She says she was not, however, deterred by that and proceeded to contact ACAS on 21 January 2019. She says the conciliator advised her, when the certificate was issued on 21 February 2019, that she had a further month to bring her claim in the Tribunal. She therefore knew and understood that her claim would have to be submitted by 21 March 2019.

10. The Claimant says she took some steps towards submitting the claim between 21 February and 12 March 2019, including researching the Employment Tribunal Rules, downloading the claim form, and starting to think about the information she would need to give in the form. Then on 12 March 2019 her son, who lives in Athens, called and said his son had had an accident and broken his leg. The Claimant decided to fly to Athens that day. She stayed there for a month, until 13 April 2019. The Claimant says that it was not possible for her to submit her claim while she was in Athens because she was fully occupied caring for her grandson. She accepts that she had internet access, and had her own laptop with her, but says she was not in the frame of mind to do it and she did not have the paperwork relating to her dismissal with her.
11. The Claimant says that when she returned to the UK on 13 April 2019 she did not return to the task of submitting her claim because her understanding was that it was too late. She did not know the Tribunal had a discretion to extend the time limit. Shortly after this she says her family came to stay for a week and again she was looking after her grandson. The Claimant then travelled to Greece again in August 2019 to help with childcare.
12. The Claimant says she found out that Tribunal had a discretion to extend time in late 2019, around the time that she was dealing with her response to HCPC proceedings, which were being handled by a solicitor. By then, however, she was dealing with various difficulties in her personal life, including with her housing situation. The Claimant says she has been the victim of numerous and repeated attacks from December 2018 to date. She also claims she had health problems that prevented her from bringing a claim. Another factor was the pandemic and the lack of access to legal advice. The Claimant says that because of all of those reasons she could not submit her claim until March 2022.

CONCLUSIONS

13. It is not in dispute that the extended time limit expired on 21 March 2019. The first question is whether it was reasonably practicable for the Claimant to submit her claim by that date. She was aware of the time limit from at least 21 February 2019. Indeed she believed at the time it was an absolute deadline, i.e. there would be no discretion to extend. On the Claimant's case she was intending to submit the claim by 21 March 2019, but suddenly on 12 March 2019 she unexpectedly had to travel to Greece and it simply was not possible for her to submit the claim while she was there.
14. I do not accept that it was not reasonably practicable for the Claimant to submit the claim by 21 March 2019. I am prepared to accept that this was a family emergency that required the Claimant to drop everything and travel to Athens immediately, that the Claimant was very preoccupied looking after her grandson, and that the circumstances were far from ideal in terms of being in the best frame of mind to submit a Tribunal claim. There was, however, nothing actually preventing the Claimant from submitting her claim. She had her laptop, she had access to the internet – on her case in fact easier access to the internet than she did at home where she goes to the Royal Society of Medicine to use the internet. She already had the claim form and had conducted some initial

research. To the extent that she needed the paperwork with her, the Claimant should have realised when she travelled that she was likely to be away until after the deadline and brought the documents with her, or she could have submitted the claim as well as she could without the documents. It may have been difficult but it was reasonably possible for the Claimant to submit the claim by 21 March 2019.

15. Even if it was not reasonably practicable to submit the claim in time, I do not accept that the claim was submitted within a further reasonable period. The reason the Claimant says she did not submit the claim when she returned to the UK was a mistaken belief that there was no discretion to extend the time limit. It seems somewhat doubtful that the Claimant did not know about the discretion to extend time. She was well-informed about Tribunal procedures and if she had been very concerned about missing the deadline while she was in Greece she would surely have double-checked to see if there were any exceptions. I consider it likely that having been given negative advice on the prospects, and life events having somewhat taken over, the Claimant simply decided it was not worth submitting the claim.
16. Even if a misunderstanding of the law was the genuine reason for the subsequent delay after the Claimant's return to the UK, her misunderstanding was not reasonable. The Claimant was fully capable of researching the law or taking advice, as she had done previously. This was before the housing and health issues had become, on the Claimant's case, a major impediment to submitting a claim. The Claimant says the attacks started in December 2018, but this did not prevent her from engaging in her appeal against dismissal and contacting ACAS in January and February 2019. Indeed it is the Claimant's case that if her grandson's accident had not happened she would have submitted the claim in time. The Claimant could have, on her return to the UK, returned to the task of preparing the Tribunal claim and if necessary taken advice on how to submit a claim out of time.
17. The Claimant had a further opportunity to submit the claim in late 2019 when she learned of the discretion to extend the time limit. Even accepting that the Claimant was by this stage experiencing serious problems in her personal life, she was still able to engage with the HCPC proceedings and instruct her solicitor for that purpose. It ought to have been possible, therefore, for her to submit her claim form at that time.
18. In light of those conclusions it is unnecessary for me to make any findings about the period from late 2019 to March 2022 when the claim was eventually submitted.
19. In summary, I do not accept that it was not reasonably practicable to submit the claim in time and even if it was not, the claim was not submitted within a further reasonable period. It is unnecessary to take into account the prejudice that would be caused to the Respondent in allowing the claim to proceed but I accept that there would be significant prejudice in seeking to defend the fairness of a dismissal that took place more than four years ago, so that would also weigh against finding the claim was submitted within a further reasonable period.

20. The Tribunal therefore does not have jurisdiction to consider the claim and it is dismissed.

Employment Judge Ferguson

Date: 29 November 2022