



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs J Gunnell

v

Milton Keynes College

Heard at: Watford

On: 28 November 2022

Before: Employment Judge Forde

Appearances

For the Claimant: did not attend

For the Respondent: Miss Pryce, Solicitor

JUDGMENT

1. The claim is struck out

REASONS

1. By way of letter dated 6 July 2022 the tribunal wrote to the parties to indicate that the tribunal was concerned the claimant's claims had been presented to the tribunal out of time. The letter indicated that the parties should submit representations in writing to the tribunal no later than 7 days prior to the date of the hearing listed to take place on 29 November 2022 with a time estimate of 3 hours.
2. The basis for the tribunal's concern is set out in the respondent's response to the claimant's claim. Specifically, it was the respondent's position that the claimant had resigned from her employment on 6 September 2021.
3. While it is clear from the claimant's claim that she pursues a claim of constructive unfair dismissal it is unclear as to whether or not any further claims are pursued particular in respect of whistleblowing. For the purposes of this judgment I assume that the claimant pursues a claim of whistleblowing.
4. Both claims have a time limit of three months from the date on which the claimant's employment terminated to present proceedings to the

employment tribunal. For the unfair dismissal claim the relevant limitation period expired on 5 December 2021.

5. The claimant did initiate Acas early conciliation process on 26 November 2021 and the EC certificate was issued on 6 January 2022. The limitation period was therefore extended to 6 February 2022. However, the claimant presented her claim to the tribunal on 16 March 2022 which is ostensibly 38 days after the limitation period expired for her to present her claim. Understandably, the respondent contends that the claimant's claims are out of time and that the tribunal does not have any jurisdiction to hear them.
6. Before the hearing commenced, there had been correspondence between the parties which was copied to the tribunal. The claimant had requested a postponement of the hearing on the basis that a bundle of documents prepared by the respondent had been provided to her late and she had not had an opportunity to consider the documents contained within the bundle and, secondly, that the respondent has failed to provide disclosure of certain document which the claimant considered germane to her claim. The application for postponement was dismissed and the hearing ordered to proceed. However, the claimant was not in attendance at the hearing and the tribunal was not able to contact her either by telephone or email.
7. Ms Pryce, solicitor on behalf of the respondent, attended tribunal in person as directed. The tribunal gave consideration to whether or not it should proceed with the preliminary hearing in the absence of the claimant. Ms Pryce contended on behalf of the respondent that the hearing should proceed. It was her view and contention that in the absence of an adequate excuse, the claimant would not be able to demonstrate that it was not reasonably practicable for her to have presented her claim within the three month limitation period. Further, the parties had received notification of the hearing by way of letter dated 6 July 2022 and that notice indicated that the parties should provide representations in relation to the issue that the tribunal had to determine by no later than seven days in advance of the hearing. The claimant had chosen not to provide any representations in respect of the issue to be determined.
8. Ms Pryce submitted that it would not be in the interests of justice to delay determination of the issue until a later date, that the claimant had been aware of the hearing, that the claimant had been provided with adequate notice of the hearing, and that she had chosen not to attend the hearing.
9. I found that the claimant had taken the decision not to attend the hearing having had adequate notice of the hearing. The tribunal had taken adequate steps to contact the claimant but was unable to reach her. Further, the claimant could have provided written submission to the tribunal in respect of the issue to be determined but she had chosen not to do so. In the circumstances, it was open to me to reach the decision I did which was that the hearing should proceed in the claimant's absence.

Time

10. The tribunal went on to consider the issue of time and found, on the balance of probabilities, that the claimant had presented her claim 38 days after the limitation had expired and that the claimant did not have a reasonable excuse for doing so. Accordingly, I find that the claimant's claim of constructive unfair dismissal and in respect of whistleblowing (protected disclosure) are out of time as the tribunal does not have jurisdiction to hear them.
11. The claim is therefore stuck out.

Employment Judge Forde

Date: 16/12/2022

Sent to the parties on: 24/12/2022

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For the Tribunal Office