



THE EMPLOYMENT TRIBUNAL

Claimant **Respondent**
Ms. Ailsa Paton **South East Coast Ambulance**
v **Service**

Heard at: **London South Employment Tribunal by CVP**

On: **27 January 2023**

Before: **Employment Judge Martin**

Appearances

For the Claimant: **In person**

For the Respondent: **Ms. Egan - Counsel**

JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's claim of unfair dismissal was brought out of time, and it was reasonably practicable for it to have been brought in time. The claim is therefore dismissed.
2. The Claimant's claim for discrimination was brought out of time and it is not just and equitable to extend time. The claim is therefore dismissed.

REASONS

1. Reasons were given at the conclusion of the hearing. These written reasons are provided at the request of the Claimant.
2. The relevant dates are as follows:
 - a. Claimant's request for flexible working refused - 5 August 2021
 - b. Appeal against flexible working outcome – 13 September

- c. Effective date of termination of employment – 24 September 2021
 - d. ACAS early conciliation – 21 April 2022 to 25 May 2022
 - e. Claim presented – 3 June 2022
 - f. Limitation date for unfair dismissal – 23 December 2021
 - g. Limitation date for discrimination – 4 November 2021
3. The Claimant accepts that her claims were presented outside the statutory time limits set out in s111(2)(a) Employment Rights Act 1996 (“ERA”) (for unfair dismissal) and s123 ERA (discrimination).
4. The tests for extending time are different for the two types of claim brought. For unfair dismissal the test is whether it was reasonably practicable for the claim to have been brought in time. For discrimination the test is whether it is just and equitable to extend time.

Why the Claimant says she did not present her claim in time

5. The Claimant gave clear and frank evidence about why her claim was not brought in time. The main reason given is that it took until April 2022 for the Respondent to hear her appeal against the refusal to agree to her request for flexible working and she considered that given the continued contact and communications in this period that the time limit would not have expired.
6. The Claimant had access to advice, although she says that the advice she got initially did not give her details of how to present a claim in the employment tribunals or of the time limits. The advice she had access to was:
- a. Her daughter who is a trainee solicitor
 - b. A conversation with a solicitor in the firm that her daughter is employed by on or about 13 September 2021
 - c. Union representation both during her application for flexible working, and after the termination of her employment in relation to her appeal
 - d. Other union representatives who were colleagues in the HR department where she was working.
 - e. Union Line where both representatives and members could get legal advice and support
7. The Claimant explained that she was in a ‘dark place’ when her employment ended. She did not seek or need medical intervention of any kind.
8. In or about 18 February 2022 the Claimant telephoned the Union Line and was told then that her claims were out of time. The Claimant said she only contacted

ACAS on 21 April 2022 once her appeal had been rejected and that notwithstanding what Union Line had told her she believed she was still in time to present her claim.

9. The Claimant gave no explanation as to why she did not ask ACAS for a certificate immediately she contacted them. There is no need for actual conciliation, just that the Claimant has completed the process.
10. The Claimant gave no explanation as to why she waited until 3 June 2022 before presenting her claim when the conciliation process finished on 25 May 2022.

The Respondent's submissions

Unfair dismissal and reasonable practicability

11. The Respondent pointed to the Claimant writing a detailed appeal letter regarding the refusal of her flexible working request which she did not termination of her employment and other communications between the parties during the limitation period. It was pointed out that correspondence from the Claimant soon after her employment ended used phrases such as '*constructive unfair dismissal*' and '*associative discrimination*'. This pointed to the Claimant having taken advice.
12. The Claimant had access to legal advice from her daughter, a solicitor, her union representatives and colleagues and Union Line. She was aware that she may have a legal claim from an early stage. It would have been easy for her to undertake an internet search to find out how to present a claim, where to present a claim and the applicable time limits.
13. It was submitted that although the Claimant referred to her mental health during the limitation period and beyond, that she did not need medical treatment and was still able to draft the detailed appeal document and correspond with the Respondent.
14. It was submitted that the delay in presenting the claim was considerable and it was reasonably practicable to have brought the claim in time and therefore the unfair dismissal claim should be dismissed.

Discrimination and just and equitable

15. It was submitted that whilst this test is broader than the reasonably practicable test that there is no presumption that time would be extended, and it was exceptional rather than the rule. It was for the Claimant to persuade the tribunal that it should extend time.
16. The delay was considerable, the reasons for the delay were not clear and the Claimant had access to numerous sources of legal advice.

The law

17. s111(2)(a) Employment Rights Act 1996.

An employment tribunal shall not consider a complaint under this section 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.

18. S123 Equality Act 2010

Proceedings ... may not be brought after the end of -

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

19. The following case law is relevant:

- a. **Wall's Meat Co Ltd v Khan [1978] IRLR 499** - If the reason is because of a mistake or ignorance of time limits was the mistake or ignorance reasonable. Did the Claimant take advantage of the opportunities available to find out what rights they had.
- b. **Palmer v Southend-on-Sea Borough Council [1984] IRLR 119** – an internal appeal process in itself will not justify a Claimant's failure to meet the primary time limit.
- c. **Dedman v British Building and Engineering Appliances Ltd [1974] All ER 520** – Reliance on incorrect advice does not excuse a failure to present a claim in time.
- d. **Cullinane v Balfour Beatty Engineering Services Ltd (UKEAT/0537/10)** – The Deadman case also applies to trade union advisors and representatives.
- e. **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA** – Exercise of the discretion to extend time is the exception not the norm

My conclusions

20. I have come to the following conclusions on the balance of probability having heard the reasons put forward by the Claimant for presenting her claims late and submissions from both parties.

Unfair dismissal

21. The test for an unfair dismissal claim is narrow. Was it reasonably practicable to have brought the claim in time? I find that it was for the following reasons:

- a. The Claimant had access to advice from several sources which are set out above from an early stage.
- b. The Claimant was able to put together a detailed appeal document appealing against the decision in her flexible working request.
- c. The Claimant was able to communicate with the Respondent during and beyond the limitation period.
- d. I recognise that the Claimant says she had mental health issues, however there was no evidence to substantiate this because she did not need to seek medical assistance. Her mental health did not impede her in writing the detailed appeal request or communicating with the Respondent and her union representative.

22. For these reasons I find it was reasonably practicable for the claim for unfair dismissal to have been presented in time and I therefore dismiss this claim.

Discrimination – just and equitable extension

23. In addition to the matters cited in relation to the unfair dismissal claim I also took account of the following:

- a. The Claimant was told in or about 18 February 2022 that her claim was out of time by Union Line. Notwithstanding this the Claimant made no attempt to contact ACAS to start the early conciliation process, to research on the internet what needed to be done, to speak to her union representative about what Union Line had said and ask him for his help.
- b. Had the Claimant put her claim in at that point I might have been persuaded that it would be just and equitable to extend time given the Respondent's considerable delay in dealing with her appeal and her view that because of this she believed she would still be in time.
- c. However, the Claimant did not do this which I find difficult to understand. Instead, she waited for the conclusion of the appeal process before contacting ACAS. She then went through a month of conciliation rather than getting a certificate immediately and putting in her claim at the earliest possible moment.

- d. I accept the Respondent's submission that the delay was significant and that the recollections of witnesses would be dimmed by the passage of time. Indeed, this would apply equally to the Claimant and any of her witnesses. This is one reason that there are relatively short time limits in Employment Tribunal cases.
- e. I have considered all the factors relevant to this type of application, namely:
 - i. The length and reason for the delay. I find the delay to be significant and the reasons for the delay not credible especially as the Claimant was told on or about 18 February 2022 that her claim was out of time by Union Line.
 - ii. The extent to which the cogency of the evidence is likely to be affected. All witnesses would be affected by the delay as discussed above.
 - iii. The extent to which the Respondent had cooperated with any requests for evidence. This was not relevant in this case.
 - iv. The promptness with which the Claimant acted once she knew of the facts giving rise to the cause of action. I find that the Claimant did not act promptly. She knew she had a cause of action at the time her employment ended, yet did not present a claim for some 8.5 months.
 - v. The potential merits – this was not considered in any detail and was not a factor in my decision.

24. In all the circumstances I do not find it just and equitable to extend time and the Claimant's claim for discrimination is dismissed.

Employment Judge Martin
Dated: 27 January 2023

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.