



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Joanne Cook

v

The Bennie Group Limited

Heard at: Huntingdon

On: 1 March 2023

Before: Employment Judge M Ord (sitting alone)

Appearances

For the Claimants: In person

For the Respondent: Ms A Foley, Solicitor

JUDGMENT on Application for Strike Out

1. The Claimant's complaints were presented out of time.
2. The time for presenting the Claimant's complaint of unfair dismissal is extended to 11 February 2022, on the basis that it was not just and equitable to present the claim in time.
3. The time for presenting the complaint of disability discrimination is extended to 11 February 2022, on the basis that it is just and equitable to extend time.

REASONS

1. The Claimant was employed by the Respondent as an Operations Team Leader from 8 August 2019 to 30 September 2021.
2. The Claimant began Early Conciliation on 30 November 2021 and her Certificate is dated 10 January 2022.
3. The Claimant presented her claim form to the Employment Tribunal on 11 February 2022.

4. By its Response, the Respondent identified that the Claimant had presented her claim out of time and sought to have the complaints struck out for lack of jurisdiction.
5. I heard from Mrs Cook who had prepared a statement and supporting documents.
6. The Claimant says that she relies on advice in relation to the Rule and was relying on the information she received from ACAS. She does not have the funds to instruct a Solicitor and does not have knowledge of the Law or the process needed to follow regarding her claim.
7. Those aspects of her evidence were unchallenged.
8. On 20 January 2022, the ACAS Officer advised the Claimant that because she now had an Early Conciliation Certificate,
“the clock is ticking on any deadline to submit a claim”
and that the Claimant,
“should have one calendar month from the date the Certificate is issued”.
9. There was an exchange of emails regarding the fact that the Claimant was still engaged in internal processes and on 1 February 2022, the Claimant asked of the ACAS Officer,
“Can you please advise the final date before I am no longer able to go to Tribunal? And what my options are now please?”
10. On the same day, the ACAS Officer replied saying,
“If you wish to proceed to an Employment Tribunal you should have at least one calendar month from the date the Certificate was issued in which to do so. The Certificate was issued on 11 January 2022.”
11. On 2 February 2022, the Claimant wrote again to the ACAS Officer saying that the outcome of the internal process would not be received until 15 February 2022, or thereafter and,
“This now takes me past the deadline on 11 February to go to Tribunal. I started this in October, we are now in February, 4 months and I am no further forward. Is there anything I can do?”
12. On 2 February 2022, the ACAS Officer replied explaining that a claim can still be submitted even though internal processes were continuing, but there was no advice to the Claimant that the “deadline” was not 11 February 2022.
13. Based on the evidence I have heard, I am satisfied that:

- 13.1. Although the ACAS Certificate is dated 10 January 2022, it was not sent to the Claimant until 11 February 2022, as ACAS confirmed;
 - 13.2. The Claimant believed that one month (the ACAS Officer told her “*at least one month*”) from 11 January 2022 was 11 February 2022; and
 - 13.3. When this was raised with ACAS, there was no statement from the ACAS Officer to correct the Claimant’s misunderstanding and to inform her that the final date for presentation of the claim was 10 February 2022.
14. In those circumstances I am satisfied that the Claimant’s failure to present the claim in time due to her reliance on the information provided by the ACAS Officer, was because that advice made it not reasonably practicable to present the claim in time. She was advised of the final date for the presentation of her claim, expressed her understanding of that and that understanding was not corrected.
 15. The Claimant then presented her claim on what she believed was the last day she was entitled to do so. Clearly, that was within a reasonable time after 10 February 2022 (within 24 hours) and therefore the claim was presented within a reasonable time thereafter.
 16. In relation to the claim of discrimination, I am satisfied that it is just and equitable to extend time. The Respondent suffers no prejudice whatsoever by the extension of time by one day, the Claimant again was relying upon the ACAS Officer’s advice and it would be entirely unjust and inequitable for her to be unable to pursue her complaint against the Respondent because she relied on that (erroneous) advice.
 17. Accordingly, the time for presentation of the claims is extended up to 11 February 2022, the date upon which the Claimant submitted her claim form.

3 March 2023

Employment Judge M Ord

Sent to the parties on: 11.3.2023

GDJ
For the Tribunal Office.