



EMPLOYMENT TRIBUNALS

Claimant: Ms A Pedro

Respondent: L. Rowlands & Company (Retail) Limited

Heard By Video at: Swansea Civil Justice Centre **On:** 10 March 2023

Before: Employment Judge S Povey

Appearances

For the Claimant: In Person

For the Respondent: Mrs Fernandez-Mahoney (Solicitor)

JUDGMENT

1. The claim of automatic unfair dismissal (contrary to section 103A of the Employment Rights Act 1996) was not presented to the Tribunal before the end of the period of three months beginning with the effective date of termination.
2. It was reasonably practicable for the claim of automatic unfair dismissal (contrary to section 103A of the Employment Rights Act 1996) to be presented before the end of the period of three months beginning with the effective date of termination.
3. The claim of automatic unfair dismissal (contrary to section 103A of the Employment Rights Act 1996) was not presented to the Tribunal within such further period as the Tribunal considers reasonable.
4. As such, and by reason of section 111 of the Employment Rights Act 1996, the Tribunal cannot consider the claim of automatic unfair dismissal (contrary to section 103A of the Employment Rights Act 1996) and it is hereby struck out.
5. All other claims against the Respondent are dismissed upon withdrawal.

REASONS

1. At the culmination of the hearing on 10 March 2023, I provided my judgment and reasons orally to the parties.

2. On 17 March 2023, the Claimant made a request for a transcript of my reasons. This is that transcript.

Background

3. These are claims brought by Ana Pedro (hereafter referred to as the Claimant) against her former employer, L. Rowland & Company (Retail) Limited (hereafter referred to as the Respondent). The claims were presented to the Employment Tribunal ('the ET') on 19 & 30 December 2022 respectively.
4. The Claimant was employed by the Respondent as a pharmacist, from 3 January 2019 until her dismissal with effect from 16 April 2019. The claims have been brought out of time. The purpose of the hearing was to decide whether the ET should extend time and allow the claims to proceed.
5. On 18 January 2023, Regional Employment Judge Davies directed that the parties prepare a bundle of relevant documents and that the Claimant prepare and provide a witness statement relevant to the issues to be determined at this hearing. Although a bundle of documents was prepared, the Claimant failed to provide a witness statement.
6. However, it was agreed that I would allow the Claimant to explain why she had brought her claims out of time in the course of the hearing (which I have set out, below).
7. The Claimant confirmed, after discussion with myself, that her only claim against the Respondent was one of automatic unfair dismissal on the grounds of making protected disclosures. All other claims and allegations against the Respondent and its other employees fell under the jurisdiction of the General Pharmaceutical Council ('GPC') and the Claimant intends to pursue those complaints with the GPC. As such, the Claimant was content to withdraw all other claims against the Respondent, which, as explained, I dismissed upon withdrawal.
8. The claim of automatic unfair dismissal is resisted by the Respondent, who maintains that the Claimant was dismissed on grounds of misconduct.
9. The Claimant has brought two earlier claims against this Respondent. One was struck out on 20 May 2022. The other was rejected by the ET and returned to the Claimant on 16 September 2022.

The Relevant Law

10. Section 103A of the Employment Rights Act 1996 states as follows:

An employee who is dismissed shall be regarded...as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

11. By reason of section 111(2) of the Employment Rights Act 1996, the ET shall not consider a complaint of unfair dismissal unless it is presented:

- (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 [ET] 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.

The Claimant's Submissions

12. It is not in dispute that the claims have been presented after the end of the period of three months from the effective date of termination of the Claimant's employment (on 16 April 2019).
13. The Claimant explained that by the time of her dismissal, she knew that she could complain to the GPC (about the Respondent's conduct) but not that she had the option to present a claim to the ET or the associated time limits. It was only when she had another employment problem (unconnected to the Respondent) and was advised by Citizens' Advice ('CA') that she could complain to the ET that she became aware of the ET and its functions. That was in or around April 2021.
14. Thereafter, the Claimant was engaged in her other dispute, which took about a year to resolve. The Claimant explained that she was really involved in finding evidence and conducting her other case in the ET. That case finished in April or May 2022.
15. The Claimant further explained that at the end of April 2022, she submitted an application for an NHS England contract. The application form included a section where an applicant has to declare if they have ever been dismissed. The Claimant took advice on filling out that part of form from the National Pharmaceutical Association ('the NPA'), who advised her of her right to bring a claim in the ET, in order to clarify that she was not dismissed because of her behaviour but because of reporting wrong doing.
16. The Claimant recalled that she spoke to the NPA on 22 April 2022. The NPA confirmed the advice that she had already received from CA in or around April 2021 (as regards bringing claims to the ET and the associated time limits).
17. The Claimant was thereafter engaged in responding to NHS England about her application and for that reason was unable to start her current claims until December 2022. The Claimant described how NHS England were contacting her every two weeks. They wanted different references from those included in the Claimant's application form. To date, the Claimant has sent them about 10 different references. NHS England last contacted her about them on 25 January 2023 to say that they had received the latest references and would be in touch.
18. Finally the Claimant referred to the fact that whilst she was dealing with her NHS England application, she was also working, which impacted upon her time. In addition, she explained how she had to think about what she was going to put in her current claims.

19. I checked that my understanding of the Claimant's submissions was accurate and she confirmed that it was.

Reasons for Not Extending Time

20. The claims have been brought out of time. In order for them to proceed, the Claimant must rely upon the ET's power to extend time. That requires determination of the following:

20.1. Whether it was reasonably practicable for the Claimant to present the claims to the ET within the three month time limit;

20.2. If it was not, whether the Claimant thereafter presented the claims within a further reasonable period of time after the expiry of the three month time limit.

Reasonably practicable

21. The Claimant is educated and intelligent. On her own case, she felt wronged upon being dismissed, referring to being aware at the time of her dismissal of how to complain to the GPC. It would not have taken much research or enquiry to find out, from a simple online search, of the remedies available in the ET and the associated time limits.

22. Ignorance of rights can only be relied upon if the ignorance is reasonable. It is not a wholly subjective test. Was it reasonable in all the circumstances for the Claimant to be ignorant of her rights to claim unfair dismissal, after being sacked for, in her words, raising wrongdoing? Given her education, her professional qualifications, her belief that she had been wronged and her knowledge of the ability to raise concerns with the GPC, any ignorance of her right to bring a claim in the ET and its associated time limits was unreasonable.

23. In addition, there was no good reason for why the Claimant did not seek advice sooner than April 2021, especially if she believed, as she claims, that she knew that she had been dismissed because of highlighting wrong doing.

24. For those reasons, it was reasonably practical for the Claimant to bring these claims before the expiry of three months from the date of her dismissal.

Further Reasonable Period

25. In the alternative, even if it was not reasonably practicable to bring the claim within three month time limit because of ignorance, the claims have not been brought within a further reasonable period. On the Claimant's own case, she took advice on an employment-related matter in April 2021 and began ET proceedings against different respondents. That was when she became aware of the ET and the associated time limits to bring claims. Despite believing that she had been wronged by this Respondent for sacking her and now being armed with applicable legal advice, she did not start proceedings.

26. Instead, the Claimant claimed that she concentrated on her other proceedings. That was her choice and entirely a matter for her. But it was an informed choice. She could have equally chosen to start these proceedings but decided not to.
27. Once those other proceedings concluded, the Claimant still did not start these proceedings. This time, she decided to concentrate on an NHS England application, despite again taking advice in April 2022 and it being reiterated that she could bring her current claims in the ET subject to time limits. The Claimant again made an informed choice and decided to concentrate on her NHS England application. That was entirely her right but it was not reasonable to wait a further seven months to start these proceedings. The requests by NHS England to supply references and the fact that the Claimant was working did not reasonably stop her starting these claims. Indeed, the Claimant started these claims whilst still being asked for references.
28. In addition, the Claimant began other claims against the Respondent, which were either struck out by the ET (on 20 May 2022) or rejected (on 16 September 2022). There was no good reason for not including the current complaint of automatic unfair dismissal with one of those claims.
29. The deadline for bringing these current claims was July 2019. They were presented in December 2022, three and a half years out of time. It was reasonably practicable for the Claimant to present them to the ET by July 2019. In the alternative, they were not brought within a further reasonable period after the end of the three month time limit.
30. For those reasons, time is not extended and, by operation of section 111 of the Employment Rights Act 1996, the ET cannot determine these claims and they are struck out.

Employment Judge Povey
20 March 2023

Sent to the parties on 22 March 2023

For the Tribunal Office Mr N Roche