



EMPLOYMENT TRIBUNALS

Claimant: Miss D Nasir

Respondent: Teleperformance Ltd

Heard at: Bristol (in public, by video (VHS))

On: 6 June 2023

Before: Employment Judge Livesey

Appearances

For the Claimant: Did not attend

For the Respondent: Ms Lundy, Respondent's HR Manager

JUDGMENT

The Claimant's claims were issued out of time and are all dismissed.

REASONS

Relevant background

1. The Claim Form was issued on 12 August 2022. Within it were complaints of unfair dismissal, discrimination on the grounds of age and 'negligence' on the grounds of part time worker status.
2. At an initial Case Management Preliminary Hearing, which was conducted by Employment Judge Bax on 31 January 2023, a great deal of time was clearly spent discussing the nature of the various claims which the Claimant had intimated (see paragraphs 35 and 41 to 48 of the Case Summary which was produced after the hearing). The issues for determination at the final hearing were identified within paragraph 59 and they are, in essence;
 - Dismissal on the grounds of part time worker status (paragraph 1);
 - Detriment on the grounds of part time worker status, namely the requirement to attend for training on a non-working day (paragraph 2); 4 detriments are alleged (paragraph 2.1);
 - Direct age discrimination (paragraph 3); 5 detriments are alleged (paragraph 3.2);
 - Harassment related to age (paragraph 4); 1 allegation;

- Unlawful deductions from wages (paragraph 5).
- 3. At that hearing, there was a possibility that the Claimant might have sought to bring a complaint of discrimination on the grounds of disability. It was subsequently confirmed that that was not her intention.
- 4. A further Case Management Preliminary Hearing was conducted on 31 March 2023 by the same Judge. He listed this hearing in order to determine a number of preliminary issues (see paragraph 4 of the Order), as recited below.

The hearing

- 5. The Claimant did not attend the hearing. She had not made contact with the Respondent since 31 March. Under the Order which was made on that day, she was required to supply any medical evidence that she had relied upon and a witness statement in support of her applications to extend time by 28 April. She did neither.
- 6. Attempts were made by the clerk and the Video Hearings Officer to contact the Claimant on the morning of the hearing by telephone and email. They were unsuccessful. The hearing therefore proceeded in her absence.

Determination of the issues

- 7. Each of the issues identified by Employment Judge Bax have been set out below in bold and addressed in turn.
- 8. **In relation to the claims of discrimination under the Equality Act 2010, was any complaint presented outside the time limits in sections 123 (1)(a) & (b) of the Equality Act 2010 and if so should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it? Dealing with these issues may involve consideration of subsidiary issues including: whether there was “conduct extending over a period”; whether it would be “just and equitable” for the tribunal to permit proceedings on an otherwise out of time complaint to be brought; when the treatment complained about occurred.**
 - 8.1 The Claim Form was issued on 12 August 2022, the ACAS Certificate having been obtained on 11 July, the Claimant having contacted ACAS on 31 May 2022. The dismissal which took effect on 30 March 2022. Three months less one day would have been 29 June 2022. The Claimant’s contact with ACAS stopped the clock for 41 days and therefore extended the limitation period to 9 August 2022, because this date was within one month of the certificate being issued the time was further extended to one month after the issue of the certificate, i.e. to 11 August 2022.
 - 8.2 It was clearly stated in paragraph 58 of the Case Summary of 31 March 2023 that the Claimant would have needed to provide a witness statement in relation to issues concerning time. Paragraph 10 of the Case Management Order made it a requirement for her to do so by 28 April 2023, as stated above. No such evidence was available.

Relevant principles

8.3 Under section 123 of the Equality Act 2010, a complaint of discrimination may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates (s. 123 (1)(a)). For the purposes of interpreting this section, conduct extending over a period is to be treated as done at the end of the period (s. 123 (3)(a)) and this provision covers the maintenance of a continuing policy or state of affairs, as well as a continuing course of discriminatory conduct.

8.4 Should a claim have been brought outside the three month period, it was nevertheless possible for a claimant to pursue it if the tribunal considered that it was just and equitable to extend time (s. 123 (1)(b)). There was no presumption in favour of an extension. The onus remained on a claimant to prove that it was just and equitable to extend time and, if he/she advanced no case in support of an extension, he/she would not be entitled to one (*Rathakrishnan-v-Pizza Express* [2016] ICR 23 and *Moray Hamilton-v-Fife Council* UKEATS/0006/20/SS). Time limits were not just targets, they were 'limits' and were generally enforced strictly. A good reason for an extension generally had to be demonstrated, albeit that the absence of one would not necessarily be determinative (*ABMU-v-Morgan* [2018] IRLR 1050 (CA)).

Conclusions

8.5 In this case, the last act complained of was the dismissal on 30 March 2022. The Claim was therefore out of time for the reasons set out in paragraph 8.1 above. No reason for the delay was provided and there was no presumption in favour of an extension of time in such circumstances. For the reasons explained in paragraph 8.4 above, in the absence of an explanation from the Claimant, she had no entitlement to an extension, albeit even a short one, and the claim was dismissed as being out of time.

9. **Were the claims of less favourable treatment on the grounds of part-time worker status presented outside the time limits in regulation 8 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and if so should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it? Dealing with these issues may involve consideration of subsidiary issues including: whether there was “a series of acts or failures to act comprising the less favourable treatment”; whether it would be “just and equitable” for the tribunal to permit proceedings on an otherwise out of time complaint to be brought; when the treatment complained about occurred.**

9.1 There was no good reason to adopt a different approach to this claim than to those under the Equality Act above. Accordingly, they were also dismissed.

10. **Was the unfair dismissal complaint presented outside the time limits in sections 111(2)(a) & (b) of the Employment Rights Act 1996 and if so should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it? Dealing with these issues may involve consideration of subsidiary issues including: whether it was “not reasonably practicable” for the unfair dismissal complaint to be presented within the primary time limit; what the effective date of termination was.**

Relevant principles

- 10.1 The test here was different. A complaint to a tribunal of unfair dismissal has to have been presented in accordance with s. 111 of the Act and the legal test was a harder one to meet on the face of the wording of the section. It required a consideration of whether it had been reasonably feasible for the claim to have been issued in time. A tribunal was entitled to take a liberal approach (*Marks & Spencer-v-Williams-Ryan* [2005] EWCA Civ 470 and *Northamptonshire County Council-v-Entwhistle* [2010] IRLR 740), but it nevertheless had to apply the wording of the statute to the facts.
- 10.2 The question of what was or was not reasonably practicable was essentially one of fact for the tribunal to decide. The leading authority as to the test to be applied was the decision of the Court of Appeal in *Palmer and Saunders-v-Southend-on-Sea Borough Council* [1984] IRLR 119, CA in which May LJ undertook a comprehensive review of the authorities, and proposed a test of 'reasonable feasibility'.
- 10.3 If it was not reasonably practicable to present the claim time, the tribunal may allow an extension, but only for such a further period as is considered reasonable. A consideration of that issue generally involves similar considerations to the threshold test.

Conclusions

- 10.4 The Claimant provided no explanation as to why it was not feasible for her to have issued the claim in time. She was not therefore entitled to the benefit of an extension under s. 111 and the claim was dismissed.
11. **In relation to the wages claim, was any complaint presented outside the time limits in sections 23(2) to (4) of the Employment Rights Act 1996 and if so should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it. Dealing with these issues may involve consideration of subsidiary issues including: whether there was a relevant “series”; whether it was “not reasonably practicable” for a complaint to be presented within the primary time limit.**
- 11.1 Again, there was no reason to adopt a different approach in relation to this claim than that adopted in relation to the complaint of unfair dismissal. The statutory test was the same.

6 June 2023

Sent to the parties on
19 June 2023 By Mr J McCormick

For the Tribunal Office