



EMPLOYMENT TRIBUNALS

Claimant: Ms K Evans

Respondent: Bolton NHS Foundation Trust

Heard at: Liverpool (by CVP)

On: 18 August 2023

Before: Employment Judge Ainscough

REPRESENTATION:

Claimant: Mr Cairns – lay representative

Respondent: Ms Souter - Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The effective date of termination was 7 March 2023.
2. the claim for unfair dismissal was submitted within the prescribed time limits set out at section 111 of the Employment Rights Act 1996.

REASONS

Introduction

1. The claimant has made a complaint of unfair dismissal. The respondent contended that the claim was submitted outside the prescribed time limits.

The Issues

2. It was clarified with the parties that the issues were:
 - (1) To determine the date of termination;
 - (2) To determine whether the claim was submitted within the prescribed time limits;

- (3) If not, to determine whether the claimant could have reasonably practicably brought that claim within time, and
- (4) If not, whether she submitted the claim within a reasonable period thereafter.

The Law

3. Pay in lieu of notice does not move the effective date of termination. I have considered the case law on this and in particular the Employment Appeal Tribunal case of **Adams v GKN Sankey Ltd [1980] IRLR 416**.

4. Section 97(1) of the Employment Rights Act 1996 provides:

“Subject to the following provisions of this section, in this Part “the effective date of termination”—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect.”

5. The first part of that section provides for dismissal with notice and that the date of termination will be at the end of the period of notice in such circumstances.

6. Section 111(1) of the Employment Rights Act 1996 provides:

“Subject to the following provisions of this section, 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.”

What was the date of termination?

7. The note of the meeting of 7 December 2022 made reference to 12 weeks’ notice. The claimant confirmed that she understood she was entitled to 12 weeks’ notice. The claimant also confirmed that she had been asked to come back to work on her next shift at the end of the meeting.

8. Following the meeting on 7 December the claimant's trade union representative sent an email to the respondent querying the reason for the claimant's dismissal. The claimant's trade union representative made the point that if the reason for dismissal was some other substantial reason, the claimant would be entitled to 12 weeks' notice.

9. It was the understanding of the claimant's trade union representative that for whatever reason the claimant has been dismissed, the claimant was told that she was entitled to 12 weeks' notice.

10. In response, on 8 December 2022, the respondent confirmed that the claimant was entitled to 12 weeks' notice. The respondent then made an offer on the 8 December 2022 to pay the claimant in lieu of that notice period. The claimant accepted that offer so that she would not have to return to work on the next shift.

11. The **Adams** case confirms that when somebody is dismissed with notice but then subsequently takes pay in lieu of notice, the notice period does not expire until the end of the notice period. In the claimant's case, this was 7 March 2023.

12. **Adams** also confirms that when somebody is dismissed immediately with pay in lieu of notice, the pay in lieu of notice is given as compensation for not providing somebody with a notice period. This was not the situation within which the claimant found herself. The claimant merely exercised the option to take pay in lieu of notice so she did not have to come back to work. The date of termination remained the 7 March 2023.

13. The respondent relied on the dismissal letter being evidence of immediate dismissal because it did not set out when the notice period would expire. However, the letter did confirm that the claimant was entitled to 12 weeks' notice and that she accepted pay in lieu of that notice. The claimant's acceptance of the offer did not negate her right to the notice period.

14. Any ambiguity in such a letter is resolved in the claimant's favour due to the draconian consequences of not resolving it in her favour.

15. The respondent recognised the claimant's ill health and allowed her to take the pay in lieu of notice rather than returning to work. However, the respondent cannot now take advantage of the claimant's acceptance of that offer to deny her the right to pursue her claim.

16. The claimant's termination date was 7 March 2023.

Was the claim submitted within the prescribed time limits?

17. The claimant began ACAS Early Conciliation on 13 March 2023. The claimant received the Certificate on 16 March 2023. The ET1 was submitted on 15 April 2023.

18. Therefore, the claim was submitted within the prescribed time limits.

Employment Judge Ainscough

Date: 21 September 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
17 October 2023

FOR THE TRIBUNAL OFFICE

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