



EMPLOYMENT TRIBUNALS

Claimant: Ms M Doughty

Respondent: Whitbread Group PLC

Heard at: London Central Employment Tribunal by CVP (video)

On: 17 July 2023 and 10 August 2023

Before: Tribunal Judge Overton sitting in the Employment Tribunal

Representation:

Claimant: Mr Wareing, Counsel

Respondent: Ms Dalziel, Solicitor, Weightmans LLP

JUDGMENT having been sent to the parties on 9 August 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. Ms Doughty resigned from her employment on 11 July 2022. She presented her claim to the tribunal on 5 January 2023, having referred her dispute with the Respondent to ACAS on 28 December 2022. Early Conciliation ended on 3 January 2023.

2. The Tribunal listed the claims for a preliminary hearing to determine the question of jurisdiction; that is, whether the claims had been brought outside the statutory time limits set out in s. 111 and s. 23 of the Employment Rights Act 1996 and s.123 of the Equality Act 2010. If the claims were brought outside the time limits then, in respect of her claims of unfair dismissal and unpaid wages, the Tribunal is to determine whether it had not been reasonably practicable for the claimant to bring the claims within the time limit and, if so, whether the claims were brought in a reasonable time thereafter. In relation to the claimant's claim of race discrimination, if the Tribunal was to determine that the claims had been brought outside the statutory time limit then it should determine whether it was just and equitable to extend time.

3. Ms Doughty gave evidence at the hearing and Mr DeAlwis, Hotel Manager, gave evidence for the Respondent.
4. The Respondent's position is that it resists the claims and argues that the Claimant's claims have been brought outside the relevant time limits and the Tribunal therefore has no jurisdiction to hear them.
5. The starting point in a case of this nature is that time limits should be adhered to unless there are good reasons to extend them. The Respondent referred the Tribunal to *Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*. The first question therefore is whether the Claimant has put forward coherent reasons for extending the time limit in this case – it is not to be assumed that time will be extended. However that does not mean that exceptional circumstances are required before it would be just and equitable to extend a time limit. It is a broad discretion for the tribunal to do what it considers just and equitable.
6. In exercising its discretion to allow out-of-time claims to proceed, a tribunal may also consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case — in particular:
 - a. the length of, and reasons for, the delay. In this case the delay is considerable. In relation to the discrimination claim, all but the most recent of the alleged acts of discrimination relied upon occurred between 2006 and 2019 and some of these allegations had been the subject of earlier internal complaints of race discrimination which were not then pursued by the claimant as claims to the Employment Tribunal. Only the most recent act complained of took place after 2019 i.e. the receipt of a number of letters from the Respondent on 2 July 2022 including an invitation to a disciplinary hearing. The delay in making the claims for constructive unfair dismissal and unpaid wages was also considerable. The alleged failures in pay stem from 2006 (failure to pay for an additional hour per week) and 2015 (failure to pay minimum wage). The Respondent then ceased to pay the claimant in July 2022 due to being allegedly absent without leave and in breach of sickness reporting procedures. Ms Doughty explained the reasons for the delay in her evidence. I summarise these as follows:- (i) she was receiving treatment for pain and injury outside of the UK; (ii) the Respondent refused to liaise with Ms Doughty's friend while she was out of the UK meaning Ms Doughty had to deal with everything upon her return; (iii) Ms Doughty was unable to access the work files she needed to assist her claim; (iv) the Respondent persuaded her to complete the internal procedures before contacting ACAS or making a Tribunal claim and the Respondent delayed in completing the internal procedures.
 - i. I accept that Ms Doughty was outside of the UK at the point when she resigned on 11 July 2022, however she returned to the UK on 8 August 2022 and so was able to pursue matters from that date and even while in Zimbabwe, she had at least some access to emails and to the internet.
 - ii. Although Ms Doughty stated that the Respondent's refusal to engage with her friend as a sort of 'appointee' while Ms Doughty was outside the UK contributed to the delay as she had too much to deal with upon her return, in oral evidence Ms Doughty acknowledged that she did not engage her friend to assist her with

her employment problem until after she had returned to the UK and therefore this reason for the delay is contradicted by the claimant's evidence.

- iii. Ms Doughty's request for information made in August 2022 was treated as a data subject access request and responded to in September. Ms Doughty gave evidence that what she wanted to receive were personal files that she had created and saved to her work computer but she did not request these from the respondent or alert the respondent to their presence. She gave evidence that she had not expected to have her access to the Respondent's computer system restricted after her resignation from the Respondent and this restriction contributed to the delay, but this was not a reasonable expectation for the claimant to hold. She should have been aware that having left the Respondent's employment, she would no longer have access to their systems.
 - iv. Ms Doughty gave evidence that the Respondent had written an email on 21 July 2022 which persuaded her to wait for the completion of the internal grievance process before lodging her claim, however the email of 21 July 2022 did not support the claimant's position and the claimant conceded in cross-examination that no one had told her she should complete the internal grievance procedure before lodging a Tribunal claim.
 - v. In her witness statement Ms Doughty gave as a reason for the delayed claim the pain and mental health difficulties she experienced. Although it is accepted that Ms Doughty has back pain, no medical evidence was brought in support of Ms Doughty's contention that medical difficulties impacted upon her ability to lodge her claims in time and Ms Doughty gave evidence that she did not seek medical help concerning her mental health until May 2023.
- b. the extent to which the cogency of the evidence is likely to be affected by the delay; I have heard evidence and submissions from the Respondent as to the difficulty that would be caused to the Respondent in identifying and contacting the Claimant's named comparators or witnesses to the alleged incidents as the Respondent's system retains information of past employees for only seven years and Ms Doughty's claims extend as far back as 2006.
- c. the extent to which the party sued has cooperated with any requests for information; the Respondent complied with the claimant's data subject access request within a reasonable time period. It did however delay in dealing with the claimant's appeal against the grievance outcome, although some of that delay was contributed to by the claimant's delay in complying with the Respondent's requests for details of her grounds of appeal. I take into consideration in that regard the fact that the Respondent took four months from the date of Ms Doughty's grievance appeal to give her an outcome to that appeal, two and a half months of which was the delay in arranging an appeal hearing. To that extent the Respondent's delayed grievance appeal procedure has contributed to the delay in the case as Ms Doughty was under the mistaken belief that she needed to complete the internal grievance procedure before bringing a claim;
- d. the promptness with which the plaintiff acted once she knew of the facts giving rise to the cause of action; a number of Ms Doughty's complaints of

race discrimination had been the subject of previous internal procedures and had been previously identified by Ms Doughty as acts of unlawful discrimination, so she was aware of the facts giving rise to a claim of race discrimination a number of years before making this claim. In her resignation email of 11 July 2022 she suggested that the Respondent pay a settlement sum by way of compensation which indicates that she had litigation in mind at that point. I have heard evidence from Ms Doughty that she was made aware by her friend in July or early August 2022 that there were time limits to bringing a claim in the Employment Tribunal which is further evidence that litigation was being contemplated. On balance of probabilities Ms Doughty was aware of the facts giving rise to her Tribunal claim at the time of her previous grievances concerning discriminatory acts and at the time of her resignation or certainly with a few weeks of the resignation. Ms Doughty did not, at the time when she became aware there were time limits, take steps to find out what those time limits were. Ms Doughty gave evidence that, at some point in October 2022, she became aware that she was running out of time and that she knew the details of the applicable time limits by 24 October 2022 but still no action was taken until 28 December 2022 when she commenced ACAS Early Conciliation. I accept that Ms Doughty was outside the UK at the time she first became aware that there were relevant time limits, but she did have access to the internet and she could have asked her friend for more information. Although she arrived back in the UK on 8 August 2022 to a number of other personal issues to be dealt with, she did not bring any supporting documentary evidence of those issues and she was able to write to the Respondent to request information and therefore she could also have taken steps to lodge her Tribunal claim.

- e. the steps taken by the claimant to obtain appropriate advice once she knew the possibility of taking action. As set out above, Ms Doughty delayed in taking action despite having information about the time limits. Although Ms Doughty said that the Respondent persuaded her not to take legal action until the internal procedure was exhausted and stipulated that this had been put into writing by the Respondent on 21 July 2022, she was unable to point to the relevant words in the written correspondence between the parties that conveyed this idea to her and she conceded in cross-examination that no one from the Respondent had told her that she should wait for the outcome of the internal procedure. Ms Doughty gave evidence that she has a local Citizens Advice but didn't attempt to get any assistance from them or any other advice agency and despite having been told of the existence of time limits by a friend, she did not ask that friend for further information.

7. I must balance the respective prejudice to the parties if I allow the claim to proceed. The Claimant's account of the delay in bringing the claim and the reasons for it is only one of the relevant factors. Weighing the respective prejudice to the parties is an essential step. The prospective merits of the claim are also relevant. I can only adopt a very broad brush approach to the merits of this claim as neither party came equipped with evidence. However on the face of it the Claimant has not put forward any information concerning the most recent act of alleged discrimination to link that act to race. This is a point in favour of refusing to extend time. However, whether the incidents of race discrimination alleged by the claimant are discrete acts or a continuing act are not matters that can be determined at this stage of proceedings. The letters received by the Claimant on 2 July 2022 and which included an invitation to a disciplinary meeting and the cessation of her wages could potentially give rise to justiciable

claims of constructive unfair dismissal and wages claims. These are points in favour of allowing the claimant's claims to proceed.

8. I have already referred to the fact that the Claimant seemed to contemplate bringing legal proceedings as early as the date of resignation - 11 July 2022. In her own evidence she knew there were time limits in July or early August 2022 and knew the time limits were close to expiry in October 2022. She was aware of the details of the time limits by 24 October 2022 but still took no action. There was no evidence to support the claimant's assertion that the respondent persuaded her to exhaust the tribunal proceedings before commencing proceedings and Ms Doughty said she knew of her local Citizens' Advice but didn't contact them. Even after getting the outcome of her grievance appeal, Ms Doughty still waited over a month before commencing Early Conciliation and there was no credible explanation for this delay. In my judgment the Claimant's reasons for delay were inadequate and the disadvantage to the Respondent is significant and this tips the balance of prejudice away from allowing an extension of time in this case. Although there is obvious disadvantage to the Claimant in not allowing her claims to proceed, the disadvantage to the Claimant is outweighed by the disadvantage to the Respondent as the Claimant had many opportunities to learn of the time limits and therefore to bring her claims in time and she chose not to avail herself of those opportunities.

9. I concluded that it was reasonably practicable for the Claimant to bring her claims of unfair dismissal and wages claims within the time limit and in addition, she did not submit her claims within a reasonable time after the expiry of the time limit. I concluded that it is not just and equitable to extend time for the Claimant's race discrimination claim in this case and the Claimant's claims cannot therefore proceed.

EJ Overton

Date: 3 November 2023

REASONS SENT TO THE PARTIES ON

07/11/2023

FOR THE TRIBUNAL OFFICE