



EMPLOYMENT TRIBUNALS

Claimant: Mrs Y Spaven

Respondent: Just in Case (Wine Merchants) Limited

Heard at: Southampton (by VHS) **On:** 10 August 2023

Before: Employment Judge Scott

Representation

Claimant: In person

Respondent: Mr T Keitley of AVLA accountants (litigation friend)

JUDGMENT

1. The Claimant has sufficient continuous service to bring a claim of unfair dismissal.
2. The Claimant was dismissed by the Respondent on 9 May 2022.
3. This claim was submitted on 13 February 2023 and therefore the claim was not made within 3 months of the effective date of termination.
4. It was not reasonably practicable for the claim to be made to the Tribunal within the time limit, and the claim was made thereafter within a reasonable period of time. Accordingly, the claim is deemed to be received within time by virtue of s111(2)(b) Employment Rights Act 1996.

REASONS

1. By a claim form presented on 13 February 2023 (case 1400707/2023), the claimant, Ms Spaven, complained of unfair dismissal.
2. In a response dated 24 March 2023, the Respondent stated that the Claimant quit in February 2022, but also that her employment ended on 9 May 2022 with the issuing of her P45 and that therefore her claim was time barred.

3. The Respondent also indicated there was a break in the Claimant's employment, however no details were given for the dates of that break.
4. The issues for me to determine were as follows:
 - a. Whether the claimant has sufficient continuous service (2 years) to bring a claim of unfair dismissal.
 - b. Was the claim made to the Tribunal within 3 months (plus early conciliation extension) of the effective date of termination / act complained of / date of payment of wages from which the deduction was made?
 - c. If not, was there a series of similar acts or failures and was the claim made to the Tribunal within 3 months (plus early conciliation extension) of the last one?
 - d. If not, was there a series of deductions and was the claim made to the Tribunal within 3 months (plus early conciliation extension) of the last one?
 - e. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - f. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Evidence

5. I was provided with a bundle from the Claimant consisting of 22 pages together with a statement from the Claimant.
6. In the course of the hearing I also received 4 documents from the Respondent which were copies of documents previously provided.
7. I also heard oral evidence from the Claimant in relation to her claimed resignation and the filing of her claim.
8. No employment contract was provided.

Findings of Fact

9. The Claimant claims to have worked for Just in Case since April 2010. The Respondent confirmed that there was a break of two years in her employment but was unable to provide any details as to when that break occurred. In the absence of any evidence to the contrary, I accept the Claimant's evidence that she was continuously employed from April 2010 until 2022.
10. The parties agree that the Claimant has been in continuous employment with the Respondent since at least 17 June 2019.
11. It is the Respondent's case as set out in the ET3 (5.3) that the Claimant resigned in February 2022. However, the Respondent records the final date

of employment as 9 May 2022.

12. The basis for the Respondent's assertion that she resigned in February 2022 is a note purported to be written by the Claimant and left on 18 February 2022. That note states '*Yvette can not work anymore (due to health issues).*' The Claimant claimed Statutory Sick Pay (SSP) from her employer but was told her earnings were too low to qualify, until her claim was allowed by HMRC. She has subsequently been paid SSP from February 2022 until 9 May 2022.
13. The Claimant provided fit notes for the period 18 February 2022 until 15 September 2022.
14. The Respondent accepted at the hearing that the Claimant had not resigned on 18 February 2022. In any event, the wording of the letter indicates that Ms Spaven was unable to work due to a health issue, and not that she had resigned. I therefore do not accept that she resigned on that date.
15. The Respondent asserts in its narrative defence that the Claimant requested her P45 on 3 May 2022, which was processed on 9 May 2022. The Respondent asserted at the hearing that the request for her P45 was evidence that she had resigned. The Claimant denies resigning.
16. The Claimant sought advice from HMRC and was notified she did not require a P45 but required a form SSPI, which was completed by the Payroll manager.
17. The Claimant found out a P45 had been created on 14 May 2022, but she never received the document. I was provided with evidence at app 10 which confirmed that the Claimant had made multiple requests for her payslips as she was not receiving them. Having had the benefit of the Claimant's oral evidence, in which she appeared credible throughout, I accept she also did not receive the P45.
18. On or around September 2022, the Claimant spoke with HMRC and was advised by telephone that the Respondent had said her employment ended on 9 May 2022. In response, the Claimant contacted Lt Commander Fred Woodfine, but did not receive a response. The Claimant says she believed her employment could not have ended because she had not been told by anyone that she had been dismissed.
19. It was the Claimant's evidence that she had been good friends with Lt Commander Woodfine but that they would fall out and he would ignore her, and she believed that this was a temporary falling out which would be resolved. I accept her evidence in this regard. There is some support for this in the Respondent's defence, which confirmed that the Claimant and Respondent were 'long term friends' and that the Respondent gave the Claimant £500. I found the Claimant to be credible when given evidence, as she gave a frank account even when it was not supportive of her case.
20. By letter dated 5 January 2023 the Claimant received a letter from HMRC confirming that her employment had ended on 9 May 2022.

21. The Claimant contacted ACAS at the end of January 2023, and received an Early conciliation certificate from ACAS on that date.
22. The Claimant submitted her ET1 on 13 February 2023.

Conclusions

23. The Respondent accepted at the hearing that the Claimant had two years continuous service and having found that the Claimant has been continuously employed since April 2010, I find that she has.

Effective date of termination.

24. Turning then to the termination of the Claimant's employment, I remind myself that the burden of proof is on the Claimant to show she was dismissed and that the relevant test is the balance of probabilities.
25. The Claimant accepts, by virtue of her claim form, that her employment ended on 9 May 2022 and this is also accepted by the Respondent. I therefore accept that it did. However, it is the Claimant's case that she was unaware that her employment ended until 5 January 2023.
26. The Claimant disputes that she resigned by requesting her P45. Having looked at the text exchanges provided in the bundle I see no evidence that the Claimant sought to end her employment. In fact, in response to a request for SSP, she has been informed by the accountant, Miss Fisher, that '*SSP is not an option available to you*' and further, '*I can P45 you. If that makes it easier for you to claim Universal Credit*'. The message then states that they can add her back onto the payroll should she come back to work for Fred. In response, Ms Spaven states '*Thank you that would be good. And the P45 please.*'
27. It is notable that on 4 May 2022 the Claimant had had hip surgery, the day after she was purported to have requested her P45 and thus to have resigned.
28. The evidence of communication between Ms Spaven and Ms Fisher corroborates Ms Spaven's account that she was attempting to provide HMRC with the documents required to process her SSP claim.
29. It is accepted by the Respondent that Ms Spaven provided fit notes throughout this period, which would be inconsistent with someone who had resigned on either 18 February 2022 or 9 May 2022.
30. The fact that the Respondent asserts the Claimant resigned on two different dates damages its credibility.
31. I have had regard to *Bates v Brit European Transport Ltd EAT 309/94* as authority that the request for a P45 cannot, without more, be evidence of resignation. It is the Respondent's position that the request for the P45 was clear and irrefutable evidence, on its own, that the Claimant resigned.

Having considered the circumstances in the round, and in particular that the P45 was offered by Miss Fisher in response to the Claimant seeking SSP, I do not accept that the confirmation by Ms Spaven that she should be sent her P45 was a resignation.

32. It is the Respondent's case that the provision of the production of the P45 ended the employment relationship. In the absence of a contract of employment and having concluded that the Claimant had not resigned, I accept that the Respondent dismissed the Claimant on this date.

Time limits

33. As the Claimant's employment ended on 9 May 2022, her claim is out of time. However, it is the Claimant's case that she was unaware that her employment had ended on this date until receiving the letter from HMRC on 5 January 2023.

34. The Claimant gave evidence that she did not know that receiving her P45 meant her employment had ended. As indicated above, I found the Claimant to be a credible witness and I accept that she did not receive a copy of her P45. I further accept she was unaware that she had been dismissed as a result of the Respondent processing a P45.

35. The Claimant admits to being told by HMRC in September 2022 that the Respondent had said her employment had ended on 9 May 2022. However, I accept the Claimant's evidence that she sought confirmation from her employer that this was the case and received no response. I accept she did not believe she could be dismissed without being told either verbally or in writing. In the context of an employment relationship of 13 years, together with a long term friendship, that conclusion is reasonable.

36. I therefore accept that the Claimant was unaware that she had been dismissed until 5 January 2023.

37. The relevant test is set out at s111(2)(b) of the Employment Rights Act 1996 as follows:

(2)[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.

38. I remind myself that whether a claim has been presented in accordance with s111(2)(b) should be given a liberal interpretation in favour of the employee *Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53*,

CA.

39. As Ms Spaven was unaware that she had been dismissed, I accept that she was not aware of a fundamental fact that was necessary to bring her claim. In reaching this conclusion I take account of the fact that she was not receiving any pay from her employer, but had been told that she did not meet the threshold for SSP, and that she had been providing fit notes throughout the period 18 February 2022 to 15 September 2022.
40. I therefore accept that it was not reasonably practicable for the Claimant to bring her claim before 5 January 2023.
41. I therefore consider whether the Claimant presented her claim within such further period as the Tribunal considers reasonable. The Claimant contacted ACAS 2-3 weeks after receiving the letter dated 5 January 2023, and filed her claim approximately 5 weeks after finding out she had been dismissed.
42. The Claimant is a litigant in person, with no legal experience. Furthermore, that she discovered her dismissal in correspondence where her primary concern was receipt of SSP. Nevertheless, the Claimant has filed her claim within 5 weeks of finding out that she had been dismissed. I further take account of the 3 month time limit in unfair dismissal claims. Considering all these points, I accept that the Claimant has filed her claim in a further reasonable period following the 5 January.
43. I therefore extend time for the filing of this claim until 13 February 2023.

Employment Judge Scott
Date: 18 October 2023

Judgment sent to the parties on 23 November 2023

For the Tribunal Office

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.