



EMPLOYMENT TRIBUNALS

Claimant: Ms S Scott

Respondent: The Council of the City of Wakefield

Heard by CVP – remote video hearing **On:** 5 January 2024

Before: Employment Judge D N Jones

REPRESENTATION:

Claimant: In person

Respondent: Ms S Fraser, In-house counsel

JUDGMENT having been sent to the parties on 5 January 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the Tribunal provides the following:-

REASONS

Introduction

1. By section 111(2) of the Employment Rights Act 1996 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.

2. That is subject to section 111(2A) which provides for an extension in respect of the period during which there is early conciliation.

3. Under section 123(1) of the Equality Act 2010:

“Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of:

- (a) the period of three months starting with the date of that act to which the complaint relates; or
- (b) such other period as the Employment Tribunal thinks just and equitable.”

4. Section 104B provides for an extension for the purpose of early conciliation.

5. This is a preliminary hearing for me to consider whether the claims were presented within the respective time limits and therefore whether the Tribunal has jurisdiction to hear them.

6. I have heard evidence from the claimant and submissions from both the claimant and the respondent's representative.

The Complaints

7. These are claims for unfair dismissal and disability discrimination presented by the claimant, Sarah Scott, against her former employer, the Council of the City of Wakefield. The claim was presented on 1 September 2023.

The Facts

8. The claimant was employed by the respondent from 7 January 2019 until 18 December 2022. In the latter part of her employment the claimant worked as an Engagement and Outreach Officer. She had periods of ill health associated with mental health conditions which she says are disabilities within the meaning of section 6 of the Equality Act 2010.

9. When the claimant returned to work after a period of sickness absence in September 2022 she made a request for flexible working. She says there was no response to that request and so she made a further request for flexible working on 11 November 2022. The claimant says that the health conditions, depression, anxiety and agoraphobia, necessitated adjustments to her normal working day so that she did not have to start as early and work as late – she could be having to work from 9.00am and remain in the building until 9.00pm which could be difficult, particularly given her agoraphobia and the difficulties of lone working at such times.

10. The claims for disability discrimination concern the failure of the respondent to make reasonable adjustments by changing the working hours of the claimant in accordance with her request for flexible working.

11. On 16 November 2022 the claimant resigned. She says this concerns the failure of the respondent to deal with her request and accommodate any reasonable adjustments.

12. On 6 December 2022 the claimant submitted a grievance. She had asked for her resignation to be withdrawn on 29 November 2022, but the respondent had said it was not in a position to do that. Her grievance included concerns about the refusal to accept the withdrawal of her resignation and matters concerning flexible working and some other issues.

13. On 16 December 2022 the claimant attended an informal resolution discussion meeting with her manager. There was a conversation about the

claimant's flexible working request. The claimant does not recall being verbally informed of the outcome and, only having her evidence, I am satisfied that she was not fully informed of the outcome of that resolution on 16 December 2022, but she had to chase the outcome over the following few weeks.

14. On 18 December 2022 the claimant's notice ended and her employment came to an end.

15. On 28 December 2022 the claimant contacted ACAS with a view to early conciliation before bringing a claim to the Tribunal. On 8 February 2023 ACAS issued a certificate of early conciliation.

16. The claimant was unwell in respect of her anxiety and depression and agoraphobia. She went to live with her mother in Huddersfield for a period of four months and returned to her own home in April 2023. At that time (towards the end of the month) the claimant received written notification of the outcome of the informal resolution. Her complaints were not upheld.

17. The claimant wrote by email to the respondent on 3 May 2023 and she asked for the grievance to be considered again and she acknowledged she had just received the written response.

18. On 4 May 2023 the respondent replied and said the procedure had been exhausted under the modified procedure under its policies. The claimant had discussions with ACAS, who were not clear about what policy or procedure was being referred to.

19. Later in May 2023 the claimant was admitted to hospital. She had taken an overdose. She had been receiving antidepressant medication in the form of mirtazapine. The claimant was in hospital for 24 hours before being discharged. She had not been receiving the support she requested from the Mental Health Services in Wakefield and raised a complaint but was referred back to her GP.

20. In early July 2023 the claimant had a further episode of mental health difficulties requiring her to attend at the Accident and Emergency Department. After that she has been treated by her GP. In October 2023 he changed the medication from Sertraline to Duloxetine.

21. On 27 July 2023 the claimant sent an email to the respondent at 7.46am and she said that they had failed fully to respond to her grievance of December 2022 and following advice from ACAS she said she had a right to ask for a copy of the formal grievance procedure and asked why the respondent had not followed the procedure. At 5.44pm that day, the claimant sent an email to the respondent stating she wished to raise a formal complaint about the grievance process and that the respondent had not dealt with her complaint properly.

22. On 7 August 2023 the respondent replied and stated that it had considered the matter under its resolution policy, that it had followed the policy properly and no further action would be taken.

Time Limit Issues - analysis

23. It is accepted by the parties that, in both the unfair dismissal claim and the disability discrimination claim, the case was presented outside the primary time period, by which I mean three months from the last act of discrimination or the effective date of termination of the employment. It is accepted that the complaint of breach of the duty to make reasonable adjustments (the disability discrimination complaint) would concern adjustments to be made whilst the claimant was still in employment. In respect therefore of both the complaints, the primary period of three months would require the claimant to have presented the claim by 17 March 2022, but the early conciliation extension provisions extend that period by 40 days (28 December 2022 to 8 February 2023), to 26 April 2023 (although the respondent said 28 April 2023). I shall assume the respondent's calculation is correct, the difference having no significance to the issues I am considering.

Unfair Dismissal

24. The claimant said to me that the reason she had not presented the complaint within that primary period was because she had been poorly and very depressed throughout the period. The claimant had often had to stay in bed, she had been on medication and the medication had changed. The severity of her condition was reflected by admissions to hospital which I have addressed above and a section 136 detention, but I was provided with no further information about that.

25. The claimant's ill health was longstanding. She had lost her younger sister to suicide the previous year and her grandmother had died. This led to the period off work in 2022. She found it exhausting. The medication has changed, and she is now managing better.

26. I recognise that the claimant was in a very difficult situation in the first few months of 2023 in the light of everything she has told me. She was able to contact ACAS and had communications with the ACAS officer in the early part of 2023. She was able to contact ACAS again when she received the outcome in writing of the grievance in April 2023. They advised her then and afterwards in respect of time limits. The claimant said she was told by an officer that she would be out of time to bring a claim but that the Judge could consider whether to allow the case to proceed.

27. The claimant attempted to resolve her concerns with the respondent by contacting them in May and late July 2023, but with no success. She is an intelligent and able litigant who was able to follow the issues and explain her situation very clearly.

28. The test I must apply in respect of the unfair dismissal claim is whether it was not reasonably practicable to have presented that claim by 28 April 2023. In that respect I must have regard to whether the claimant knew (or could have known) of her right to bring a claim and the period within which it must be brought. She clearly knew that she could bring a claim – she had contacted ACAS to discuss that at the end of December 2022. She knew of the time limits, at least by the end of April, and I am satisfied it is probable that she knew of them before the time limit had expired. I am satisfied, in spite of the many difficulties she had, that the claimant was able to have communications with ACAS and the respondent and have lucid and sensible discussions.

29. In those circumstances it seems to me, notwithstanding the real difficulties the claimant suffered because of her health, that it was reasonably practicable to have presented the claim by 28 April 2023. She would have been able to access the online system for submitting forms and set out the details, which she subsequently did on 1 September 2023. She was aware of the time limits, had been able to communicate with ACAS and could have provided the details for a Tribunal claim in an ET1.

30. Even if that were not the case and she had only become aware of the time limit after the end of April and could not reasonably have learned about time limits before then (which is not my principal finding), I am satisfied that it would have been reasonably practicable to have brought the claim by the end of May because the claimant was clear what the time limit was and had, by then, had communications in writing with the respondent. The ability to express herself to the respondent in writing suggests that she could have done so with the Tribunal.

31. I recognise that there is much to be said for trying to resolve matters with one's employer (or former employer) before rushing to litigation, as the claimant did, but those attempts do not mean it is otherwise not reasonably practicable to present a claim form. It follows therefore that the unfair dismissal claim is out of time, and I therefore dismiss it.

Disability Discrimination

32. Was the claim presented within such further period as is just and equitable?

33. In that regard I must have regard to the reasons for the delay, which I have explained. The claimant was clearly not well and not functioning as she can now and could later in the year when the medication changed. She suffered huge difficulties, and I accept her evidence about that.

34. I have to have regard to the length of the delay. The claim was four months beyond the primary period. That is a significant period. It is one month more than the primary time limit itself.

35. I have not been told that there was any significant effect on the cogency of the evidence because of this delay. It is likely there was record-keeping in the grievance which addressed the flexible working request which had been made, and I am not told any witnesses have disappeared. However, evidence never improves with time, it only deteriorates because recollections are not what they are shortly after the events. No doubt that is one of the reasons the primary time limit is so short.

36. In considering whether the discrimination claim was presented within such further period as is just and equitable, I have regard to the disadvantages the claimant had (her ill health), her admissions to hospital and a significant mental health condition which had a real impact on her ability to perform and function normally. I have regard to the disadvantage which would arise if the claimant could not bring this claim, not having the complaint decided on its merits. I take account of the disadvantage to the respondent of not being able to rely upon the primary time limit and the cost it would incur in defending a claim which should have been presented sooner.

37. The test is whether it was presented within such further period as is just and equitable. For the reasons I have explained in respect of the unfair dismissal complaint, I do think the claimant could have presented a claim before 1 September, notwithstanding her serious health condition. I do consider she could have filled in a claim form and brought this matter to the Tribunal earlier than she did, because of those emails she had with the respondent and the discussions she had with ACAS. I also have regard to the other considerations I have set out above and the respective disadvantages to the parties. Notwithstanding I recognise that this will be a difficult decision for the claimant, I do not regard the case as having been presented within such further period as is just and equitable, in particular because it was presented significantly later than it could and should have been and the claimant had a number of opportunities (although they were fewer than most people would have) to present this claim to the Tribunal before 1 September 2023.

38. I have therefore concluded that it was not presented within such further period as is just and equitable and that therefore both claims are out of time.

39. Therefore, my decision is that the claims must be dismissed as the Tribunal does not have jurisdiction to consider them.

Employment Judge D N Jones

Date: 11 January 2024

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