



EMPLOYMENT TRIBUNALS

Claimant: Miss B Lewis

Respondent: Greggs plc

Heard at: London South Employment Tribunal (by CVP)

On: 6 and 11 December 2023

Before: Employment Judge T Perry

Representation

Claimant: in person

Respondent: Ms R Thomas (Counsel)

RESERVED JUDGMENT

1. The Tribunal does not have jurisdiction to consider the Claimant's claim of unfair dismissal under section 111 Employment Rights Act 1996 as it was not presented within three months of the Effective Date of Termination when it was reasonably practicable to do so. The Claimant's claim is dismissed.

REASONS

Evidence

1. I was initially provided with a bundle running to 76 numbered pages. By the second day of the hearing this had been updated to a bundle of 79 numbered pages. The Tribunal file contained a longer version of the attachments to the ET1 claim form than that included in the bundle. The extra pages appeared to be effectively copies of the Claimant's documents relevant to the case.
2. The Claimant gave evidence from a written witness statement.

3. I had the benefit of a note from Ms Thomas at the start of the hearing. I heard oral submissions from both sides.

The issues

4. The hearing was listed to consider whether the Claimant's claim was issued in time and, if not, whether to extend time.
5. At the start of the hearing the Claimant clarified that she was not bringing a discrimination claim and her sole claim was for unfair dismissal. Accordingly, the questions to be determined were under section 111 Employment Rights Act 1996:
 - a. whether the claim presented within three months of the Effective Date of Termination;
 - b. if not, whether it was reasonably practicable to do so; and
 - c. if so, whether the claim was submitted within a period the Tribunal considers reasonable.
6. There was a dispute regarding the Effective Date of Termination. The Claimant says it was 2 December 2022. The Respondent sought to argue in its pleadings that it was 8 November 2022. The Respondent's pleaded position was not advanced with much force before me.

Findings of fact

7. The Claimant was employed by the Respondent from 2007.
8. On 21 February 2022 the Claimant was given a written warning.
9. In April 2022 the Claimant submitted a grievance regarding the warning she received.
10. From 3 May 2022 until the end of employment, the Claimant was absent from work with stress and anxiety.
11. On 14 May 2022 the Claimant received the outcome of her grievance.
12. On 25 July 2022 the Claimant submitted a second grievance relating to largely the same matters as the first. This was not upheld. Neither grievance was appealed.
13. On 9 November 2022 the Claimant started work at Aldi. The Respondent was unaware of this.

14. On 30 November 2022 the Claimant resigned giving her last date of employment as 2 December 2022. The Claimant referred to her concerns about her treatment not being heard or listened to.
15. On 8 December 2022 the Respondent invited the Claimant to a grievance meeting including to reconsider her resignation. That meeting happened on 12 December 2022.
16. On 22 December 2022 the Respondent wrote to the Claimant stating it believed the Claimant's treatment in relation to the warning was fair. The Respondent accepted the Claimant's resignation.
17. On 31 December 2022 the Claimant wrote disputing the notes of the meeting on 12 December 2022.
18. On 16 January 2022 the Respondent wrote stating the notes were not verbatim but that overall it was satisfied that the matter had been deal with appropriately. There was no further correspondence between the parties regarding any internal process.
19. On 24 February 2023 the Claimant started ACAS Early Claim Conciliation (ECC). The Claimant had been advised of the need to go through ECC by a solicitor she had spoken to. The Claimant had also been told by ACAS to start ECC within 3 months less one day of the EDT.
20. On 7 April 2023 the Claimant was provided an ECC certificate and number.
21. On 4 May 2023 the Claimant sought to issue her claim by post. The Claimant did this herself. This was received by the Tribunal on 5 May 2023.
22. On 9 May 2023 the Tribunal sent the Claimant a letter acknowledging receipt of and returning her "correspondence". The Tribunal enclosed an ET1 form and told the Claimant to complete this thoroughly including providing an ACAS number. The Claimant was told to send the form back with any evidence.
23. The Claimant received this letter on or around 13 May 2023. She did not understand it and sought advice from ACAS and her daughter, who is an HR consultant.
24. On 17 May 2023 the Claimant submitted her claim form, which was received and accepted by the Tribunal on 18 May 2023.

The Law

25. Section 111 Employment Rights Act 1996 states

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(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.

26. The phrase not reasonably practicable means not reasonably feasible. It is a question of fact for me to determine.

27. The correct enquiry is into 'what was the substantial cause of the employee's failure to comply' **Palmer and Saunders v Southend-on-Sea Borough Council** [1984] IRLR 119 at [35].

28. Having determined as a matter of fact the substantial cause of the claimant's failure to comply with the primary time limit, the question is whether notwithstanding that reason or reasons, a timeous presentation of the claim was reasonably practicable.

29. The Court of Appeal in **Schultz v Esso Petroleum Ltd** [1999] IRLR 488 identified that when asking whether it is reasonably practicable to lodge a claim within three months the overall limitation period is to be considered but 'attention will in the ordinary way focus upon the closing rather than the early stages'. Thus the fact that there is no impediment to lodging a claim within the first part of the limitation period may not lead to a finding that it was reasonably practicable to lodge the claim in time, if it became not reasonably practicable to lodge it in the later stages of the three months.

30. Claims are often late due to ignorance or mistake on the part of a claimant. The approach that should be taken to such an assertion is whether, in light of the evidence about that ignorance or mistake, it was reasonably feasible for the litigant to have presented the complaint to the employment tribunal

within the relevant primary period.

31. The test of whether the claimant should reasonably have known of matter they were ignorant of or the mistake they had made is an objective one. In **Porter v Bandridge Ltd** [1978] IRLR 278, [1978] ICR 943 the majority of the Court of Appeal approved an employment tribunal's finding that the claimant 'ought to have known' of his right to claim, even though he did not in fact know of it.

32. It was held by Brandon LJ in **Wall's Meat Co Ltd v Khan** [1978] IRLR 499 that ignorance or mistake 'will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made [...]'. One question to be asked in ignorance or mistake cases will therefore be whether the claimant who did not engage an advisor acted reasonably in failing to do so. Consideration will be both to the reasonableness of failing to instruct a solicitor, but also the reasonableness of failing to seek advice from other sources such as the Citizens Advice Bureaux, pro bono charities, ACAS or, increasingly, sources of information available on the Internet.

33. The EAT in **Software Box v Gannon** [2016] ICR 148 held (at [41]) that as a matter of principle, the fact that a claimant has managed to lodge one claim (subsequently rejected as defective) within time does not automatically require the conclusion that it was reasonably practicable to lodge a second claim dealing with the same matters as the first within time.

34. In **Adams v British Telecommunications** [2017] ICR 382 a minor error in accurately transposing an ECC number meant it was not reasonably practicable for a Claimant to lodge a second claim dealing with the same matters as the first within time.

Conclusions

35. The Effective Date of Termination was 2 December 2022. The Respondent was unaware that the Claimant had started work elsewhere in November 2022 and accordingly that act did not lead to the termination of employment.

36. The Claimant then contacted ACAS in time and sought to issue her claim

within one month of receiving her ECC number. However, the claim was then not validly submitted until more than a month after the date of the ECC certificate, meaning it was not submitted within time for the purposes of section 111(2)(a) Employment Rights Act 1996

37. I find that the reason that first attempt to submit the claim was not accepted by the Tribunal was because the Claimant did not send form ET1 to the Tribunal on 4 May 2023. The Claimant says that she did and that it was completed in substantially the form accepted on 19 May 2023 with the addition of some further information about the compensation she was seeking in box 9.2. I reject this evidence for the following reasons:

- a. A tribunal would not reject a claim simply for failure to complete box 9.2. That is not a mandatory part of the form and is often left blank;
- b. If a claim form was received and rejected there would be evidence of that rejection on the Tribunal file, which there was not in this case;
- c. The letter from the Tribunal dated 9 May 2023 makes no reference to the Claimant having submitted an ET1 form. It refers only to receipt of “enclosed correspondence”. Indeed, the Tribunal enclosed form ET1 for the Claimant and told her to use this. The obvious conclusion is that the Claimant had not used and sent form ET1; and
- d. The first page of the Claimant’s particulars of claim was stamped returned on 5 May 2023. I take judicial notice of the fact that the Tribunal stamps the date of acceptance or rejection on the first page of the documents received (generally page 1 of the ET1). This suggests (although it is not conclusive where a claim has been submitted by post) that no ET1 was included.

38. The reason for not submitting the claim on time was not to do with any ongoing internal process at the Respondent. Those had been completed before the Claimant contacted ACAS.

39. The reason for not submitting the claim on time was not lack of knowledge of the time limit. I find that the Claimant did know of the time limit (hence the reason her first attempt to issue a claim was made in time).

40. The reason for not submitted the claim on time was not lack of knowledge of the existence of the prescribed ET1 claim form. The claimant has never said she was unaware of the need to use the form and had headed her particulars of claim submitted on 4 May 2023 “ET1 for constructive dismissal.” If (and this is not the Claimant’s case) it was a result of a failure to make enquiries about the ET1 form, such a failure to make enquiries would have been unreasonable in all the circumstances – especially as the Claimant knew the name of the form in question. A search on the internet would have led the Claimant to it in no time at all.
41. The reason for not submitted the claim on time was not ill health. The Claimant was well enough to work and well enough to attempt to issue a claim on time. I see no evidence that ill health played any part in the claimant’s mistake.
42. The answer to the question of why the time limit was missed is two reasons. First, the Claimant left it until late in the day to issue her claim (which was her right). Second, the Claimant failed to use the prescribed ET1 form to submit her claim. This failure is still somewhat unexplained but appears to have simply been an oversight.
43. I find that, unlike in **Gannon** or **Adams**, having left it to the last minute to issue her claim, the Claimant’s oversight in not using form ET1 was not reasonable and did not mean that it was not reasonably practicable for her to issue a second claim in time. This was not a minor oversight that the Claimant could reasonably have been unaware of. It was a total and still largely unexplained failure to follow possibly the single most important aspect of issuing a claim – namely use of the prescribed form.
44. It follows from all of the above that the Tribunal does not have jurisdiction to consider the Claimant’s claim of unfair dismissal under section 111 Employment Rights Act 1996 is it was not presented within three months of the Effective Date of Termination (as extended by ECC) when it was reasonably practicable to do so.
45. The Claimant’s claim is dismissed.

Employment Judge **T Perry**

Date 20 December 2023