



EMPLOYMENT TRIBUNALS

Heard at: Ashford (by video) **On:** 10 January 2024

Claimant: Mrs Iveta Opalkova

Respondent: Signature Senior Lifestyle Operations Limited

Before: Employment Judge Fowell

Representation:

Claimant In Person

Respondent Yousaf Mahmood on behalf of Peninsula Business Services Ltd

JUDGMENT ON A PRELIMINARY ISSUE

1. The claims of automatically unfair dismissal, whistleblowing detriment and of failure to provide records under section 11 of the National Minimum Wage Act 1998, were all made in time, on the basis that it was not reasonably practicable for the claimant to have presented them within the normal time period, given the confusion over the date of dismissal.
2. The claimant's claims will proceed to a hearing on 19 November 2024.

REASONS

Background

1. Mrs Opalkova was a care assistant. She was dismissed at or following a probationary review meeting on 18 February 2022. There is some dispute as to whether her contract came to an end that day or a week later, on 25 February 2022, as stated on her P45.
2. This hearing was listed to decide whether the claims are out of time. It is agreed that if the contract ended on 25 February then the claims are (just) in

time, but if it ended on 18 February then the claim was submitted after the normal deadline.

3. In that case, under s.111 Employment Rights Act 1996, Mrs Opalkova needs to show that it was not reasonably practicable for her to have submitted the claim in time, and that she did in fact submit it within a further reasonable period of time.
4. I heard evidence from Mrs Opalkova on that issue and had a bundle of documents of about 100 pages. Having considered that evidence and the submissions on each side, the relevant facts are these.

Findings of Fact

5. According to the minutes of the probationary review meeting she was dismissed with immediate effect and she does not dispute those minutes. This outcome was confirmed in a follow-up letter on 21 February although it does not mention specifically the date of dismissal. Nevertheless, the fact is that her employment ended on the date of that meeting, 18 February 2022.
6. However, as already noted, the subsequent P45 gave the date of dismissal as 25 February 2022. When she came to submit her claim she was aware of the relevant time limits and made her calculations based on that date. That was not done from a comparison between the documents in question. She did not necessarily remember the date of the probationary review meeting and simply took the relevant date from this document. No explanation has been given as to why the P45 gave that date.

Applicable Law

7. There are many cases where an employee says that they had no idea about the right to claim unfair dismissal or about time limits. It is well established that in a case of that sort the employee's lack of awareness may mean that it was not reasonably practicable for them to present a claim in time, but that lack of awareness must itself be reasonable: **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53. In **Porter v Bandridge Ltd** 1978 ICR 943, CA, the Court of Appeal held that the correct test is not whether the claimant knew of her rights but whether she *ought* to have known of them.

Conclusion

8. Those principles appear to me to apply equally here, where there is a confusion over the date of dismissal. The confusion was not of her making, and in my view it was reasonable for her to conclude that the actual date of dismissal was 25 February 2022, or at least that 25 February 2022 was the start date for the purposes of calculating when to submit her claim. She had no legal advice on

the point, and there was no obvious reason why she would need to take any or to make any further enquiries. Even if she had checked more thoroughly and noted that the probationary review meeting was a week earlier, she might still have assumed that the P45 was relevant and official legal document for these purposes. She had a legal right to one week's notice and that also may have influenced her conclusions, even though she was told in the probationary review meeting that she would be paid in lieu of notice. People do not always appreciate such distinctions.

9. In those circumstances I accept that her lack of awareness of the true date of dismissal was reasonable and hence it was not reasonably practicable for her to have submitted the whistleblowing claims in time. They were then submitted within a further reasonable period, based on the same misunderstanding.
10. It is accepted that the claim based on the lack of a pay slip is in time, on the basis that the date for payment was not until 31 February 2022.

Employment Judge Fowell

Date **10 January 2024**

JUDGMENT & REASONS SENT TO THE PARTIES ON
24 January 2024

FOR THE TRIBUNAL OFFICE
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