



EMPLOYMENT TRIBUNALS

Claimant: Ms D Vickery
Respondent: T. Cribb & Sons Ltd
Heard at: East London Hearing Centre
On: 13th December 2023
Before: Employment Judge Smyth

Representation

Claimant: Ms Clifford
Respondent: Mr Plume

JUDGMENT having been sent to the parties on 2 January 2024 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. The claimant was employed between 1st May 2017 and 17th February 2023. The claimant claims that she was unfairly dismissed. She submitted a claim form which was received by the Employment Tribunal on 29th May 2023. She also sought an extension of time. Acas issued an early conciliation certificate on 23rd June 2023.
2. Before bringing a claim, the claimant was required under section 18A of the Employment Tribunals Act 1996 to make contact with and provide Acas with details of the prospective claim. There is evidence on page 46 of the bundle to support the claimant's claim that she called the Acas helpline on 19th May 2023, which is two days after the deadline to bring a claim. However, it was not until 23rd of June 2023 that Acas issued an early conciliation certificate.
3. Section 111(2) of the Employment Rights Act 1996 provides:

111 **Complaints to employment tribunal**

....

(2) subject to the following provisions of this section, an employment tribunal shall not consider the 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 the 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.
4. “Reasonably practicable” means “reasonably feasible”. It is important to note that the test is more stringent than the “just and equitable” test which applies for extensions of time in claims under the Equality Act 2010. The burden of proving that it was not reasonably practicable to present the claim in time is on the claimant.
5. The claim was listed for hearing on 13th December 2023. I informed the parties that I would consider the late claim as a preliminary issue. There is no dispute between the parties that the claim is late. The claimant submitted her letter of resignation to the respondent on 14th February 2023, and gave notice that her last date of employment would be 18th February 2023. The deadline to bring a claim expired on 17th May 2023, which is three months from the effective date of termination less one day. The claim was brought 12 days later on 29th May 2023.
6. I heard oral evidence from the claimant followed by submissions from Miss Clifford and Mr Plume.
7. On behalf of the claimant Miss Clifford made four core submissions. First, in the context of legal proceedings the claimant is not a sophisticated individual and has only secured legal representation a few days ago. Second, the delay in question is minor. The claimant contacted Acas on 19th May 2023 which was just two days late. She sought legal advice on 26th May 2023 and submitted a claim promptly thereafter on 29th May 2023. Third, in all the circumstances it was not reasonably practicable for the claimant to present her claim in time because of her mental impairment. The claimant’s medical records show that she was taking antidepressant medication at the material time. There is also reference to the claimant experiencing suicidal thoughts albeit this post-dates the claim. Finally, the facts of this claim should be distinguished from the case of Cygnnet Behavioural Health Ltd v Britton (Jurisdictional - Time Points) [2022] UKEAT 2020_000972, on which reliance was placed by Mr Plume in his written submissions.
8. I shall address Miss Clifford’s submissions in turn. The claimant has not specifically pleaded ignorance as to her rights or procedure as a reason as to why she missed the deadline. Therefore, I do not consider there to be any relevance to the fact that the claimant has only recently

secured legal representation. In any event, I do not accept that she is an unsophisticated individual and I find that it was open to her to conduct research and ensure that she was fully informed as to the relevant deadlines.

9. I do not accept that the delay is minor. While I accept that the claimant did telephone the Acas helpline on 19th May 2023 there has been no good explanation as to why it took until 29th May 2023 to present the claim.
10. In so far as February to May 2023 is concerned, I accept that the claimant had low mood, struggled to get up in the morning, and had been prescribed anti-depressant medication. However, there is no medical evidence to explain why it was not possible for the claimant to present her claim in time. Absent any such evidence, I do not accept that the claimant was so impaired as to not be reasonably able to present her claim on time. I reach this conclusion having taken into account that the claimant was sufficiently well to attend a job interview in March 2023. I find that during what was clearly a very difficult period for the claimant there were nevertheless times when she was able to function well, and it is during such times I find it would have been reasonably practicable for the claimant to submit her claim.
11. Miss Clifford's final submission was to distinguish the facts of this claim from Cygnet Behavioural Health Ltd v Britton. I agree that the facts of this case should be distinguished. Inevitably this is a very fact sensitive exercise, and it is on the particular facts of this case that I find that the exception to the three month deadline contained in section 111 (2) of the Employment Rights Act 1996 is not met.
12. The Employment Tribunal does not have jurisdiction to consider this claim. The claim is struck out.

Employment Judge Smyth
Dated: 16 February 2024