



EMPLOYMENT TRIBUNALS

SITTING AT: LONDON CENTRAL BY CVP
BEFORE: EMPLOYMENT JUDGE F SPENCER
CLAIMANT MS G COOPER
RESPONDENT CECP ADVISORS LLP

ON: 12 APRIL 2024

Appearances:

For the Claimant: In person
For the Respondent: Mr Kediya, counsel

JUDGMENT

The Judgment of the Tribunal is that the Tribunal has no jurisdiction to consider the Claimant's claim which was presented out of time.

REASONS

These written reasons are given at the request of the Claimant following an oral Judgment given on the day of the hearing.

1. Today's hearing was listed by Employment Judge Jack at a preliminary hearing for case management on 13 February 2024. As set out in the subsequent case management order, the purpose of today's hearing was to consider:
 - a. whether the Claimant's discrimination complaints were made within the time limit in section 123 of the Equality Act 2010;
 - b. the Claimant's application to amend the claim to include complaints of harassment and victimisation;
 - c. further case management, if appropriate.

2. At this hearing I had a bundle of documents extending to 330 pages, a supplementary bundle of 18 pages. On the morning of the hearing the Claimant also submitted images of a number of emails which were not contained in the bundle. I heard evidence both from the Claimant and from Mr Brown, a solicitor acting for the Respondent.
3. Facts. The Claimant was employed by the Respondent as an Executive Assistant from 1 August 2022 until her dismissal (the Respondent says for misconduct) with effect from 20 February 2023. She brings claims of disability discrimination, relying on the disability of anxiety. Both disability and knowledge of disability are, at present, denied by the Respondent.
4. The early conciliation certificate names the Respondent and records that conciliation started on 12 May 2023 and ended on 23 June 2023. This meant that the primary time-limit would expire on 23 July 2023. The claim form was presented on 18 October 2023. Prima facie the claim is just under three months out of time.
5. The Claimant had instructed solicitors to act for her on 20th February, the day of her dismissal. She accepts that they advised her of the time limits. Her solicitor sent a pre-action letter to the Respondent on 14th March.(86). Acas was notified by the Claimant on 12th May, naming the Respondent as the prospective Respondent.
6. On 5 June Acas wrote to the Respondent's solicitors on the Claimant's behalf offering to settle for 5 months salary. This was rejected but Mr Brown of the Respondent's solicitors also wrote "*while I do not have any specific instructions, if the Claimant will withdraw her claim in return for one month's gross salary then I would recommend that to my client.*" This was not an offer per se, just an offer to recommend the settlement to the Respondent. The Claimant rejected this offer on 21 June 2023 by emailing Mr Brown directly and reiterating her original proposal with a deadline to accept of 23 June. The Respondent did not respond. Acas sent an early conciliation certificate to the Respondent on 23 June.
7. On 24th June 2023 a friend of the Claimant died, and the Claimant was deeply upset.
8. On 28 July 2023, the Claimant presented a claim to the Tribunal naming Jennifer Barker as the Respondent. This was rejected on 21 September 2023 on the basis that the name of the Respondent was not the same as the name of the person on the ACAS certificate.
9. This first claim form was itself ostensibly out of time.
10. However the Claimant now says, and I accept, that she did not receive the early conciliation certificate until 27 July. Although the Claimant's timeline of events (p87) states that early conciliation ended and the certificate was issued on 23rd June, images of emails provided by the Claimant show that

ACAS emailed the Claimant on 30th June (rather than 23rd June) saying that early conciliation was to be brought to an end, and that a certificate would be issued.

11. The Claimant emailed ACAS on 26th July that due to a recent bereavement she had decided to withdraw her claim and accept the Respondent's settlement. (The Respondent denies having knowledge of this).
12. On 27th July the Claimant emailed ACAS saying that she had not received the early conciliation certificate. The certificate was then sent to her but showed that early conciliation had ended on 23rd June. She presented her first (invalid) claim the next day, naming Ms Barker as the Respondent.
13. ACAS wrote again to the Respondent on 15th September stating that the Claimant was now prepared to accept their offer of one month's gross salary in settlement of the matter. There was no response.
14. In mid September the Claimant went to Bali and launched a new coaching business.
15. The Claimant received notification from the Tribunal that her claim form had been rejected on 23rd September. On 29 September ACAS wrote to the Respondent on the Claimant's instruction saying that should the Claimant not receive a response by 4 October "confirming the settlement" she would progress the matter with the tribunal. Acas relayed to the Claimant that the Respondent believed her claim was out of time.
16. On 2 October the Claimant wrote to Ms Barker stating that she had "recently accepted your one month offer due to a close bereavement and have been waiting for the paperwork".
17. On 18 October the Claimant presented her second claim form which was then accepted by the Tribunal.
18. The Claimant's evidence to the Tribunal was that the reason she did not submit this second claim form to the Tribunal sooner was because she was waiting for the Respondent to action the settlement that they had offered, which she was willing to take because of her recent bereavement. She went to Bali in September, but this was to start a business. The delay in presenting the second claim had nothing to do with her being in Bali, but was because she was waiting to hear from the Respondent after she had "accepted the settlement".

The law

19. Section 123 of the Equality Act 2010 provides that, subject to extensions to allow for early conciliation, complaints of discrimination may not be brought after the end of –
 - “(a) the period of three months starting with the date of the act to which the complaint relates, or

(b) such other period as the Tribunal thinks just and equitable.

20. Section 123(1)(b) provides a broad discretion. In considering whether it would be “just and equitable” to extend the relevant time limits, the Tribunal has to consider all the circumstances. I have to consider the prejudice caused to either party should the extension be granted or refused. All the circumstances are relevant including the length of, and reasons for, the delay; any prejudice to the Respondent if the application is allowed to proceed; the likely injustice to the Claimant if the complaint is not heard including whether any other redress is available, whether the Claimant was in receipt of advice; and the conduct of the parties after the complaint was received and up to the date of the application. This list of factors is a guide, not a legal requirement, although the two factors which are almost always relevant are the length of and reasons for the delay. (*Southwark London Borough Council v Afolabi* 2003 ICR 800).
21. In considering whether or not to exercise its discretion. The important issue is the prejudice each party will suffer as a result of the decision made having regard to all the circumstances and, in particular, (but without limitation) the length and reasons for the delay. In *Adeji v University Hospitals Birmingham NHS Foundation trust* 2021 EWCA Civ 23 the Court of Appeal said that the best approach in considering the just and equitable extension was to “assess all the factors in the particular case which it considered relevant to whether it is just and equitable to extend time including in particular the length of, and the reasons for, the delay.”
22. However, notwithstanding the breadth of the discretion, there is no presumption that a tribunal should exercise its discretion to extend time on the 'just and equitable' ground unless it can justify failure to exercise the discretion. The onus is always on the Claimant to convince the tribunal that it is just and equitable to extend time, Time limits are jurisdictional. The exercise of the discretion should be the exception rather than the rule. (*Robertson-v-Bexley Community Centre* [2003] IRLR 434). In most cases there are strong reasons for a strict approach to time limits.
23. Submissions. The Claimant asked for the Tribunal to take a compassionate approach . She said she had done everything she could. She thought her first claim was in time and while she accepted that she could have presented her second claim earlier, she had waited to see if she could settle because of her mental health; she had had a difficult year.. She submitted the gravity and severity of her claims necessitated adjudication and the tribunal should hold accountable the senior individuals implicated in their behaviour towards her and future potential victims should be safeguarded.
24. For the Respondent Mr Kediyal submitted that the Claimant was always aware of the time limits. It was not credible that the Claimant did not know that the first claim was out of time, nor was it credible that she believed that

the Respondent had made an offer to her of one month's salary which was still open for her to accept.. The Claimant had candidly said that the reason for delaying is that she would rather put things behind her. That was not a valid reason for an extension of time .

Conclusions

25. I accept that ACAS did not send the Claimant the early conciliation certificate on 23rd June. ACAS told the Claimant on 30th June that they would bring early conciliation to an end and issue a certificate – which clearly indicates that no certificate had already been issued. If early conciliation had come to an end on 30th June then the deadline would have been extended until 30th July making first claim in time.
26. The Claimant did not know that her first claim been rejected until 23 September. If the Claimant had acted promptly at that time then notwithstanding the delay I would have considered it just and equitable to allow the claim to proceed. However after the Claimant had been notified of the rejection of her first claim form she waited another four weeks, until 18 October, to submit a new claim. In the context of a three-month time limit this delay is significant. The Claimant's explanation for this extra delay is that she was hoping to settle. While that may be understandable it is not a good reason for delay. She knew about time limits, had been professionally advised and it would have been very easy to resubmit her claim naming the correct Respondent.
27. There was no reason for the Claimant to believe that there was any offer on the table or that she had just been "waiting for the paperwork". I am satisfied that it would have been clear to the Claimant that there was no such offer on the table. She had made a new offer at the end of July, but this had not been accepted by the Respondent as the Claimant was aware.
28. As to prejudice, while the delay of 12 weeks is unlikely to cause much forensic prejudice to the Respondent in the sense of fading memories or loss of documents, there is clear prejudice to the Respondent in having to defend a claim that would otherwise be out of time. The Claimant will of course lose the opportunity to have her claim heard but that fact is the same for all out of time claims and that fact alone is not sufficient for an exercise of discretion in her favour, where there is no good reason for the delay.
29. While I accept that the Claimant had a difficult year by September the Claimant was setting up her own business. While she may have preferred to settle, that did not prevent her presenting her claim with more speed than she did.
30. As the claim is out of time, I need not deal with the amendment application.

Employment Judge F Spencer
23 May 2024

JUDGMENT SENT TO THE PARTIES ON
03rd June 2024

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FOR THE TRIBUNAL OFFICE