



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107437/2023

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Held in Glasgow on 7 October 2024

Employment Judge P Smith

Miss R Elgar

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Claimant
In Person

Plant Blonde Limited

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Respondent
Represented by:
Ms J Walls -
Director

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The Claimant's claim in respect of holiday pay is dismissed upon its withdrawal by her.
2. The Claimant's claim of wrongful dismissal (notice pay) is dismissed as the Tribunal has no jurisdiction to hear it.

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REASONS

3. At the outset of the hearing the Claimant confirmed that she had been paid what was due to her in respect of holiday pay. Having explained the consequences of withdrawal to her, the Claimant elected to withdraw that claim and accordingly I dismissed it under rule 52.
4. The sole remaining claim was that of wrongful dismissal, in relation to notice pay only. The parties agreed that irrespective of which of them truly ended the employment, the effective date of termination (EDT) was 1 August 2023. It was evident that this claim had therefore been presented outside the applicable time limit. Given the jurisdiction issue It was therefore necessary to determine whether the Tribunal was able to hear the claim first, and only if I decided it was would I go on to determine the claim on its merits.

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5. In relation to the jurisdiction issue the Claimant gave evidence to the Tribunal orally at the hearing. She was asked questions by me and by Ms Walls on behalf of the Respondent. The Claimant had produced a small file of documents for use at the hearing and in relation to the jurisdiction issue she directed my attention to one of them (page 8). The Claimant also wished to refer to a timeline document she had sent to the Tribunal on an earlier occasion. A copy was printed so that the Respondent could consider that document and ask the Claimant questions about it. Time was given to Ms Walls to enable her to read it and prepare any appropriate questions. No evidence was led by the Respondent in relation to the jurisdiction issue.
6. An oral judgment, together with summary reasons, was delivered in the hearing itself. The Claimant requested written reasons and these are set out below in pursuance of that request.

15 **Findings in fact**

7. The primary time limit for the Claimant to have presented her claim to the Employment Tribunal in this case was 31 October 2023, given all parties' agreement that the effective date of termination (EDT) was 1 August 2023.
8. However, it was mandatory for the Claimant to obtain an early conciliation certificate from Acas before she could present the claim. That process was only started when the Claimant notified Acas for early conciliation on 9 November 2023. Therefore, in this case the time for presenting a claim of wrongful dismissal had already expired and the early conciliation provisions could not have had the effect of stopping the clock.
9. An early conciliation certificate was ultimately issued by Acas on 19 December 2023, but by that date the claim was already around seven weeks out of time.
10. I now return to the initial part of the chronology. Whilst it took some time for the Claimant to be able to obtain some advice in relation to her employment rights, she was ultimately able to do so within a few weeks of 1 August 2023.

She was able to obtain advice from a Ms Susan Clark at the Drumchapel Citizens Advice Bureau (CAB) and the result was that Ms Clark, on 4 September 2023, drafted the text of an email for the Claimant to then send on to the Respondent.

- 5 11. That email was duly sent by the Claimant to the Respondent on 9 September 2023, and the text of it mentioned what the Claimant contended were the factual circumstances of how the employment came to an end. It also expressly stated that she was due a notice payment representing £1,680. The email also mentioned about the Claimant taking further advice on her legal rights moving forward, in the event the matter could not be resolved. The Claimant confirmed in evidence that the reference to those legal rights meant her ability to pursue a legal claim to the Employment Tribunal.
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12. The Claimant also confirmed that these discussions with Ms Clark at the CAB resulted in her knowing that she could pursue a claim of wrongful dismissal to the Employment Tribunal, that she had three months from the date of termination to be able to do that, and that first she would have to go through the early conciliation process with Acas. It follows that I find that the Claimant was equipped with all this knowledge from a relatively early stage in the limitation period.
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13. There was no evidence, or indeed any suggestion, that she later forgot or somehow lost sight of the advice she had been given by Ms Clark. The advice given to her appears to have been accurate.
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14. The Respondent never responded to the Claimant's email of 9 September 2023. A further appointment with the CAB was arranged for 19 October 2023 in order that the Claimant could take advice, in her words, on "how to proceed". Unfortunately, that meeting never went ahead because of technical problems at the CAB's end, but the Claimant's evidence was that it was on 9 November 2023 that Ms Clark advised her to start the early conciliation process. I accepted that that was said but it was, of course, after the time limit had already expired.
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15. The Claimant did contact Acas for early conciliation the next day, but she did so in the full knowledge that she had had to contact Acas for early conciliation prior to the three-month time limit expiring. The fact that a meeting with Ms

Clark did not go ahead on 19 October did not to me appear to be of consequence given what the Claimant already knew about time limits and practicalities.

- 5 16. I was not told what was said between the Claimant and Ms Clark on 19 October, when the meeting had to be postponed. There was no evidence that the subject of Employment Tribunal time limits came up, or indeed that it did not come up. I can therefore make no finding about that.
- 10 17. However, there was no evidence given by the Claimant of any impairment which would have stood in the way of her lodging her claim with the Employment Tribunal at any point between 19 October 2023 and late December 2023, when she went on holiday to Spain. Equally, there was no evidence of any obstacle in the way of her obtaining an early conciliation certificate from Acas earlier than she eventually did.
- 15 18. Acas issued the certificate on 19 December 2023 and the Claimant presented a claim form to the Employment Tribunal on the same day. That claim was rejected on 22 December 2023 by Legal Officer Demir because the Respondent's name did not correspond with the name of the employer that appeared on the early conciliation certificate.
- 20 19. Although I was not told precisely when she went on holiday (and the Claimant did not say that she received the notice of rejection whilst abroad) I accept that the Claimant was on holiday in late December, until 30 December 2023. She then presented the current claim, which was accepted, on 11 January 2024. In terms of the substance of the claim, the claim form which was submitted on 11 January 2024 was not materially different in its contents from
25 the form that had been rejected the previous month.
- 30 20. The Claimant stated, and I accepted, that reason she did not present her claim in time was because she wanted to take advice and get her paperwork in order before proceeding to the Employment Tribunal, and that the postponement of the 19 October meeting prevented that from happening.

21. A claim of wrongful dismissal is a breach of contract claim. As a claim arising on the termination of employment it is one which the Employment Tribunal has jurisdiction to hear by virtue of the **Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994**. The Employment Tribunal can only deal with claims that Parliament has expressly conferred the jurisdiction upon them to consider.
22. The time limit for bringing wrongful dismissal claims is governed by **article 7** of the **1994 Order**, which provides as follows:
- “Subject to article 8B [which concerns the effect of Acas early conciliation on time limits], an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented -*
- (a) *within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or*
- ...
- (c) *where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.*
23. Whether the Employment Tribunal has jurisdiction to consider a wrongful dismissal claim presented out of time therefore involves a two-stage test. The first question – whether it was not reasonably practicable to have presented in time – is a matter of fact for the Tribunal (**London International College v Sen [1992] IRLR 292, EAT**). A Tribunal ought to establish first what the reason was for the delay in presenting in time. The question of what is reasonably practicable should be given *“a liberal interpretation in favour of the employee”* (**Marks and Spencer plc v Williams-Ryan [2005] ICR 1293, England and Wales Court of Appeal**). Reasonable practicability means what was *“reasonably feasible”* at the time (**Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, Court of Appeal**).

24. Erroneous advice from or (in)action by a skilled adviser does not in principle rule out a Claimant benefitting from an extension of time on this basis (**DHL Supply Chain Ltd v Fazackerley UKEAT/0019/18**, EAT) but the threshold to be crossed remains high in such cases. Where a Claimant has, in advance
5 of the expiry of the primary time limit, sought and received advice from a skilled adviser, and the reason for the failure to lodge the claim within that time limit is reliance on erroneous advice or conduct by that adviser, the general rule is that the escape clause will not be available to them (**Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379**, Court
10 of Appeal). CAB advisers may in certain circumstances be deemed skilled advisers for this purpose (**Williams-Ryan**), but even if that is appropriate in any particular case, the task for the Tribunal is to look at the full picture and to find out what happened and why.
25. If, and only if, the Claimant succeeds in persuading the Employment Tribunal
15 that it was not reasonably practicable to have presented in time may it go on to consider the second element: whether the claim was presented within such a time as was reasonable.

Analysis and conclusions

26. It being accepted that the claim was presented out of time, the first step for
20 me is to determine what the reason for delay was (**Sen**). In my findings I have accepted the Claimant's reason, which is that she did not present her claim in time was because she wanted to take advice and get her paperwork in order before proceeding to the Employment Tribunal, and that the postponement of the 19 October meeting prevented that from happening.
27. That is her explanation, but even allowing for the fact I should give the
25 Claimant the benefit of a liberal interpretation (**Williams-Ryan**) it is in my judgment problematic given that from early September 2023 – and thus an early stage in the limitation period – the Claimant was fully equipped with knowledge of the time limit and of the practicalities involved (compliance with
30 the early conciliation process and then submitting a claim to the Employment Tribunal).

28. Whilst I accept that the postponement of a meeting with the CAB on 19 October was no doubt inconvenient for the Claimant, her claim was in time when that happened and she always knew what she needed to do, and by when. In my judgment it remained reasonably feasible (**Palmer and Saunders**) – and thus “reasonably practicable” within the meaning of **art.7(c)** – for the Claimant to have presented the claim in the time she knew she still had left, even without whatever assistance Ms Clark could have provided.
29. Whilst choosing to start legal proceedings in the form of an Employment Tribunal claim would generally be a major decision in most people’s lives, completion of the ET1 claim form and submitting it to the Employment Tribunal is not of itself a complicated process. The Claimant gave no evidence that she found the process challenging, and there is nothing in either of her claim forms (the first rejected, the second accepted) that suggested she struggled to complete or submit them. The Claimant is in fact to be credited with submitting in both cases claim forms in which both the basis of each claim and the amounts claimed are clearly set out and readily understandable.
30. Whilst, as I have observed, a failure on the part of a skilled adviser generally – although not always – bars an individual from being able to rely upon the escape clause under **art.7(c)**, this was not a case where there had been an error on the part of the adviser, Ms Clark. Even assuming she was a person who would properly fall into the category of “skilled adviser” (**Fazakerley; Williams-Ryan**) – of which I have made no finding – her advice regarding time limits and the process to be followed appears to have been broadly accurate. The postponement of the 19 October meeting was unfortunate but did not of itself impede the Claimant from being able to lodge the claim.
31. The Claimant did not actually suggest that Ms Clark got anything wrong, and there was no evidence that Ms Clark had in fact agreed to act as her representative in any Tribunal claim the Claimant later decided to bring. Having explained to me her reason for delay I took from what the Claimant said that it was always her intention to bring the claim herself, and that the extent of the assistance she may have sought from Ms Clark would have been about how she ought to go about doing it.

32. In short, the involvement of the adviser in this case had no impact on the reasonable practicability of the Claimant submitting a claim within the statutory time limit.

5 33. For these reasons my conclusion must necessarily be that the Employment Tribunal has no jurisdiction to consider the Claimant's claim of wrongful dismissal, presented (as it was) outside the **art.7** time limit.

34. It is not necessary for me to go on to consider whether the Claimant presented the claim within such further period as was reasonable.

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P Smith

Employment Judge

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8 October 2024

Date

Date sent to parties

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8 October 2024