



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Jobe

**Respondent:** Hull University Teaching Hospitals NHS Trust

**HELD by Cloud Video Platform (CVP) in Leeds**

**ON: 7 August 2024**

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms J Whiteley, Solicitor Advocate

# JUDGMENT

The claimant did not present her claim for unfair dismissal before the end of the period of three months beginning with the effective date of termination and there is no further period which the Tribunal considers reasonable 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. In the circumstances the Tribunal does not have jurisdiction to hear the claim which is struck out and dismissed.

# REASONS

## 1. Claim

1.1. Unfair dismissal.

## 2. Issues

The issues in this case are set out in a document entitled Draft List of Issues

A) Jurisdiction – Time, and I will recite 2), 3) and 4) below:

2) Was the claim brought within three months of the effective date of termination?

- 3) If not, was it reasonably practicable for the claim to have been submitted within three months of the effective date of termination?
- 4) If not, was it then brought within a reasonable period thereafter?

3. **The Law**

- 3.1. The Tribunal has to have regard to the following provisions of the Law: Section 111(2) Employment Rights Act 1996 .

“.....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.”

- 3.2. The Tribunal also has to have regard to the following general rules relating to the reasonable practicability test:

3.2.1. It should be given a liberal construction in favour of the employee – **Dedman v British Building and Engineering Appliances Limited [1974] ICR 53 CA.**

3.2.2. What is reasonably practicable is a question of fact and for the Tribunal to decide. The test is empirical and involves no legal concept – per **Shaw LJ in Wall's Meat Co Ltd v Khan [1979] ICR 52 CA.**

3.2.3. The onus of proving that presentation was not reasonably practicable rests on the claimant – that imposes on her a duty to show precisely why it was that she did not present her complaint in time – **Porter v Banderidge Ltd [1978] ICR 943 CA (Porter)**. So if the claimant fails to argue that it was not reasonably practicable to present the claim in time the Tribunal will find that it was reasonably practicable – **Sterling v United Learning Trust EAT 0439/14 (Sterling)**.

4. **Facts**

**The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):**

- 4.1. The claimant was dismissed from her employment as a staff nurse on 21 June 2023. The three month period for presenting a complaint, the claimant says for unfair dismissal, expired on 20 September 2023. The claimant entered early conciliation late, on 21 September 2023, and received her early conciliation certificate on 6 October 2023. The early conciliation certificate makes reference to instituting proceedings in the employment tribunal but the claimant did not do so until 29 February 2024. Nevertheless the claimant appealed against her dismissal internally on 28 June 2023 and received the outcome on 11 October 2023. At no time has the claimant maintained that a reason for withholding her claim was because she was waiting for the outcome of her appeal.

- 4.2. The claimant had the support of the trade union of which she was a member, namely, The Royal College of Nursing (RCN) which supported the claimant in the disciplinary and appeals processes. After each hearing the claimant was given a summary and guidance as to what to do next, that is after the disciplinary and appeals processes had expired. In her witness statement the claimant says she was advised by RCN that if she wanted to bring a claim she had to contact ACAS first within three months of the effective date of termination. The Tribunal finds as a fact that the claimant was put on notice about bringing a claim and that there was indeed a three month period. She was, as I have said, in fact one day late in contacting ACAS but was again on notice about the reference in the early conciliation certificate about the instigation of proceedings. As the claimant says in her witness statement she put the tribunal claim on hold to focus on her health and mental well-being as well as in relation to her husband and her unborn child. In other words the Tribunal finds as a fact that the claimant chose not to present her claim until 29 February 2024, and not that she was unaware of time limits.
- 4.3. The claimant puts forward reasons for this long delay in presenting her claim:
- Firstly she said she was not in a fit state of mind, being focused on her pregnancy. She told us that she had no medical evidence to substantiate her mental state. As it was her child was born in December 2023 leaving another two months in which to present her claim before she actually did.
  - Secondly she said her husband was unwell, diagnosed with thyroid cancer. The claimant's husband was in fact diagnosed in March 2023. The claimant seemed uncertain as to when her husband had his first (of two) operations. Being a nurse the Tribunal was surprised that she did not appear to know when this was, but when the Tribunal questioned the claimant about the first operation and when it was, the claimant told the Tribunal that it was two months before the second operation and she knew that the second operation was on or about 6 August 2024. That being so neither operation took place within the three month period or indeed before 29 February 2024.
  - Thirdly the claimant said she was evicted from her property. The Tribunal was expecting the eviction to have taken place between 21 June 2023 and 20 September 2023, the three month period. That was not the position at all. The eviction had taken place in October 2022, some eight months before the claimant's dismissal. Unpleasant though it must have been living in temporary accommodation the act of eviction had taken place considerably before the claimant was dismissed and therefore before the three month period. In any event the claimant received permanent accommodation by the end of December 2023, two months before the presentation of her claim. The claimant still found time before the Tribunal to complain about the permanent accommodation – an empty house, no paint, no floor. She also seemed to complain about her now three children being in that accommodation.

- 4.4. All in all at the end of her evidence the claimant said “from my point of view the best was not to issue” meaning that she chose when she should and when she should not present her claim.
5. **Determination of the Issues (after listening to the factual and legal submissions made by and on behalf of the respective parties):**
- 5.1. The claim was not brought within the three month period of the effective date of termination.
- 5.2. Was it reasonably practicable for the claim to be submitted within the three months of the effective date of termination?
- 5.2.1. Firstly the claim was submitted five months late.
- 5.2.2. Secondly from the claimant’s point of view the best was not for her to issue. This indicates a lack of compulsion on the claimant’s part - not to issue rather than it not being reasonably practicable for her not to have done so.
- 5.2.3. Thirdly we should examine the claimant’s reasons:
- The claimant’s state of mind – there being no medical evidence to prevent the claimant issuing her claim in time.
  - The claimant’s husband’s illness. Of course the Tribunal has every sympathy for the claimant’s husband’s suffering, but was it reasonably practicable for the claimant to issue? The Tribunal had no medical evidence before it that between the effective date of termination and 20 September 2023 this would have prevented the claimant issuing. Furthermore it appears that the husband although unwell had no operations during this period or indeed in any period up to the date of presentation.
  - The eviction – this did not happen in the relevant period and although unpleasant for the claimant that it was ongoing in the way that it was, the claimant had been in temporary accommodation for eight months before the three month period and her accommodation became permanent in any case two months before the claimant presented her claim.
- 5.3. To return to **Porter**, the onus of proving that presentation was not reasonably practicable rests on the claimant – that imposes on her duty to show precisely why it was that she did not present her complaint in time. Therefore, if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the Tribunal will find that it was reasonably practicable – see **Sterling**.

- 5.4. So in the case here, having regard to the reasons set out, the claimant has failed to prove the onus required and therefore her claim is out of time. The Tribunal has no jurisdiction to hear her claim for unfair dismissal and the claim is struck out and/or dismissed as applicable.

J Shulman

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**Employment Judge Shulman**

Date: 27 August 2024

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