



Case Number: 2301166.2017

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs V Townley

and

Respondent

Kent County Council

Held at Ashford on 20 October 2017

Representation

Claimant:

In Person

Respondent:

Miss H Titchner

Employment Judge Kurrein

JUDGMENT

The Tribunal has no jurisdiction to heard the Claimant's claims of unfair dismissal and disability discrimination and they are struck out as having no reasonable prospect of success in accordance with Rule 37 Employment Tribunal Rules of Procedure 2013

REASONS

- 1 This matter came before me at an Open Preliminary Hearing to consider out of time points.
- 2 I heard the evidence of the Claimant and the submissions of each party. I read the documents on the file and to which I was referred. I make the following findings.
- 3 The Claimant was born on 26 September 1967 and started working for the Respondent on 1 February 1994.
- 4 In November 2015 she was diagnosed with a non-invasive cancer. The Respondent accepts she was disabled as a consequence.
- 5 The Claimant returned to work on 8 February 2016 after a period of sickness absence. On 21 March 2016, in the course of a supervision meeting, the Claimant's line manager raised some performance issues. The Claimant was referred to OH.
- 6 Thereafter the Claimant was largely absent from work. Some absence was certified, some was not.
- 7 On 6 May 2016 the Claimant resigned, but it was subsequently retracted at the Respondent's instigation.

- 8 The Claimant was again largely absent from work thereafter and did not attend various meetings the Respondent sought to arrange.
- 9 In late July 2016, after the Claimant's failure to attend a Performance and Capability Meeting ("PCM"), OH reported that the stress the Claimant perceived was related to management's actions, and would only be resolved by management action.
- 10 On 29 September the Respondent asked the Claimant to attend a PCM on 14 October 2016.
- 11 On 3 October 2016 the Claimant resigned with notice, asserting that the invitation to a PCM was a final straw, effective 2 November 2016.
- 12 The Claimant had re-joined and been in touch with UNISON since June 2016.
- 13 In early November 2016, in response to a request from UNISON dated 6 November 2016, the Claimant completed a Case Form setting out the details of her issues with the Respondent, and sent a copy of her letter of resignation to them in December 2016.
- 14 The Claimant sent chasing emails to UNISON on 25 January and 6, 16, 21, 24 and 25 February 2017. She did not receive substantive responses, but accepts that she was orally advised that a time limit existed on 16 February 2017. She did not take any steps to inform herself of her position, such as by looking on-line or seeking advice from ACAS or some other source.
- 15 The last date on which she could conceivably have started Early Conciliation ("EC") in time was 1 February 2017. UNISON started EC on 27 February 2017, without asking for it to be expedited, so that it concluded on 27 March 2017. She was therefore 26 days late in starting EC.
- 16 During this period UNISON told the Claimant they could not assist her further and informed her that she might be able to seek advice through her home insurance.
- 17 She was put in contract with DAS solicitors, who informed her her claims were out of time, but presented a fully pleaded ET1 on 27 April 2017.

Unfair Dismissal

- 18 The time issue is governed by the following provision of the Employment Rights Act 1996:-
- 111 Complaints to employment tribunal
- (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
- (2) Subject to subsection (3), 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.
- 19 I have had regard to the following guiding principles:-

Wall's Meat Co Ltd v Khan [1978] IRLR 499, Lord Denning, quoting himself in Dedman,

'It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time?

Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, the matters to be considered include:-

The substantial cause of the claimant's failure to comply with the time limit;

Whether there was any physical impediment preventing compliance, such as illness, or a postal strike;

Whether, and if so when, the claimant knew of his rights;

Whether the employer had misrepresented any relevant matter to the employee;

Whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

20 In light of my above findings of fact I have concluded that it was reasonably practicable for the Claimant to have presented her claim within the time limits:-

20.1 Such stress as she may have been suffering from did not prevent her from providing UNISON with detailed information or from her chasing them for information or action. She was able to make telephone enquiries of ACAS and send detailed emails.

20.2 The Claimant was clearly aware of her right to make a complaint to a Tribunal: she was advised in July regarding discrimination and constructive dismissal claims.

20.3 To the extent that she did not know the precise time limits:-

20.3.1 she was perfectly capable of researching that issue for herself, they are widely publicised on ACAS and the Tribunal websites and elsewhere; and

20.3.2 in any event the fault lies with UNISON or its legal advisers, something which in the above circumstances must be visited on her.

Disability Discrimination

21 My above findings and conclusions are also relevant to the wider issue set out in the Equality Act 2010:-

123 Time limits

(1) [Subject to section 140A and 140B] proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

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

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

- (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
- (b) such other period as the employment tribunal thinks just and equitable.
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

22 I accept for this purpose that the termination of the Claimant's employment on 2 November 2016 is the last act complained of.

23 I also bear in mind that the granting of an extension of time is the exception, not the rule: Robertson v Bexley Community Centre [2003] IRLR 434.

24 I have also had regard to the factors set out in British Coal Corp'n v Keeble [1997] IRLR 336:-

- (a) the length of and reasons for the delay;
- (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
- (c) the extent to which the party sued had cooperated with any requests for information;
- (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and
- (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

in which context I repeat my above conclusions.

25 Having regard to all the evidence before me I have concluded that the Claimant has failed to establish on the balance of probabilities that it would be just and equitable to extend time in her favour.

Conclusion

26 The claims are outside the jurisdiction of the Tribunal because they are out of time and must therefore be struck out.

Employment Judge Kurrein
20 October 2017