



EMPLOYMENT TRIBUNALS

Claimant: Mrs H Traetto-Reynolds
Respondent: Chief Constable of Bedfordshire Police
Heard at: Cambridge Hearing Centre
On: 22 March 2019
Before: Employment Judge Foxwell

Representation

Claimant: No attendance
Respondent: Mr N Moore (Counsel)

JUDGMENT

1. The Claimant's claim of unfair dismissal was presented outside the time limit contained in section 111 of the Employment Rights Act 1996 and is dismissed.
2. The Claimant shall pay the Respondent's costs of this hearing summarily assessed at £720.

REASONS

1. The Claimant, Mrs Haley Traetto-Reynolds, was employed by Bedfordshire Police as a resource/operations planner between July 2012 and 22 February 2018 when she was summarily dismissed for alleged gross misconduct. Having gone through early conciliation through ACAS between 13 April 2018 and 13 May 2018, on 12 September 2018 she presented a claim of unfair dismissal to the Tribunal.
2. The Respondent filed a response to the claim disputing the merits but also asserting it had been presented outside the statutory time limit so that the Tribunal did not have jurisdiction to hear it.
3. The claim and response were considered by Employment Judge Ord who directed that this hearing, which had originally been listed as the final hearing of the claim, be converted to a public preliminary hearing to decide whether the Tribunal had

jurisdiction to hear the claim. The parties were notified of this on 20 November 2018.

4. The primary time limit for bringing a complaint of unfair dismissal is three months from the effective date of termination (Section 111(2) of the Employment Rights Act 1996). This time limit can be extended under the early conciliation provisions contained in the Employment Tribunals Act 1996: in simple terms, early conciliation “stops the clock” so that the period spent in early conciliation is added to the limitation period (the position is slightly different where the primary time limit expires during early conciliation but that is not the case here). I find that the effect of the early conciliation provisions in this case is that the final date by which an in-time complaint could be presented to the Tribunal was 20 June 2018. This claim was presented almost 3 months later than this
5. Section 111 includes a saving provision for late claims and there are two strands to the test which I must apply when deciding whether a late claim can be accepted: the first is whether it was “*not reasonably practicable*” to present the claim within the primary time limit; the second is whether the claim has been presented in such further period as is reasonable in all the circumstances. These are distinct stages which must be considered separately. Furthermore, it is well established that the test of reasonable practicability is one of what was reasonably feasible in the circumstances, it is not a broader test of justice and equity such as exists under the Equality Act 2010. The burden of proving that it was not reasonably practicable to present a claim in time is on a claimant.
6. The claimant has not attended this hearing. She emailed the Tribunal on Wednesday, 20 March saying that “*due to unforeseen circumstances*” she could not attend the hearing. She did not explain what those circumstances were. Her email was referred to me and I gave an instruction that she be informed that the hearing may proceed in her absence if, without explanation, she did not attend. This letter was sent to the parties by email on 21 March 2019. No further explanation or clarification has been received from the Claimant since as far as I am aware.
7. The Claimant has not attended today’s hearing. I asked the clerk to telephone her mobile number to check whether she was on her way but the call went straight to voicemail.
8. I am satisfied that the Claimant is aware of this hearing and of its purpose and have decided to proceed in her absence.
9. I find that the Claimant’s claim was presented outside the statutory time limit and that the Claimant has failed to prove facts enabling the Tribunal to extend time. In those circumstances I dismiss the claim as the Tribunal does not have jurisdiction to hear it.
10. Having announced that decision, Mr Moore applied for the Respondent’s costs of today limited to his brief fee (£600 + VAT). The Employment Tribunal is ordinarily a costs free jurisdiction but a Tribunal may make an Order for costs where it is satisfied that a party has brought or conducted a claim unreasonably (see Rule 76 of the Tribunal Rules 2013). Mr Moore argued that the Claimant was clearly aware

of the relevant time limit as she had initiated early conciliation within this. He said that the Claimant's failure to present a timely claim by some margin, her failure to provide any explanation for this before today and her failure to attend today indicated that she had no real intention of pursuing this claim and therefore it was unreasonable of her to bring it in the first place. He also made the point that, if the Claimant were to persuade the Tribunal that she had a good reason for not attending today such that this hearing is relisted, she is likely to be ordered to pay the costs of today thrown away in any event. I considered that there was some force in this last point, although much would depend on the Claimant's explanation for her non-attendance.

11. I reminded myself that costs are the exception rather than the norm in Tribunal proceedings and that there had been no orders for the Claimant to provide evidence or disclosure relating to the preliminary issue in advance of this hearing but I was nevertheless persuaded by Mr Moore's submission. I noted that the Claimant had found other employment within a month of her dismissal when considering her likely ability to pay a costs order. I accepted that the amount claimed, £720, was less than the actual costs incurred by the Respondent, a public authority, and found that it was right to Order the Claimant to pay this sum to it.

Employment Judge Foxwell 22 March 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON
3 April 2019

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FOR THE TRIBUNAL OFFICE