EMPLOYMENT TRIBUNALS

Claimant: Miss D Cherrington

Respondent: Queen Street Neighbourhood Resource Centre

Heard at: **Nottingham** **On: 28 January 2020**

Before: **Employment Judge Brewer**

Representation

Claimant: In person
Respondent: Mr D Brown, Counsel

JUDGMENT

The tribunal does not have jurisdiction to hear the claims under case number 2603208/2019 and such claims are therefore dismissed.

REASONS

Introduction

1. By a claim form presented on 5 November 2019 the Claimant claimed disability discrimination (the disability claim) and detriment as a result of making a protected disclosure (the PIDA claim). The Claimant contacted ACAS for early conciliation on 25 October 2019 and the EC Certificate was issued on 28 October 2019. The prospective Respondent is noted as "Queen Street Neighbourhood Resource Centre. The details of the claims are not material to, and need not be set out in this judgment.

2. In section 2 of the ET1, in box 2.1, which asks for the name of the person or organisation "you are claiming against", the Claimant put "Hugh Warner". In box 2.2, which asks for the address of the Respondent, the Claimant starts with "Queen Street Neighbourhood Resource Centre". She then goes on to give her work address.

3. The Claimant was employed by the Respondent as a Booking Administrator from 2 December 2018 until 30 June or 1 July 2019. There remains uncertainty as to the effective date of termination but nothing in this matter turns on that.

4. In relation to time limits for bringing her claims, given the effective date of termination (EDT), the normal 3-month time limit expired on either 29 September 2019 (if the EDT was 30 June 2019), or alternatively 30 September 2019 (if the EDT was 1 July 2019)

5. On the face of it therefore the claims are all out of time and the case was listed for a preliminary hearing.

Issues

6. The hearing was listed to determine:

    a) whether the claims are out of time and, if so,

    b) whether the Tribunal should extend time.

7. At the hearing Mr Brown, on behalf of the Respondent, raised a further issue which I have alluded to in paragraph 2 above; that the claim should not be allowed to proceed as the Respondent set out in the ET1 is not the same as the prospective Respondent set out in the EC Certificate. This was a matter which had been raised with the Tribunal and the Claimant before the hearing, and as the facts were not in dispute and no evidence would be required, I considered that the Claimant would not be prejudiced by me dealing with the submissions of Mr Brown on the point, and accordingly I agreed that I would also deal with this matter.

Law

8. The law as to time limits can be found in the Employment Rights Act 1996 (ERA), in relation to the PIDA claim, and in the Equality Act 2010 (EQA) in relation to the disability claim.

9. The relevant part of section 48 ERA is as follows:

    48 Complaints to employment tribunals.

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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.

(4A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (3)(a).

10. The relevant part of section 123 EQA is as follows:

123 Time limits

(1) Subject to sections 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.

11. In relation to the requirements for Early Conciliation (EC), The Employment Tribunals Rules 2013 state as follows:

Rejection: substantive defects 12.

(1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—

(a) one which the Tribunal has no jurisdiction to consider; (b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process.

(c) one which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies;

(d) one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;

(e) one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the

prospective claimant on the early conciliation certificate to which the early conciliation number relates; or

(f) one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate to which the early conciliation number relates.

(2) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a) (b), (c) or (d) of paragraph (1).

(2A) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim.

(3) If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the Judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.

12. I shall refer to relevant case law, as necessary, below.

Findings of fact

13. Given all of the facts in this case I find that the Claimant's employment terminated on 30 June 2019. The normal 3-month limitation period ended therefore on 29 September 2019. The Claimant did not contact ACAS for EC within the normal time limit and she does not therefore get the benefit of any extension to the time for presentation for EC.

14. The Claimant presented her ET1 on 5 November 2019. The claim for unfair dismissal (the disability claim in effect) was therefore 37 days out of time. The last act complained of within the PIDA claim (leaving aside the dismissal itself) occurred on 7 August 2018 and is therefore some 12 months out of time.

15. The Claimant initially said that she contacted ACAS for advice in mid-October 2019. She said that she contacted ACAS on for EC on 25 October 2019. This latter date is confirmed by the EC Certificate. She says that she could not have contacted ACAS sooner than mid-October as she was too unwell. I note that as well as her job with the Respondent, the Claimant was employed in a nursery which occupied the same building as the Respondent. The Claimant remained employed by the nursery after she had resigned from the Respondent.

16. The Claimant spent the period 28 October to 5 November completing her ET1 which she then filed with the ET.

17. The Claimant applied for a new job in early July 2019. She says she completed an application form, she was offered and attended an interview on 18 July

2019. She says the interview went well, she said she had "no difficulty" answering the questions. She was offered and accepted the new job.

18. Also, during the limitation period, the Claimant was dealing with her appeal against the removal of her ESA. This involved her communicating with her GP, obtaining relevant medical records, communicating with the tribunal hearing her appeal and preparing for and attending the appeal itself (although this happened later).

19. The Claimant says that she was ignorant of the tribunal time limits until the week of 28 October 2019.

Discussion

20. I shall deal with general points first and then consider those in the context of the relevant statutory provisions. Finally, I shall deal with the point about the name of the Respondent.
21. The Claimant appears to be relying on alternative explanations for the late presentation of her ET1. The first is ignorance of the time limit. The second is her ill health. She does not assert that she was ignorant of the time limit because of her ill health which is why I posit these as alternative reasons. It must follow that if I accept the ignorance point, the Claimant's ill health as an explanation for the late presentation is irrelevant. If I do not accept the ignorance argument, then I must go on to consider the ill health point.

22. For a Claimant to successfully rely on ignorance of a time limit I must be satisfied that her ignorance is reasonable. I am not so satisfied. The Claimant is intelligent and articulate. During the limitation period she was able to deal with her ESA appeal and I cannot and do not accept that she was unable to search on the internet for how to bring a claim to the employment tribunal, and if she had she would immediately have been aware of time limits and the need for EC. Given all of the above facts, even if the Claimant was ignorant of time limits this was not reasonable.

23. I turn to the ill health point.

24. The first point to note is that the Claimant provided no medical evidence of any ill health during the limitation period. Second, during that period she remained at work in the nursery (she resigned latterly from that job). Third, during that period she continued to deal with her ESA appeal as I have set out above. Finally, and most tellingly, during the limitation period the Claimant did all that was necessary to obtain further employment. In all those circumstances I am not satisfied that the Claimant was ill either at all, or certainly not too ill to turn her mind to the claims she wished to bring against the Respondent.

25. I turn then to the separate jurisdictions. I deal first with the PIDA claim. As set out above, the legal position is that the claim should be brought before the end

of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably.

26. In my judgment, for the reasons set out at [24], the Claimant has not shown any reason why it was not reasonably practicable for her to bring the PIDA claim within the normal limitation period. That being the case I do not have to consider whether the extra time taken was "such further period as the tribunal considers reasonable".

27. It follows that the tribunal does not have jurisdiction to hear the PIDA claim.

28. Turning to the disability claim, the law allows me to confer jurisdiction on an otherwise time-barred claim if it is just and equitable to do so.

29. I note that there is to be no presumption that time should be extended, and it is for the Claimant to make out her case (Robertson v Bexley Community Centre (2003)). In consider the exercise of the discretion to extend time I should consider any prejudice to the parties and all of the circumstances of the case including the length of delay, the reasons for it, how quickly the Claimants acted when she was aware that the time limit had passed, what advice she may have had (see British Coal Corporation v Keeble (1997)).

30. Mr Brown said that a key witness is no longer employed by the Respondent and thus should the case go ahead the Respondent will be prejudiced. I note the point but in truth it is not a strong one. There is always a delay between the date a claim is presented, and the hearing and it is a fact of life that witnesses may leave the organization. That is inconvenient but not a prejudice since if necessary, they can be compelled to attend through a witness order. The Respondent brought no evidence to suggest the person in question could not be found or would not co-operate with the Respondent.

31. Having said that, I have considered all of the circumstances. In my judgment the Claimant was or ought reasonably to have been aware of the time limit for bringing her claim. She has brought no evidence as to why she could not and indeed to the contrary, her oral evidence showed that during the limitation period she dealt with work, looking for and obtaining a new job and her ESA appeal. In my view this amounts to the Claimant making a choice to prioritise those matters over and above her claims to the tribunal and that is the actual reason for the delay. Whilst it does not follow automatically that a person making that choice could not persuade a tribunal to extend time on a just and equitable basis, in this case the Claimant has not done so. She posits ignorance and ill health as reasons she could not bring her claims in time, but I have rejected those reasons as set out above. In my judgment the delay was avoidable, it was a matter of choice. The Claimant did not really say why it

would be just and equitable for the tribunal to extend time in this case other than she wanted to pursue the claims. But had she felt that way then she would have spent the short amount of time necessary to do that within the normal time limit. She did not, and in the circumstances, I find that it is not just and equitable to extend time in the case.

32. Finally I should deal with the Respondent's argument that the ET1 is defective and that the claim should not be allowed to proceed as the Respondent set out in the ET1 is not the same as the prospective Respondent set out in the EC Certificate.

33. Put simply, the Respondent relies on Rule 12(1)(f) and (2A) of the 2013 ET Rules which say that:

    a. if a claim is one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate to which the early conciliation number relates; and
    b. unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim; then
    c. the claim, or part of it, shall be rejected.

34. Mr Brown pointed out that the prospective Respondent on the EC Certificate is the Respondent in this case. However, on the ET1 form, in box 2.1 which asks for the name of the Respondent, the Claimant has inserted "Hugh Warner". In box 2.2, which asks for the address, the Claimant has included the correct name of the Respondent. I have considered the cases of Giny v SNA Transport Limited (2016) and E.ON Control Solutions Limited v Caspall (2019).

35. The E.ON case concerned Rule 12(2), not Rule 12(2A). Rule 12(2) is mandatory, Rule 12(2A) is not. The Giny case is about Rule 12(2A) but is very significantly different to the present case. In Giny the Claimant incorrectly identified an individual as his employer and the prospective respondent and the EC Certificate included the incorrect prospective respondent. That is not the case here. The EC Certificate names the employer, correctly, as the prospective respondent. The ET1 form also names the Respondent nut does so in box 2.2 instead of 2.1. That was considered by a judge after presentation of the ET1 and it was concluded that in all the circumstances this was a minor error. I agree.

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Employment Judge

Date____30 January 2020_____

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Note
Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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