



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Adams

**Respondent:** Telecom Service Centre Ltd t/a Webhelp UK

**Heard at:** Cardiff **On:** 17 March 2020

**Before:** Employment Judge Moore

**Representation**

Claimant: In person

Respondent: Mr R Byram, Solicitor

## RESERVED JUDGMENT

1. The claimant's claim of unfair dismissal was presented out of time and it was reasonably practicable for it to have been presented in time. The claim is dismissed.
2. The claimant's claim of less favourable treatment under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations was out of time but it is just and equitable to consider the complaint and it will proceed.

## REASONS

### Background and Introduction

1. The ET1 was presented on 2 December 2019. The claimant brings claims of unfair dismissal and less favourable treatment under Regulation 5 of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("the Regulations"). The respondent resists the claim and asserted the claim had been brought out of time. The effective date of termination was 26 June 2019 giving a primary limitation date for the unfair dismissal claim of 25 September 2019. The primary limitation date for the part time worker claim was fact dependent. The date of receipt by ACAS of the early conciliation certificate was 25 November 2019 and the date of issue of the certificate ("DAY B") was 28 November 2019.

2. A preliminary hearing by telephone took place on 31 January 2020 which led to the listing of this preliminary hearing in person to determine whether the Tribunal has jurisdiction to hear the claims.
3. There was an agreed bundle of 76 pages and I heard witness evidence from the claimant.

### **The Law**

4. An unfair dismissal claim must be presented before the end of the period of three months beginning with the effective date of termination or 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. (Section 111 Employment Rights Act 1996).
5. I was referred to a number of authorities regarding the 'reasonably practicable' extension namely;
  - a. **Porter v Bandridge Ltd [1978] ICR 943 (CA)** (applying **Dedman v British Building & Engineering Appliances Ltd [1974] ICR 53 CA**);
  - b. **Trevelyan (Birmingham) Ltd v Norton [1991] ICR 488**;
  - c. **Times Newspapers Ltd v D L O'Regan [1977] IRLR 101**;
6. There is a different test for the Part Time Workers claim in both the limitation trigger and the question of whether to allow the claim. The former is as set out in Regulation 8 (2):

#### **8 Complaints to employment tribunals etc**

- (1) **Subject to regulation 7(5), a worker may present a complaint to an employment tribunal that his employer has infringed a right conferred on him by regulation 5 or 7(2).**
  - (2) **Subject to paragraph (3), an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months (or, in a case to which regulation 13 applies, six months) beginning with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.**
7. Regulation 8 (3) provides that a tribunal may consider any such complaint which is out of time, if in all the circumstances of the case, it considers it is just and equitable to do so.
  8. In both cases the extension of time limits to facilitate conciliation before instituting of proceedings apply.
  9. I was referred to these authorities regarding the 'just and equitable test';
    - a. **Perth & Kinross Council v Ms Fiona Townsley UKEATS/0010/10/BI**;
    - b. **Mr R Robinson v The Post Office UK EAT/1209/99.**

I also asked the parties to consider the decision of Mr Justice Underhill in **John Lewis Partnership v Chapman UKEAT/0079/11.**

**Findings of fact**

10. I make the following findings of fact on the balance of probabilities.
11. The claimant commenced employment with the respondent in May 2012 as a customer service advisor. The respondent provides call centre support staff to third party clients. It was common practice for staff to be moved onto different campaigns. The claimant had worked full time until she returned from maternity leave in January 2017 when she reduced her hours to 16 hours per week.
12. The claimant was working on a campaign for 'Shop Direct'. The respondent decided to move this campaign to their Glasgow offices and all full-time staff allocated to that campaign would be allocated to a Vodafone campaign. The respondent accepted in their ET3 that due to "different requirements" and training requirements it was difficult to facilitate part time workers on this campaign and accordingly, reallocated all part time staff to a Sainsbury's campaign. This was the less favourable treatment that is the subject of the claimant's complaint. The respondent's ET3 says the date the decision was 1 April 2019 but the decision must have been taken before then as this was the date the part time staff actually commenced on the Sainsbury's campaign. The claimant's evidence, which I accepted was that she was informed by Sarah Cann, Head of Operations on 27 March 2019 that no part time staff would be moved onto the Vodafone campaign. I find that the decision was taken on 27 March 2019.
13. On 23 April 2019 the claimant along with other staff working on the Sainsbury's campaign were informed they were at risk of redundancy.
14. On 30 April 2019 the claimant raised a formal grievance. She cited having spoken to her union on 29 April 2019. I set out the relevant part of that grievance

**"I do believe that there is suitable employment within the Vodafone campaign and see this as unfair dismissal, and also discrimination to part-time workers as I have been moved over to a contract which has been put under potential redundancy in under a month of my move.**

**My Union has made me aware that this is a breach of my rights under unfair dismissal and that Webhelp would have a case to answer to this this goes to a tribunal. They've made me aware that I have three months from April 1st to make this complaint and a claim if appropriate."**

15. The claimant was asked about this in cross examination. Her evidence was consistent and compelling as to her understanding of what she had meant by the time limit advice provided by her union. I accepted it in full. The claimant had understood when she was advised by her union about a three month time limit that this meant she had three months to make a complaint to her employer which she duly made on 20 April 2019. As far as the claimant was concerned, she had complied with that advice about time limits in lodging her grievance. The claimant did not seek any further advice in respect of time limits until after she received her grievance appeal outcome in late November 2019. The claimant's evidence, which again I accepted in full, was that she believed she had to exhaust the grievance procedure and receive a final

outcome before she could bring a complaint to the employment tribunal. This was corroborated by the content of the contemporaneous grievance documents which I will return to below.

16. On 29 May 2019 claimant had a grievance meeting with her manager. She was accompanied by her union representative but was not given nor did she seek any further advice about time limits for an employment tribunal claim as she was following the process she believed needed to be followed and had made the complaint to her employer within the three month period.
17. The respondent also commenced consultation with the claimant regarding her redundancy. The claimant was offered a role on a Shell campaign which she declined as it was a short term fixed term contract initially to July 2019.
18. The claimant's last day was 26 June 2019.
19. The claimant did not receive a response to her grievance until 17 July 2019. She appealed the outcome on 26 July 2019. There was a series of delay for legitimate reasons attributable to both parties. The grievance appeal took place on 27 September 2019. The claimant was accompanied by her union representative. She heard nothing further so on 23 October 2019 she chased the manager dealing with the appeal (Hayley Thorne) by email. Having received no reply she then chased HR on 25 October 2019. It transpired that the respondent had sent the grievance outcome letter to an incorrect address for reasons that were not clear to me. The claimant finally received the appeal outcome letter on 18 November 2019. On reading the letter the claimant concluded she had exhausted the procedure as it stated the appeal outcome was final. At this point the claimant looked up Employment Tribunal on the internet and then rang ACAS and asked how she should proceed. ACAS explained the certificate procedure and made the claimant aware of the ET1. The first time she was aware her claim was out of time was when she was informed by the respondent's representative after the ET3 was filed.

## **Conclusions**

### **Unfair Dismissal claim**

20. This claim was not presented in time. The claimant contacted ACAS on 25 November 2019, two months after the expiry of the primary limitation date and lodged a claim on 2 December 2019, a week later.
21. Having accepted in full that the claimant has misunderstood what she had been advised by her union (that she had three months to make a complaint to her employer) I have carefully considered whether this rendered it not reasonably practicable to have presented the claim in time.
22. The claimant knew of her right to bring a claim for unfair dismissal. She cited unfair dismissal in her grievance. In my judgment, it was therefore reasonably practicable for her to have presented her claim in time as she knew of her rights but failed to make appropriate enquiries into time limits. I have specifically taken into account the guidance in **Dedman** and **Trevelyan** which are authority for the proposition that if a claimant knows of his / her right to claim unfair dismissal there is an obligation to seek information

or advice about the enforcement of those rights. The claimant has not sought to advance that she was advised in error by her union. She has been candid and frank in explaining that she misunderstood the advice she was given. Even so, the authorities are clear that where a person knows of the right to seek redress from the Tribunal they are under a duty to make appropriate enquiries (paragraph 10 **Times Newspapers v D L O'Regan**).

### **Part Time Workers Claim**

23. Regulation 8 (4) (c) provides that a deliberate failure to act contrary to regulation 5 shall be treated as done when it was decided upon.
24. The relevant date for the purpose of limitation was in my judgment 27 March 2019. Having regard to the evidence before me this was the only date which enabled me to conclude the date the respondent had taken the decision not to allocate the claimant to the Vodafone campaign because of her part time status. The claimant relies on this act as a detriment as she asserts that decision to exclude part time workers from the contract was discriminatory and ultimately led to the termination of her employment.
25. The fact that the decision was compounded and reiterated at the grievance hearing and subsequent appeal is irrelevant to the question of when the relevant act or failure to act took place.
26. The claim was therefore presented over 8 months out of time.
27. I have gone on to consider whether it would be just and equitable to permit the claim.
28. I was referred to the case of **Perth and Kinross** in respect of the claimant's ignorance of time limits. I have no doubt that the claimant was genuinely ignorant of the time limit. The next question is whether that was reasonable? I have concluded it was reasonable for the following reasons. In doing so I am mindful of my conclusions above in the unfair dismissal claim but the test is a different one with different authorities. The claimant had sought advice from her union. She was not given the wrong advice but misunderstood the advice she was given. That misunderstanding (that she had three months to make a complaint to her employer) was not an unreasonable misunderstanding to have reached. I have had particular regard for the claimant's efforts to resolve the matter through the correct internal procedures.
29. I have also considered the balance of hardship. I have concluded that this very much falls down in favour of the claimant. I have not heard any evidence or submissions that allowing this claim would cause the respondent prejudice, other than the obvious prejudice of having to defend a claim which is out of time. The respondent has been well aware of the claimant's complaint from her grievance, which they took seven months to resolve. The claimant would be prevented from bringing a claim which she has sought to resolve internally. I accept that there is no general principle that time should be extended to the end of internal procedures (acknowledging as in **Robinson** that Parliament has deliberately not provided as such for the running of time).

30. For these reasons it is just and equitable to consider the claimant's claim for less favourable treatment under Regulation 5. The claim will now be listed for a telephone preliminary hearing to set down directions and list the substantive claim.

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Employment Judge S Moore

Date            6 April 2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 6 April 2020

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FOR EMPLOYMENT TRIBUNALS