



EMPLOYMENT TRIBUNALS

Claimant: Ms A Bolton

Respondent: Ladbrokes Coral Group Ltd

Heard via Teams (London Central) On: 25 May 2021

Before: Employment Judge Davidson

Representation

Claimant: Ms E McIlveen, Counsel

Respondent: Mr D Brown, Counsel

JUDGMENT

The claimant's complaint is dismissed as it was presented outside the statutory time limit and the tribunal does not have jurisdiction to hear it.

Employment Judge Davidson

Date 26 May 2021

JUDGMENT SENT TO THE PARTIES ON

26/05/2021..

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FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

The hearing

1. The hearing was a remote public hearing, conducted at first using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way.

2. From a technical perspective, there were difficulties in the claimant and the witness attending on CVP. The hearing was moved to Teams and no difficulties were encountered. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal.
3. The participants were told that it was an offence to record the proceedings.
4. Evidence was heard from Ms A Gallagher, the claimant's solicitor. I was satisfied that she was not being coached or assisted by any unseen third party while giving her evidence.

REASONS

Background facts

1. The issue for this hearing was whether to allow the claim to proceed as the claim form (ET1) had been submitted outside the statutory time limit. The last day for presentation of the ET1 was 7 January 2021. It was submitted on 11 January 2021.
2. The claimant was dismissed on 22 August 2020 and she instructed Paul Doran Law to represent her. The firm holds itself out as employment law specialists, in particular representing claimants. The matter was assigned to Ms A Gallagher, a solicitor admitted in foreign jurisdictions and applying to be admitted in England & Wales. She had joined the firm in August 2020 and was one of three associates, reporting into the Director, Mr Doran. There were also two paralegals but neither was assigned to Ms Gallagher. Ms Gallagher accepts it was the firm's responsibility to lodge the ET1 on behalf of the claimant.
3. Ms Gallagher was working from home from a desktop computer. She also had access to emails from her mobile phone but found it difficult to work from her phone.
4. On 10 December, the claimant told Ms Gallagher that ACAS early conciliation had ended and she had a certificate from ACAS. Ms Gallagher understood that the ET1 would have to be presented within a month of the end of early conciliation but she asked to see the certificate so that she could satisfy herself of the correct date.
5. Ms Gallagher keeps a spreadsheet of all her cases in order to keep on top of time limits. Other staff in the firm have access to this. She had put 'EC – notified' under the claimant's case notes. She told the tribunal that she was waiting to see the EC certificate before updating this.
6. After being requested by Ms Gallagher, the claimant finally sent the certificate under cover of email dated 18 December 2020. Ms Gallagher saw the email but the certificate took a while to download and therefore she did not realise that there was an attachment to the email.
7. At that time, Ms Gallagher had an extremely heavy workload with no paralegal or secretarial support. Mr Doran was aware that she had a heavy workload but, due to her relatively short service and her impending maternity leave, she did not want to complain to him about this.

8. She was due to give birth in early February (in the event the baby arrived on 19 January 2021), she was moving house over the weekend of 19 and 20 December where she would have no broadband until 11 January 2021. She left her desktop computer at her parents' house until she had broadband in her new home.
9. The firm's Christmas shut-down was from 23 December 2020 to 3 January 2021.
10. During the Christmas shut-down period, Ms Gallagher came into contact with a family member who had tested positive for COVID 19 and she was told she had to isolate for 14 days. She herself had some symptoms but did not test positive. She was absent from work for two days due to illness on 5 and 6 January 2021. She was working normally on all other working days.
11. Ms Gallagher was due to go on maternity leave during January and Mr Doran had arranged maternity cover. The maternity cover was not an employment specialist and was a Legal Executive. For the first few days of her employment, she was being trained on the computer equipment and was not able to assist Ms Gallagher.
12. Ms Gallagher contacted the claimant on 10 January 2021. She then realised that the deadline had been missed and the ET1 was subsequently lodged on 11 January 2021.

Submissions

13. The claimant's representative argues that it was not reasonably practicable and that Ms Gallagher was not unreasonable in missing the deadline bearing in mind all the obstacles she had to overcome, namely her short service with the firm, her pregnancy, her house move and lack of internet, self-isolation and feeling unwell, the challenges in working from a mobile phone and the early arrival of her baby.
14. She asks the tribunal to follow a liberal interpretation of the rules and to allow the claim to proceed.
15. The respondent's representative contends that it is not a 'reasonableness' test but a test of reasonable practicability. This is a case where the fault lies with the skilled adviser and therefore the *Dedman* principle applies, which gives the claimant a remedy against the skilled adviser (*Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53 CA).
16. The respondent argues that Ms Gallagher had been told by the claimant that the EC certificate had been issued and she should have proceeded on the basis of that information. She was aware of the Christmas shutdown and her personal circumstances in advance. The firm should have made arrangements to deal with any interruptions to the service to the clients which could have arisen (and which did arise) due to Ms Gallagher's situation.

Decision

17. The claim is for unfair dismissal and therefore the relevant test is whether it was reasonably practicable to submit the claim within the time limit. If I find it was not reasonably practicable, I would take no issue with the length of any subsequent delay, so the issue is limited to the reasonable practicability of submitting the claim in time.

18. It is for the claimant to establish that it was not reasonably practicable to lodge the claim in time.
19. In determining whether it was reasonably practicable for the claim to have been lodged in time, I need to decide why the deadline was missed. Having considered all the evidence before me, my conclusion is that the claimant's matter 'fell through the cracks' towards the end of December 2020. Ms Gallagher received an email from her which she thought did not include the attachment she was waiting for (the EC certificate). Instead of responding immediately to the claimant asking her to send her the attachment, Ms Gallagher moved on to her next task and the claimant's file was overlooked. I have every sympathy for Ms Gallagher who had an extensive workload and an absence of support. In such circumstances, there is a risk that matters will get overlooked.
20. Once Ms Gallagher had failed to update her spreadsheet, which still showed 'EC – notified', the firm's system of ensuring deadlines were met would not have picked up the fact that the time limit was about to expire. Given that she had been told by the claimant that there was an EC certificate, it is surprising that Ms Gallagher did not update her spreadsheet until she had seen the certificate herself.
21. If the claimant's matter had not been overlooked and Ms Gallagher was aware that the deadline for submission was about to expire, she could have found a way to lodge the claim, perhaps by asking Mr Doran or another colleague and her practical challenges relied on by the claimant's representative would not have prevented the claim being lodged.
22. Ms Gallagher's pregnancy, self-isolation, sick days and lack of internet were not the reasons that the deadline was missed. The reason that the deadline was missed was insufficient checks and balances within the firm's processes. In fact, the difficulties Ms Gallagher had to contend with, many of which were known about in advance, increased the obligation on Mr Doran to ensure that Ms Gallagher's clients were not prejudiced. The firm failed to make appropriate arrangements.
23. In conclusion, I find that the claimant has failed to show that it was not reasonably practicable to lodge the ET1 in time. As the tribunal does not have jurisdiction to hear the complaint, it is hereby dismissed.