

RM



EMPLOYMENT TRIBUNALS

Claimant: Ms C Dickens
Respondent: The Partyman Company Ltd
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 22 December 2021
Before: Employment Judge Mr J S Burns

Representation

Claimant: In person (assisted by Mr D Thesterman - a friend)
Respondent: Ms G Duffy (peninsula rep)

JUDGMENT

The claim is dismissed.

REASONS

1. On 3/8/21 the matter was listed for an OPH today to consider whether the claim (Unfair Dismissal) should be dismissed on the basis that the Tribunal has no jurisdiction to entertain it because it has been presented outside the 3 month time limit (as extended by the ACAS conciliation period).
2. I heard evidence from Mr D Thesterman, a friend of the Claimant, and then from the Claimant herself. The documents were in a bundle of 43 pages.
3. The Claimant resigned and her employment ended on 18/11/2020. The three month period expired on 17/2/21. She applied to ACAS on 8/4/21 but this did not extend the time for claiming because the three months had already expired by then. The ACAS certificate was issued on 19/5/21 and the ET1 was presented on 21/6/21, over four months late.
4. Time can be extended for the presentation of an unfair dismissal claim if it was not reasonably practicable for the Claimant to claim in time and if she then applied within a reasonable time thereafter.

5. Previous case law has established that “*reasonably practicable*”, means “*feasible*”, that ignorance of time limits is not usually a valid excuse, especially when there is further unexplained delay when the Claimant became aware of the time limit; and that tribunal time limits must be strictly enforced.
6. The Claimant’s employment ended by resignation and she stated in her Particulars of Claim (POC) attached to her ET1, that she was then in a bad mental state and suffering from depression caused by bullying which had caused her resignation. Her grievance about bullying was upheld. Hence it is likely that she was feeling depressed in the aftermath of her resignation.
7. The Claimant was and is in a stable long-term relationship with a partner and children. Mr Thesterman stated that he was in contact with the Claimant and her partner in the few months after her resignation and that he recalls that she was in a poor mental state. However the Claimant stated in evidence that she did not consult with her GP or other mental health specialist, nor did she take any medication for depression nor did she seek or receive counselling. If the Claimant had been suffering a severe incapacitating mental health illness it is likely that she or her partner on her behalf would have obtained help for her. In summary, there is no medical or other objective evidence to show that the Claimant was so depressed as to be incapacitated from taking a step such as applying to ACAS during the initial three month period which expired on 17/2/21.
8. The timing of the application to ACAS was not determined by recovery from a previous depression but by the fact that the Claimant’s sister had suggested it shortly before the Claimant applied, and before then the Claimant had not thought of it. As the Claimant stated in her particulars of claim “*When I resigned I was unaware that I could make a claim for constructive dismissal until April 2021 when I filed an early conciliation case with ACAS.*” The real explanation for the Claimant not claiming in time is thus ignorance of the law which permits such a claim to be made. The Claimant had access to the internet on which there is abundant information and advice about this, from the government and other sources. Ignorance of the law is not a good excuse.
9. The Claimant said she felt better in April/May and was able to update her CV and submit a successful job application for a full time livestock job which she held down for about a month in May 21. She and her partner were also joined on several occasions during this period by Mr Thesterman on walks with their dogs and children.
10. The Claimant stated she became aware about the time limits only when she applied to ACAS. That was in early April 21.
11. The Claimant stated that she spent the period between the issuing of her ACAS certificate and the presentation of her claim (a period of over a month - when she already knew that the time limit had long since expired) composing her POC for her ET1. She could and should have composed this document (which is only just over one page in length) during the conciliation period. If she needed help to do so she could and should have asked her partner or Mr Thesterman

(who is an ex-TU official) for such help but she stated in evidence that “she preferred to do things for herself”.

12. In summary, I do not find that the Claimant’s depression prevented her from lodging her claim in time. It was reasonably practicable for her to do so. Even after the time limit had expired and she was aware of this, she delayed unduly and without adequate excuse.
13. This in no way condones the bullying which the Claimant suffered, but unfortunately the conditions for extending time are not met and so the claim is outside the jurisdiction of the tribunal, and must be dismissed.

Employment Judge J S Burns

22 December 2021