



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs Linda Langley-Carter

AND

Respondent

Hospitality Accommodation Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY AT Plymouth **ON**
By Video Hearing Service

24 February 2022

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Did Not Attend

For the Respondent: Did Not Attend

JUDGMENT

The judgment of the tribunal is that the claimant's claims for unfair dismissal and for accrued holiday pay were presented out of time and are hereby dismissed.

REASONS

1. This is the judgment following a Preliminary Hearing to determine whether or not the claimant's claims were presented in time.
2. The claimant recently notified the Tribunal that she did not intend to attend this hearing. She did not make any application for a postponement. The respondent appears to have ceased trading, and no one attended from the respondent. I decided to proceed with the hearing under Rule 47 bearing in mind all the information available to me which includes the originating application and response which have been submitted by the respective parties.
3. The respondent company runs the Kings Arms which is a public house in Swindon and the claimant Mrs Linda Langley-Carter was employed as a waitress/bar staff from 21 July 1968 until her dismissal by reason of redundancy on 16 September 2020. The claimant brings two claims: the first is a claim for unfair dismissal arising from her redundancy; and the second is a claim for accrued but unpaid holiday pay which she claims is due on the termination of her employment.

4. The claimant approached ACAS under the Early Conciliation procedure on 7 January 2021 (Day A). ACAS issued the Early Conciliation Certificate on the same day, 7 January 2021, (Day B). The claimant presented these proceedings on 4 February 2021.
5. Having established the above facts, I now apply the law.
6. One of the relevant statutes is the Employment Rights Act 1996 ("the Act"). Section 111(2) of the Act provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it is 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.
7. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"), and there are similar time limit provisions in Regulation 30(2), although under Regulation 30(2)(a) time does not necessarily start to run from the termination of the relationship, and might otherwise run from the date the payment should have been made.
8. With effect from 6 May 2014 a prospective claimant must obtain an early conciliation certificate from ACAS, or have a valid exemption, before issuing employment tribunal proceedings.
9. Section 207B of the Act provides: (1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision"). But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A. (2) In this section - (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section. (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted. (4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period. (5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.
10. I have considered the following cases, namely: Palmer and Saunders v Southend-on-Sea BC [1984] ICR 372; Porter v Bandridge Ltd [1978] IRLR 271 CA; Wall's Meat Co v Khan [1978] IRLR 499; London Underground Ltd v Noel [1999] IRLR 621; Dedman v British Building and Engineering Appliances [1974] 1 All ER 520.
11. In this case the claimant's effective date of termination of employment was on 16 September 2020. The normal time period of three months therefore expired at midnight on 15 December 2020. The claimant did not approach ACAS under the Early Conciliation provisions until 7 January 2021 and therefore does not benefit from any extension of time under those provisions.
12. The claimant has not attended today and has not put forward any grounds for suggesting that it was not reasonably practicable to have issued proceedings within the relevant time limit.
13. The question of whether or not it was reasonably practicable for the claimant to have presented her claim in time is to be considered having regard to the following authorities. In Wall's Meat Co v Khan Lord Denning, (quoting himself in Dedman v British Building and Engineering Appliances) stated "it is simply to ask this question: has the man just cause or excuse for not presenting his complaint within the prescribed time?" The burden of proof is on the claimant, see Porter v Bandridge Ltd. In addition, the Tribunal must have regard to the entire period of the time limit (Elbeltagi).
14. Subsequently in London Underground Ltd v Noel, Judge LJ stated at paragraph 24 "The power to disapply the statutory period is therefore very restricted. In particular it is not

- available to be exercised, for example, "in all the circumstances", nor when it is "just and reasonable", nor even where the Tribunal "considers that there is a good reason" for doing so. As Browne Wilkinson J (as he then was) observed: "The statutory test remains one of practicability ... the statutory test is not satisfied just because it was reasonable not to do what could be done" (Bodha v Hampshire Area Health Authority [1982] ICR 200 at p 204).
15. In conclusion therefore the claimant has not satisfied the statutory test to the effect that it was not reasonably practicable for her to have issued these proceedings in time, nor that she did so within such further time as was reasonable. Accordingly, I hereby dismiss her claims for unfair dismissal and for accrued holiday pay because they were presented out of time.
 16. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 3 and 4; a concise identification of the relevant law is at paragraphs 6 to 14; how that law has been applied to those findings in order to decide the issues is at paragraph 15.

Employment Judge N J Roper
Date: 24 February 2022

Judgment sent to parties: 1 March 2022

FOR THE TRIBUNAL OFFICE