



EMPLOYMENT TRIBUNALS

London South Employment Tribunal (remote) on 18th February 2022

Claimant

Marian Francis

Between

&

Respondent

Willow Tower Opco 1 Limited

Before

Judge M Aspinall (Sitting as an Employment Judge)

Appearances

Miss Francis (in person)
Ms Lawrence (Representing Miss Francis)
Mr Chadwick (consultant, for Respondent)

OPEN PRELIMINARY HEARING Judgment with Reasons

1. This hearing was changed, in advance, to a Preliminary Open Hearing. The reasons for this were that the Respondent had raised two issues which were properly to be taken at a preliminary stage and which, if correct, could determine the outcome of the entire claim.
2. The **first issue** was that the address of the Respondent differed between the ACAS certificate (R180842/20/79 issued on 17 August 2020 having been commenced on 15 August 2020). The **second issue** was that, in any event, the claim was out of time.
3. I identified a **third issue**, which fell to be determined early. The dates of the Claimant's employment varied between the ET1 Claim and the ET3 Response. The ET1 Claim had the Claimant's employment between 15 May 2015 and 17 February 2019 (3 years, 9 months). The ET3 Response had the dates as 17 June 2015 to 17 February 2020 (4 years, 8 months).
4. **First issue: Address differences between ACAS certificate and ET1 claim form**
This issue was first raised in the ET3 Response and the Claimant reacted by writing on 26 July 2021 confirming that this was an administrative error which could be corrected. Indeed, it appears that further correspondence followed between the Claimant and ACAS as the latter issued a revised certificate on 18 August 2021 which bore the corrected address (R165283/21/39). Mr Chadwick, for the Respondent, properly withdrew the issue at the outset of the hearing before me. **I am satisfied that the first issue is thereby resolved and make no determination on it.**
5. **Second issue: Dates of the Claimant's employment with the Respondent**
On raising the differences in dates with the parties, Ms Lawrence for the Claimant, accepted that the dates proffered in the ET3 by the Respondent were correct. I am satisfied that the correct dates of employment were therefore between 17 June 2016 and 17 February 2020 (inclusive). **That resolves this issue and I do not make a determination in respect of it.**

6. **Third issue: That the claim is out of time**

The Claimant's effective date of termination (the date on which notice expires if notice is given or, where notice is not given, the date on which termination takes effect) is 17 February 2020. This means that, as a matter of law, she ought to have commenced proceedings by either advising ACAS on Early Conciliation or by filing her ET1 with the Tribunal by 16 May 2020 - 3 months less one day after her employment ended ("primary time limit"). Even allowing for an approach to ACAS made on the last possible day of that period (16 May 2020), the time limit for filing an ET1 with the Tribunal would only have extended by one month after conciliation ended.

7. ACAS conciliation actually commenced - according to the dates on the first ACAS certificate (which the parties agreed were the correct dates for Early Conciliation) - on 15 August 2020; 3 months less one day after the final date of the primary time limit. Conciliation ended on 17 August 2020. In these circumstances, where the primary time limit had already expired before ACAS was contacted, the Early Conciliation process does not automatically extend time for filing an ET1.

8. For the Claimant, it was said that she was:

- i) distressed by the situation;
- ii) had been delayed in acting due to her visual issues when using a screen;
- iii) had been awaiting the outcome of her internal appeal;
- iv) was unable to access advice or consultative guidance due to the pandemic lockdown.

9. For the Respondent, it was said that:

- i) it was not doubted that the experience of being dismissed was distressing but that the Claimant had been able to attend disciplinary and appeal hearing (including a re-convened appeal hearing on 4 May 2020 where the original decision was confirmed orally and confirmed in writing on the same day);
- ii) that the Claimant had been offered a new job (with a new employer) on 14 September 2020 and must, therefore, have been able to apply for, interview for and successfully complete the process for obtaining such work;
- iii) that the internal appeal process was over by 4 May 2020 - 12 days before the primary time limit for filing a claim (or contacting ACAS) had expired;
- iv) that the pandemic lockdown had not prevented the Claimant from engaging in the disciplinary and appeals process, including attending meetings. That she had subsequently obtained new employment which indicated that she had been able to engage with a new employer and the recruitment processes involved;
- v) that, in all of the circumstances, the Claimant had not made her claim to the Tribunal, or her approach to ACAS, in anything like a timely manner or as soon as was reasonably practical or feasible. The ACAS process was commenced three months beyond the primary time limit and so, as a result, the ET1 was filed four months too late. The Claimant, it was said, had not provided any good or compelling reason why this was so and had not provided any medical evidence to support medical assertions.

10. **Conclusion on issue three: was the claim out of time and should time be extended?**

i) In short, the claim was very much out of time. It was filed one month after the ACAS process was concluded but that process itself was three months out of time. Ultimately, the claim came to the Tribunal four months beyond the primary time limit. The question is then one of whether, in the circumstances as described, I can properly find that the Claimant had good reasons for not presenting the claim in time and, if I do so find, whether it was then lodged as soon as reasonably practicable or feasible.

ii) Even accepting, as I do, that the Claimant was distressed by her dismissal and the police investigation which accompanied it, I cannot be satisfied that she has provided an adequate explanation, or good reason, why the process of approaching ACAS and filing her claim was not followed more timeously.

iii) It follows that I do not consider that she has given good reasons for not presenting the claim in time and, whilst I do not necessarily need to decide the point, I do not see that she did do as soon as was reasonably practicable either. The appeals process with her former employer ended prior to the primary time limit expiration, ACAS was not approached for a further 3.5 months and the claim came in a month after that.

11. **It is ordered:**

1. That the name of the Respondent is changed, by consent, to Willow Tower Opco 1 Limited; and
2. That the claim for unfair dismissal was made out of time and not as soon as reasonably practicable; and
3. That I do not extend time; and
4. That all claims are dismissed as being outside of the jurisdiction of this Tribunal due to being out of time.

Judge M Aspinall on Friday, 18th February 2022

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