



EMPLOYMENT TRIBUNALS

Claimant

Ms Laura Edwards

v

Respondent

Enrich Learning Trust

Heard at: Norwich

On: 22 March 2023

Before: Employment Judge Postle

Appearances

For the Claimants: In person

For the Respondent: Mr Ohringer, Counsel

JUDGMENT

Pursuant to an Open Preliminary Hearing

1. It was reasonably practicable for the Claimant to have issued her claims for unfair dismissal under the Employment Rights Act 1996 for breach of contract, within the three month period required by Statute.
2. The Claimant's claims under the Equality Act 2010, for the protected characteristic or disability was issued outside the three month period (allowing for ACAS Early Conciliation extension) and the Tribunal did not exercise its discretion on the just and equitable principle.

REASONS

1. This is a Preliminary Hearing to determine whether any of the claims have been presented outside the normal time limits and, if they have, in the case of the unfair dismissal and breach of contract claims, whether it was reasonably practical to have issued within the time limits and if not, in what further period that would be reasonable. In the case of the claim under the Equality Act 2010 for the protected characteristic of disability, whether the Tribunal should exercise its discretion to extend time under the just and equitable principles as the claims were issued outside the time limits.
2. In this Tribunal we heard from the Claimant through a prepared witness statement and she describes her disability as being Autism. The Tribunal also had the benefit of a Bundle of documents consisting of 205 pages. In

that Bundle there was a witness statement from the Claimant's Mother and Counsel for the Respondent confirmed he had no questions for the Claimant's Mother and therefore it was not necessary for her to attend later in the day.

3. It is common ground that the Claimant was dismissed on 17 June 2021. The Claimant commenced Early Conciliation with ACAS on 13 September 2021, concluding on 23 September 2021. Allowing for the one month extension of time to bring a claim, that would mean the last date for filing the claim was 23 October 2021.
4. It is common ground that the claim was not presented or filed until 4 January 2022, which is some 73 days late. The Claimant's claims are a claim for ordinary unfair dismissal, a claim for wrongful dismissal under the Employment Rights Act 1996, and a claim under the Equality Act 2010 for the protected characteristic of disability.
5. Following the Claimant's suspension at the Respondent's school, the Claimant being a Science Teacher, the Claimant had the benefit of a Trade Union Official representing her from the National Education Union. That representation by the Trade Union continued throughout the suspension period, was present at the Disciplinary Hearing and was present at the Appeal.
6. Following the Claimant withdrawing her Appeal against her dismissal, she also confirmed that she wished to withdraw from Early Conciliation with ACAS, which is evidenced by an email from the Claimant's Trade Union Official dated 23 September 2021.
7. Following the Claimant's dismissal, the Claimant applied for alternative work and in August 2021 having applied for a Taxi Driving job, started at the end of the August. In the course of this application the Claimant had to apply for a Taxi Driver's Licence with the Local Authority and undergo a Taxi Driving Test. The Claimant also confirmed in cross examination that she had to attend Broadland District Council and explain what had happened with the Respondents as to why she was dismissed from her position as a Science Teacher.
8. Whilst employed by the Respondents, the Claimant was undertaking a Master's Degree in Education. Following her dismissal she took the decision to diversify in relation to the subjects she was to take with her Master's Degree and confirms she completed that Master's Degree successfully some time between June and November 2022.
9. Notwithstanding the above, the Claimant's witness statement suggested following the Claimant's dismissal she experienced physical exhaustion requiring numerous days in bed hiding from the world.

10. Despite the Claimant being somewhat aggrieved at her dismissal, to use her words she was “cross” and felt it was “unjust”, nevertheless, she started the Appeal against the decision to dismiss and then started ACAS Conciliation. The Appeal being submitted by her Trade Union Official, but for reasons best known to the Claimant, either closed her mind to time limits or did not enquire about time limits.
11. Having withdrawn her Appeal on 23 September 2021 and having withdrawn from the Early Conciliation process with ACAS, at the same time the Claimant affectively does nothing for approximately 76 days and then apparently seeks the advice of the Citizens Advice Bureau towards the end of December and files her claim on 4 January 2022.

The Law

12. For the purposes of s.111(2)(a) of the Employment Rights Act 1996, a claim for unfair dismissal must be brought before the end of the period of three months beginning with the effective date of termination.
13. A claim for breach of contract under paragraph 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, must be presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim.
14. The above time limits are extended by s.207B of the Employment Rights Act 1996, to allow for Early Conciliation with ACAS.
15. If a claim is presented outside the time limit, the Tribunal will consider whether it was reasonably practical to have issued the claim and if not, was the claim presented within a reasonable period thereafter.
16. What is reasonably practical is a question of fact and is a matter for the Tribunal to decide,

As Lord Justice Shaw put it in Wall’s Meat Company Limited v Khan [1979] ICR52 CA,

“The test is empirical and involves no legal concept. Practical common sense is the keynote that legalistic forenotes may have no better result than to introduce a lawyer’s complications into what should be a lay man’s pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the Employment Tribunal and that their decision should prevail unless it is plainly perverse or oppressive.”

17. The onus of proving the presentation in time was not reasonably practical rests with the Claimant. That imposes a duty upon her to show precisely why it was that she did not present her complaint in time.

18. The meaning of reasonably practical has never really been clearly or usefully defined, other than the Court of Appeal have said reasonably practical does not mean reasonable, which would be too favourable to employees and does not mean physically possible which would be too favourable to the employers. It means reasonably feasible. Indeed, Lady Smith in Asda Stores Limited v Kausar UKEAT/0165/07, it was explained,

“The relevant test is not simply a matter of looking at what was possible, but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done.”

19. Under the Equality Act 2010, time limits are set out in s.123 which states,

123 Time Limits

- (1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of-
- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.

20. Time limit is extended under s.140B of the Equality Act 2010 to allow Early Conciliation with ACAS.

21. In this case ACAS Early Conciliation took place between 13 September 2021 and 23 September 2021. Those 11 days do not count towards the limitation period. Furthermore, the Claimant had a minimum of one month from 23 September 2021 to bring a claim. The deadline, therefore, for presenting the ET1 was 23 October 2021 and the claim was not filed until 4 January 2022, 73 days late.

22. Under the Equality Act 2010, if complaints are out of time, the Tribunal can still consider them if it believes it is right to exercise its discretion to extend time on the just and equitable principles. It is important for Claimants to be aware that it is the Claimant to persuade the Tribunal that the discretion should be exercised and there is good reason for doing so. There is well trodden law that the starting point should be that the time limits are to be enforced unless there are proper grounds to override them.

23. In the case of Adedeji v University Hospitals NHS Foundation Trust [2021] EWCA Civ.23, the Court of Appeal observed that the discretion to extend is, “*very broad general discretion*” and there is no need to refer to the factors in British Coal Corporation v Keeble [1997] IRLR336, the Tribunal is required to focus on: (a) the length of and reasons for the delay; and (b) does the delay prejudice the Respondent.

The Tribunal's Conclusion

24. It is agreed that the Claimant was dismissed on 16 June 2021 and allowing for an extension of time when the claim was filed on 4 January 2022, the claims were approximately 73 days out of time.
25. In the case of the Claimant's claim for unfair dismissal on breach of contract, the Tribunal was asking itself was it reasonably practical for those claims to have been issued? It is a high hurdle, the Claimant is an educated individual being a former Science Teacher, from the time she was suspended in January 2021 she had the assistance of a Senior Regional Trade Union Official and after her dismissal. When the Claimant contacted for Early Conciliation in September and advised by her Trade Union Official, she was clearly at that stage considering bringing a claim to the Employment Tribunals. It would be surprising at that stage if she were not made aware of time limits in which to bring a claim.
26. Clearly, at that stage it was reasonably practical to have brought the claims.
27. It is unlikely at that stage, given ACAS involvement and a Senior Trade Union Official, that the Claimant would not have been made aware of time limits. However, at the end of September 2021, for reasons best known to the Claimant, she wanted to draw a line under and move on as she instructed her Union to withdraw the Appeal and terminate Conciliation.
28. We know at the end of August 2021, the Claimant had taken up new employment and she had resumed her Master's Degree. In the above circumstances there is, therefore, no reason why notwithstanding the Claimant being autistic, that she could not have issued her claim within the three month period. The Tribunal repeat, she had gone through the process of applying for a Taxi Driver's Licence, a Taxi Driver's Test, explained to Broadland District Council why she had ceased to be a Science Teacher and continued with her Master's Degree. She was clearly able to engage with people and officialdom.
29. Therefore, the Tribunal are of the view it was reasonably practical to have brought her claims for breach of contract and unfair dismissal, within the three month period.
30. So far as the claim under the Equality Act 2010 is concerned, as indicated above, it is a different test. The question is, is it just and equitable to extend time and for the Claimant to explain why she should have that discretion granted in her favour.
31. The starting point is that time limits are set for good reason and should be enforced unless there are exceptional reasons to allow latitude.
32. In this case we need to look at the length and reasons for the delay. This was not a delay of a few days, or a few weeks. This was a delay of some

73 days. The Claimant has not explained, or persuaded me, that there are good reasons to exercise the discretion. The fact the Claimant is autistic did not prevent her from engaging with Broadland District Council, continuing with her Master's Degree, sorting out Conciliation with ACAS and lodging her Appeal through her Trade Union.

33. Furthermore, I must consider whether the delay has in some way prejudiced the Respondent. I am told and I accept that there is potential real prejudice if I were to exercise my discretion as both Mr Harris who investigated the allegations against the Claimant at the School has left the Respondent's employ on 1 December 2021 and Mr Rocky, the Principal who conducted the Disciplinary Hearing and dismissed the Claimant, has also left the Respondent's employ on 31 December 2021. That always presents a problem to Respondents where major players in a situation have left their employ.
34. Furthermore, although the Claimant has described difficult personal circumstances at the time, the Tribunal are not persuaded that prevented her from preparing an application to the Employment Tribunal and submitting it after ACAS Conciliation had concluded, by 23 October 2021.
35. In those circumstances, the Tribunal are not persuaded this is a case where they should exercise their discretion under the just and equitable principle on the facts before the Tribunal.

Employment Judge Postle

Date: 24 April 2023

Sent to the parties on: 28 April 2023

For the Tribunal Office.