



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Newman
Respondent: Vale Academy Trust
Heard at: Reading Employment Tribunal (in public, by video)
On: 12 December 2024
Before: Employment Judge Annand

Representation

Claimant: Mrs Newman, representing herself
Respondent: Ms Quigley (Counsel)

JUDGMENT

1. The Claimant's claims of 1) constructive unfair dismissal, 2) constructive automatic unfair dismissal on grounds of having made a protected disclosure, and 3) her claim that she was subjected to detriments on grounds of having made a protected disclosure, were not presented within the applicable time limit. It was reasonably practicable to do so. All the Claimant's claims are therefore dismissed.

REASONS

Introduction

1. A preliminary hearing was held on 12 December 2024 by video. The purpose of the preliminary hearing was to decide if the Claimant's claims had been presented within time, and if not, to decide if it had been reasonably practicable for the Claimant to have presented them in time, and if so, were the claims presented within such further time as the Tribunal considered reasonable.
2. A preliminary hearing for case management was held on 24 September 2024 by Employment Judge Brown. He ordered the Claimant to provide a witness statement and made orders regarding the preparation of a bundle for the hearing. I was provided with a witness statement from the Claimant, and a bundle of documents consisting of 107 pages. The Claimant gave

evidence and was cross examined. I asked the Claimant some additional questions. I then heard submissions from both sides and took some time to reach a decision. I gave the parties my decision orally and the Claimant requested written reasons.

3. At the start of the hearing, there was some discussion about how some of the evidence that the Claimant wanted to give related to her family members and was sensitive in nature. The hearing was held in public and there was an observer in attendance. I explained the range of options under Rule 50 of the Employment Tribunal Rules to the Claimant. The Claimant was content to agree to referring to her family members by name or by reference to their relationship to the Claimant (for example, her brother, her sister, her uncle etc) in the hearing and it was agreed that in the judgment they would be referred to simply as “a family member”.

The primary limitation period

4. The Claimant was employed by the Respondent from 3 September 2007 to 19 November 2023. On her Acas early conciliation certificate, it was recorded that the early conciliation period started on 29 February 2024 and finished on 13 March 2024. The Claimant presented her Claim Form to the Tribunal on 15 March 2024.
5. The Claimant had three months less one day from her final day of employment to start the early conciliation process. Three months less one day from 19 November 2023, which was the date of the Claimant’s final day working for the Respondent, was 18 February 2024. As noted above, the first date on the Claimant’s early conciliation certificate was 29 February 2024.
6. As the first date on the Claimant’s certificate is not within three months less one day from the date of her final day of employment, the Claimant does not benefit from the extension of time for early conciliation (*Pearce v Bank of America Merrill Lynch and ors* EAT 0067/19), so her Claim Form was presented 26 days late to the Employment Tribunal.
7. The Claimant has brought claims of constructive unfair dismissal, detriments on grounds of having made a protected disclosure and constructive automatic unfair dismissal on grounds of having made a protected disclosure. In respect of each of these types of claim the Tribunal has jurisdiction to extend time when claims of this type are presented late if the Tribunal is satisfied that
 - a) it was not reasonably practicable for the Claimant to have presented her claim form in time,
 - b) and she presented her claim within such further time as the Tribunal considers was reasonable.

The factual background

8. The Claimant handed in her notice on 20 October 2023. Her last day of employment was 19 November 2023, although the Claimant went off sick

from 7 November 2023. She felt under considerable stress and her blood pressure had increased.

9. The Claimant started a new role on 20 November 2023 with a new employer. Her new role is considerably further away from home than her role with the Respondent had been, and so she had an additional 2.5-3 hours of travelling per day.
10. On 8 December 2023, the Claimant experienced a highly traumatic event. She found herself in the deeply distressing situation of having to give CPR to a close family member. This member of the Claimant's family was taken to hospital by ambulance and was unquestionably in a very serious condition. In mid-December 2023, the Claimant attended the hospital to speak with the doctors. The life support machine was switched off on 11 December 2023 and the family member died a few days later. This must have been extremely difficult and upsetting for the Claimant and her family. There was considerable paperwork and administrative matters which also had to be dealt with by the Claimant as a result.
11. On 4 January 2024, the Claimant sent an email to the Respondent saying she considered now was the right time to submit a grievance. It was her evidence to the Tribunal that she had started writing the grievance before she had left work and had been adding to it since she had left.
12. On 5 January 2024, the Claimant had a further family emergency to deal with. She urgently needed to find alternative accommodation for her family member whose home was affected by flooding. This family member is disabled, and the Claimant is the family member's registered carer. The flooding also required the Claimant to undertake a huge amount of administrative work including dealing with the insurers and builders. Emergency services were required to assist in the removal of her family member from the flooded home.
13. On 9 January 2024, the Respondent sent the Claimant a copy of the Grievance Policy, and she submitted a grievance on 28 January 2024.
14. On 2 February 2024, the Claimant went online and received a 'save and return' code from Acas. Her evidence to the Tribunal was that she genuinely believed this was enough to log her claim with Acas. She said in her witness statement that she did not realise that Watford Employment Tribunal and Acas were not one establishment.
15. On the same day the Claimant sent an email to the Respondent saying "Just to keep you updated, I have today logged this with Acas. I understand they will get in touch to see if they can resolve the matter before we go forward to tribunal."
16. I accepted the Claimant evidence that at the time she did this, she genuinely believed she had taken sufficient steps to start the process. Her email of 2 February 2024 to the Respondent suggested she thought that Acas would now contact the Respondent to take things forward. The Claimant had not in fact completed the form in its entirety, and so the Claimant's claim was

not registered with Acas for early conciliation purposes. She had not started the early conciliation process.

17. The email sent to the Claimant on 2 February 2024 from Acas provided her with a “return and save” code. This allowed her to use the code to return to the form to complete it. The Claimant’s evidence to the Tribunal was that she was not sure she fully read the email she was sent and she candidly admitted that she made a mistake.
18. The Claimant’s evidence was that later in February, probably on the 29 February 2024, she telephoned Acas, and they informed her that she had not completed the form and so she went online again to complete the form.

The law

19. When a claimant seeks to argue that it was not reasonably practicable to present his or her claim within the specified time limit, the relevant sections should be given a ‘liberal construction in favour of the employee’ (*Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53, CA). The question of what is reasonably practicable is a question of fact (*Wall’s Meat Co Ltd v Khan* [1979] ICR 52, CA). The Court of Appeal confirmed in *Porter v Bandridge Ltd* [1978] ICR 943, CA, that the onus of proving that presentation in time was not reasonably practicable rests on the claimant.
20. In *Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490, CA, Lord Justice Underhill set out that the statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was ‘reasonably feasible’ for the employee to present his or her claim in time. If an employee misses the time limit because he or she is ignorant about the existence of a time limit or mistaken about when it expires in his or her case, the question is whether that ignorance or mistake is reasonable. If it is not, then it will have been reasonably practicable for the employee to bring the claim in time.
21. In *Palmer and anor v Southend-on-Sea Borough Council* [1984] ICR 372, CA, the Court of Appeal conducted a general review of the authorities and concluded that ‘reasonably practicable’ does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like ‘reasonably feasible’.
22. In *Asda Stores Ltd v Kauser EAT 0165/07* Lady Smith 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.”
23. In *Stratford on Avon District Council v Hughes EAT0163/20* the EAT overturned an employment tribunal’s finding that it was not reasonably practicable for the claimant to have presented his claim in time where he had not received the EC certificate by the expiry of the relevant limitation period. In that case, the claimant was dismissed on 29 March 2019 and contacted Acas on 25 June 2019. Acas informed him on 2 August 2019 that

the employer did not wish to continue with the conciliation process and emailed him a certificate that day. However, he did not receive the certificate. The primary limitation period expired on 2 September 2019. By the time the claimant had obtained a copy of the certificate and presented his claim, on 5 September 2019, it was three days out of time. The tribunal extended time on the basis that it had not been reasonably practicable for the claimant to have presented his claim in time because he needed the EC certificate in order to lodge the claim. However, on appeal, the EAT held that this reasoning was flawed. The question that the tribunal should have asked was whether, in all the circumstances, it would have been reasonably practicable for the claimant to have obtained the EC certificate sooner, not whether he behaved reasonably in waiting until after the expiry of the primary limitation period to contact Acas. The concept of reasonable practicability involves a heavier onus than just behaving reasonably but is not to be equated with what is physically possible.

Decision on reasonable practicability

24. Following the EAT's guidance in *Stratford on Avon District Council v Hughes* I had to consider if it would have been reasonably practicable for the Claimant to have obtained an EC certificate in time, not whether she reasonably believed she had done enough on 2 February 2024, or whether she had behaved reasonably when she started to complete the form but did not complete it fully.
25. I wish to stress to the Claimant that I entirely accept her explanation is genuine. I also wish to emphasize that the test that I am bound to apply is not what I think would be a fair or just outcome. The test also does not require that I consider whether she has a good case or whether the Respondent has behaved well or not throughout her employment. Those are not matters that I am allowed to take into account in reaching this decision. I have to focus on the question of whether it would have been reasonably practicable for the Claimant to have obtained an EC certificate in time.
26. I am of the view that it clearly was reasonably practicable for the Claimant to have obtained an EC certificate in time because the Claimant very nearly did do this. She was capable of doing it, despite all the pressures she was under and all she had been through. She had been able to work, submit a grievance, and was able to log on to Acas on 2 February 2024 with a view to starting the process. I also believe that she was capable of either completing the form in full or reading the email sent to her by Acas in full and seeing that the form had not been completed, and then taking steps to complete it. I believe it was reasonably practicable for the Claimant to have either completed the form in full or read the email in full. I wish to stress that we have all made mistakes such as this. They are entirely human and understandable. I have considerable sympathy for the Claimant, but it is my obligation in this case to apply the specific legal test set out in the statute. And therefore, it is my decision that it was reasonably practicable for the Claimant to have submitted her Claim Form in time, and as a result, the Claimant does not benefit from an extension of time, and her claims are dismissed.

Case No: 3303082/2024

Employment Judge Annand
Date: 17 December 2024

SENT TO THE PARTIES ON
9/1/2025

FOR THE TRIBUNAL OFFICE
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