



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Blackman

Respondent: Sodexo Limited

HELD AT: Manchester

ON: 4 February 2021

BEFORE: Employment Judge Slater

REPRESENTATION:

Claimant: In person, assisted by Mr D Langton, claimant's son

Respondent: Mr O Lawrence, counsel

JUDGMENT

The Tribunal does not have jurisdiction to consider the complaint of unfair dismissal which was presented out of time and the claim is dismissed.

REASONS

Claims and Issues

1. The claimant brings a complaint of unfair dismissal. The issue to be decided at this preliminary hearing was whether the tribunal has jurisdiction to deal with the claim having regard to the statutory time limit for presentation of claims in the Employment Tribunals.

2. I explained that the relevant time limit was three months beginning with the effective date of termination, unless it was not reasonably practicable to present the claim in time, in which case it had to be presented within a reasonable time after the end of the normal time limit. The three month time limit was extended by the conciliation period if ACAS had been notified of the claim within the primary time limit.

3. The claimant agreed that her last day of employment was 13 May 2020, although she had put 15 May 2020 on the claim form. The ACAS early conciliation certificate showed that the claimant had notified ACAS of the potential claim on 17 September 2020. The certificate had been issued on 18 September 2020. Since the claimant had not notified ACAS within the primary time limit, no extension of time because of early conciliation applied. The claim should, therefore, have been presented by 12 August 2020, unless it was not reasonably practicable to do so. The claimant had presented her claim on 25 September 2020. I had to consider, therefore, whether it was reasonably practicable for the claimant to present her claim by 12 August 2020 and, if it was not, whether she had presented it within a reasonable time thereafter.

Evidence

4. The claimant had not produced a witness statement dealing with evidence relevant to the issue as to whether it was reasonably practicable to present her claim in time, although orders had been made that she should do so. The claimant told me she had produced a witness statement and emailed this to me and to Mr Lawrence but it did not address the issue of why the claim had not been presented in time.

5. In written submissions provided to me on the morning of the hearing, the respondent submitted that the claimant should be dismissed because the claimant had not produced a witness statement in compliance with the case management orders. I commented that such a course of action would be draconian and I would need to consider whether we could fairly proceed either that day, or on a future date.

6. I suggested, and Mr Lawrence agreed, that we should proceed on the basis that I would hear evidence from the claimant in answer to questions from me. We would then have a break, during which Mr Lawrence could consult his instructing solicitor as to whether the respondent could go ahead that day or whether the respondent applied for a postponement.

7. We went ahead on this basis and, at the end of the claimant's evidence responding to my questions, Mr Lawrence told me that the respondent could go ahead that day, if he had some time to prepare for cross examination. We took a break of 35 minutes for this purpose and Mr Lawrence then cross-examined the claimant.

8. During the course of the claimant giving evidence, there were a number of times when Mr Lawrence pointed out to me that someone was speaking to the claimant. The claimant told me this was her son, Mr Langton, who had helped her with the case. I told the claimant that he should not help her when she was giving evidence but, if she wished him to, he could then give evidence. Mr Langton intervened again. I said he should either leave the room or sit next to the claimant where I could see him. They chose that he should leave the room.

9. After the claimant had finished giving evidence, I asked if she wanted to call Mr Langton to give evidence. The claimant said she did. I, therefore, heard evidence from Mr Langton in answer to questions put by me. Mr Lawrence then cross-examined Mr Langton.

10. I had an electronic bundle of documents of 106 pages.

11. During cross examination of the claimant, I found out that the claimant was not looking at the hearing bundle, but at a shorter bundle of documents, which it appeared may have been a bundle of evidence which had been sent by her son to the respondent at an earlier stage of proceedings. We paused so that Mr Lawrence could email to the claimant a further copy of the hearing bundle and resumed cross examination when the claimant confirmed that she had the correct document open.

Facts

12. The claimant was dismissed with effect from 13 May 2020 at a disciplinary hearing on that day. The claimant accepts she was informed orally of her dismissal on that day. Although initially, the claimant denied that she had received written confirmation of her dismissal, she later agreed that she had received the letter dated 20 May 2020 which confirmed her dismissal, prior to her appeal.

13. The claimant appealed against her dismissal. The claimant accepts that she received correspondence about arrangements for the appeal hearing but says she did not receive correspondence confirming the outcome of the appeal. The contents of the claimant's letter of appeal suggest that she was referring to the written confirmation of her dismissal when writing her appeal letter.

14. The claimant was informed at the reconvened appeal hearing on 17 July 2020 that her appeal was unsuccessful. In the hearing bundle, there was a letter dated 30 July 2020 confirming the outcome of the appeal. However, the claimant denied receiving this until a later date when she had sought copies of documents from the respondent.

15. The claimant wrote to the respondent on 10 September 2020 asking for copies of documents.

16. The claimant told me she was aware as at 13 May 2020 that she had a right to bring a claim for unfair dismissal in the employment tribunal and that there was a three month time limit. She told me that she had some experience in bringing a complaint in the employment tribunal, having taken previous proceedings against the respondent for unpaid wages.

17. The claimant told me that she had suffered from depression and her doctor had advised her not to go to the appeal hearing but she did, because she wanted to get it out of the way. When it was put to her that, if she felt fit enough to engage with the appeal process, she was fit enough to bring a Tribunal claim, the claimant answered "Yes, most definitely".

18. In answer to cross examination, the claimant confirmed that she was not relying on illness as being the reason for not presenting her claim in time. She clarified that her case was that she did not present the claim in time because ACAS had advised her that she needed to get copies of all the documentation relating to her dismissal and appeal before she could bring a claim in the employment tribunal. She then clarified that the only document she was told she needed was the letter confirming the outcome of the appeal.

19. The claimant's evidence was not consistent as to when she first spoke to ACAS and was given the advice she claimed to have received. In answer to my questions, it appeared that this was sometime after the appeal had been concluded (17 July 2020) but before 10 September 2020 (when she first asked for copies of documents). However, during cross examination, after Mr Langton's voice was heard in the background, the claimant said she had been told in May that she needed to obtain all the relevant documentation before presenting a claim.

20. When Mr Langton gave evidence, he informed me that he had had most of the conversations with ACAS on his mother's behalf. Mr Langton's evidence was inconsistent as to when they had first spoken to ACAS. At first he said this was in May. He later agreed that it must have been after mid August, saying it was after his birthday, which is 20 September. However, the ACAS certificate shows notification to ACAS on 17 September 2020, with the certificate issued on 18 September 2020, so the first conversation with ACAS was no later than 17 September. Mr Langton told me that the advice ACAS had given them was that the claim was out of time.

21. I consider it very unlikely that ACAS would have given what would have been incorrect advice to the claimant that she could not present her claim to the employment tribunal until she had copies of all relevant documents. The evidence for the claimant about when the advice was given and what advice was given was inconsistent. I find that ACAS did not give advice that the claimant must obtain a copy of the letter confirming the appeal outcome before submitting the claim to the Tribunal. Rather, as Mr Langton has said in evidence, the advice they were given was that the claim would be out of time. I find that the claimant did not seek advice from ACAS until after the time limit for presenting a claim had expired.

Law

22. Section 111(2) of the Employment Rights Act 1996 provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it is presented to the tribunal (a) before the end of the period of three months beginning with the effective date of termination, or (b) 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.

23. There are provisions which extend the time limit to take account of time spent in early conciliation where ACAS has been notified of the potential claim within the primary time limit.

Submissions

24. Mr Lawrence submitted that the onus of proving that presentation in time was not reasonably practicable rests on the claimant. The claimant argued that the reason she did not present a claim in time was advice from ACAS that she needed further documents before bringing her claim. Mr Lawrence submitted that her evidence was not credible. The claim must, therefore, fail.

25. The claimant chose that her son, Mr Langton, should make submissions on her behalf. Mr Langton said he did not believe his mother had submitted anything late. Referring to the merits of the claim, which I explained we were not looking at during this hearing, he said that it had never happened.

Conclusions

26. It is for the claimant who has presented a claim of unfair dismissal out of time to satisfy the Tribunal that it was not reasonably practicable to present the claim in time. If the Tribunal is not satisfied that it was not reasonably practicable to present the claim in time then the Tribunal has no jurisdiction, or power, to consider the complaint of unfair dismissal.

27. The claimant's claim was presented out of time. The claimant's argument is that she relied on advice given by ACAS that she had to obtain a copy of the letter confirming the outcome of the appeal before she could present a claim to the employment tribunal. For the reasons given above, I have found that ACAS did not give this advice. This was not, therefore, the reason the claimant did not present her claim in time. I found that the claimant did not seek advice from ACAS until after her time limit had expired.

28. The claimant was, on her own evidence, aware of her right to bring a claim and of the relevant time limit by the time of her dismissal on 13 May 2020.

29. Since I have rejected the explanation put forward by the claimant as to why she presented the claim out of time, she has failed to satisfy me that it was not reasonably practicable to present her claim in time. The tribunal does not, therefore, have jurisdiction, or power, to consider the complaint of unfair dismissal and this claim is dismissed.

Employment Judge Slater

Date: 8 February 2021

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON
9 February 2021

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.