



EMPLOYMENT TRIBUNALS

Claimant: Mrs P Mellor

Respondent: Canon UK Limited

RECORD OF A PRELIMINARY HEARING

Heard at: East London Hearing Centre (by telephone)

On: 1 February 2021

Before: Regional Employment Judge Taylor

Appearances

For the claimant: In person

For the respondent: Ms E Dorey, representative

JUDGMENT FOLLOWING A PRELIMINARY HEARING

1. The claimant's claim of unfair dismissal and breach of contract were presented outside of the applicable time limits and are dismissed;
2. The claimant's claims of disability discrimination has been presented outside the primary time limit and it is not just and equitable to extend time for bringing the complaint of disability discrimination.
3. Accordingly, the tribunal does not have jurisdiction to consider these claims and they are dismissed.

REASONS

1. The claimant was employed by the respondent, a company that is the sales organisation of the Japanese manufacturer Canon Incorporated, as a service co-ordinator from 1 December 1998 until 9 March 2020. Early conciliation started on 7 May 2020 and ended on 7 June 2020.

2. Having regard to the pause to the time limit provided by the early conciliation period, the date on which the claim form should have been presented was 9 July 2020. The claimant submitted the claim form on 17 September 2020 which was outside of the applicable time limits.
3. The claim is about unfair dismissal, notice pay and disability discrimination. The respondent submitted that the claim should be dismissed because a tribunal did not have jurisdiction to consider it. The respondent also defended the claim on the ground that the claimant had been dismissed for the reason of redundancy following a fair procedure.
4. The matter came before the tribunal to consider whether the claimant's claims have been presented within the statutory time limits and/or whether the claimant should be given an extension of time.
5. The claimant prepared a witness statement and attachments which, in summary, gave an account, starting from 23 March 2020, of having to care for her elderly and unwell mother during the current pandemic. The claimant submitted that it was a stressful situation and contended that it was not until September 2020 that she could apply herself to presenting this claim.
6. The respondent submitted that the claimant's evidence did not explain why she could not have complied with the initial time limits and why she then delayed a further 10 weeks. The claims should be dismissed.

The applicable law

7. Section 111 of the Employment Rights Act 1996 provides that the time limit for bringing a claim is ordinarily within three months of the date of any dismissal, subject to an extension of time to facilitate early conciliation. Where an employee can show that it was not reasonably practicable for them to present the claim in time an employee can be given a further extension. The same principles apply to breach of contract claims. The burden is on the claimant to show that it was not reasonably practicable to present the claim in time. Reasonably practicable does not mean "reasonable" nor "physically possible". It means "reasonably feasible" (*Palmer v Southend on Sea BC* [1984] ICR 372).
8. Section 123 of the Equality Act 2010 provides that the time limit for bringing a claim is ordinarily within three months of the date of any act of unlawful discrimination complained of, subject to an extension of time to facilitate early conciliation. Where an employee can show that it was just and equitable for them to present the claim late an employee can be given a further extension. The exercise of the power to extend time is the exception, not the rule: see *Robertson v Bexley Community Centre* [2003] IRLR 434. Factors which are relevant to consider when exercising any discretion whether to extend time include the length of, and reasons for, the delay.

The Tribunal's conclusions

9. Unfair dismissal and breach of contract. It is evident from the claim form that the claimant intended at the date of her dismissal to bring a claim against the respondent. The claimant therefore contacted ACAS promptly and without difficulty. The Tribunal is satisfied that it was also practicable for the claimant to present the claim form within the time limit. The Tribunal did not accept that the claimant's caring responsibilities prevented her from presenting the claim on time. Therefore, the claimant's claim is struck out for being out of time. The Tribunal does not have jurisdiction to consider the claimant's complaint of unfair dismissal since it was presented out of time.

10. Disability discrimination. Although the Tribunal has a discretion to extend time on the basis that it is just and equitable to do so it is the exception to the strict time limits and should only be exercised on rare occasions. The reason put forward by the claimant for bringing her complaints late was that she was caring for her elderly mother, made all the more difficult against the background of the current pandemic. Although the Tribunal accepted that the circumstances as described by the claimant were challenging the Tribunal was not satisfied that this was sufficient to show that the claimant was not capable of bringing the claim in time or that the discretion should be exercised. The Tribunal bears in mind that the claimant knew at the date of her dismissal that she intended to bring a claim and her ability to contact ACAS within the primary limitation period. Therefore, the claimant's claim of disability discrimination is struck out for being out of time.

**Regional Employment Judge Taylor
Date: 1 February 2021**