



EMPLOYMENT TRIBUNALS

Claimant: Mrs N. Hedley

Respondent: Patisserie Holdings PLC

PRELIMINARY HEARING

Heard at: Birmingham

On: 16 March 2018

Before: Employment Judge Butler – Sitting alone

Representation

Claimant: Mr N. Caiden – Counsel

Respondent: Mr B. Gerner - Solicitor

JUDGMENT

The Judgment of the Tribunal is that the claim was presented in time and, accordingly, the Tribunal has jurisdiction to hear it.

REASONS

1. The Claimant submitted her claim form through her Solicitors on 10 August 2017. There is no dispute that this was within the statutory time limit set out in Section 11 Employment Rights Act 1996. Unfortunately, Section 8.2 of the claim form was not completed and the additional document containing the Claimant's particulars of claim was not apparently received by the Tribunal with the claim form. As a result, the claim was rejected as not providing the required details of the claim and could not be properly responded to. This was communicated to the Claimant's Solicitors by letter dated 30 August 2017 which was received by them on 01 September 2017.
2. Immediately upon receipt of the Tribunal's letter, the Claimant's Solicitors emailed the Tribunal with the particulars of claim stating that it had been omitted due to "an unfortunate administrative error". This letter was written by a legal secretary who did not have the benefit of being able to speak to the paralegal, Mrs Humphris, who had submitted the claim and who was on annual leave on that day. In the email to the Tribunal, the Claimant's Solicitors said "we hereby attach the RTF file to this email and respectfully ask that the decision to reject Mrs Hedley's claim be reconsidered".

3. I heard evidence from Mrs Humphris who was cross-examined by Mr Gorner. Her evidence was that she had submitted many claims for Claimants using the Tribunal's online facility and had never before been notified that the additional RTF documents containing the particulars of claim had not been received. It was her evidence that, in fact, it is not possible to complete the online form without filling in Section 8.2 or attaching a further document with the particulars of claim since the online facility will not allow progression to the next section until Section 8.2 has been dealt with.
4. Both Mrs Humphris and Mr Street, the Principal of the Claimant's Solicitors, indicated that they had not noticed that the acknowledgment from the Tribunal of the claim form on 10 August 2017 indicated that no additional documents had been received.
5. Since the particulars of claim were not received by the Tribunal until 01 September, and this would have made the claim out of time pursuant to Section 111, the Respondent applied to have the claim struck out as being out of time.
6. Upon making enquiries with the Tribunal's administrative staff, I was advised that it was not unheard of that documents attached to the claim form had been lost when the claim form had been submitted. Whilst this was unusual, it did happen and was an unfortunate consequence of using an online facility.
7. Having considered the matter in some detail, I concluded that the claim form had been submitted along with the particulars of claim within the statutory time limit. What happened to the particulars of claim is unknown, but, in the absence of any challenge to the evidence of Mrs Humphris about how the claim form is completed online, I accept that the document was attached to the claim form. Accordingly, the claim form should not have been rejected and stands as being filed in time. In reaching this decision, I bear in mind the Employment Appeal Tribunal's decision in *Tyne & Wear Autistic Society –v- Smith (2005)*.
8. Accordingly, the Tribunal has jurisdiction to hear the claim.

Employment Judge Butler

10 April 2018