



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss B Jackaman

and

Respondent

SSE Metering Limited

Held at Ashford on 27 September 2018

Representation

Claimant:

Mrs S Spry, Family Friend

Respondent:

Mrs M Sangster, Solicitor

Employment Judge Kurrein

JUDGMENT

- 1 The proper name of the Respondent is SSE Metering Ltd and the title to these proceedings is amended accordingly.
- 2 The Claimant's claims have no reasonable prospect of success and are struck out.

REASONS

Outline of Facts

- 1 The Claimant was born on 16 September 1997 and started her employment with the Respondent as a smart meter installer on 23 June 2017. She was subject to a six month probationary period during which she was expected to attend the Utilities Academy and qualify appropriately for her role involving both gas and electric meters.
- 2 It appears there were difficulties in the course of that training. In particular: –
 - 2.1 She had difficulty passing the relevant tests for gas meters.
 - 2.2 On 11 November 2017 she told the Respondent that a member of the Utilities Academy staff made an inappropriate approach to her on Snapchat.
- 3 The Respondent dealt with these matters as follows: –
 - 3.1 It gave her additional support and training and later extended her probation, but ultimately dismissed her with PILON on 21 December 2017
 - 3.2 On 14 November 2017 it reported to the Utilities Academy what the Claimant had alleged.

Issues

- 4 In respect of any claim arising from the incident involving a member of the Utilities Academy staff, which claim, it appears to me, would probably have to be against that organisation, the Claimant would have had to start early conciliation no later than 10 February 2018.
- 5 In respect of any claim in respect of the manner in which the Respondent dealt with that claim the Claimant would probably have had to start early conciliation no later than 13 February 2018.
- 6 In respect of any claim relating to her dismissal. The Claimant would have had to start early conciliation no later than 20 March 2018.
- 7 The Claimant did not start early conciliation until 18 April, and it did not end until 15 May 2018, on which date the Claimant presented her claim against the above Respondent. The boxes for claims of unfair dismissal and age discrimination were the only claims specifically identified.
- 8 The Claimant does not have the two years service necessary to bring a claim alleging unfair dismissal.
- 9 It is against the above background that this matter came before me at an open preliminary hearing to consider the Respondent's application that the Claimant's claim be struck out as having no reasonable prospect of success.

Evidence and Findings

- 10 I heard the evidence of Mrs Spry and of the Claimant on behalf of the Claimant. I read the documents to which I was referred. I heard the submissions of the parties. I make the following findings of fact.
- 11 Mrs Spry is in business on her own account, advising small companies on recruitment and training. She has no legal training. She sought advice from the ACAS helpline twice. She could not give the dates. She told me that she was advised to follow the Respondent's procedures in order to resolve the Claimant's issues. She stated that she was not informed of the normal three month time limit in the course of either call.
- 12 ACAS is well aware that litigants in person may not know of that time limit. I think it likely that the scripts used by its advisers ensure that anyone phoning their helpline would be made aware of the limit at an early stage.
- 13 On 7 March 2017 Mrs Spry sought to present an appeal for the Claimant. The Respondent did later offer such a hearing, which was declined by Mrs Spry in favour of a proposed telephone hearing. The Respondent later requested written representations, but none were received.
- 14 If at that time the Claimant started early conciliation on 18 April ACAS were properly informed of the facts relating to the Claimant's case the Conciliator would have known that it was out of time. It is my universal experience that in such circumstances the Conciliator immediately advises the putative Claimant of that fact, ends early conciliation forthwith, issues the certificate and advises that proceedings be issued at the earliest opportunity. That did not happen in this case.

- 15 Mrs Spry emailed ACAS on 14 May 2018 to suggest the Respondent was “playing delay tactics” and suggesting they should go to the tribunal. ACAS replied on 15 May 2018 to inform Mrs Spry that the Respondent had asked for an extension to early conciliation to consider a “further appeal hearing as a gesture of goodwill.” Mrs Spry was given the option of extending the conciliation period or of being issued with a certificate that day. She responded to say that she wished to press forward and a certificate was issued that morning under reference R241353/18, when the Conciliator told her that she would have at least one month from the date on the certificate to start employment tribunal proceedings.
- 16 That advice was clearly incorrect, based on the above facts, but the Claimant does not appear to have been prejudiced by it as she presented her claim the same day.
- 17 The Claimant’s evidence was that in late 2017 she knew “pretty much nothing” about Employment Tribunals. Following her dismissal she took no steps to research her rights online, but knew of a three month time limit in “early 2018”. During this period her Nan had a series of three heart attacks and was admitted to hospital briefly on each occasion. She travelled to visit her Nan there and at her home. She was upset throughout this time and suffers from anxiety.
- 18 Following submissions I explored the basis on which the Claimant sought to advance her case with her and Mrs Spry. They appeared to be fixated on the conduct of the employee from the Utilities Academy. The Claimant was quite unable to tell me the basis on which she alleged age discrimination.

Further findings and Conclusions

Unfair Dismissal

- 19 For the reasons set out above, this claim has no reasonable prospect of success.
- 20 In any event, based on my below findings, it was reasonably practicable for the Claimant to have started early conciliation within the three month time limit.

Age Discrimination

- 21 I find as a fact that, on the balance of probabilities, Mrs Spry was aware of the three month time limit in early 2018. It is more likely than not that ACAS informed her of it and she was the source of the Claimant’s knowledge.
- 22 I have considered the principles set out in British Coal Corp v Keeble [1997] IRLR 336 and have had particular regard to:-
- (a) the length of and reasons for the delay;
 - (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - (c) the extent to which the party sued had cooperated with any requests for information;
 - (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and

(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

23 I am satisfied that the Claimant had the knowledge required to start early conciliation in plenty of time to comply with the time limit. She knew the facts that gave rise to her claims and of the venue. She was in touch with ACAS.

24 While I accept that delay will always risk adversely affecting the cogency of evidence the delay in this case is just less than a month. Any adverse effect is likely to be minor.

25 It is plain, however, that the Claimant did not act promptly once she was in possession of all the information she needed. In addition, the Claimant did not, by her own researches or by visiting a local CAB, seek any professional advice on her position.

26 In all the circumstances of the case, bearing in mind:-

26.1 the principle set out in Robertson v Bexley Community Centre [2003] IRLR 434, that the granting of an extension of time is the exception, not the rule; and

26.2 the very poor merits of the Claimant's claim as set out in her claim form;

I have concluded that she has failed to establish on the balance of probabilities that it would, in all the circumstances of the case, be just and equitable to extend time in her favour. Her claims must be struck out.

Employment Judge Kurrein
10 October 2018