



EMPLOYMENT TRIBUNALS

Claimant: Miss M Voin

Respondent: PJ Southport Limited trading as Papa Johns Southport Limited

Heard at: Liverpool

On: 1 March 2022

Before: Employment Judge Grundy

REPRESENTATION:

Claimant: In person, (interpreter Miss Vansis) (Romanian)

Respondent: Ms J Charalambous, Litigation Consultant

JUDGMENT

The judgment of the Tribunal is that the Tribunal does not have jurisdiction to deal with the claimant's claims. The claim was presented out of time and the Tribunal declares that it was reasonably practicable for the claimant to bring the claim in time so there the Tribunal has no jurisdiction to deal with it.

REASONS

1. This case was before Employment Judge Slater at a previous case management hearing where she set out the history in brief form. The claimant worked for the respondent between 4 March 2020 and 3 October 2020 when she resigned. The claimant says she left because the respondent changed her working hours from 40 hours to a zero hours contract and demoted her. The claimant also says that she was not paid national minimum wage rate and this caused her to bring a grievance. After the grievance the respondents rectified the pay issue but this was some time down the line.
2. The complaints on the face of the claim form related to breach of contract and unpaid wages, which as indicated have been paid. The claimant also clarified after the case management hearing on 5 October 2021 that she brought a claim that was that she had resigned and been constructively dismissed

arising from her grievance relating to non-payment of the national minimum wage and this is plainly a serious matter and the Tribunal has factored that into the balance when considering reasonable practicability. The interpreter was sworn at the outset and interpreted throughout the hearing.

3. The questions for the Judge were identified on page three of Employment Judge Slater's Case Management Order.
Was it reasonably practicable for a claim to be made to the Tribunal within the time limit?
If it was reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within such further period as the Tribunal considers reasonable?
4. So far as the key dates are concerned the claimant was employed from 4 March 2020, her employment ended on 3 October 2020, the date of receipt by ACAS of the early conciliation notification was 26 October 2020 and the date of issue of the certificate was 10 December 2020.
5. The respondent identifies the dates as follows- The original time limit would have been 2 January 2021 when three months would expire (from 3 October) however this is extended by the clock stopping due to the early conciliation process, adding that time on to the time after 2 January 2021 the time for the claim to be brought would be by 16 February 2021. The claim was presented on 22 February 2021 and was therefore six days late.
6. The Tribunal has considered the time limits in Section 111(2)(a) of the Employment Rights Act 1996 regarding the claimant's constructive dismissal claim for asserting a statutory right under Section 104 of the Employment Rights Act and also under consideration was Article 7 of the Employment Tribunals (Extended Jurisdiction) England and Wales Order in respect of the breach of contract claim.
7. The format of this hearing was that the claimant gave evidence with assistance of the interpreter, she provided a witness statement, which was considered and was cross -examined by the respondent's representative. The Tribunal also had a bundle of documents, which contained relevant emails regarding the timeframe.
8. In the claimant's statement of evidence and through her oral evidence, she relied on mental health issues and that she felt her claim had not been progressed by her advisors such that she needed to change advisors.
9. The Tribunal accepts that the claimant does not have English as a first language and that is also a barrier to access to justice but she has found help and it is noted Mr Sutcliffe on behalf of the GMB has assisted her. It is also noted that Zoe Starling, of Brighter Living (who the Tribunal believes is a Psychologist) or who has offered psychological help to the claimant has also been assisting her and it is noted that Robert Brennan from Sefton Council for Voluntary Service has also assisted the claimant.
10. I accept that the claimant has suffered from issues of anxiety but on the evidence and the answers that she gave to the respondent's representatives

she has been able to stay in communication with her advisors throughout of the relevant period. She has had union representation for some time, certainly since 12 June and the grievance was progressed and she has been a member of the union for four years.

11. She accepted that she could communicate with those assisting her between 26 October and 22 February 2021, her evidence was they did everything on her behalf. The Tribunal accepts her apology for the late claim.
12. The respondent's submissions by Ms Charalambous were briefly to the following effect. The claimant had had access to the time limits for Tribunal claims, she had advice from her union over a lengthy period and the correspondence within the bundle to which I was referred makes clear the advice about time limits being unfortunately very strict, the email at page 48 which was from Mr Brennan on 22 February flags up that the certificate was issued on 10 December and it says "it is now well over a month outside the limit allowed, it will therefore be a Judge whether or not to allow your claim" so Mr Brennan was certainly aware the claimant was up against the time limits at that point.
13. On page 42 Mr Sutcliffe had forwarded to the claimant the information about conciliation, in particular the email received from the ACAS conciliator, which gave links to other information which would provide details about time limits. The claimant accepts that she hadn't clicked any of the links and hadn't investigated further so it seems that the respondent say she had opportunity for finding out about her rights and it wasn't reasonable for her not to have taken those opportunities. The respondents relied on **Porter -v- Bandidge Limited 1978**, **Deadman -v- British Building Engineering Appliances Limited 1974** and **Palmer and Saunders -v- Southend on Sea in 1984**.
14. In respect of the mental health aspect the respondents submit that the claimant failed to provide medical evidence and did accept that she could communicate with her advisors at all times. The respondents also referred to **London Underground -v- Noel 1999** about the test to be applied in terms of not just what is reasonable but what is reasonably practicable. In respect of the six days the respondents say the claimant has no explanation as to why a further six days was needed for a response.
15. My conclusions are as follows. The claimant has suffered from mental health issues about which she sought assistance from Brighter Lives. The claimant has tried to progress her claim but given she is reliant on others that has proved difficult. The rules are strict. Three months from the 3 October in the first instance would give a time limit of 2 January 2021 and although that is extended by the stop the clock on the early conciliation she was still out of time.
16. In the circumstances having considered the aspects of mental health and the advisors who were assisting in my judgment it was reasonably practicable for the claimant to present her claim in time. She had legal advisors and they knew the rules. Unfortunately, page 52 is really the "nail in the coffin", that quotes advice from the trade union dated 28 November 2020, that quotes advice on bringing a claim to the Employment Tribunals, there are very strictly

time limits for doing so and claims must be brought within three months less one day of the act complained of which seems to be at the earliest the 8 August 2020, I accept that is looking at different days but it is about the advice, it is about the three months.

17. "The primary limitation period that is on the August date was therefore 7 November 2020. I note your union rep has begun ACAS early conciliation on 5 November and this will extend the deadline for issuing your claim," (that is the stop the clock bit and the add on bit.) "I believe that early conciliation is ongoing and the date on the certificate when you receive it will determine the absolute deadline for you to issue your claim. Please ask ACAS to confirm what that date is as we are unable to advise further without knowledge of the dates during which conciliation took place." So, if the early conciliation closed on 10 December the stop the clock and add on took the period to the 16 February 2021 so the claimant was still out of time.
18. I do accept that what is said on page 52 that Mr Brennan tried to help because he was contacted by the health worker on 2 December 2020 but was not formally instructed until 18 February 2021, I do accept that he acted promptly between 18 February and 22 February but all in all I have to look at the whole of the timeframe and on that basis it was reasonably practicable for the claimant to present the claim in time.
19. As I said I have taken into consideration that the claimant makes some serious allegations, that obviously has weighed in the balance but at the end of the day on the evidence the claimant has given me relating to her mental health and relating to her advisors I conclude that it was reasonably practicable for the claim to be brought in time, so the Tribunal has no jurisdiction to deal with the claimant's claims.

Employment Judge Grundy
1 March 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
10 March 2022

FOR THE TRIBUNAL OFFICE

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