

THE INDUSTRIAL TRIBUNALS

CASE REF: 5989/18

CLAIMANT: Claire Hughes

RESPONDENTS:

1. Nuala Murphy
2. Kieran Murphy

DECISION

The decision of the tribunal is that the claimant's claim for unfair dismissal is dismissed. The claimant is entitled to a redundancy payment in the sum of £2,475.00. The claim for notice pay is dismissed. The claim for holiday is dismissed having been withdrawn in open Tribunal on 18 April 2019.

CONSTITUTION OF TRIBUNAL

Employment Judge: Employment Judge Murray

Members: Mr I Acheson
Mrs L Hutchinson

APPEARANCES:

The claimant was represented by: Her stepfather Mr Shilcock.

The respondent was represented by: The respondents did not appear and were not represented

1. The claimant claimed unfair dismissal, a redundancy payment, notice pay and holiday pay. At the outset of the Hearing, the claimant stated that she no longer had a claim for holiday pay and that claim was dismissed at the outset of the Hearing.
2. The respondents in the response form denied liability stating that the claimant had been paid her holiday pay and wages and stated that the claim was otherwise out of time.

Issues

3. The issues for the tribunal were therefore as follows:-
 - (i) The claim for unfair dismissal was presented outside the three-month time limit and the issue therefore was whether time should be extended because it had not been reasonably practicable for it to be lodged within the time limit.

- (ii) Was the claimant made redundant and thus entitled to a redundancy payment?
- (iii) Is the claimant entitled to notice pay?
- (iv) The holiday pay claim was dismissed at the outset of the Hearing.

Sources of Evidence

4. The tribunal heard evidence from Ms Hughes on her own behalf and heard evidence from her stepfather Mr Shilcock. The tribunal also took into consideration the contents of the claim and response forms and the documentation provided by both sides in the course of preparation for this Hearing and provided by the claimant during the Hearing.

The Law

5. The law on unfair dismissal is set out in the Employment Rights (Northern Ireland) Order 1996 as amended (referred to below as the “ERO”). The right not to be unfairly dismissed is set out at Article 126 of the ERO and at Article 130 are listed the potentially fair reasons for dismissal, one of which is redundancy. It is for the employer to show that the dismissal was for one of the potentially fair reasons and it is for the tribunal to determine whether the dismissal was fair in all circumstances.
6. Redundancy is defined at Article 174 of ERO as follows:

“174.— (1) For the purposes of this Order an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

- (a) the fact that his employer has ceased or intends to cease-*
 - (i) to carry on the business for the purposes of which the employee was employed by him, or*
 - (ii) to carry on that business in the place where the employee was so employed, or*
- (b) the fact that the requirements of that business-*
 - (i) for employees to carry out work of a particular kind, or*
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer.*

Have ceased or diminished or are expected to cease or diminish.”

7. Under Article 199 ERO the primary time limit for a redundancy payment is six months from the EDT and in some circumstances the time limit is 12 months from the EDT.

8. Under ERO the claimant has the right not to be unfairly dismissed and provides at Article 145(2) that the claim must be presented:
- “(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.”*

Findings of Fact and Conclusions

9. The tribunal found the following facts proved on a balance of probabilities and applied the legal principles to the facts found in order to reach the following conclusions.
10. The claimant was employed as a shop assistant from 1 November 2006 until 26 January 2018 when the business closed. The claimant and other employees had been informed approximately one week before the business closed, that this was going to happen.
11. The claimant inquired of Ms Nuala Murphy as to her entitlement to wages and was told by Ms Murphy that the Murphys could not afford to pay her and that “the Government” would pay any sums due.
12. The claimant’s last day at work was on Saturday 26 January 2018. The working week ran from Tuesday to Saturday and the claimant was therefore paid up to that date being the end of her last week at work. The effective date of termination (EDT) is therefore 26 January 2018. At the date of the EDT, the claimant had worked for 11 full years, she was aged 33 years, and her gross weekly pay was £225.
13. The claimant stated that she telephoned a Citizen’s Advice Bureau in Newry on Monday 28 January 2018 to ask for advice about her entitlement to redundancy.
14. The claimant’s evidence was that Ms Murphy gave her documents on Monday 28 January 2018 and that included a letter from the Murphys’ accountant which sets out the accountant’s calculation of the redundancy money due to a claimant.
15. The claimant’s evidence was that in the conversation with the CAB on the Monday, she was told to ensure that she received her P45 and that she should apply to ACAS for any outstanding sums. The claimant stated that she then emailed a form to ACAS and the response was that they would respond within six weeks. The claimant stated that when she received a response six weeks later, it said that she should phone them, and when she did so, she was told that ACAS covers England only and that she should contact the Government in Northern Ireland.
16. The claimant’s evidence was that she telephoned the CAB again in early March and spoke to the same adviser, who apologised, and told her to seek legal advice. The claimant stated that she obtained legal advice around the end of March and was

told that she should put in a claim to the Department. The claimant stated that she put in her claim to the Department approximately one week later.

17. The claimant stated that she put in a claim to the Department for payment from the Redundancy Payments Fund, shortly after she spoke to a solicitor. One of the documents presented by the claimant in the Hearing was from the Department which is dated 16 August 2018 and refers to the “recent application” for a redundancy payment.
18. Mr Shilcock gave evidence that he helped the claimant by typing up the form of application to the Department at her dictation. He could not help us in relation to a date for that form. He stated that conflicting opinions were being received from the CAB on what to do next.
19. The claimant’s evidence was that she was told by the adviser in the CAB that the time limit for unfair dismissal was three months, minus one day, and for redundancy payment was six months, minus one day. The claimant’s evidence was that she was told this in February or March 2018. At that stage she was likely to have been within the three-month time limit for an unfair dismissal claim.
20. The claimant’s evidence was clear that she was told about the time limits for unfair dismissal and redundancy payment and her explanation for the form being lodged in the tribunal outside the three month time limit, was that she believed that ACAS were dealing with the matter, and that she was getting conflicting advice about where to go to put in her claims.
21. The claimant stated that the reason she was prompted to complete a claim form for the tribunal, was because of advice that she received from the CAB, and she was advised at that point that as well as a claim for redundancy, she should include in her claim form a claim for unpaid notice pay, redundancy pay and unfair dismissal.
22. The claimant stated that she filled in the form for the tribunal herself in consultation with the CAB on the phone and waited a further week to put the form in. The form was presented to the tribunal on 10 May 2018.
23. It is for the claimant to persuade us that it was not reasonably feasible for her to present her claim for unfair dismissal within the three-month time limit. The three months expired on 26 March 2018. As the claim form was presented on 10 May 2018, it was lodged approximately six weeks outside the three-month time limit.
24. The claimant stated there was nothing else going on her life which might have been relevant to any delay, and relied entirely on the alleged misdirection by the CAB to the ACAS organisation.
25. We have considered carefully the evidence presented by the claimant in relation to the timing of her claim for unfair dismissal and our conclusion is that it was reasonably feasible for the claimant to present the claim form within the time limit. The claimant had sought advice promptly, was told of the time limits, and she knew of sources of advice. The claimant’s point to us was that she was effectively misled by the adviser in the Citizens’ Advice Bureau and this led her to wait until ACAS contacted her. The contact with ACAS as well within the three-month time limit,

and within that period the claimant knew that she had been sent to the wrong organisation. It was for the claimant to move promptly to obtain further advice, if necessary, particularly in view of the fact that (on her case) she was given the wrong advice by the CAB. The claimant's evidence to us was that she spoke to the CAB on four occasions (despite the fact that they had given the wrong advice to her initially) and finally spoke to a solicitor.

26. The claims for notice pay and for unfair dismissal claim are therefore dismissed, as they were presented outside the requisite time limits and we are not persuaded to extend time. The tribunal does not therefore have jurisdiction to entertain them.
27. The claimant was clearly made redundant because of the closure of the business and her case in that regard is supported by the letter dated 26 January 2018 from the Murphys' accountant which indicated that the owners of the business were exploring the cost of redundancy before the business closed. We therefore find that the claimant was dismissed on the grounds of redundancy, and is entitled to a redundancy payment in the sum of £2,475.00.
28. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 18 April 2019, Belfast.

Date decision recorded in register and issued to parties: