



EMPLOYMENT TRIBUNALS

Between

Claimant: Dr M D Fernandez Del Valle

Respondent: St George's University Hospitals NHS Foundation Trust

Heard at London South Employment Tribunal on 2 November 2018

Before Employment Judge Baron

Representation:

Claimant: Matthew Jackson - Solicitor

Respondent: Emma Rowley - Solicitor

JUDGMENT AT A PRELIMINARY HEARING

It is the judgment of the Tribunal that the claim be dismissed.

REASONS

- 1 These reasons are provided at the request of the Claimant. The material facts are set out below.
- 2 The Claimant was dismissed by the Respondent with effect from 14 February 2018 and that was the effective date of termination for the purposes of the Employment Rights Act 1996.¹ The Claimant contacted ACAS under the early conciliation procedure on 26 February 2018 and the certificate was issued on 26 March 2018. The combined effect of sections 111 and 207B of the 1996 Act is that the time period for the presentation of a claim of unfair dismissal to the Tribunal expired on 10 June 2018. The claim was presented on 12 June 2018. Mr Jackson accepted that the claim was out of time.
- 3 The Claimant had been aware for some years of the unfair dismissal jurisdiction of the Tribunal and also that there was a time limit of three months less one day. Following her dismissal the Claimant accessed the internet and found that it was necessary to utilise the early conciliation

¹ Mr Jackson asked me to note that he reserved the right to argue that *Rabess v. London Fire and Emergency Planning Authority* [2017] IRLR 147 CA was wrongly decided. I so do.

procedure before being able to present a claim. She also learned that during the conciliation period 'the time was stopped.'² The calculation carried out by the Claimant was as follows:³

I assumed that the time for filing a tribunal claim stopped on 26 Feb and started to run again on 26b March. Therefore, the 1st month (of the three-month time limit) ran from 14 Feb to 14 April 2018. The 2nd month ran from 14 April to 14 May 2018. And the 3rd month ran from 14 May to 13 June 2018.

- 4 That calculation was based on whatever information the Claimant obtained from the internet, and she did not seek any advice on the matter. The Claimant had, through her defence union, had the benefit of advice from solicitors and representation by counsel in her disciplinary process. The Claimant accepted that she could easily have sought advice concerning the Tribunal process from the same firm of solicitors.
- 5 Mr Jackson in his submissions drew a distinction between what he referred to as 'retainer cases' where professional advisers had been retained by an individual to act generally for a party on the one hand, and 'advisor cases' where an individual took advice on the specific point. He referred to *London International College v. Sen* [1993] IRLR 333 CA as falling into this latter category. Mr Jackson submitted that the Claimant was confident that her calculation of the time limit was correct, and therefore there was no need to for her to take advice.
- 6 Mr Jackson also submitted that the effect of section 207B and its impact on the time limit in section 111 was not clear, even to lawyers. Mr Jackson accepted that it was incumbent on a party seeking an extension of time to have made reasonable enquiries to identify the time limit, and he submitted that the Claimant had in fact done so done so.
- 7 Miss Rowley referred me to the following authorities:
Norbert Dentressangle Logistics Ltd v. Hutton UKEATS/0011/13
Reed in Partnership Ltd v. Fraine UKEAT0520/10
Trevelyan (Birmingham) Ltd v. Norton [1991] ICR 488 EAT.
- 8 The position, said Miss Rowley, was simple. The Claimant was aware of the time limit, and the early conciliation process which extended the time limit. She did not make any enquiries about the correct time limit. She did not receive incorrect advice. The Claimant did not seek advice in circumstances where she could easily have done so. She simply got it wrong and that was an inappropriate basis upon which to find that it was not reasonably practicable for the claim to have been presented in time.
- 9 I entirely accept the point made by Mr Jackson that there has been some uncertainty concerning section 207B, but I do not consider that that assists the Claimant. Firstly the chronology in this case is straightforward, and I am not aware on any confusion arising in these circumstances. Secondly, the Claimant did not seek to analyse the wording of the statutory

² Quoting from paragraph 15 of her witness statement.

³ Again quoting paragraph 15.

provisions. Thirdly, the Claimant did not seek advice and the advisor was confused by the provisions.

- 10 The task of the Tribunal is to find as a fact whether or not it was reasonably practicable for the claim to have been presented in time. If it is found that it was reasonably practicable then it is a matter of law, and the claim must be dismissed. There is no discretion in the Tribunal.
- 11 I accept the submissions of Miss Rowley and find that it was reasonably practicable for the Claimant to have presented the claim within the time limit for the reasons Miss Rowley set out as recorded above. There is no need to repeat them.
- 12 I do not find the distinction between categories of advisors as suggested by Mr Jackson to be of any assistance. The Claimant simply did not take advice in circumstances where it was open to her to do so. I do not find *Sen* to be of assistance as in that case Mr Sen had taken advice. I am also not persuaded that the admitted difficulties which have arisen over the effect of section 207B in certain circumstances has any relevance here.
- 13 For those reasons the Tribunal does not have jurisdiction and the claim is dismissed.

Employment Judge Baron

02 November 2018