dk

EMPLOYMENT TRIBUNALS

Claimant: **Miss T Chauhan**

Respondent: **Specialist Computer Centres PLC**

Heard at: **Birmingham** **On:** **20 September 2018 Before: Employment Judge Butler**

Representation Claimant:
Mr M Conlon, Counsel Respondent:
Miss P Whelan, Solicitor

JUDGMENT

The judgment of the Tribunal is that the claims of unauthorised deductions from wages, sex and race discrimination were submitted out of time and the tribunal has no jurisdiction to hear them.

REASONS

The Claims

1. By a claim form submitted on 3 May 2018, the claimant brought claims of unauthorised deductions from wages, and sex and race discrimination. She had resigned from her employment with the respondent with effect from 10 March 2017. EJ Dimbylow ordered that there be a Preliminary Hearing to determine whether the claims could proceed out of time and this was heard before me on 20 September 2018. It became apparent from the evidence that further documents may assist in the determination of the issues and disclosure of those documents was duly ordered. They were disclosed and the claimant made a further application to deduce

further oral evidence which I dismissed as not being proportionate bearing in mind the only issue before me, namely, whether the claims were out of time.

2. Bearing in mind the effective date of termination of the claimant's employment, her claims should have been submitted by 10 July 2017.

The Law

3. S. 23(2) Employment Rights Act 1996 provides that an "Employment Tribunal shall not consider a complaint (for unauthorised deductions) unless it is presented before the end of the period of three months beginning with … (the date of) the last deduction …" S 23(4) provides that a tribunal may consider such a claim if it "was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of 3 months" and "if it presented within such further period as the tribunal considers reasonable".

4. In relation to sex and race discrimination, s 123(1) Equality Act 2010 provides that proceedings "may not be brought after the end of – (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable".

The Evidence

5. I heard evidence from the claimant and Mr Handley, a former employee of the respondent and a friend of the claimant, and from Ms Jordan, HR and Operations Director, of the respondent.

6. I found the evidence of the claimant to be unreliable. She requested permission to work from home when she became the full-time carer for her mother who was terminally ill with cancer. As Ms Jordan rightly pointed out, the respondent was entitled to wonder how the claimant could carry out full-time carer duties at the same time as undertaking the duties of her employment. In my view, the request was entirely unreasonable. In her grievance about the refusal to allow home-working submitted to the respondent on 31 January 2017, the claimant alleged that other employees, including her, had been allowed to work from home. This is a gross exaggeration. The claimant had undertaken small amounts of work from home on a few

occasions but this was not a frequent occurrence. As regards other employees, there was no reliable evidence before me that other employees had worked from home and certainly not in circumstances of being a full-time carer for a family member. The respondent, in its grievance outcome letter dated 28 February 2017, noted that the claimant had been granted annual leave and unpaid leave on short notice when her mother was ill.

7. I also note that the claimant was legally advised throughout the period from around 10 January 2017 until well beyond the termination of her employment. Her first solicitors were intervened by the SRA but she promptly instructed another firm and it is clear there was ample time for her claim to be submitted within the time limits.

8. The claimant was inconsistent in some of her evidence. In her oral evidence, she said she had “80%” decided to leave the respondent up to 10 March 2017 and “100%” sure when she received the grievance outcome.

Quite apart from the unreliability of her chronology, the claimant told Dr Appleford on 16 February 2017 that she could not go back to work for the respondent (page 98 of the bundle).

9. The claimant relies on Dr Appleford’s report to explain the delay in submitting her claim. It concludes that she was suffering from adjustment disorder but he was unable to “attribute precisely the contribution “ of the factors leading to this condition which she had said were the refusal to allow her to work from home, the death of her mother and other financial issues. Miss Whelan makes the point that the report was based solely on the claimant’s comments to Dr Appleford who did not review her medical records. During this period, the claimant had decided to leave the respondent’s employment and was applying for other jobs and attending interviews. She commenced her new employment on 10 April 2017 and that employment has continued since then. This does not rest easily with her contention that she has been badly affected by depression as at 10 June 2017 which continued for another 5 or 6 months. I do not consider it credible that the claimant would be able to hold down her current employment yet be psychologically unable to submit a claim to the tribunal.

10. I also found Mr Handley’s evidence to be unreliable. His was a close relationship with the claimant while they were colleagues. The tenor of the messages between them while at work show this clearly. I do not accept he did not know why the claimant said she left the

respondent or that he did not keep in touch with her afterwards particularly since they worked for the same organisation albeit at different locations. Their relationship was evidently a close one and I consider Mr Handley's evidence to be that of a former employee trying to help his friend. There is no evidence before me to show he did anything but a small amount of work while recovering from surgery and his bank statements do not support his contention that he was paid for working from home when it is clear the respondent wrote to him clearly explaining precisely for how long he would be paid whilst recovering.

11. I further note that Mr Handley was the claimant's companion at one of her welfare meetings and she wanted him to accompany her to a grievance hearing. This does not indicate that he had no contact with her. He also attended a welfare meeting with the claimant on 20 December 2016 so would have known about her request to work from home then. The claimant also raised this in her grievance and gave names so this is inconsistent with only finding out from Mr Handley almost a year later. This all points to collusion between them.

12. In contrast, I found the evidence of Ms Jordan to be clear and concise. Most importantly, she explained that the respondent did not have a homeworking policy and this, crucially, was accepted by the claimant in her grievance appeal hearing. She accepted that the claimant had sent emails from home, especially at month end, but this was not considered to be home working which is an entirely different concept.

The Facts

13. In relation to the issues in this hearing, I find the following facts: (i) The respondent did not operate a homeworking policy for its employees and the claimant was aware of this.

(ii) The claimant did not undertake work from home on a regular basis and, when she did, it was with no expectation of payment.

(iii) The claimant was aware of her potential claims in December 2016.

(iv) The claimant's psychological issues had no bearing on her ability to submit her claims within the statutory time limits.

Conclusions

14. In Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53 CA, the Court of Appeal said that the test of reasonable practicability should be given a liberal construction in favour of the employee. This is a question of fact and the burden of proof rests with the claimant. On any construction of the facts, given my findings, it was reasonably practicable for the claimant to submit her claim for unauthorised deductions in time. She was represented by solicitors throughout so cannot claim she was ignorant of the time limits nor can she claim to have been confused by her rights. Indeed, her expressed motive in seeking retribution does not assist her given the comments made to Dr Appleford. Nor can she rely on facts which were not known to her since I have found she was well aware of them well before her resignation. Neither can the claimant rely on her illness as a reason for it not being reasonably practicable to submit her claim in time. Dr Appleford noted in his report that the claimant's adjustment disorder would probably last for around 6 months and she submitted her claim well after that period would have expired. Accordingly, it was reasonably practicable for the unauthorised deductions claim to have been presented in time. In any event, that claim is clearly without merit.

15. In relation to the discrimination claims, the test is somewhat different in that the just and equitable ground is broader. Mr Conlon relies, inter alia, on the decision in Chief Constable of Lincolnshire Police v Caston 2010 IRLR 327 CA where the claimant's mental ill health was taken into consideration in allowing an extension under the just and equitable principle. However, in this case, on the facts, I do not consider the claimant's health affected her ability to submit her claims in time. Put simply, she worked in her new employment for many months before finally instructing solicitors to submit her claim, was not taking any medication for her adjustment or any other disorder and there was no evidence she was suffering from any symptoms post July 2017.

16. In British Coal Corporation v Keeble and others 1997 IRLR 336 EAT, the Employment Appeal Tribunal expressed the view that the factors listed in s.33 Limitation Act 1980 should also be considered in an employment context where the just and equitable ground was being relied upon. These factors are a guide only but I address them below.

17. The first factor is the length of the delay and the reasons for it. This was a claim form submitted some 10 months after the time limit expired and, I have found, there were no good reasons for the delay. As I have already mentioned, even if the claimant's and Mr Handley's version of events is true, and I find it is not, the claimant failed to act promptly when she became aware of the potential cause of action. The cogency of the evidence after the delay is also relevant. With such a long delay, I consider it likely that the memories of the respondent's witnesses will diminish even though the issues are relatively straightforward. It is also likely that the alleged comparators named by the claimant in evidence would have considerable difficulty in recalling instances when they may have done some work at home.

18. I further note that the respondent acted promptly on each occasion the claimant raised an issue or grievance and also in defending the claims and disclosing information.

19. In assessing the above factors, I conclude there would be a greater prejudice to the respondent in allowing the extension than there would be to the claimant in refusing it. But primarily, on the facts as I have found them, these are claims which I cannot allow to proceed as it is plainly not just and equitable to extend time.

20. For the above reasons, the claims are out of time and the tribunal has no jurisdiction to hear them.

Employment Judge Butler

_____

Date 20 June 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

...S.Hirons 25.6.2019.....

.....

FOR THE TRIBUNAL OFFICE