

Claimant did not notify ACAS under the Early Conciliation process until 30 June, with the Certificate being issued on 28 July and the Claim Form issued on 25 August.

3. The Tribunal heard evidence from the Claimant and from Mr Richard Perry (Vice-Principal).

Law

4. There are two sets of rules on limitation and the requirements in the two sections set out here cover all of the complaints. Under the Employment Rights Act 1996 s.111:

(1) *A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*

(2) *Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—*

(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.

5. Under the Equality Act 2010 s.123:

(1) *Subject to sections 140A and 140B proceedings on a complaint within section 120 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.

6. There has been a considerable amount of guidance regarding the discretion to extend time under s.123 and its predecessor legislation. The Court of Appeal made it clear in **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434, that when employment tribunals consider exercising the discretion, *'there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.'* The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds.

Findings of fact

7. The Claimant commenced employment with the Respondent on 25 August 2010 as a teaching and learning assistant at the Ashcroft Technology Academy, which is operated by the Respondent. She was employed on a full-time basis, but in January 2014, she requested that her hours be reduced to a four-day week. A new contract was issued to reflect this change and the

contract contained a clause which entitled the Respondent to make a payment in lieu of notice.

8. On 21 March 2017 at 01.37 the Claimant sent an email headed "resignation". The email said, "*I have enjoyed working with all the ARC students and my colleagues over the past 6½ years; however, it is with regret that I am writing this resignation letter today. I would like it to take place effective immediately. If possible, please could this be kept confidential? Richard, please could you let me know when my last day will be? I would like to thank you both for all the support you've given me over the years and also for the opportunities. I have learnt a lot during my time at Ashcroft.*"
9. Mr Perry replied on the same day, stating that he was sorry to have received her notification that she wished to resign and saying that, "*whilst not wishing to lose you, I accept your resignation and confirm that it is able to take immediate effect. We shall be in contact separately to notify you of final payment arrangements, but I can add that the trust will pay you one month's pay in lieu of notice*". That letter does not explicitly answer the Claimant's question of when her last day would be, but does say the resignation takes immediate effect.
10. One minute before sending her resignation email, the Claimant sent an email containing a grievance, which includes much of what is contained in her claim form. In his response to the resignation, Mr Perry also acknowledged receipt of the grievance.
11. The Claimant did not go into work that week. On Tuesday 21 March, she emailed to say that she had a medical appointment and would not be in school that day and did the same again on Thursday 23. The Respondent noted her emails, but did not request any confirmation of those appointments. There was no documentary evidence at this hearing to confirm those appointments.
12. On Friday 24 March, the Claimant sent an email asking if she could come into the Academy on Tuesday 28 March, "*to say goodbye to my students and collect my things*". Mr Perry replied to say that was fine, but asked her to confirm the best timings for her visit. The Claimant did so by email on 27 March, saying that she thought, "*11:00 a.m. so I can start to collect my things, then see my students at 11:30 a.m. for break time, so as not to disturb any lessons*".
13. The Claimant came into the Academy on Tuesday 28 March at 11.00 to sort and collect her belongings and she met her students to say goodbye at 11.30. I find that she did not come into school to perform any contractual duties, but – as she said – just to sort things out and say goodbye. As she was not able to complete sorting her belongings that day, she requested permission to return on 31 March to finish off. That was agreed and that is what she did.
14. On 8 May, the Claimant was sent a rather confusing email by the payroll officer, which stated that she had resigned on 20 April, but also said her notice had expired on that day.
15. At or around the start of June, the Claimant contacted ACAS about what she described as her treatment during her employment (although not at this stage to start the Early Conciliation process). She was advised to contact the ICO

and the Equality Advisory Support Service, which she did. She then contacted solicitors around 10 June. On 16 June, the Claimant sent a long email to Mr Perry, which essentially particularised her claim.

16. In cross examination, the Claimant accepted that, if she could write out everything in this letter, then there was no reason why she could not have put it in a claim form, as she was aware of her legal rights and the claims she could bring.
17. She notified ACAS on 30 June and the Early Conciliation certificate was issued on 28 July 2017. Her claim was issued on 25 August 2017.

Conclusion

18. My conclusion is that the effective date of termination was 21 March 2017 and therefore the primary limitation period expired on 20 June. The Claimant did not notify ACAS until 30 June.
19. There was clear and unequivocal communication from the Claimant on that day that she was resigning with immediate effect. The response from the employer confirmed their understanding of this and referred, again clearly, to paying one month in lieu of notice.
20. I find it difficult to accept that the Claimant could have found that confusing (as she now suggests). Indeed, in her statement at paragraph 18, she says that after she read the Respondent's letter a few times and spoke to her friends, she did understand. She says that took her a few days, but I find that the position was completely clear to her on 21 March.
21. I have also found that she did not work after that. In her own words, she went in twice to say goodbye to her students and sort out her things. Therefore, the Claimant was behaving in a way consistent with an understanding that her employment had ended. She was asking permission to go in to the school and was saying goodbye to her students during their break.
22. It is also significant that, when she notified her employment in the days after her resignation that she had medical appointments and would not be attending, she neither provided nor was asked for confirmation. It is true that she did not need to tell them, if she had resigned, but at this stage she wanted to keep her resignation confidential from her colleagues.
23. Therefore I find the claim out of time, because the Claimant needed to contact ACAS before the primary limitation period expired on 20 June. It is not argued that it was not reasonably practicable for her to bring a claim, so the next issue to deal with is whether it would be just and equitable to extend time.
24. The Claimant relies on her medical condition. She has fibromyalgia, which can be very debilitating and which she has managed since 2013. On 11 May 2017, she had day surgery on her shoulder, which the medical evidence suggests was successful, as it restored movement, although she remained in pain. I accept that this condition will have had an impact on her day-to-day life.

25. However it did not prevent her from approaching ACAS, the ICO and the Equality Advisory Support Service at the start of June. Critically it did not prevent her from writing on 16 June (and therefore within the three month limitation period), a detailed letter to the Respondent setting out her complaints and referring to the legal basis for those complaints.
26. Mr Meichen said in submissions that, if she could do that, which amounted to sending her draft particulars of claim, then (a) she knew her rights and remedies, having taken advice, and (b) she could therefore have brought a claim in time. In cross examination, the Claimant admitted that this was the case.
27. I agree with Mr Meichen. I do not find this a case where, on the evidence before me, it would be just and equitable to extend time and I therefore find that the tribunal does not have jurisdiction to hear these claims, which are dismissed.

Employment Judge Cheetham QC

Date 20 January 2019