



Case Number: 2301479.2017

MK

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs R Harrold

and

Respondent

Porchlight

Held at Ashford on 1 September 2017

Representation

Claimant:

In Person

Respondent:

Mr N Roberts, Counsel

Employment Judge Kurrein

JUDGMENT

The Tribunal has no jurisdiction to hear the Claimant's claim and it must be struck out as having no reasonable prospect of success.

REASONS

- 1 The Claimant's claim alleging public interest disclosure detriment/dismissal came before me to consider an "out of time" point.
- 2 I heard the evidence of the Claimant and the submissions of the parties. I make the following findings of fact.
 - 2.1 The Claimant was employed from 12 October 2015 until she resigned summarily on 22 September 2016, her EDT because the alleged PID concerns she had raised had not been dealt with to her satisfaction..
 - 2.2 At that time she was aware of the existence of Employment Tribunals and shortly afterwards, in October, she browsed the ACAS web site and learned of the three month time limit generally applicable to claims and of the need to start early conciliation..
 - 2.3 She did not research further to discover whether or not she could complain of the consequence of her whistleblowing then or thereafter.
 - 2.4 On 10 October 2016 she wrote to the Respondent at considerable length to raise issues concerning the Respondent's treatment of its clients.
 - 2.5 She took no further steps to start any legal process at that time because she wished to "work through the process" with the Respondent in the hope of achieving a more amicable parting.

- 2.6 To be within the three month time limit the Claimant should have started early conciliation on or before 21 December 2016.
- 2.7 The Claimant's letter resulted in the Respondent instigating two investigations, and the Claimant gave evidence to both. She received the reports resulting from those investigations on 24 December 2016 and 18 February 2017.
- 2.8 The Claimant sought to appeal the outcomes of the reports but was not permitted to do so. She was informed she was entitled to raise further complaints if she wished to and did so.
- 2.9 In late February or early March 2017 the Claimant consulted a solicitor with a view to making a personal injury claim against the Respondent for a needle stick injury she had suffered. In a telephone conversation with a solicitor she learned that she could make a PID claim to the employment tribunal.
- 2.10 It was only following that conversation that the Claimant started early conciliation on 8 March 2017, which ended on 7 April 2017.
- 2.11 Had she started early conciliation within three months of the date complained of the latest date on which she could have presented her claim in time would have been 6 May 2017.
- 2.12 The Claimant's claim was received on 2 June 2017.
- 3 In light of the above the Claimant's claim has clearly been presented outside the relevant time limits.
- 4 The tests I have to apply are set out in the Employment Rights Act 1996 as follows:-
- 48 Complaints to employment tribunals
- ...
- (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.]
- ...
- (3) An employment tribunal shall not consider a complaint under this section unless it is presented—
- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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 The same test applies to PID dismissals under S.103A of that Act.
- 6 I have had regard to the following guiding principles:-
- Wall's Meat Co Ltd v Khan [1978] IRLR 499, Lord Denning, quoting himself in Dedman,
- 'It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time?'

Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, the matters to be considered include:-

The substantial cause of the claimant's failure to comply with the time limit;
Whether there was any physical impediment preventing compliance, such as illness, or a postal strike;
Whether, and if so when, the claimant knew of his rights;
Whether the employer had misrepresented any relevant matter to the employee;
Whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

- 7 I have concluded that the reason the Claimant's claim is out of time is the simple result of inaction on her part:-
 - 7.1 She did not take any reasonable steps to seek advice on her position, whether from a solicitor, law centre, CAB or on-line within a reasonable time of her resignation.
 - 7.2 In those circumstances I cannot accept it would be reasonable to allow her to rely on her ignorance of the PID jurisdiction of the Tribunal. Having got as far as the ACAS web site and learned of the 3 month limit a few minutes more research or a short phone call would have given her the requisite information.
 - 7.3 I did not accept that the Claimant was too ill during the relevant period to take matters further: during that same period she was making detailed lengthy complains and giving evidence to enquiries. She also appears to have been applying for new positions.
- 8 The Claimant has failed to establish that it was not reasonably practicable for her to present her claim in time. There is no jurisdiction to hear it and it must be struck out.

Employment Judge Kurrein

1 September 2017