



EMPLOYMENT TRIBUNALS

Claimant: Mrs G W Ratcliffe

Respondent: St Helens Metropolitan Borough Council

HELD AT: Liverpool

ON: 30 November 2017

BEFORE: Employment Judge Robinson
(sitting alone)

REPRESENTATION:

Claimant: Mr Tolcher, Solicitor

Respondent: Ms Bakewell, Solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is that the claimant's claim form was originally sent to Liverpool Tribunal in June 2011 by her solicitors. Consequently the claimant's claim for equal pay, as set out in her ET1 presented in 2017, can proceed on the basis that it was issued on 28 June 2011.

REASONS

1. This claim concerns the multiple litigation that has occurred between employees of the respondent council with regard to equal pay claims.
2. Over many years, and certainly since 2007, the unions representing the employees of the council and their solicitors, together with the council's Legal Department, have been involved in litigation which has been ongoing and protracted.
3. In 2011 a number of claims were issued by Mr Tolcher's firm, namely Simpsons Solicitors, acting for GMB members.

4. According to Mr Leach, the Deputy Head of Human Resources dealing with these issues at the council, there have been over 1,200 claims made by the council's employees for equal pay. Some of those claims were settled, some withdrawn and some are still to be dealt with.

5. The single issue that I had to decide was whether Mrs Ratcliffe's claim was sent to the Employment Tribunal in 2011 or not.

6. Mrs Ratcliffe has issued supplemental proceedings under the case number set out above which simply duplicates the application that was made in 2011. There are, of course, certain differences in the application now because the application form has changed and the preliminary requirements with regard to the issue of proceedings have also changed.

7. I heard from one of Simpsons Solicitors' employees, namely Ms Maher, who gave evidence that, under the case management software system used by the claimant's solicitors, certain documents for the claimant's claim, were set up on 24 June 2011, or shortly before that, ready to be sent to the Tribunal. Ultimately a first class letter together with an ET1 went out to the Employment Tribunal in Liverpool at the old address at Cunard Buildings.

8. The ET1 form, which I have seen, was prepared in 2011 and is in the format and on a form that would have been used at that time. I have also seen a copy of a covering letter dated 24 June 2011 signed by Mr David Tolcher stating that he was enclosing an ET1 for Mrs Ratcliffe and that:

“we should be grateful if you could please issue the same and for you to serve on the respondents directly.”

9. The letter bears the correct address for Cunard Buildings.

10. Mr Tolcher in his address to me considered that there might have been some mix up because the Employment Tribunal were moving out of the Cunard Building into the present premises at about that time. However, Mr Tolcher is wrong. The move from Cunard Building was not until October 2012.

11. Consequently there is no explanation why the claim form was not registered, processed and served upon the Council. It is agreed between the parties that St Helens Council never received the ET1 until this year. They have responded to that ET1 by formally serving their ET3.

12. I am satisfied from Ms Maher's evidence to me today that the processes which were gone through by the claimant's solicitors did end up with a claim form for Mrs Ratcliffe being sent out from the offices of Simpsons to the Employment Tribunal at Liverpool on or around 24 June 2011. On the balance of probabilities that is more likely to have happened than not.

The Law

13. I set out below the law in relation to receipt of documentation and the rules and regulations that have assisted me in coming to my decision.

14. These proceedings were issued under the auspices of the old Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004 which are silent in relation to the date of delivery of documents.

15. However, rule 90 of the 2013 Rules mirrors the Civil Procedure Rules in that that rule provides as follows:-

“Where a document has been delivered in accordance with rule 85 or 86 it shall, unless the contrary is proved, be taken to have been received by the addressee –

(a) if sent by post on the day on which it would be delivered in the ordinary course of post.”

16. Under the Civil Procedure Rules first class post is assumed to have been received by the addressee on the next business day, or alternatively under rule 6.14 service is deemed to have taken place on the second business day after completion of the relevant steps. That would put, under the rules of the civil courts, the receipt of the claim form by the Tribunal on Tuesday 28 June 2011.

Conclusion

17. Applying those principles and rules as best I can to the facts of this case I came to the following conclusion. I refer to further findings of fact below for ease of presentation.

18. I have made enquiries of the Administration and it is clear that as far as both Liverpool Employment Tribunal and the Manchester Administration Centre is concerned the claim form was never received by the Tribunal in 2011, or if it was it must have been misplaced as it cannot be found.

19. On 31 August 2016 I caused a letter to be sent to Mr Tolcher and Ms Bakewell stating that Mrs Ratcliffe’s claim could not be processed as part of the multiple because the Tribunal had no record of receipt of her claim. I added to that letter this sentence:

“Therefore it can only be assumed claim forms for the above named claimants were never sent.”

20. At that time it had become apparent to the claimant’s solicitors that Mrs. Ratcliffe’s claim had not been issued. I made the above comment not knowing all the circumstances.

21. At that time there were two claimants in a similar position. I am now, however, only dealing with Mrs Ratcliffe’s claim.

22. I accept Mr Tolcher’s submission to me that these multiple equal pay claims are dealt with differently from the more straightforward, single claims that are received by the Tribunal relating to, for example, unfair dismissal, unlawful deduction of wages and/or discrimination.

23. In those cases when an ET1 is received it is served upon the respondent or respondents and within 28 days an ET3 is usually received and the matter either goes straight to a final hearing or there is a preliminary hearing in order for directions to be made. That process takes a matter of weeks.

24. However, I have to accept, that directions can be given, in some multiple equal pay cases, many months after the issue of the proceedings, that even preliminary hearings can take place months and years after the original application is made and that the vast majority of claims came, in 2011, in the form of one ET1 with an attachment listing many claimants.

25. I do understand that from the respondent's point of view it is galling now to have to deal with a case which they have had little, or no, knowledge of in the intervening six years.

26. I also accept that Mrs Ratcliffe's claim was unlike some of the other claims as it was not part of multiple claims set out on one ET1 with an annex of many claimants. Her claim was an individual claim.

27. I have to criticise the claimant's solicitors for not making enquiries when they did not receive any confirmation of receipt by the Tribunal of the ET1 or receiving a copy of the ET3 which would, in the normal scheme of things, arrive shortly after 28 days from the issue of proceedings.

28. However, on the evidence I have heard today, I accept that, on the balance of probabilities, it is more likely than not that the claim form was sent to the Tribunal and for some reason, either because the Post Office did not deliver it or because the Tribunal mislaid it, the proceedings have never got off the ground.

29. As I understand it, Mrs Ratcliffe is still an employee of the respondent. One question for a Tribunal to deal with will be how far back the compensation will go for her if she is successful in her claim. She has been employed since 1995 and so her claim for compensation has the potential to go back six years from 2011.

30. I recognise that it is the Council's contention that they ceased paying discriminatory bonuses as long ago as 2008.

31. Therefore there may still be time issues which have to be wrestled with in this litigation..

32. Consequently by backdating receipt of the claim form to 2011 there is potentially prejudice to the respondent.

33. Having weighed up the balance of prejudice, however, I take note that the greater prejudice will be upon the claimant in not being able to pursue her claim for equal pay from the point where she instructed her solicitors to issue proceedings

34. In one sense, however, that is not the issue for me today. All I have to decide is whether the claim form was sent to the Tribunal in 2011 and through, either administrative error or the vicissitudes of the post, the ET1 was never registered and then issued.

35. In all the circumstances of this case I believe that the claimant's solicitors did send an ET1 in 2011. It is unfortunate that it has not been processed and dealt with in the way that it should have been. Consequently I will allow the claim to proceed on the basis that Mrs Ratcliffe issued her proceedings by the Employment Tribunal on 28 June 2011.

36. Directions will now have to be made. Both parties should inform the Tribunal of their availability in that regard.

Employment Judge Robinson

04-12-17

Date_____

JUDGMENT AND REASONS SENT TO THE PARTIES ON

13 December 2017

FOR THE TRIBUNAL OFFICE