



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mrs K Belle**

v

**Respondent**

**Al Shira'aa Farms Ltd**

## PRELIMINARY HEARING

**Heard at: Watford**

**On: 27 June 2017**

**Before: Employment Judge Milner-Moore**

**Appearances:**

**For the Claimant: In person**

**For the Respondents: Ms B Criddle, Counsel**

## JUDGMENT

1. The correct respondent is Al Shir'aa Farms Ltd.
2. The complaints of breach of contract, unlawful deduction from wages and breach of the Working Time Regulations (regulation 14) are dismissed upon withdrawal.
3. The complaints of unfair dismissal and detrimental treatment contrary to s.47(b) of the Employment Rights Act 1996 are dismissed.
4. The complaint of disability discrimination proceeds.

## REASONS

1. This matter was listed for a PH to consider whether the tribunal had jurisdiction to hear the complaints being brought by the claimant and to consider issues of case management. The respondent contends that the tribunal has no such jurisdiction because the claims have been presented out of time.

2. In her ET 1 the claimant has brought the following complaints:

**Unfair dismissal**

- 2.1.1 The claimant alleges that the reason or principal reason for her dismissal was that she had made a protected disclosure.
- 2.1.1.1 In or around August 2016, the claimant alleges that she saw Thomas O'Brien mistreat a horse, kicking it several times, and on the following day, hitting it with a heavy leather head collar. The claimant says that shortly afterwards she informed Carol Anderson, who was the PA/Nanny of the Sheika, of the mistreatment she had witnessed.
- 2.1.1.2 The claimant relies on this exchange with Carol Anderson as having been a protected disclosure for the purposes of the whistle blowing provisions of the Employment Rights Act 1996.

**Detrimental treatment on grounds of having made a protected disclosure.**

- 2.2 The claimant alleges that, between the date of her protected disclosure and 6 January 2017, Thomas O'Brien subjected her to detrimental treatment and that he did so because she had made a protected disclosure. The detrimental treatment complained of was as follows:
- 2.2.1 That he spoke harshly to her and gave her the cold shoulder whilst at work;
- 2.2.2 That in or around September or October he singled her out to give her an unpleasant and difficult task (transporting some horses that were considered to be difficult to handle);
- 2.2.3 That on 22 November he gave her an unwarranted verbal warning;
- 2.2.4 That unlike other grooms employed at the respondent's farm he did not, in the period between 28 December and 6 January, allow her to work half days over the Christmas period; and
- 2.2.5 That he made her work alone during that period when others were working together.

**Disability discrimination**

- 2.3 The claimant alleges that during the first week of January 2017, Thomas O'Brien, knowing that she had hearing loss in her right ear, asked "When are you getting a hearing aid?" and the claimant relies on this as an act of disability discrimination.

**Breach of contract/unlawful deduction from wages/failure to pay outstanding holiday pay.**

- 2.4 During initial discussions aimed at clarifying the issues, these complaints were withdrawn by the claimant who accepted that there were no sums of money still owed to her.

**Correct Respondent**

3. The claim form was originally filed against Sheika Fatima Bint Hazza'Bin Zayed Al Nahyan at the address Al Shira'aa Farms Ltd. The claimant's contract of employment was with Al Shira'aa Farms Ltd and the respondent contends that this is the correct respondent. The claimant had filed against the Sheika (who was a director of the Al Shira'aa Farms Ltd) because she regarded her as the ultimate authority responsible for the management of the farm. However, the claimant's contract of employment clearly states that her employer is Al Shira'aa Farms Ltd and there was no evidence before me to suggest that the contract did not correctly and genuinely represent the position as to the identity of the claimant's employer. The fact that the Sheika may have been involved in decision making was entirely consistent with her role as a director of Al Shira'aa Farms Ltd. It was not suggested that the claimant had acted in bad faith or had been attempting to mislead by naming the Sheika as the respondent and I considered that this was a simple misunderstanding on the claimant's part. Nor was it suggested that any difficulty to the respondent would be occasioned by the amendment. I therefore considered it would be appropriate to amend the claim to record that Al Shira'aa Farms Ltd was the correct respondent. No objection to that amendment was raised by the respondent.
4. I had before me an agreed bundle of documents and a document headed "Claimant's List of Issues". By agreement that document was treated as the claimant's witness statement setting out the evidence that the claimant wished to give in relation to the timing of the presentation of her complaints to the tribunal.
5. It was common ground between the parties that the complaints lodged by the claimant in her claim form dated 10 April 2017 had been filed outside the ordinary statutory time limits applicable to such complaints. Time for bringing the complaint of unfair dismissal expired on 6 April 2017, by operation of s.111 of the Employment Rights Act 1996 which requires that such claims are presented within three months beginning with the effective date of termination. In the case of her complaints of detrimental treatment and disability discrimination time in relation to such complaints expired on 5 April 2017 (within three months beginning with the date of the act complained of).
6. The extension of time provisions set out in section 207B of the Employment Rights Act, which are triggered by ACAS early conciliation, did not avail the claimant because, as will be explained, the claimant did not contact ACAS to engage in early conciliation within the relevant time periods. Accordingly, the issues arising for determination were as follows:
  - 6.1 In relation to complaints of unfair dismissal and detrimental treatment on grounds of having made a protected disclosure, whether the claimant could establish that it was not reasonably practicable for her to have complied with the ordinary time limit and that she had presented her complaint within such further period as was reasonable;

- 6.2 In relation to the complaint of disability discrimination, whether the claimant could establish that she had presented her complaint within such period as was just and equitable.

## 7. The facts

- 7.1 The claimant began employment with the respondent on 1 June 2016 and was employed as a groom taking care of horses at the respondent's farm. The claimant was managed by Thomas O'Brien.
- 7.2 6 January 2017 was the last day on which the claimant attended work. On 7 January 2017, the claimant left a message to say that she would not be at work that day. Later that same day the claimant received a letter from Thomas O'Brien which summarily terminated her employment. The claimant alleges that she was dismissed by Thomas O'Brien for having made protected disclosures.
- 7.3 On Monday 30 January, responding to Mr O'Brien's letter, the claimant wrote in the following terms:

“Employment law Acts and employee legislation in Britain also protect the workforce against discrimination from co-workers and your employers. Having spoken to legal representatives with regards to my case I am now in a position to commence legal proceedings which will include unfair dismissal, harassment and discrimination. Should we not reach a satisfactory agreement within seven days of the date of this email legal proceedings will commence.”

- 7.4 The claimant was cross-examined about what legal advice she had sought about her case and what steps she had taken to inform herself as to the options that were available to her to bring legal proceedings and the steps that she needed to take. I find that, shortly after the claimant was dismissed, she began to research the possibility of bringing an employment tribunal complaint and that as part of that process she spoke to ACAS, having first done some research on the internet. (when the claimant wrote of having spoken to legal representatives, it was ACAS that she was referring to). When she spoke to ACAS she explained to them the “gist” of the matters that she was unhappy about and they explained to her that she could bring a complaint to an employment tribunal about such matters and that they told her that there was a three-month time limit for bringing such complaints. The claimant also very fairly accepted that ACAS explained to her when the relevant time limit ran from. The claimant confirmed that ACAS were encouraging her to try to resolve matters with her employer. The claimant's evidence was that ACAS did not explain to her that she needed to engage in a process of early conciliation before bringing an employment tribunal complaint and that it was not until she spoke to the employment tribunal in the period shortly before she filed her claim form that she was aware that there was a requirement of early conciliation. I find it implausible that ACAS would not have made mention of the requirement to engage in early conciliation during the discussions that the claimant had with them. The Respondent put in evidence the guidance which is published on the ACAS website which makes clear that there is a requirement to engage in early conciliation and the fact that

there is a statutory time limit for doing so. That guidance would have been available to the claimant.

- 7.5 On 3 February 2017 Mr O'Brien wrote to the claimant indicating that her complaints were not accepted and that the respondent was not prepared to engage in any attempt to reach an agreement with her.
- 7.6 It was not until 23 March that the claimant wrote to the respondent again. She wrote a letter to the Sheika (care of her ladies in waiting) and copied that letter to Thomas O'Brien. The claimant wrote directly to the Sheika because she believed that she was not being kept informed by Thomas O'Brien of what had gone on and she believed that once the Sheika saw her letter the Respondent might take a different approach. It is relevant to note that the letter was described as "Tribunal.dox" when attached to the covering email, so the claimant still had in mind the possibility of legal proceedings. The claimant subsequently attached this letter to her ET1 form as her grounds of complaint.
- 7.7 The claimant's letter stated that she had been unable to respond previously because of "personal illness". When giving evidence the claimant explained that she had suffered from anxiety and this was what she referred to as personal illness. The claimant asked for payment of certain monies that she considered to be outstanding and required a response within seven working days. When giving evidence about what she hoped to achieve with this letter, the claimant accepted that she knew that if she did not receive a satisfactory response the next step was to go to the employment tribunal. She also accepted that she knew that there was no guarantee that her personal appeal to the Sheika would result in matters being resolved to her satisfaction.
- 7.8 In late March, the claimant was offered administrative work with a friend and she started work on 1 April 2017.
- 7.9 The respondent replied to the claimant's letter of 23 March to the effect that matters were being looked in to and that a full response would be delayed whilst they approached Carol Anderson. The respondent's replies made clear that the claimant was unlikely to receive a response until the end of the week commencing 3 April 2017. A full response was not eventually received until Friday 7 April 2017 when the claimant received a letter from the Sheika confirming that her complaints were not accepted and that the respondent would not enter into any agreement to resolve matters with her.
- 7.10 Having received this response from the respondent on 7 April 2017, the claimant made contact with ACAS on 7 April 2017 to engage in early conciliation. The early conciliation certificate was issued on 10 April and the Claimant then filed her ET1, which was marked as received by the tribunal on 10 April 2017.

## **8. Relevant legal principles**

- 8.1 The case of Palmer v Southend on Sea Borough Council 1W.L.R.1129 summarises the matters that a tribunal should consider in determining whether it was reasonably practicable for a litigant to comply with a statutory time limit. In short, it is for the tribunal to investigate the substantial cause of the failure to comply with the time limit and to consider matters such as whether the individual was aware of the right to bring the statutory complaint in question, whether there has been misrepresentation on the employer's part as to any relevant matter, whether the individual has been advised and, if so, how and whether there has been substantial fault on the part of the individual who has failed to comply with the time limit.
- 8.2 The court also gave guidance as to the meaning of the phrase "reasonably practicable" and suggested that it should be understood as meaning "was it reasonably feasible" for an individual to present a complaint within the statutory time limit. The respondent also directed me to the case of Sodexo Health Services Ltd v Harmer UK EATS 0079/08/B1 in support of the proposition that ignorance would not be an excuse unless such ignorance was reasonable in all the circumstances.
- 8.3 I have considered the authority of British Coal Corporation v Keble which sets out some of the key factors that a tribunal should have regard to in considering whether or not time should be extended on the grounds that it would be just and equitable to do so. Such factors will include the length of and reasons for delay, the extent to which the cogency of evidence is likely to be affected by delay; the extent to which a respondent has co-operated with a request for information, the promptness with which the claimant acted once aware that he or she had a complaint and the steps taken by the claimant to obtain appropriate advice once aware of the possibility of taking action.

## 9. Conclusions

- 9.1 In her closing submissions, Ms Criddle argued that the date of presentation of the claimant's ET1 complaint should be regarded not as 10 April 2017 but as the date of the preliminary hearing. She relied on the fact that it was not until the hearing took place that the correct respondent (Al Shiraa Farms Limited) was substituted by amendment. Having considered the authority of Cocking v Sandhurst Stationers Ltd 1974 I.C.R 650, I consider that, when determining the question of the Tribunal's jurisdiction to hear this complaint, the relevant date for consideration is the date on which the ET1 was originally filed and not the date of any subsequent amendment of that claim form to correct the identity of the Respondent.
- 9.2 I have concluded that it was reasonably practicable for the claimant to have complied with the relevant statutory time limits relating to her complaints of unfair dismissal and detrimental treatment on grounds of protected disclosure. Accordingly, the Tribunal has no jurisdiction to hear those complaints. I have reached this conclusion for the reasons set out below:

- 9.2.1 By 30 January 2017, the claimant had undertaken some research and was aware of the right to bring employment tribunal proceedings in relation to these matters. She had also spoken to ACAS, had been made aware of the three-month time limit for doing so. I have found that ACAS would have made her aware of the requirement to engage in early conciliation as part of the discussions that she had with them, but, in any event, this requirement is clear from the published guidance on the ACAS website. If the claimant did somehow remain ignorant of the requirement to engage in early conciliation, that ignorance was not reasonable in the circumstances.
- 9.2.2 She was therefore aware that she could bring a claim, she knew, or ought to have known, what steps she needed to take in order to do so, what the time limit was and when it ran from.
- 9.2.3 This is not a case where the respondent misled the claimant as to the position and thereby caused any delay. The respondent had made clear that it would not be providing a response to the claimant's letter until it had had an opportunity to speak to Carol Anderson and it made clear a response was unlikely to be produced until the end of the week commencing 3 April 2017. The claimant was, or ought to have been, aware that the time limit would expire during that week. She also knew that there was, in any event, no guarantee that any response she received would resolve things to her satisfaction.
- 9.2.4 It is relevant to note that the claimant put forward no medical evidence to show how her anxiety at this time impacted on her ability to comply with the statutory time limits. I note that during the relevant period she was able to correspond with the respondent in fairly robust terms and that, once it was clear that no agreement was going to be reached, she took action promptly to file her complaint. I therefore conclude that, although the claimant may well have suffered from anxiety as a result of these matters, it was not affecting her to such a degree that it made it not reasonably practicable for her to have complied with the statutory time limit.
- 9.2.5 The claimant failed to comply with the time limit because she was hopeful that a personal appeal to the Sheika would resolve matters in her favour and she preferred to wait and see what the Sheika's response would be. However, it would have been reasonably feasible for her to bring her complaint before the statutory time limit expired.
- 9.3 Turning to the question of whether it would be just and equitable in all the circumstances to extend time to allow the disability discrimination complaint to proceed, I have borne in mind that it is for the claimant to establish that it would be just and equitable to extend time and that the exercise of discretion is to be regarded as the exception rather than the rule. I have had regard to the relevant factors as set out in British Coal Corporation v Keble. I have concluded that it would be just and equitable to extend time to allow the disability discrimination complaint to proceed. I have reached that conclusion for the following reasons:
- 9.3.1 The reason for the delay was that the claimant wished to resolve matters directly with her employer and was awaiting a response from her employer.

- 9.3.2 Once it became clear that an agreement with her employer was not likely to be reached, the claimant acted promptly to contact ACAS to begin the early conciliation process, subsequently filing her employment tribunal complaint on the date that the early conciliation certificate was issued. The period of delay in question is very short. Had the Claimant contacted ACAS to engage in conciliation a day earlier section 207(B) of the Employment Rights Act 1996 would have been triggered and time extended.
- 9.3.3 No evidence was put forward by the respondent to suggest that the delay would cause any prejudice to it in relation to the evidence that it would be able to adduce at any hearing.

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**Employment Judge Milner-Moore**

Sent to the parties on:

...17/07/17.....

For the Tribunal:

.....18/08/17.....