



# EMPLOYMENT TRIBUNALS

**Claimant:** X  
**Respondent:** Y

**HELD AT:** Hull **ON:** 19 March 2018

**BEFORE:** Employment Judge Knowles (sitting alone)

## REPRESENTATION:

**Claimant:** In person  
**Respondent:** Mr Ho, Solicitor

## JUDGMENT

### PRELIMINARY HEARING Employment Tribunals Rules of Procedure 2013 Rule 53(1)(b)

#### Judgment

The Judgment of the employment tribunal is that the Claimant's claims should proceed to a full hearing. It was not reasonably practicable for the Claimant's claims under the Employment Rights Act 1996 to have been brought within the ordinary time limit and the claim was brought within a reasonable period thereafter. It would be just and equitable to extend time so as to allow her claims under the Equality Act 2010 to proceed to a full hearing.

Having considered all of the circumstances of the case I consider that it is in the interests of justice to make an anonymity order under Rule 50 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013. This is an order that

- (i) the identities of the parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation and
- (ii) an order for measures preventing witnesses at a public hearing being identifiable by members of the public.

# REASONS

## Issues

1. The purpose of this hearing was to determine whether or not the tribunal has jurisdiction to hear the Claimant's claims because they appeared to be made out of time. Indeed the Claimant accepts they were brought outside the primary time limit for claims under the Employment Rights Act 1996 and Equality Act 2010.

## Evidence

2. I heard evidence from the Claimant. The Respondent produced a bundle of documents consisting of 43 pages. The Respondent added written submissions, 5 pages, and the Claimant brought with her some additional documents that she wished me to consider, 10 pages. I added these to the bundle as sections 2 and 3 respectively.

## Findings

3. The Claimant commenced employment for the Respondent 19 August 2013. In or around March 2015 the Claimant advised the Respondent and her work colleagues that she was pregnant and expecting her third child. She raised a grievance on 10 September 2015 concerning several issues. She finished work on 1 October 2015 to begin maternity leave. The Claimant gave birth to her daughter A on 9 October 2015. On 1 January 2016 the Claimant's husband contacted the Respondent advising them that the Claimant had fabricated her grievances. The Respondent attempted several times to engage with the Claimant over the allegation but the Claimant refused to attend a hearing. Correspondence over the issue did however pass between the parties. The Claimant advised the Respondent that she was on leave. A disciplinary hearing was held on 30 September 2016 and in her absence the Respondent dismissed the Claimant without notice for fabricating her grievance. The outcome letter is contained in the bundle of documents at pages 25-28 and is dated 6 October 2016. The Claimant was offered a right to appeal and initiated an appeal but did not pursue the process when the Respondent advised her that they would await further contact from her as to when she was ready to proceed. The Claimant had told them she was not well enough to attend at that stage. The Respondent did not hear from the Claimant further about whether she was ready to pursue her appeal. The Claimant took no further action in terms of internal procedures.
4. I will set out the Claimant's complaints below however they relate either to matters during her employment or to her dismissal, and the latest date of any asserted act by the Respondent which contravened employment law is therefore the Claimant's effective date of termination of employment.
5. The Respondent has suggested that the effective date of termination of employment was at the disciplinary hearing on 30 September 2016 but it is common ground that the decision to dismiss the Claimant summarily without notice was taken in her absence and the outcome not communicated to her until she received through the post the confirmation letter dated 6 October 2016. A

dismissal will only be effective when the Claimant receives notification that she has been dismissed.

6. I find that the effective date of termination of employment is 8 October 2016, which is the last date of the any of the acts which the Claimant complains about.
7. The earliest act which the Claimant complains about is a failure to undertake a risk assessment concerning her pregnancy, from around April 2015.
8. The range of dates of the Claimant's complaints is therefore April 2015 to 8 October 2016.
9. The Claimant notified ACAS of her complaints on 14 March 2017. This is, at its best, at least 2 months outside of primary time limits which expire, at their latest, on 7 January 2017. An early conciliation certificate was issued 7 April 2017.
10. The Claimant instituted her complaints by submitting her claim form to the tribunal on 4 August 2017.
11. At the beginning of the hearing, I took time to hear from the Claimant an explanation of what acts she was specifically raising in her claim, and when those acts occurred.
12. The Claimant explained to me that, in her words, the problems that she had encountered during her period of employment with the Respondent were as follows:
  - a. *That **inappropriate comments** were made to her on 8, 15, 22 and 24 July 2015. She set these out to the Respondent in her grievance letter dated 10 September 2015. She asserts that each of these comments were inappropriate and related to her pregnancy. All of the allegations are against Mr Furman, the Claimant's line manager.*
  - b. *That the Respondent **failed to assess risks to her during her pregnancy** through omitting to undertake a risk assessment and forcing her to continue travel to clients to attend their premises. The Claimant considers that the amount of travel was a risk in itself but additionally that some of the premises were unsafe for her as a pregnant woman. The travel and attendances at client premises which she specifically raises in her complaint were between 14 April 2015 and 10 September 2015.*
  - c. *That the Respondent **scrutinised her movements** between July and October 2015.*
  - d. *That the Respondent **subjected her to unwarranted disciplinary process based on a statement from her aggrieved husband and bombarded her with requests to attend a disciplinary hearing.** The allegations by her husband, which led to disciplinary process being instituted against the Claimant by the Respondent, which were made 13 January 2016 and the final invitation to a hearing was that for the hearing on 30 September 2016.*

e. ***She was dismissed*** – I found the Claimant have been dismissed with an effective date of termination 8 October 2016.

13. The Claimant ticked the box in her claim form concerning payments due but has advised me at this hearing that her only claims for pay relate to what she has lost by reason of being dismissed. I consider it implicit that where the Claimant has brought a claim that her dismissal was unwarranted that this includes also a claim of **breach of contract for wrongful dismissal**.
14. The Claimant's witness statement is contained in her documents at pages 2-4. She recites her complaints as summarised above. She then gives evidence concerning the reasons for the delay in putting in her tribunal claim. She states that she was advised by ACAS that she was not obliged to attend a disciplinary meeting whilst she was on maternity leave. She states that as a result of her dismissal she lost a high-profile account manager role resulting in her family and her becoming homeless, losing her career and company car and forcing them to live in one room in a women's refuge. She states that the impact this has had, in particular on her two boys aged eight and ten was considerable. She states that no checks were done to corroborate her ex-husband's accusations. She states that the police have been called out 15 times to deal with her ex-husband. She states that her ex-husband made the call to the Respondent on the same day that he was served with a restraining order by the Claimant. She states that her ex-husband continued for a further two years to control her through twenty six (26) court hearings in the family court concerning contact with the children. She states that he had an injunction placed on her so that she could not leave Cheshire and accused her of abuse. She recites paragraphs from a psychology report on the family which describes her ex-husband as showing at least a moderate degree of psychopathology characteristics, with over controlled internal cohesion wherein basic intentions and interactions with others are framed within a constricted and defensive mind-set. The quotations she shares state, amongst other similar conclusions, that the assessment data suggests that a pronounced distrust typifies her ex-husband's behaviour and relationships, creating a distorted sense that others and their circumstances are, for the most part malevolent, in nature. The description is of a man with a sense of authority and control and a tendency to become incensed, resentful and possibly vengeful. He is described as a highly mistrusting individual. The paragraph states that he may engage in increasing reckless and erratic pursuits under periods of distress. The Claimant suggests that the Respondent was looking a reason to get her out and believed they had found one. She states that she subsequently found herself living in a daily nightmare of trying to raise her family of three children, including a baby, combined with homelessness and trying to fight a continued attack of coercive control by her ex-husband. She states that all of this had to take priority over any requests for disciplinary meetings at work. She states that the disciplinary attendance requests drove her into depression and stress to the extent that she faced mental breakdown and some days wanted to end her life. She produced no medical evidence at the hearing. She states that after having lived in a woman's refuge for 16 months in one room under the wing and support of the CWA, taking many courses in self-worth and rebuilding her life, her eyes have been opened to how many women's' lives are impacted by domestic abuse and states that she now wishes to help support victims. She concluded by stating that she has no doubt in her mind that if her ex-husband hadn't called the

Respondent that day, then the whole sequence of events that followed would not have happened. She states that it had a catastrophic effect on how her life turned out from that very point. She states that it is her belief that her dismissal, subsequent homelessness, and the emotional and psychological impact of living in a refuge has had on her and her children's life was a direct consequence of that phone call. She states that it is because of those extenuating circumstances that she is asking the tribunal to allow her unfair dismissal hearing to proceed even though the time limit has lapsed. She states that it is only now that she has the strength to say what the Respondent did was unacceptable, and she wishes to highlight this case to others that they too have rights and to stand up for what they believe, most importantly she wishes to inspire other women to find the courage to rebuild their lives too. She states that justice and truth should never in her opinion be restricted by the length of time it takes to be delivered.

15. In answer to questions from the Respondent at the hearing the Claimant stated that she did take advice from ACAS prior to dismissal. She states that she did not take advice from anyone else. However she also mentioned contacting solicitors for free initial consultations and stated that they were all saying that she was not obliged to attend a disciplinary hearing during her maternity leave. This contradicted her previous insistence that she was only advised by ACAS. She stated that she does not recall any of the advisers that she spoke to mentioning time limits; she states that she was under a lot of stress. Asked again did anyone mention time limits to achieve states not that she recalls. She states that she did not have time to access the Internet or research the law herself. She confirmed that she visited two Members of Parliament. She confirmed that one Member of Parliament made a subject access request on her behalf but the response was sent that MP. She confirmed that she received the letter which stated that in relation to her appeal she could go back to the Respondent at her leisure. She states that she sent in a sick note. She states that she did not take up the appeal due to the complexities of her home situation and that she was not in the frame of mind to do that. She states that she did not receive the content of the answer to the subject access request from her MP. She reiterated that she was living in a refuge and had a lot to deal with. She's stated that she was prioritising other circumstances which were out of control. She states that she was dealing with so many situations. She had twenty six court cases concerning her family together with meetings with her solicitor and school. She stated that between October 2016 and January 2017 she believes she attended six or seven court cases but the work around these cases was substantial involving social services, family liaison, domestic abuse, police and the charity Cheshire Without Abuse. She confirmed that it only took two hours to complete her claim form. She stated that she completed it with the help of a support worker. She stated that she put her baby daughter in a crèche so they could complete it. She states that she had other paperwork to deal with at the time. She confirmed that she had been in a relationship with a new partner for the past 12 months but was unable to leave Cheshire; her new partner lived in Hull and therefore he could not support as he wished. Asked if she was claiming that she was medically incapable of completing the claim form she did not confirm that but stated that she was fragile and vulnerable. She stated she was not on medication. She denied contemplating a tribunal claim when raising her grievance. She stated that she had faith in the Respondent believed that they could work through a solution.

16. In answer to questions from me the Claimant stated that she was not aware of time limits until she received the Respondent's response to her claim. She stated that was the first time it sunk in. Asked whether by stating that was the first time it sunk in she was therefore aware of time limits at some previous point she replied that she didn't take it in with a clear mind set. She stated she did not react as quickly as she should. She states she was dealing with so much. She states she does not recall feeling that her claim was out of time. She stated that the timing of her claim was nothing to do with the change in the regime for fees for bringing a tribunal claim.
17. The Respondent's bundle contains the claim and the response form. A copy of the confirmation of summary dismissal letter dated 6 October 2016 is contained at pages 25-28. It is clear from the dismissal letter that the Respondent did engage with the question of whether or not the Claimant's ex-husband assertions were true or malicious, based on the evidence they had and the communications received from the Claimant in writing.
18. The bundle also contains at page 30 copy of an e-mail dated 1 November 2016 from the Respondent to the Claimant concerning her desire to appeal suggesting that the Claimant get in contact with the Respondent when she feels able to attend an appeal hearing. The bundle contains her appeal e-mail at pages 36 to 38. A copy of the response to the subject access request dated 22 December 2016 is contained at pages 39-41. At pages 42-43 are an early conciliation certificates and e-mail dated 7 April 2017 which refers to time limits and it being the prospective Claimant's responsibility to ensure a claim is instituted in time.
19. Within the Claimant's papers at page 1 is a copy of a letter from the Claimant's Member of Parliament dated 5 October 2017 to the Bar pro bono unit. At page 5 is a copy of a letter from Cheshire Without Abuse dated 15 March 2018. This states that the Claimant was under exceptional pressure and had to concentrate her time and effort in order to help herself and children move on from their experiences and rebuild their lives. At pages 6-7 is an acceptance of her application for assistance by the bar pro bono unit however the Claimant has confirmed that they are still seeking to find her a barrister.
20. At page 9 is a copy of a letter from West Cheshire Domestic Abuse Family Safety unit dated 25 January 2018. This describes the Claimant having been referred on 20 October 2015 by her health visitor due to ongoing domestic abuse. It refers to the Claimant being assessed as being at high risk of serious or fatal harm. It states that the prohibited steps order has now been lifted and she is finally able to make a planned move to be closer to her new partner and asks that she is given priority for rehousing. At page 10 is a copy of a letter from the Claimant's Family Intervention Worker concerning support for the family being rehoused closer to Hull.

#### Submissions

21. In submissions the Respondent referred to the support that the Claimant had received from her MP, from ACAS and from solicitors and stated that it was difficult to believe that nobody had advised her of the time limits. They submitted that she had opportunities to bring her complaints. They stated it would not be

just and equitable to allow the claims to proceed. They expressed sympathy for the Claimant having rightfully prioritised her family. However they referred to case law concerning reasonable practicability and just and equitable extensions which are elaborated on in their five pages of written submissions which are contained in their bundle of documents.

22. In submissions the Claimant stated that nobody should lose their job on the basis of an ex-husband's allegations. She states that she deserves the right to challenge a decision which led to her losing her home. She states that there are genuine reasons for the delay in bringing her claim.

#### The Law

23. The statutory time limit for bringing a claim under the Employment Rights Act 1996 (ERA) is set out in section 111 which provides:

**111. Complaints to employment tribunal**

- (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.*
- (2A) *Section ... 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2)(a).*

24. The statutory time limit for bringing a complaint under the Equality Act 2010 (EQA) is set out in section 123 which provides as follows:

**123 Time limits**

- (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.*

...

- (3) *For the purposes of this section—*
- (a) *conduct extending over a period is to be treated as done at the end of the period;*
  - (b) *failure to do something is to be treated as occurring when the person in question decided on it.*
- (4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
- (a) *when P does an act inconsistent with doing it, or*
  - (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

25. Section 140B of the EQA refers to extensions of primary time limits for early conciliation as per section 111(2A) of the ERA. The period for early conciliation has no relevance in this case because the Claimant instituted early conciliation after the expiry of the primary time limits.
26. In **Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA**, the Court of Appeal conducted a general review of the authorities under the ERA and concluded that reasonably practicable does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like '*reasonably feasible*'. Lady Smith in **Asda Stores Ltd v Kauser EAT 0165/07** explained it in the following words: '*the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*'.
27. The Court of Appeal in **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 EWCA Civ 640, CA**, stated that it was plain from the language used ('such other period as the employment tribunal thinks just and equitable') that Parliament chose to give employment tribunals the widest possible discretion under the EQA. Unlike other limitation provisions, section 123 does not specify any list of factors to which a tribunal is instructed to have regard, and the Court of Appeal held that it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a list. Although it had been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see **British Coal Corporation v Keeble and ors 1997 IRLR 336**), a tribunal is not required to go through that list. The tribunal is only required to ensure that it does not leave a significant factor out of account (**Southwark London Borough Council v Afolabi 2003 ICR 800, CA**). The Court of Appeal pointed out, however, that there are two factors that are almost always relevant when considering the exercise of any discretion whether to extend time – the length of, and reasons for, the delay; and whether the delay has prejudiced the Respondent.
28. The EAT in **British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT**, suggested that tribunals would be assisted by considering the factors listed in



section 33 of the Limitation Act 1980 i.e. the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular, the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action. In **Lupetti v Wrens Old House Ltd 1984 ICR 348, EAT**, the Appeal Tribunal added that tribunals may, if they consider it necessary, also consider the merits of the claim, but if they do so they should invite the parties to make submissions.

### Conclusions

29. I consider that it would be in the interests of justice to make orders concerning the anonymity of the parties until the claims are concluded at a full hearing, at which point, if not before, further representations may be made by the parties. The claim involves background information about matters which may be considered allegations of criminal conduct by a third party and information concerning private matters involving the Claimant and her three children who have been through extensive family court proceedings.
30. The period of delay in bringing these claims is considerable, particularly in relation to the 2015 matters raised by the Claimant. It would be a rare and exceptional case for time to be extended by so great a time so as to allow a claim brought in August 2017 to proceed concerning matters occurring between April 2016 and 8 October 2016.
31. However the Claimant's explanation for the period of delay has considerable weight. Reasons for delay extend over a significant period and will have been a very considerable burden on the Claimant's well-being and have had a deep and significant impact not only on her priorities but also on her ability to engage in matters outside the direct arena of dispute concerning marriage her children.
32. It is not disputed that the Claimant was a victim of domestic abuse, going through a very acrimonious divorce, engaged in 26 family hearings with a new born baby whilst living in a women's refuge with two older children aged 8 and 10. The Claimant's credibility and the weight of her personal situation has not been challenged by the Respondent, in submissions they referred to her 'rightfully' prioritising her children. I concur with the Respondent on this point.
33. She could possibly have brought her employment tribunal proceedings earlier; it would have taken her little time with the kind of support she found from a support worker in August 2017. It was theoretically possible to bring her claim earlier.
34. However, her circumstances had such a deep and significant impact on her ability to engage in matters outside of the direct arena of dispute concerning her children that in my conclusion the threshold of not reasonable feasible is met in the Claimant's particular circumstances and situation.

35. The claims were brought within a reasonable period of family matters settling down relatively speaking; indeed they appear to have been brought very soon after the Claimant had secured her freedom to move away from her ex-husband with her children and family proceedings were being brought to a close.
36. In my conclusion the Claimant's situation was so significantly restraining her ability to engage in another litigation arena that it was not reasonably feasible for her to bring her claims earlier and her claims were brought within a reasonable period thereafter. Therefore time for bringing her claims under the ERA should be extended to allow her claims to proceed to a full hearing.
37. In my conclusion there would be little prejudice to the Respondent in allowing these claims to proceed. I note that the 2015 matters were fully investigated and recorded during internal proceedings by the Respondent. The 2016 dismissal generate lengthy reasons in writing. No suggestion has been made to me by the Respondent that witnesses are not available to the Respondent. Their memories will be greatly assisted by the documentation which has been generated contemporaneously. The period of delay whilst considerable does not in my conclusion lead me to consider that memories will be so significantly impaired that a fair hearing cannot proceed.
38. I conclude that the Claimant was advised as to time limits but cannot remember the specific details she was told and in any event, as she states, had other very serious and compelling priorities that required significant investment in terms of time and both physical and mental effort.
39. She was a vulnerable person under very significant pressure during the period of delay between the last matter being complained of and bringing her claims. The Claimant appears to me, as stated above in relation to my findings concerning an extension of time under the ERA, to have brought her claim within a reasonable period after the family dispute had, relatively speaking, settled down.
40. I note the depth of feeling that the Claimant has over the issues she raises having gone through an acrimonious family dispute with her ex-husband and the obvious connection she will feel between that and her dismissal, the dismissal being based on her ex-husband's assertions the day she served upon him a restraining order.
41. Considering the circumstances in the round, I conclude that the balance of prejudice would be greater on the Claimant than the Respondent were time not to be extended. It would be just and equitable in my conclusion to extend time and to allow the Claimant's claims under the EQA to proceed to a full hearing.

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Employment Judge Knowles

25/04/2018

