



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J H Broadbent

**Respondent:** Co-Operative Group Limited

**Heard at:** Manchester

**On:** 15 February 2019

**Before:** Regional Employment Judge Parkin

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms A Niaz-Dickinson, Counsel

# JUDGMENT ON A PRELIMINARY HEARING

**The Judgment of the Tribunal is that** the claimant's unfair dismissal claim presented on 18 May 2018 was presented in time and the Tribunal has jurisdiction to consider that claim at a final hearing.

## REASONS

1. By a claim presented by post at Leicester Central Office on 18 May 2018, the claimant claimed constructive unfair dismissal in respect of the termination of her employment as a Customer Team Leader at Delph Village Store when she resigned on 18 January 2018.
2. By its ET3 response presented on 5 July 2018 the respondent vigorously resisted the claim, although accepting the date 18 January 2018 as the effective date of termination of the claimant's employment. Further to its application by a letter dated 8 August 2018, the Tribunal changed the listing from a final hearing listed at

service to a preliminary hearing to determine whether the unfair dismissal claim was presented in time having regard to the statutory provisions including early conciliation provisions or, if not, whether it was not reasonably practicable to present it in time but it was presented within such a reasonable period thereafter that the Tribunal could still consider it.

3. At the preliminary hearing, no evidence was heard but the Tribunal first canvassed with the parties whether the claimant's employment had terminated on 18 January 2018 or, having regard to the content of paragraphs 8 and 9 of the grounds of resistance, whether it had in fact terminated on 22 January 2018 when the claimant provided the Store Manager with her letter of resignation dated 18 January 2018. On fuller instructions taken by the respondent's counsel and confirmation by the claimant herself, the Tribunal accepted that the effective date of termination was 18 January 2018 as set out both in the ET1 claim form and ET3 response, since what happened that day was the claimant's appointed trade union representative contacting the respondent the day before a further investigatory meeting on 19 January 2018 and notifying the respondent that the claimant would not attend that meeting as she was resigning with immediate effect. The notification of immediate termination by the representative as her agent was then merely confirmed by the claimant's attendance at the store on 22 January 2018 when she handed over the letter which was dated 18 January 2018.

4. There followed considerable discussion with the respondent's counsel in respect of the extension of time limit provisions at section 207B of the Employment Rights Act 1996 and their impact upon the ordinary unfair dismissal time limit section 111(2). Following such discussion and research of legal authorities, in particular the leading EAT case of **Luton Borough Council v Haque [2018] ICR 1388**, the Judge explained his understanding of the effect of section 207B(2) and (3) as being that the claimant received the benefit of an extended time limit otherwise known as "stop-the-clock" provision such that the period when she was engaged actively in early conciliation was not taken into account but extended the primary time limit.

5. The Judge analysed the dates, such that the 3-month primary time limit would have expired on 17 April 2018 but for the early conciliation provisions. Day A on the early conciliation certificate recording the claimant's notification to ACAS was 6 March 2018. Day B recording the date of issue by ACAS of the certificate was 6 April 2018. Applying section 207B(3) the period beginning with the day after day A and ending with day B, 7 March to 6 April 2018, amounts to a period of 31 days. The Judge explained that he was taking the approach of days (rather than eg a month) by reference to the **Haque** authority in particular paragraph 9 of that Judgment where the EAT Judge under the overall heading "The Relevant Statutory Provisions" and the further heading "Section 207(3)" set out the effect of the subsection in days. On the facts of **Haque** the "stop-the-clock" extension" amounted to 31 days from day A to day B and the Judgment shows that this period of 31 days was added to the original end date of the primary time limit and formed the extension granted to that claimant.

6. Counsel's researches did not provide any further guidance from the higher Courts or Tribunals on the meaning of the words: "the period beginning with the day after day A and ending with day B", and counsel did not challenge the Judge's understanding, having regard to the application of the same provisions within **Haque**.

7. In those circumstances, without hearing evidence or more extensive submissions from either side, the Judge concluded that the claimant's unfair dismissal claim presented on 18 May 2018, which alleged a constructive dismissal on 18 January 2018, was just in time having regard to the 31 days added under the "stop-the-clock" provision. No consideration of whether it was reasonably practicable to present it in time or not is raised. By way of comment, it appears that the claimant here has benefitted from the fact that the month in which the primary time limit would have expired, April 2018, was a 30-day rather than a 31-day month. Had there been an April 31<sup>st</sup>, the 31 day period of extension would have expired on 17 May 2018, making her claim out of time. This chance effect might be viewed in rather the same way as the potential disadvantage to a claimant who do not get the same number of days within a three month period of primary limitation as others, such as when 30 day months or indeed the shorter month of February are brought into account.

Regional Employment Judge Parkin

Date 19 February 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

22 February 2019

FOR THE TRIBUNAL OFFICE