



EMPLOYMENT TRIBUNALS

Claimant

Ms A Badejo

V

Respondent

Royal Free London NHS Foundation Trust

PRELIMINARY HEARING

Heard at: Watford Employment Tribunal

On: 24 January 2019

Before: Employment Judge Daniels

Appearances:

For the Claimant: Mrs Hodgson, Counsel

For the Respondents: Ms Kennedy, Counsel

JUDGMENT

The Employment Tribunal has jurisdiction to hear the claim for unfair dismissal as this claim was filed in time (as it was not reasonably practicable for the claimant to bring the claim in time and the claim was brought within a reasonable period thereafter).

REASONS

Introduction

1. The claimant was employed by the Trust as a Healthcare Assistant in the Trust's Spruce Ward. Her employment with the Trust commenced on 14 February 2008 and continued until she was dismissed, with payment in lieu of notice, with effect from 31 January 2018.

The Evidence

2. I heard evidence from the claimant on her own behalf and from Ms Jane Woollard of the respondent, the Divisional Nurse Director for Medicine and Urgent Care for Barnet Hospital. There was also a helpful bundle of documents.

The Facts

3. In May 2017, an alleged incident occurred in the Trust's Spruce Ward and it led to disciplinary allegations being made against the claimant which led to a disciplinary hearing on 31 January 2018. The claimant was dismissed by Ms Woollard in the disciplinary hearing for alleged conduct reasons.
4. The decision to dismiss was confirmed in a letter dated 23 February 2018.
5. The claimant has subsequently accepted that the effective date of termination of employment was 31 January 2018.
6. The claimant issued a two-page appeal letter on 8 March 2019, received by the Trust on 9 March 2019. The claimant had been taking antidepressant medication for some significant time before the termination of her employment on 5 April 2018.
7. The ordinary time limit for unfair dismissal would ordinarily have expired on 30 April 2018 absent prior ACAS conciliation.
8. The claimant became significantly unwell following her dismissal by the respondent. A few weeks after the letter confirming dismissal, and around four weeks after the end of employment, the claimant visited her General Practitioner who recorded that the claimant
9. On 5 April 2018, the GP surgery referred the claimant to the Mental Health Crisis Team.
10. On 13 April 2018 Dr Carrier noted that the claimant had ongoing

“antidepressant, nil suicide/red flags, anxious and shaky when sees NHS uniforms or goes past NHS buildings/hospitals. “

Clearly the claimant continued to have significant ill-health at that time.

11. By 4 May 2018, a referral was made to Mr Rakesh, who noted:

“The claimant was feeling suicidal with an intent to end her life using insulin. Trigger for suicidal thoughts lost her work following an allegation of neglect. Protective factor is her son, Tommy and family. Anxiety reactions since then, whenever she is close to Barnet sees and NHS badge or anything related to that incident when she got fired her body shakes and gets other symptoms of anxiety.

Presentation:

During the meeting she was in tears every time she was talking about her unfairness of being sacked. No one believing her. She will not find a job and her kids life is being affected. She said she can't trust people

anymore. Will find it hard to work with others. She spends her lone time thing about all the above and feels worst. Abisiola found it difficult to think of an alternate reality where she could find a job. Acknowledged and agreed with her that she may never forget about this incident.”

The claimant commenced ACAS early conciliation on 21 May and was issued with the ACAS Certificate on 22 May. Her claim form for unfair dismissal was issued in the Watford Employment Tribunal on 24 May 2018.

Relevant legal provisions

12. The legal test in a case for unfair dismissal where the ordinary time limit is not met is to consider whether it was not reasonably practicable for the claimant to present the claim within the time limit under s.111 (2) (b) Employment Rights Act 1996.
13. Case law has established that three general rules apply when approaching the question;
 - 13.1 Firstly, following the case of **Dedman v British Building and Engineering Appliances Limited [1974] ICR 53CA**, the Employment Rights Act should be given a liberal construction in favour of the employee.
 - 13.2 Secondly, what is reasonably practicable is a question of fact and that is a matter for the tribunal to decide. The test is empirical and involves no legal concept. Practical common sense is the key note.
 - 13.3 Thirdly, the onus of proving that presentation in time was not reasonably practicable rests on the claimant. That imposes a duty upon him or her to show precisely why it was that he did not present his complaint. See **Porter v Banderidge Limited [1978] ICR 943 CA**.
14. In **Palmer v Southend on Sea Borough Council [1984] ICR 372 CA**, the Court of Appeal conducted a general review of the authorities 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 to favourable to employers but means something like reasonably feasible.
15. A claimant's complete ignorance of his/her right to claim unfair dismissal may make it not reasonably practicable to present a claim in time but the claimant's ignorance must itself be reasonable as Lord Scarman commented in **Dedman v British Building**.
16. In **Scholtz v Esso Petroleum Company Limited [1999] ICR 1202 CA**, the Court of Appeal stated that illness may, on occasions, justify the late submission of claims. In that case the Court found that during the last six weeks of the three-month time limit the claimant had been too depressed to instruct solicitors and overruling the Tribunal and the Employment Appeal Tribunal held that it was not reasonably practicable for the claimant to have presented his claim in time. The Court emphasised that the test was one of practicability, what could be done, not

whether it was reasonable not to do what could be done. In the Court's view the Tribunal had failed to have regard to all the surrounding circumstances which included the fact that the claimant had been trying to avoid litigation by pursuing an appeal against his dismissal. Although it was necessary to consider what could have been done during the whole of the limitation period, it was stated that attention should be focused on the closing stages rather than the earlier ones.

Conclusions

17. In the circumstances of this case I note the following significant facts in considering whether or not it was not reasonably practicable for the claimant to file proceedings within the ordinary time limit and/or an extension of time was appropriate under s.112 of the Employment Rights Act:
 - 17.1 Firstly, the claimant clearly from 1 March 2018, only 31 days after the dismissal and 8 days after the latter confirming the date of dismissal, had a significant and unpleasant mental illness which escalated (ie got worse) over the relevant time period.
 - 17.2 During the period in which the time limit was running the claimant suffered a host of materially disabling symptoms, including shaking, completely wishing to avoid the issue, suicidal thoughts, repeated crying and tearfulness and very low mood.
 - 17.3 The illness was a prolonged illness from 1 March 2018 until May 2018. It was very much applicable in the closing stages of the time limit.
 - 17.4 The claimant had already been on antidepressants from prior to dismissal. This was not a new and sudden development, which the claimant had only recently experienced. The claimant had, for some time, been taking antidepressants as a result of concerns about matters arising in the workplace.
18. Whilst it is noted by the respondent that the claimant did, with the assistance of her partner, file a two-page letter of appeal, this was sent on 8 March 2018, only 16 days after the letter confirming the date of her dismissal and only 5 weeks after the disciplinary meeting. This was only just after dismissal. There were a further 8 or so weeks left of the time period which would normally be available to a claimant in order to consider bringing a claim for unfair dismissal. However, by just 1 March 2018 the claimant was already experiencing significant health problems. These then got worse.
19. I note that it was only when the claimant obtained the help of Mr Rakesh on 4 May 2018, over two months later, that she became aware of the time limit issue and a need to pursue the matter with ACAS. She then acted very quickly having done so, filing the ACAS certificate on 21 May 2018 and filed her tribunal claim on 22 May 2018.
20. I also find that, as a matter of fact, the claimant was genuinely ignorant of the relevant time limits during the key time frame. There was cogent evidence before me to suggest that the claimant thought she needed to wait three months

before bringing a claim rather than her having to bring a claim within three months. This was yet further evidence supporting her position that it was not reasonably practicable to bring a claim in time.

21. In summary, this was a claimant who was suffering from illness for two of the three months of the time period and an illness that was significant and disabling. She was also significantly hampered in being able to seek both legal advice and external help. This is particularly so in relation to a condition which left her with serious suicidal thoughts and a desire to completely avoid going through what she felt to be the distressing events of her dismissal.
22. I do not accept the respondent's suggestion that she could simply pass on the matter to her partner. Even if she had considered doing so, she would still have had to have addressed the thoughts that she was having about the incidents of her dismissal. This was something she was entitled to wish to avoid. This alternative possibility did not get close to making it reasonably practicable for her to file her claim in time.
23. In all the circumstances of this case I conclude there were clear and compelling reasons to find that it was not reasonably practicable for the claimant to file proceedings within the ordinary time limit and that an extension of time was appropriate under s.112 of the Employment Rights Act. I also find that she filed proceedings within a reasonable time period thereafter. In fact, she was very quick in acting once it had been explained to her how she could so and she had got some meaningful help in doing so.
24. Therefore, for all these reasons, I have found that it was not reasonably practicable for this claimant, in all the facts and circumstances of this case, to bring the claim within the ordinary time limit and the claim was lodged within a reasonable period thereafter. The claim is in time and may proceed.

9 May 2019

Employment Judge Daniels

Sent to the parties on:

.....13.05.19.....

For the Tribunal:

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