



EMPLOYMENT TRIBUNALS

Claimant: Miss T Milford

Respondent: Cardiff County Council

Heard at: Cardiff by video link

On: 8th January 2024

Before: EJ W Brady

Representation

Claimant: In Person

Respondent: Ms Williams (Counsel)

JUDGMENT having been sent to the parties on 23rd January 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction:

1. The Claimant was a corporate trainee employed by the Respondent. She was employed on a temporary basis and worked as a customer service representative. The Claimant's employment with the Respondent ended on 23rd February 2023. The Claimant claims Unfair Dismissal, the effective date of dismissal was 23 February 2023. ACAS was notified under the early conciliation procedure on 16 May 2023 and the certificate was issued on 27th June 2023. The Claimant filed an ET1 on 25th June 2023. That ET1 was rejected. The Time limit for issuing an ET1 expired on 27th July 2023. A new ET1 was submitted on 9th August 2023. The Respondent states that the claim was 13 days out of time and should be struck out.
2. The case was listed for a preliminary hearing to decide the following:
 - 2.1 Should the claim or any part of it be struck out because the claimant has no reasonable prospect of establishing that:
It was not reasonably practicable to present the claim within the time limit; and
The claim was presented within a reasonable period?

- 2.2 If not, should the claimant be ordered to pay a deposit of between £1 and £1,000 as a condition of continuing with the claim or any part of it because they have little reasonable prospect of establishing those things?
3. The Claimant told the Tribunal that she telephoned the Tribunal office on 25th July 2023 and was told that the time limit expired on 27th July 2023. She completed the form on her mobile phone which was tricky and she mistakenly put the Respondent's address in the box for the Claimant's address, instead of her own address. The form was rejected in a letter dated 8th August 2023. As soon as the claimant received the letter she telephoned the tribunal and she then submitted the new claim form on 9th August 2023.
4. The Respondent submitted that the claim for Unfair Dismissal should be struck out because it was reasonably practicable for the complaint to be presented in time. The Respondent argued that Miss Milford is capable of completing a form and that the use of a mobile phone does not preclude the claimant from filling in the form correctly. She left it until the last minute to fill in the form and has to take the consequences for that.

The Law

5. The Respondent referred the Tribunal to the case of Robertson v Bexley CC [2003] IRLR 434 which established that time limits are applied strictly in employment cases, and there is no presumption in favour of extending time. In fact, tribunals should not extend time unless the Claimant convinces them that it is just and equitable to do so. The exercise of discretion to extend time should be the exception, not the rule. This was followed by the Court of Appeal in Department of Constitutional Affairs v Jones [2008] IRLR 128 and Chief Constable of Lincolnshire Police v Caston [2009] IRLR 327. The Respondent submitted that this case is not exceptional, so as to justify extending time, as this appears to be a case of the Claimant simply being ignorant as to the correct procedure and this cannot be said to be exceptional. Moreover, this is not a case where delay was caused by the pursuit of internal procedures, which may be a valid reason to extend time (Apelogun-Gabriels v Lambeth [2002] IRLR 116) as there were no internal procedures. The Respondent argued that the Claimant could have brought her claim within time because she attempted to do so and had she followed the correct process, in terms of completing the form correctly, she could easily have submitted her claim within time.
6. I referred myself to the case of Lowri Beck Services Ltd v Brophy 2019 where Lord Justice Underhill said that:
 - 6.1 The test should be given a liberal interpretation in favour of the employee
 - 6.2 The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was 'reasonably feasible' for the employee to present his or her claim in time. (Underhill LJ commented that the reference to 'feasibility' in the case law did not seem to be a particularly apt way of making the point that the test is not concerned only with physical impracticability)

7. I also considered Software Box Ltd v Gannon 2016 case where the EAT held that the fact that a complaint was made within time and then rejected did not and should not preclude consideration of whether the tribunal should have jurisdiction in respect of a second claim on the same ground.
8. Also the case of Adams v British Telecommunications plc 2017 ICR 382, ECR where Mrs Justice Simler held that the fact that the claimant had made a genuine mistake which led her to believe that she had correctly presented her claim meant that she believed that her claim was progressing in time.

Decision:

9. I have taken into account the overriding objective and in particular the duty to ensure that parties are on an equal footing. I have considered the fact that the claimant is unrepresented and was trying to complete the form on a small screen of a mobile phone. Today she borrowed her friend's laptop to use for the remote preliminary hearing. The Claimant had also telephoned the Tribunal to check the time limit before submitting her initial claim, once she had done so she was then under the mistaken belief that her claim was progressing until the 8th August 2023, when she was notified by the Tribunal of her error. She then immediately corrected the error and submitted the new ET1 on 9th August 2023 which was by then out of time.
10. I find that it was not reasonably practicable for the Claimant to present the claim within the time limit in light of her mistaken belief that the claim was presented in time and was progressing. As soon as she became aware of the error, she telephoned the Tribunal office and then presented her claim the following day. Before she had been made aware of the error, it was not "reasonably feasible" for her to submit a new claim in time.
11. I therefore do not strike out the claim, neither do I make a deposit order for the reasons I have given above.

Employment Judge W Brady

Date: 08th February 2024

REASONS SENT TO THE PARTIES ON 8 February 2024

FOR THE TRIBUNAL OFFICE Mr N Roche