



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Miss K Thompson**

v

**Scarborough Museums Trust**

## PRELIMINARY HEARING

Heard at: **Hull**

On: **03 September 2018**

Before: **Employment Judge Shulman**

Appearance:

For the Claimant: **In Person**

For the Respondent: **Mr E Heppel, Solicitor**

## JUDGMENT

All the claimant's claims are dismissed as being out of time.

## REASONS

### Introduction:

This is a Preliminary Hearing to consider whether the complaints of the claimant, or either of them, were brought outside the applicable time limit and if so whether or not it was not reasonably practicable for those complaints to be presented in time and if it was not reasonably practicable whether the time should be extended for the complaints for such further period or periods as the Tribunal considers necessary.

### 1. The issue

The sole issue in this case as set out above under the introduction.

### 2. Claims

The claimant brings claims for unfair dismissal and breach of contract.

### 3. The Law

The Tribunal has to have regard to the following provisions of the law:

- 3.1 Section 111(2)(a) + (b) Employment Rights Act 1996 requires the claimant to make the claim within three months of what is described as the effective date of the termination, or within such 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 the period of

three months, and ??????..... was extended to cover the Early Conciliation provisions which were brought in by the Enterprise and Regulatory Reform Act 2013 (see section 111(2)(A) of the Employment Rights Act 1996).

- 3.2 Essentially those provisions put an onus on the claimant to apply for an Early Conciliation Certificate before the proceedings can continue and this obligation is found in Section 18A of the Employment Tribunals Act 1996.
- 3.3 To the Law relating to knowledge of a particular obligation, and in this case we are talking about the obligation to apply for an Early Conciliation Certificate, this knowledge can either be actual knowledge which the claimant ought to have known about. The leading case is **Dedman v British Building and Engineering Appliances Limited [1974] IRLR 53 Court of Appeal** so it might not be reasonably practicable for a party to litigation to have complied with the correct process even if he or she did not know about it provided it was reasonable that he or she ought to have known about it.

#### 4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) finds before it the following facts (proved on the balance of probabilities) but limited to the issues of time.

- 4.1 The claimant was at all material times a freelance workshop and education provider. She had a contact with the respondent she believes since June 2011, the claimant's contract with Scarborough Museum's Trust was terminated by the respondent on 16 March 2018 and the claimant was very upset about it.
- 4.2 She rang the ACAS hotline on 29 March 2018 but was not able to get through, although she rang again on 10 April 2018 and spoke to them for about 30 minutes. The claimant told the ACAS officer to whom she spoke that she felt that she had been unfairly treated. She gave evidence to the effect that she understood from that conversation that ACAS could conciliate between employer and employee.
- 4.3 She also spoke, around that time, to a firm of solicitors but the person to whom she spoke was not optimistic about the financial aspects of her claim. There was no discussion of time limits with the solicitor.
- 4.4 In May or June of 2018 the claimant was told by her sister, who had apparently had previous experience of an Employment Tribunal claim that there was a three month time limit.
- 4.5 With that knowledge the claimant did lodge her application on 7 June 2018 which was in time. In other words, it was within the three month period from 16 March 2018. However, the claimant decided to withdraw her claim by email on the same date, that is 7 June 2018, because apparently there was an annex attached to it with which she was not happy and she wished to exclude the victimisation claim which she had included.
- 4.6 On the same day the claimant went to London for one week and she was working in that period and as far as she was concerned on the first available date she lodged a new ET1 on 15 June 2018, it was actually a day after she returned from London and she was satisfied with that ET1.

- 4.7 On page 2 of all claim forms there is a section relating to Early Conciliation (paragraph 2.3). The claimant ticked the box that ACAS did not have power to conciliate on some or all of her claim. This appears to be because of their concern about the likely success or otherwise of her claim because she had a freelance contract. In any event the claimant in lodging her second claim form (in common with the first claim form) did not comply with Section 18A of the Employment Tribunals Act 1996.
- 4.8 The claimant says she did not know she had to comply with the Early Conciliation requirements and the Tribunal accepts that she did not know.
- 4.9 On 19 June 2018 the Employment Tribunal rejected the claim because she had not complied with Section 18A of the Employment Tribunals Act 1996 and the claimant set about putting matters right, which she did on 20 June 2018 and ACAS issued a certificate straight away.
- 4.10 The Employment Tribunal deemed receipt of her claim on 21 June 2018 which was five days outside the three month time limit.
- 5. Determination of the issues (after listening to and reading the factual and legal submissions made by and on behalf of the respective parties)**
- 5.1 As the Law says the claim has to be lodged within three months of the effective date of termination. It was not but the Tribunal has power to consider extending the period for such period as it considers reasonable where it is satisfied it was not reasonably practicable for the complaint to be presented before the end of the period of three months.
- 5.2 The claimant took advice within the three month period, she referred to ACAS, she carried out her own research, she spoke to her sister. She accepts that she was in possession of all the necessary components in order to fulfil her claim except for the Early Conciliation requirements.
- 5.3 As the Tribunal has said it is satisfied she did not know those requirements. The Tribunal's obligation here are to apply the Law and in particular the case of **Dedman** and although the claimant did not know of her obligations relating to Early Conciliation, having regard to everything else that she did know, she should, in the judgment of this Tribunal, ought to have known that there was a precursor to issuing proceedings and that was the obtaining of an Early Conciliation Certificate and in all the circumstances both the claimant's claims are dismissed as being out of time.

**Employment Judge Shulman**

Date: 22 September 2018