



# THE EMPLOYMENT TRIBUNALS

## PUBLIC PRELIMINARY HEARING

**Claimant:** Mrs B Lees

**Respondent:** The Newcastle upon Tyne Hospitals NHS Foundation Trust

**Heard at:** Newcastle Hearing Centre      **On:** Wednesday 15<sup>th</sup> July 2020

**Before:** Employment Judge Johnson

***Representation:***

**Claimant:** In Person (assisted by her friend Mr D Stock)

**Respondent:** Ms A Rumble of Counsel

## JUDGMENT ON PRELIMINARY ISSUE

1. The claims of unfair dismissal and unauthorised deduction from wages were presented outside the time limit prescribed for doing so in circumstances where it was reasonably practicable for them to be presented within time. The tribunal does not have jurisdiction to hear those claims which are hereby dismissed.
2. The claims of unlawful age discrimination and unlawful disability discrimination were presented more than 3 months of the acts complained of, in circumstances where it is not just and equitable for time to be extended. The tribunal does not have jurisdiction to hear those claims which are hereby dismissed.

## REASONS

1. This matter came before me this morning by way of a public preliminary hearing to consider whether the employment tribunal has jurisdiction to hear the claimant's complaints of unfair dismissal, unauthorised deduction from wages, unlawful disability discrimination and unlawful age discrimination, all of which appear to be presented out of time. The claimant attended in person and was assisted by her friend Mr Stock. The respondent was represented by Ms Rumble of Counsel.

2. By a claim from presented on 3<sup>rd</sup> February 2020, the claimant brought complaints of unfair dismissal, unauthorised deduction from wages, unlawful disability discrimination and unlawful age discrimination. Those claims relate to the termination of the claimant's employment with the respondent on or about 9<sup>th</sup> May 2019. The respondent alleges that the claimant tendered her resignation by way of retirement by letter dated 25<sup>th</sup> April 2019, to take effect from 9<sup>th</sup> May 2019. The claimant's position now is that she wished to reduce her working hours from 5 days a week to 3 days a week and at the same time to take her pension. The claimant alleges that she was "forced to sign" the letter of 25<sup>th</sup> April 2019 and that the respondent's failure or refusal to permit her to work part-time was discriminatory on the grounds of either her age, her disability or both.
3. The relevant chronology is as follows:-
  - 25<sup>th</sup> April 2019 the claimant's letter of resignation
  - 9<sup>th</sup> May 2019 effective date of termination of the claimant's employment with the respondent
  - 17<sup>th</sup> June 2019 the claimant contacts ACAS for early conciliation
  - 17<sup>th</sup> July 2019 ACAS early conciliation certificate issued
  - 28<sup>th</sup> January 2020 claim form ET1 originally presented
  - 3<sup>rd</sup> February 2020 correct claim form ET1 accepted by the tribunal
  - 18<sup>th</sup> April 2020 private preliminary hearing before Employment Judge Garnon
  - 21<sup>st</sup> May 2020 private preliminary hearing before Employment Judge Aspden
4. Ms Rumble this morning conceded on behalf of the respondent that the claimant is and was at all material times suffering from a disability, namely a hearing impairment. Mrs Lees and Mr Stock both accepted at the start of today's hearing that, taking into account the ACAS early conciliation process, the deadline for presentation of all of the claims was 9<sup>th</sup> September 2019. Accordingly, the claims were almost 5 months out of time at the date of presentation.
5. I took time this morning to explain to Mrs Lees and Mrs Stock the basic principles relating to the presentation of claims which are out of time. In terms of the claims of unfair dismissal and unauthorised deduction from wages, it is for the claimant to satisfy the Tribunal that it was not reasonably practicable for the claim form to be presented within the 3-month time limit and if so, to go on to show that the claim was presented within a reasonable period of time thereafter. With regard to the complaints of discrimination under the Equality Act 2010, it is for the claimant to satisfy the Tribunal that it would be just and equitable for the time limit to be extended, which means the claimant providing a meaningful explanation as to why they were not presented within the time limit. It was clear that Mrs Lees had some difficulty in hearing what was said, even though the microphones within the hearing room were turned up to their maximum volume. However, Mr Stock clearly did understand what was being said and was able to explain those matters to Mrs Lees.
6. Mrs Lees produced a letter from her GP, dated 25<sup>th</sup> June 2020, confirming that the claimant has had problems with her hearing since March 1999 and was provided with hearing aids in 2019. The letter also confirms that since 2019 the claimant

has suffered from “stress, symptoms of anxiety and depression” relating to problems at work and that she had been referred for counselling to MIND. No mention is made in that letter of any medication prescribed to the claimant for stress, anxiety or depression. The claimant did inform me today that she had been prescribed medication for depression.

7. I took the claimant to her claim form. Mr Stock confirmed that he had completed the claim form by hand and had done so in January 2020. Mr Stock accepted that completing the claim form was not a particularly onerous task. Most of the information required involves filling in a number of boxes, setting out basic information such as name, address, date of birth, occupation, length of service etc. The claimant then had to tick those boxes to indicate which claims were being pursued. Finally, the claimant had to complete section 8.2 on page 7 of the form. In the claimant’s case, that involved 37 lines of handwriting setting out the grounds of complaint. Mr Stock informed me that it had taken him “two or three days” to complete the form. Whilst I expressed some surprise at this, I accepted what Mr Stock told me. Mr Stock did agree with me that the information set out in that claim form was available to Mrs Lees and himself in September 2019, as it had been in January 2020. When I enquired of Mr Stock as to why the claim form had not been completed and presented in September 2019 he simply said, “because Mrs Lees was unwell”. I asked Mr Stock whether the claimant’s hearing impairment made it any more difficult for her to complete the claim form. Mr Stock suggested that the claimant had been receiving medication for her hearing impairment. Mrs Lees confirmed that she had in fact suffered a perforated ear drum for which she had received an “ear spray” from her doctor. Neither Mrs Lees or Mr Stock were able to confirm that the claimant’s “stress, anxiety and depression” were any different in January 2020 than in September 2019. Neither was able to provide any explanation as to why that stress, anxiety or depression was such that it made it impossible for the claimant to complete the claim form within the 3-month time limit and submit it to the employment tribunal.
8. I suggested to Mrs Lees and Mr Stock that most people who are unhappy about losing their job, may well consider the immediate aftermath to be a stressful and anxious period. Some may even become depressed about their situation and their future prospects. Even in those circumstances, it remains for the claimant to provide some meaningful evidence to support their contention that a medical condition was such that it was not reasonably practicable to complete a relatively simple form and submit it to the employment tribunal within the time limit.
9. Mrs Lees and Mr Stock both accepted that the claimant was fully aware throughout the relevant period as to the existence of the time limit. The application for ACAS early conciliation had been made well within the time limit and the early conciliation certificate itself was issued shortly thereafter. Mrs Lees and Mr Stock confirmed that the claimant is a member of the trade union Unison, although both were somewhat disparaging about the quality of the assistance provided by the trade union at the relevant time.
10. Mrs Lees and Mr Stock continued to insist that the claimant had been forced into retiring from the respondent trust, contrary to her own intention, which was to reduce her working pattern from five days a week to three days a week, until such

time as she qualified for her state pension in or about January 2020. Miss Rumble read to me the claimant's resignation letter dated 25<sup>th</sup> April 2019:-

"Dear Mr Christie,

I am writing to advise you that I wish to retire from the trust employment and my last day of working will be Thursday 9<sup>th</sup> May 2019 as my pension starts on 10<sup>th</sup> May 2019. I confirm I am receipt of a travel pass via the trust's travel scheme, which I will arrange to return to them direct.

Yours sincerely Beryl Lees."

I asked Mrs Lees and Mr Stock whether there was any subsequent correspondence by which the claimant notified the respondent that she had not in fact intended to retire or with to withdraw her resignation as set out in that letter. Both confirmed that there was no such correspondence. Mrs Lees continued to insist that she had reached an agreement with the respondent verbally to the effect that she would retire from her full-time employment, take her pension, have a gap of 4 weeks and then rejoin the trust's employment on a 3-day per week working pattern. Mrs Lees insisted that she had completed the relevant paperwork and that her proposal had been agreed in principle by the respondent. Mrs Lees and Mr Stock were unable to produce copies of the relevant paperwork.

11. Ms Rumble for the respondent admitted there would appear to have been an element of confusion surrounding the claimant's retirement. The respondent does indeed have a process whereby those nearing retirement can apply for a flexible working pattern so as to reduce their working days in the run up to retirement. To do so, they must complete a request in writing which, if granted, involves termination of the full-time contract followed by a 4-week gap and then new employment on a new contract working 3 days a week. Whilst this is what the claimant may have intended, the respondent's position is that she failed to follow the correct process. What she had done was apply to the trust's pension provider to take her pension, informing them that she intended to retire. That intention to retire was notified to the trust and it simply acted upon it. Nowhere could there be any suggestion or indication of discriminatory conduct or unfairness, or any breach of contract which could lead the claimant to allege successfully that she was constructively unfairly dismissed.
12. Having considered all of those matters, I am satisfied that all of these claims were presented considerably beyond the time limit which expired on 9<sup>th</sup> September 2019. I am not satisfied that the explanation provided by the claimant is one which falls within the meaning of it not having been reasonably practicable for the claims to have been presented within time. I am not satisfied that there was any impediment that prevented the claimant from presenting her claim form within the 3-month time limit. I am not satisfied that there is a meaningful explanation as to why the claim forms were not presented within the time limit. I do not consider it just and equitable for the time limit to be extended in respect of the discrimination claim.

The law

13. In respect of time limits and their extension, the law was properly set out by Employment Judge Garnon in paragraphs 8 and 9 of the Case Management Summary attached to the hearing of 15<sup>th</sup> April 2020. It is not necessary to repeat that explanation of the law again. I am not satisfied that the claimant has shown that it was not reasonably practicable for the complaints of unfair dismissal and unauthorised deduction from wages to be presented within the 3-month time limit. I am not satisfied that the claimant has provided a meaningful explanation as to why the claims of discrimination were not presented within the 3-month time limit, nor has the claimant shown that it would be just and equitable for time to be extended.
14. For those reasons, all of the claims are out of time. The employment tribunal does not have jurisdiction to hear those claims. All of the claims are dismissed.

**EMPLOYMENT JUDGE JOHNSON**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 23 July 2020**

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