EMPLOYMENT TRIBUNALS

Claimant: **Miss A M Isaac**

Respondent: **Pierce & Geddes Limited**

Heard at: **Leeds (via CVP)**

On: **26 November 2021**

Before: **Employment Judge Smith (sitting alone)**

Representation
For the Claimant: In person
For the Respondent: Ms L Connolly, In-House Counsel

JUDGMENT

1. By consent, the name of the Respondent is amended from "Integrated Dental Holdings Group Ltd" to "Pierce & Geddes Limited".

2. The Claimant's application to amend her claim form to include a claim of harassment is refused.

3. The Claimant's claim of defamation is dismissed because the Tribunal has no jurisdiction to consider it.

4. The Claimant's claim of unfair dismissal is dismissed because the Tribunal has no jurisdiction to consider it.

REASONS

1. An oral judgment and reasons was delivered to the parties at the conclusion of the preliminary hearing (PH). Pursuant to **r.62(3)** of the **Employment Tribunals**

Rules of Procedure 2013 the Claimant exercised her right to request written reasons and these reasons are handed down in compliance with that request.

Introduction

2. By way of an ET1 claim form received by the Tribunal on 30 July 2021 the Claimant presented claims of unfair dismissal and defamation.

3. The matter had originally been listed for a full hearing on today's date but, upon consideration of the file on 24 September 2021, Employment Judge Jones converted the full hearing into a preliminary hearing. The issues to be determined at this PH were later clarified in Tribunal correspondence as being:

    3.1 Whether the Tribunal has the power to hear a claim of defamation; and,

    3.2 Whether the Claimant's unfair dismissal claim is out of time, and if it is, whether time should be extended for the presentation of that claim.

4. In the same correspondence it was explained that **s.111** of the **Employment Rights Act 1996** provides that a claim for unfair dismissal must be brought within three months of the effective date of termination of the employment (extended by any period of early conciliation if relevant), and that a claim that has been brought more than three months after the effective date of termination may be heard by the Employment Tribunal if it is satisfied that it was not reasonably practicable for the Claimant to bring the claim before the end of three months and that the claim was brought within such a further period as the Tribunal considers reasonable.

5. I was presented with a bundle of documents amounting to 160 pages and a smaller, 32-page bundle of what were described as disputed documents. I was taken to two of those disputed documents during the Claimant's evidence and asked her to explain her objection to these documents being seen by the Tribunal. Her objections were on the basis of relevance. I decided that I should read those two disputed documents and decide on their relevance (if any) if it was necessary to do so in my deliberations at the end of the PH.

6. I heard live evidence from the Claimant on her own behalf. The Respondent did not call any witnesses.

Application to amend

7. In our preliminary discussions the Claimant indicated that she wished to make an application to amend her claim form to include claims of harassment and victimisation contrary to **ss.26** and **27 Equality Act 2010** respectively. The Respondent had had no notice of the application. Having explained the concept of victimisation to the Claimant she elected not to pursue the application in respect of **s.27**, but she did pursue it in relation to **s.26**. The nature of the amendment sought was clarified and concerned comments the Claimant had alleged were made against her on the NHS Choices website between July and December 2016. The protected characteristic relied upon for this purpose was

said to be the Claimant's Roman Catholic religious beliefs. The Respondent opposed the application.

8. In determining the application I referred back to the leading case of **Selkent Bus Company Ltd v Moore [1996] IRLR 661** (Employment Appeal Tribunal). I considered that the nature of the amendment was not a pure relabelling but that it was not entirely new: the factual matters the Claimant wished to invoke were mentioned in box 8.2 of her claim form, but no mention was made of the Claimant's religious beliefs or how these alleged comments were said to relate to them. However, these allegations were significantly out of time given that there is also a three-month time limit for the presentation of harassment claims (**s.123 Equality Act 2010**) and the Claimant accepted that the link between the comments and her religious beliefs was highly tenuous. In addition, the application was being made at the start of the hearing where her putative claim of defamation (based on the same facts) was going to be considered. I took the view that the only reason the Claimant was making the application now was upon it becoming apparent to her during our preliminary discussions that she would have difficulty in establishing that the Tribunal had the jurisdiction to consider her defamation claim at all. I also took into account the balance of prejudice: in my judgment, the balance strongly favoured refusing the amendment because the Respondent would be put to the time and expense of having to defend these (now very old) allegations, whereas the Claimant would lose the ability to pursue a claim she would struggle to succeed with, both in terms of jurisdiction and on the merits.

9. For these reasons I refused the Claimant's application to amend her claim form and proceeded to deal with the two issues the PH had been listed to determine.

Issue 1 – The Tribunal's jurisdiction to hear defamation claims

10. Submissions on this issue were short. The Claimant explained that she thought the Tribunal did have jurisdiction to consider claims of defamation; Ms Connolly submitted that it did not because Parliament had not expressly conferred jurisdiction upon the Employment Tribunal.

11. In my judgment, the Employment Tribunal has no jurisdiction to determine defamation claims. The Tribunal's jurisdiction is derived entirely from statute, whether by primary or subordinate legislation. Accordingly, in the absence of an express power conferring jurisdiction, the Tribunal will lack authority to act. An example of such an instance is the case of **Secretary of State for Scotland v Mann [2001] ICR 1005**, where the EAT held that Employment Tribunals have no jurisdiction in electoral matters and so could not hear a complaint of sex discrimination by a candidate in an election to the Scottish Parliament.

12. As a consequence, I had no alternative to dismiss the Claimant's defamation claim as the Tribunal does not have jurisdiction to consider it.

Issue 2 – Jurisdiction in relation to the unfair dismissal claim

13. I then turned to the second and final issue, the question of jurisdiction in relation to the Claimant's surviving claim of unfair dismissal.

14. On 27 July 2013 the Claimant commenced what she describes as her employment with the Respondent. It remains to be seen whether the Claimant was an employee of the Respondent but the Tribunal is not deciding that issue today and proceeds on the basis that she was, taking her case at its highest. The Claimant's employment or engagement with the Respondent was terminated on 31 March 2016, and she describes this as a dismissal.

15. On 28 July 2021 the Claimant contacted Acas and notified them to commence Early Conciliation. On the same date Acas issued the Claimant with an Early Conciliation certificate. On 30 July 2021 the Claimant presented her ET1 claim form to the Tribunal.

16. The applicable law is set out in **s.111** of the **Employment Rights Act 1996**, which states:

> *(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*
>
> *(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—*
>
> *(a) before the end of the period of three months beginning with the effective date of termination, or*
>
> *(b) within such further 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 that period of three months.*

17. It was clear that the claim was presented long after the expiry of the primary time limit, as that would have expired on 30 June 2016. There were therefore two questions to determine: firstly, whether it was reasonably practicable for the Claimant to have presented her claim by that date. If it was, the Tribunal has no jurisdiction. If it was not reasonably practicable for her to have done so – and only if it was not – the Tribunal should go on to determine the second question, which is whether the claim was presented within such period as the Tribunal considers reasonable.

18. In this case, the first question focuses on the period 31 March to 30 June 2016.

19. The determination of the first question is a matter of fact for the Tribunal (**London International College v Sen [1992] IRLR 292**, EAT) and reasonable practicability means what was "reasonably feasible" at the time. (**Palmer and**

Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, Court of Appeal).

20. I first considered any awareness the Claimant may have had of her rights. In paragraph 5 of her witness statement the Claimant said that she believed that it would be difficult to prove that there had been what she described as a "breach of contract". She told me she formed this belief at the time of her dismissal, which was 31 March 2016. In my judgment, as at 31 March 2016 the Claimant had some awareness that she could take legal action against the Respondent in relation to her dismissal, even if she described it as a breach of contract and not as an unfair dismissal (which, conceptually, is significantly different). She said she decided not to because she wanted to adopt the least controversial course of action at this time.

21. Ms Connolly submitted that this was a "skilled adviser" case in the category of the **Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53** (Court of Appeal) line of authorities. I did not agree, at least in relation to the first question, because on the Claimant's unchallenged evidence she only instructed solicitors on 25 July 2016, which was by the time the limitation period had in fact expired.

22. The Claimant's principal contention is that the state of her health prevented her from being able to submit an ET1 claim form. I note that a mental impairment can be an important – even conclusive – factor in determining whether it was reasonably practicable to have presented a claim in time (**Walls' Meat Co Ltd v Khan [1978] IRLR 499**, Court of Appeal). The Claimant has hypothyroidism, which can be a severe condition and something which stress can make worse.

23. I was shown a letter from the Claimant's GP dated 30 September 2016, which in its final paragraph stated:

> *"I have enclosed* [the Claimant's] *more recent clinic letters going back to 2011. You can see that the latest episode of anxiety and symptoms suggestive of mild thyroid hormone excess was in May this year following termination of her contract of employment in March. However, at her recent review her thyroid status was well controlled biochemically and clinically on her current Carbimazole dose. We have in the past discussed definitive treatment for her thyroid condition, possibly thyroidectomy given that she has multimodular thyroid disease as well as Graves disease but she has opted for long-term Carbimazole to control the condition. When her thyroid function is adequately controlled as it has been whenever I have seen her over the last few years, there is no reason why this should have any adverse effects on her mental or physical health."*

24. I accepted that this letter set out the accurate position as to the Claimant's health at that time. The relevant part of that letter does partly touch upon the period up until 30 June 2016: it refers to May, and to an episode of anxiety and symptoms of mild hormone excess. Whilst the letter does describe some worsening of the Claimant's condition during that month, it does not suggest that the Claimant's

symptoms were of such severity that she could not undertake tasks such as submitting an ET1 claim form to the Employment Tribunal.

25. The evidence about what the Claimant could do during that time strongly pointed in the other direction. She gave notice to the landlord of her rented property during this time, and moved out. She made 15 or 16 job applications during this time, and travelled long distances to attend interviews. She commenced a new job on 2 June 2016, which was well within the three-month limitation period even if this new job was not a full time role.

26. In my judgment, the state of the Claimant's health was not such that it was not reasonably practicable for her to have submitted her claim within the period up to 30 June 2016. It follows that the Employment Tribunal therefore has no jurisdiction to consider he unfair dismissal. Necessarily, that claim is dismissed.

27. If I am wrong in my conclusions on the first question, I nevertheless went on to consider the second: did the Claimant present her claim within such a period as was reasonable?

28. The Claimant contended that the state of her health was such that it prohibited her from lodging an ET1 claim form at any point between 1 July 2016 (the day after primary limitation expired) and the date she did in fact lodge her claim form, 30 July 2021. I was simply not shown any evidence that supported such a conclusion. It was not a contention made in her witness statement and was I fact made for the first time during the preliminary hearing. For these reasons, I did not accept it.

29. In addition, on occasions during in the intervening five years the Claimant wrote strongly worded letters to the Respondent threatening legal action and making demands for the payment of very large sums of money, into millions of pounds. I was taken to pages in the bundle which showed such letters, dated 24 July 2019 30 April 2021 and 9 May 2021. These were sent during the lifetime of a General Dental Council investigation into the Claimant's conduct (in which she was able to fully participate) and during the lifetime of legal proceedings (actual and threatened) brought against the Claimant by former patients. The Claimant's health did not prevent her from repeatedly threatening apparently high-value legal action.

30. Had I been required to answer the second question I would have found that it was reasonable for the Claimant to have submitted her claim form at any time after 30 June 2016 and that she would not have benefitted from an extension of time as provided for under **s.111(2)(b)**.

31. Finally, even if wrong on that, the Claimant instructed solicitors on 25 July 2016 and she informed me that the subject of an unfair dismissal claim did come up in her discussions with those solicitors at the time. In those circumstances it was incumbent upon her solicitors to lodge the claim immediately upon that becoming apparent and, for whatever reason, they did not do so. The **Dedman** authorities are in these circumstances engaged. If the Claimant has any remedy at all, from

that point it was lost as against the Respondent and any remedy such as there may have been lay with the solicitors.

32. Finally, if I had had to determine the length of the further period provided for by **s.111(2)(b)** I would not have found a period of five years anywhere near reasonable for the Claimant to have presented her claim, and would not have granted an extension of that length.

Conclusion

33. It follows from the paragraphs set out above that all of the Claimant's claims are dismissed.

Employment Judge Smith

Date: 26 November 2021