



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Lisa Tait  
**Respondent:** Next Step Care Management Ltd  
**Heard at:** Birmingham                      **On:** 15 February 2017  
**Before:** Employment Judge Self

## Representation

**Claimant:** Mr A Tait, Lay Representative  
**Respondent:** Mr Warnes, Consultant

# JUDGMENT

1. The issue of whether or not the sexual harassment allegation relating to an incident in December 2015 has been lodged in time and if not whether it would be just and equitable to extend time shall be postponed so as to be considered by the full Tribunal between 15 and 17 March 2017.
2. The issues set out in the Case Management Summary are amended so as to include a claim that the dismissal was discriminatory as set out at paragraph 9 below.

# REASONS

1. By a Claim Form received at the Employment Tribunal on 8 October the Claimant asserted she had been unfairly constructively dismissed and was, in addition owed notice pay, holiday and arrears of pay by the Respondent.
2. Within the body of the Particulars of Claim there was an assertion that an employee of the Respondent had sexually assaulted the Claimant by grabbing her breasts at an annual Christmas function in December 2015 but at that point the specific box relating to sex discrimination was not marked. The Response was due to be lodged by 9 November 2016.
3. A Preliminary Hearing to deal with identifying the issues and directions was listed to be heard on 30 November.

4. No Response was lodged in time. On 16 November the Tribunal wrote to the Claimant on EJ Hughes' direction enquiring as to whether or not any specific legal claim was being made in respect of the alleged sexual assault. A Response was received from the Claimant's husband on behalf of the Claimant which was reasonable in its terms but ultimately equivocal as to the question asked.

5. On 29 November the Respondent's representatives made an application to extend time to lodge their Response to the Claim asserting that they had not received the Claim Form.

6. On 30 November 2016 the Preliminary Hearing was listed before Employment Judge Flood. The application for an extension of time re the Response was granted and the holiday pay claim was dismissed upon withdrawal.

7. Further the matter was listed for a three day hearing between 15 and 17 March 2017 and issues were determined between paragraphs 5 and 11 of the Case management Summary. It was identified that so far as the December 2015 harassment claim was concerned that there was a jurisdictional point based on whether the claim had been lodged in time and if not whether it would be just and equitable to extend time and today's hearing was listed to determine that point.

8. I have looked at the matter today and considered that it would not be appropriate to deal with that matter today and it is an issue that needs to be considered by the Employment Judge hearing the matter in March. It is clear from paragraph 6.1.1 and 6.2 of the Case Summary that the assault is relied upon as being a key building block that led to the decision to resign some months later. Paragraph 6.2 states that an issue to be decided in March is whether the assault took place and if so whether it contributed to the ultimate fundamental breach of contract. As a consequence of this there will be no saving of time or money in deciding the time point now as the parties are going to have to deal with this issue in documents and statements whether or not there is a stand-alone harassment claim.. On that basis determining the time matter now as a different single Judge does not seem to me to be appropriate or necessary to best fulfil the overriding objective and that decision is best dealt with by a full tribunal who will be seized with all the facts.

9. In addition on further exploration of the parties today it became clear that the Claimant's case is that the dismissal was also discriminatory on the grounds of sex and that needs to be added to the issues and I do so here:

**The Claimant asserts that her constructive dismissal was discriminatory because one of the acts that gave rise to her decision to resign was the alleged sexual assault in December 2015. For the avoidance of doubt, having taken instructions, it has been confirmed that the Claimant does not**

**assert that the matters set out at 6.1.2 to 6.1.5 inclusive of the 30 November Case Management Summary were influenced by her sex or a sexual matters.**

**10.** I was satisfied that the discriminatory dismissal claim was sufficiently set out within the last 2 paragraphs of para. 8.2 of the Claim Form to be permitted to proceed.

**11.** It was conceded that any discrimination claim linked to the dismissal claim would be in time but there remains a time point so far as the actual alleged assault is concerned as to whether linked with the dismissal it could be said to be an act continuing over a period and if not whether it would be just and equitable to extend time. That will be a decision for the Tribunal in March to make.

**12.** The parties informed me that the directions had been complied with thus far in the main and that they were both confident that the time given for completing statements would be met. I reminded the parties of the desirability of continuing to cooperate to ensure that any hearing was effective. I also asked that the Claimant revise his schedule of loss so that the compensation for unfair dismissal and discrimination was clear. He agreed to do so.

Employment Judge Self

Date: 17/02/2017