



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J V Pick

**Respondent:** West Kirby Residential School

**HELD AT:** Liverpool **ON:** 27 February 2017

**BEFORE:** Employment Judge Robinson  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Miss J Connolly of Counsel

# JUDGMENT

The judgment of the Tribunal is that:

1. All the claims that are made by the claimant in relation to harassment under the Equality Act 2010 and the application under the Health and safety at Work Act 1974 are struck out for want of jurisdiction.
2. It is not just and equitable to extend time in the circumstances of this case.
3. With regard to health and safety claims, it is also the case that those claims are not within the jurisdiction of the Tribunal generally and are also struck out for want of jurisdiction.

# REASONS

1. The issues I have to deal with are whether the claims under the Health and Safety Act 1974 and the claims under the Equality Act 2010 are claims within the jurisdiction of the Tribunal. The Equality Act claim is a claim for harassment contrary to section 26 of that Act. It is common ground that the claims have been made out of time. The question therefore is whether it is just and equitable to extend time. I have a discretion to extend time. Despite Miss Pick referring to the Sex Discrimination Act I accept that every claim of Miss Pick (save the health and safety issues) have been

made under the Equality Act 2010. The respondent also wanted this hearing to deal with an issue under section 109(5) of the Equality Act 2010 because the respondent will say they cannot be liable under that section for certain offences. I am not sure what offences under the Act have been committed but in any event the respondent is now withdrawing that application and, if there were to be a final hearing, the arguments will be put forward under section 109(1) to argue that the actions perpetrated were those done not in the course of the claimant's employment.

2. The facts from the evidence that I have heard from Miss Pick cross examined by Miss Connolly are these.

3. The act complained of is harassment that occurred on 18 December 2015. The claimant says that she was sexually assaulted on that day. The alleged perpetrator ("NC") has said to the managers of the school that whatever happened between him and Miss Pick was consensual. Miss Pick and NC are the only two witnesses as to what happened on that evening. NC ceased working at the school in July 2016.

4. There is no doubt that the incident and its repercussions since December 2015 have upset the claimant and harmed her health. From early January 2016 to 18 April 2016, however, the claimant was able to go into work everyday. She did see NC on occasions. She tells me that she hid herself away when she could both from him and other colleagues because of what had happened. She was, however, able to carry on a social life and went to, for example, the gym and to aqua aerobics. Up to 18 April 2016 she felt she needed to go into work in order to "stand up for her rights". After 18 April 2016 when the investigation had been completed she was unable to go into work. She has been absent from work since that time.

5. Ms Kennedy, the Business Manager, was concerned about her wellbeing during that period. The school have sent Miss Pick to Occupational Health in order to obtain the appropriate reports. Miss Pick was a member of a trade union and received advice and support from that trade union until she decided they were not supportive enough. Since that decision she has acted alone and these proceedings were issued on 9 December 2016 by her personally with no trade union or other legal assistance.

6. When the December 2015 incident was investigated by the school on 5 February 2016 the claimant still had trade union support. The claimant has felt that her employer has been more concerned about the reputation of the school and defending that reputation rather than defending her reputation and looking after her. I have not heard from any respondent witnesses on that point. The final Tribunal will be faced with having to analyse the incident on 18 December 2015 and to decide whether the claimant was raped or whether the only other person who can give direct evidence is to be believed and it was a consensual act between them. The claimant did discuss the possibility of a claim to the Employment Tribunal when she had that trade union support in early 2016 and knew then about time limits. By August 2016 she knew not only about the time limits but about the process of issuing proceedings. The claimant was looked after by the union from a meeting in February 2016 right through to August 2016. It was on 20 June 2016 that she had the last of her direct contact with her union, but for a few months after that date any emails she sent with regard to the issue were copied to her union official.

7. Miss Pick received advice from the Citizens Advice Bureau on 15 September 2016. She was also able to speak to ROSA for support and she spoke to the police on 21 September 2016 and received support from them to the extent that she was able to give a video recording to the police telling them what happened in December 2015. The police did not send the matter to the CPS.

8. There is no medical evidence to suggest that the claimant was incapable of functioning for the whole or any part of 2016. I recognise she was deeply affected by the incident in December 2015 and felt she had to deal with each issue "in chunks". She was able to vent her frustration she said because she had the support of her friends and family during 2016. On 20 October 2016 she phoned ACAS to start the process of issuing proceedings, but she only applied for her early conciliation certificate some three or four weeks later on 14 November 2016.

9. There was a further delay of nearly a month to 9 December 2016 before the claimant issued her proceedings to this Tribunal. The claimant tells me that she took so long to issue because she felt so "raw" about what had happened. The claimant knew NC was working at the school during the spring term of 2016 but was on shift work. As the claimant worked days she only met him on a couple of occasions when he tried to hug her.

10. The principles I have applied in order to come to my conclusion are these. Under section 123(1)(b) of the Equality Act 2010 I can extend time if I believe it is just and equitable to do so. Miss Connolly of course is right to tell me that the burden is upon the claimant to persuade me that I should do so. I have a discretion to do so and I should take into account all the circumstances before me and also consider the principles set out in section 33 of the Limitation Act. Those principles include a consideration of the length of the delay, the fact that the time limits are there to be kept to, the reasons for the delay, the effect of the delay, the prejudice to either of the parties involved, the extent to which the cogency of the evidence is affected, the extent to which the respondent has cooperated with the claimant and with the courts, and I must also consider when the claimant acted on any advice she received and at what stage she received that advice.

11. The only two parties involved in this litigation are Miss Pick and West Kirby Residential School and not NC, so applying those principles to the facts I concluded that the act of harassment complained of was the act on 18 December 2015. The primary limitation period ended on 17 March 2016. I find that the claimant was in work during that period. She was able to function in her role at the school. There is medical evidence that she was fit to work during that period and that in January 2016 it was actually said of her that "she was coping well".

12. The claimant had trade union help and advice for many months and she knew of the time limits. The delay in issuing the proceedings is long, indeed very long because the claimant waited until the end of 2016 to issue the proceedings which was nearly a year after the incident in 2015. It will be difficult for witnesses to remember the events especially when, if this case proceeds, the likely hearing date will be some 18 months after the events of December 2015. Even if we were to set a date today we will not have a date for a hearing until June or July 2017. The claimant may well remember the incident and its aftermath very clearly, but other witnesses

not so intimately involved may, with the passage of time, find that their memories have faded.

13. The prejudice will be greater to the respondent than it is to the claimant for all the above reasons. There is nothing to suggest that the respondent has not cooperated when dealing with this claim, or indeed nor have I heard that West Kirby Residential School or the management thereof have put any obstacles in the way of Miss Pick during the course of 2016 and early 2017. The claimant complains about what the respondent did or did not do during the investigation. However, by 18 April 2016 any involvement by the respondent had ended and the investigation completed. Although this was not pleaded by the claimant even if I was to say the act complained of was something done by the respondents their completion of the process took place on 18<sup>th</sup> April 2016. That could have extended the limitation period to 17<sup>th</sup> July 2016. But for the reasons set out below it still would not be just and equitable to extend time.

14. During the period immediately after the investigation was completed (in April 2016) when the claimant left work the claimant was still in touch with her trade union official. The claimant also sought CAB and ACAS advice but she did not act promptly and delayed some four weeks after the ACAS certificate was issued. She knew that she was out of time in that period because of the advice she had taken.

15. Time limits are there for a reason and extending time is the exception rather than the rule. In all the circumstances of this case I strike out the claims as being out of time and it is not just and equitable to extend time. Both claims are out of time. The harassment claim, therefore, must be struck out solely for that reason. However, the health and safety claim must also be struck out because the Tribunal has no jurisdiction to deal with those issues.

16. Consequently both claims end today.

22-03-17

Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON

29 March 2017

FOR THE TRIBUNAL OFFICE