

Appeal No. UKEAT/0446/13/SM

EMPLOYMENT APPEAL TRIBUNAL
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 7 March 2014

Before

HIS HONOUR JUDGE PETER CLARK

(SITTING ALONE)

UNIVERSITY OF HUDDERSFIELD

APPELLANT

MISS R HALIM

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

MR SIMON ANDERSON
(of Counsel)
Instructed by:
Lyons Davidson Solicitors
St Martin's House
Britannia Street
Leeds
LS1 2DZ

For the Respondent

MR FRANCIS WILDMAN
(Representative)

SUMMARY

JURISDICTIONAL POINTS

Claim in time and effective date of termination

Continuity of employment

Employment Tribunal finding just and equitable to extend time in disability discrimination (reasonable adjustments) case before finding whether claims were in time or not by virtue of a series of continuing acts. Procedural unfairness to both parties. Respondent appeal allowed; case remitted to same ET for reconsideration.

HIS HONOUR JUDGE PETER CLARK

1. This case has been proceeding in the Leeds Employment Tribunal. The parties are Miss Halim, Claimant, and University of Huddersfield, Respondent. I have before me for full hearing an appeal by the Respondent against a limitation ruling made by an Employment Tribunal chaired by Employment Judge Keevash on the fifth day of the Claimant's complaints of disability discrimination being heard. That Judgment was dated 19 April 2013 and Reasons were provided in writing on 10 June. At the end of the five-day hearing, on 12 April 2013, the Tribunal reserved its substantive Judgment, which was delivered with Reasons on 19 August 2013 (the Main Judgment). The Claimant's complaints were upheld in part. The Tribunal found that in four respects the Respondent had failed to make reasonable adjustments in light of her disability relating to her vision. All remaining complaints were dismissed. This is an appeal by the Respondent against the limitation ruling, extending time under the just and equitable provision, on three out of the four findings adverse to the Respondent. Neither party has appealed the Main Judgment.

The Tribunal hearing

2. Today I have had the advantage of hearing from both Mr Anderson and Mr Wildman, who appeared, respectively, for the Respondent and the Claimant below. I am grateful to both of them for their conspicuously fair account of what happened below. Whilst there are some slight differences in recollection, the picture I have formed is as follows.

3. On 11 March 2013, in advance of the hearing which began on 8 April, the Respondent's solicitors faxed a letter with accompanying Further Particulars to the Tribunal, copied to the Claimant, giving notice of limitation issues to be raised at the hearing. Mr Wildman tells me that these did not form part of the issues identified at the start of the hearing, although I accept

from Mr Anderson that he asked some questions of the Claimant in cross-examination directed to the limitation question. I do not have notes of her evidence.

4. Mr Anderson may have indicated to Mr Wildman at the end of the fourth day that he was proposing to lodge written submissions on limitation with the Tribunal the following day. He had not then produced written submissions.

5. On Day 5 the final witness completed the evidence, and Mr Anderson then raised the limitation question before the Tribunal heard closing submissions on liability. He produced his written submissions, which, he tells me, were not directed to the question of whether some or all of the complaints were in time, as forming part of a continuing act. The first, relevant form ET1 was presented on 12 April 2011. Mr Wildman felt that he had been ambushed, rightly or wrongly, and the Tribunal retired to consider what course to take. They returned after about 20 minutes, said that they would accept the Respondent's limitation application; that there was insufficient time to deal with it properly that day, but indicated that, even if the complaints were out of time, they would extend time under the just and equitable escape clause for all claims. Their reasoning is to be found at paragraph 7 of their Limitation Reasons. I note from paragraph 11 of the main Judgment Reasons that, having done so, the Tribunal found it unnecessary to decide the continuing act question.

The appeal

6. Mr Anderson complains, first, that the Tribunal failed to decide the first question, whether any and, if so, which claims were out of time; secondly, that he was not given a proper opportunity to argue against the ultimate finding based on the just and equitable escape clause; and, thirdly, that the conclusion that time should be extended was perverse in relation to the first two complaints upheld by the Tribunal, dating back to December 2008: that is failing to

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provide a marker or to reduce the Claimant's marking obligations and in relation to the light switch in August 2010. He accepts that the third complaint, failure to supply a support worker, was in time.

7. Mr Wildman understandably sought to retain the general limitation finding in his favour. However, it is clear that he was not given a proper opportunity to develop his argument that, in the first instance, there was here a series of continuing acts which rendered all complaints in time. Alternatively, he had not been on notice as to the evidence which he wished to lead from the Claimant in relation to limitation.

Conclusion

8. It is clear to me that time constraints below led to the Tribunal putting the cart before the horse. Instead of considering first whether the claims were in time as part of a continuing state of affairs they jumped straight to the just and equitable escape clause without hearing full submissions from the parties' representatives. There was, in my judgment, procedural irregularity all round.

9. The answer, it seems to me, is to allow the appeal and remit the limitation issue back to the same Tribunal, if practicable, for re-hearing. The case need only be listed for one day. It is open for the Claimant to be recalled to give evidence on the limitation issue only. The Respondent may call any relevant evidence on this issue if so advised. The Tribunal will determine (a) if any or all of the three breaches of duty ultimately found (see Main Judgment, paragraphs 1.1, 1.2 and 1.4) were out of time and (b) if so, whether it is just and equitable to extend time and if so why.