



EMPLOYMENT TRIBUNALS

Claimant: Miss M Akbar

Respondent: The Co-operative Bank PLC

HELD AT: Manchester

ON: 26 June 2017

BEFORE: Employment Judge Ross

REPRESENTATION:

Claimant: In person

Respondent: Miss E Mills, Solicitor

JUDGMENT having been sent to the parties on 3 July 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The preliminary hearing was to determine whether allegations 8.1, 8.2, 8.3, 8.4, 8.5 were within time and if not whether it is just and equitable to extend time. (There was no dispute that allegation 8.6 was within time.)
2. The relevant law is s123 Equality Act 2010. S123 (3)(a) states “conduct extending over a period is to be treated as done at the end of that period.”
3. I note that in *Commissioner of Police v Hendricks* 2003 ICR 530 CA the Court of Appeal reminded Tribunals not to take too literal an approach to what amounted to “continuing acts”. In *Aziz v FDA* 2010 EWCA Civ 304 CA the Court of Appeal considered the procedural basis on which Tribunals should approach the question at a preliminary hearing of whether a claim is time barred. It held that the claimant must establish s/he has a reasonably arguable case for the contention that the various acts are linked so as to be continuing acts or to constitute an ongoing state of affairs.

4. Thus what the claimant has to do in this case is to show that there was an arguable case that allegations 8.1-8.6 amount to a course of conduct or a continuing state of affairs of discriminatory treatment.

5. I note, that with the exception of the monthly pay review which is allegation 8.1, the other allegations she relies upon are personal to her or they have an element in them that are personal to her. Allegation 8.2 is the alleged refusal to allow a 7 hour working day with a one hour lunch break which the claimant says she needed to dilate regularly following her gender reassignment. It is personal to her because although the imposition of long working hours affected other employees there was a specific request in relation to her which she says was refused.

6. Allegation 8.3 which was the rejection of the claimant's application for a position in the Vulnerable Customer Team is personal to her as is allegation 8.4 which was the rejection of the claimant for a role in Customer Services. Allegation 8.5 is personal to the claimant as it refers to a lack of support or understanding by a manager. The last allegation 8.6 is personal to the claimant as it refers to a P45 being issued in the claimant's previous male name.

7. I remind myself that there is rarely overt evidence of discrimination. It is the claimant's case that there is no reasonable other explanation for the way she was treated in allegations 8.1 to 8.6 that she can think of and so she believes it must be related to her protected characteristic of transgender.

8. Although there are different individuals from the respondent's organisation involved in allegations 8.2-8.6, it is the claimant's case that the managers had been in post for a long time and they knew one other. Also at present there is lack of clarity as to precisely who took which decision in relation to allegations 8.2, 8.3 and 8.4. ; that is not entirely surprising because we are at a preliminary stage.

9. Taking the claimant's case at its height that these allegations are connected, the fact that the different individuals took the decisions is not, as the case of Aziz v FDA 2010 reminds me, fatal to a finding that there was a course of conduct.

10. I also considered the period of time involved in these allegations. I find the time period involved is short because for allegations 8.2-8.5 it is the period April to September 2016, when the claimant went absent from work on sick leave. I am satisfied that this relatively short period of time assists the claimant's argument that it allegations 8.2 -8.5 are linked and are potentially conduct extending over a period of time.

11. Weighing up the arguments I am satisfied the claimant has adduced sufficient evidence to suggest that allegations 8.2-8.6 amount to a course of conduct. I am satisfied the final allegation is within time. (This was agreed by the respondent.)

12. However, if I am wrong about this and allegations 8.2-8.6 are not a course of conduct I am satisfied that the claimant's underlying health problems in terms of her depression makes it just and equitable to extend time. The claimant gave evidence that from September 2016 she was absent from work sick due to depression and during this period took an overdose.

13. I turn back to the first allegation. I am not satisfied that this allegation is potentially part of a course of conduct related to the claimant's protected characteristic. There is because no evidence to suggest that it is anything other than a standard policy of the respondent that was applied to everybody- it was not individual to the claimant in any way. It is also further back in time, occurring in October 2015 some 6 months before the next allegation. For these reasons I find this allegation is out of time because it is not part of a course of conduct and thus the Tribunal has no jurisdiction to hear this allegation.

14. I considered whether it was just and equitable to extend time in relation to allegation one. I am not satisfied that it is. Although the claimant suffered from depression she was not absent from work with this condition until September 2016 so I am not satisfied this was a reason which prevented her presenting a claim in time as a result of allegation 1 which occurred in Oct 2015.

Employment Judge Ross

Date 17 07 2017

REASONS SENT TO THE PARTIES ON

18 July 2017

FOR THE TRIBUNAL OFFICE

[AF]