



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mrs R Pluta

Anglo Beef Processors UK

Heard at: Birmingham

On: 29th November 2017

Before: Employment Judge Choudry

Appearances:

For the Claimant: Mrs V Niklas (Lay Representative)

For the Respondent: Mr M Brewer (Solicitor)

Interpreter: Mrs M Jarza

JUDGMENT AT PRELIMINARY HEARING

1. The claimant's application to amend the claim form has been presented outside the time limits prescribed by statute and it is not just and equitable to extend the time limits.
2. The claimant's claim for breach of contract is dismissed on withdrawal.
3. The claimant's claim for race discrimination is dismissed on withdrawal. As such the claimant has no live claims before the tribunal.

REASONS

BACKGROUND

1. By a claim form presented on 23rd June 2017 the claimant brought a complaint of breach of contract and "bullying and discrimination" on the basis that the treatment she had received from the respondent was due to her being a Polish national. It was also alleged that employee of other nationalities were not requested to give the company authorisation to contact their GP, nor requested to attend health examinations.
2. The respondent disputed that the Tribunal had jurisdiction to hear the complaint of breach of contract on the basis that the claimant was still employed by the respondent and the Employment Tribunals Extension of Jurisdiction (England

and Wales) Order 1994 only permits claims for breach of contract to be brought on termination of employment.

3. On 21st September 2017 the claimant wrote to the Tribunal to indicate that she wished to change her representative to Ms Niklas, who was representing the claimant today.
4. On 3rd October 2017 the Employment Judge Camp directed that there should be a preliminary hearing in public to determine whether any part of the claim should be struck out as having no reasonable prospect of success or whether any deposit orders should be made. These issues were to be determined purely on the basis of the claim form, details of Claim and other documents lodged with the claim form.
5. On 16th October 2017 the claimant's representative made an application to amend the claim form to include claims for failure to make reasonable adjustments under section 20 of the Equality Act 2010 and disability related harassment.
6. By an email dated 7th November 2017 the respondent objected to the application to amend on the basis that it was unclear as to whether the amended particulars were intended to replace the original particulars of claim in their entirety, whether the claim for breach of contract was now being withdrawn and due to the fact that the last alleged act of discrimination appeared to be on 26th April 2017 and therefore, the application to amend was out of time. Furthermore, the matters within the application to amend post dated the pre-claim conciliation certificate.
7. The matter came before me at a preliminary hearing on 29th November 2017 to deal with the issue of strike out/deposit and to consider whether the amendments amounted to a relabeling of the original claims or new claims which were potentially out of time and, if they amounted to new claims, whether it was just and equitable to extend the time limits.
8. At the start of the hearing Ms Niklas indicated that the claimant was withdrawing her claim for breach of contract on the basis that the Tribunal did not have jurisdiction to hear the claim. I asked Ms Niklas what the position was in relation to the claim for race discrimination and whether it was intended that this should remain in addition to the application to amend. Ms Niklas indicated that the claimant did not wish to pursue the claim for race discrimination. I indicated to Ms Niklas that she may wish to take instructions on this point as if, having heard the evidence and any representations from the parties, the application to amend the claim was refused it would mean that the claimant would have no live claims before the Tribunal. I gave Ms Niklas a short adjournment in which take instructions.
9. Following the adjournment Ms Niklas confirmed that the claimant wished to withdraw the claim for race discrimination and that she was content for me to dismiss the claim for race discrimination on withdrawal. As such the parties agreed that the only matters for me to consider were the application to amend and the issuing of any case management orders for the future conduct of the case if the were application to amend were successful.

Evidence

10. I heard evidence from the claimant. I also considered correspondence from the parties to the Tribunal and the amended Details of Claim.

Facts

11. I make the following findings of fact:

- 8.1 The claimant is employed by the respondent, as a Main Line Butchery Ancillary Operative. She has been absent from work since 5th May 2017 due to foot pain.
- 8.2 On 13th May 2017 the claimant commenced a period of early conciliation and on 23rd June 2017 submitted her claim to the Tribunal. None of the boxes for discrimination in section 8.1 were ticked by the claimant and the details of Professional Centrum Limited t/a Global Centre Wrexham ("Global Centre") were completed as the claimant's representative. All the matters complained about occurred prior to the claimant becoming absent from work.
- 8.3 The claimant speaks a little English but is unable to read and write it without assistance.
- 8.4 Global Centre are an advisory and translation bureau and the claimant received advice from a Mr Ariel who was also a Polish and English speaker. Mr Ariel helped the claimant to complete the claim form. Mr Ariel had been assisting the claimant since May 2017 when her problems with the respondent first arose.
- 8.5 On 26th June 2017 the claimant submitted further particulars of her claim. Once again this was with assistance from Mr Ariel. The claimant discussed her case with him and the fact that she believed that she was being mistreated by the respondent on the basis that she had a fit note and was not being given lighter duties whilst others without a fit note were granted lighter duties.
- 8.6 The claimant indicated in evidence that she had always thought that her case was on the basis of disability discrimination and not race. I do not find this credible given the fact that the claimant accepted in evidence that she was aware that a claim for race discrimination had been submitted by Mr Ariel but not for disability discrimination and yet she took no steps to remedy the situation until she had a change in representative.
- 8.7 On 23rd August 2017 the claimant wrote to the Tribunal to request a Polish interpreter for the preliminary hearing arranged for today. This was done with assistance from Mr Ariel.
- 8.8. The claimant could not confirm when Mr Ariel ceased to advise her but on 21st September 2017 the claimant wrote to the Tribunal to indicate that she was now being assisted by Ms Niklas, to whom all further correspondence should be addressed.
- 8.9 The claimant's application to amend her claim to include allegations of disability discrimination was submitted to the Tribunal on 16th October 2017.
- 8.10 The indicated in evidence that she had been misguided by Mr Ariel but could not explain how nor could she provide any proper explanation as to why

she had not amended her claim when she first realised that the claim she had submitted was for race discrimination and not for disability discrimination.

Relevant law

12. Section 123 of the EqA provides, so far as is relevant:

(1)...proceedings on a complaint [of discrimination] may not be brought after the end of-

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

13. The “just and equitable” extension of time involves the tribunal exercising its discretion. It is for the claimant to persuade the tribunal to exercise its discretion in her favour as per ***Robertson –v- Bexley Community Centre [2003] EWCA Civ 576***.

14. The tribunal’s discretion is as wide as that of the civil courts under s33 of the Limitation Act 1980: ***British Coal Corpn –v- Keeble [1997] IRLR 336***. This requires the tribunal to consider to a number of factors including:

12.1 the length of and reasons for the delay;

12.2 the effect of the delay on the cogency of the evidence;

12.3 the steps which the claimant took to obtain legal advice;

12.4 how promptly the claimant acted once she knew of the facts giving rise to the claim; and

12.5 the extent to which the respondent complied with requests for further information.

15. The case of ***Cocking –v- Sandhurst (Stationers) Ltd [1974] ICR 650*** requires the tribunal to consider all the circumstances of the case and injustice or hardship to the parties if the proposed amendment is allowed or refused. Similarly, the case of ***Selkent Bus Company Ltf (trading as Stagecoach Selkent) –v- Moore [1996] IRLR 661*** requires the tribunal to carry out a careful balancing exercise of all the relevant circumstances and exercise its discretion with the requirements of “*relevance, reason, justice and fairness*”. Presidential Guidance is also in place for the tribunal to consider when dealing with applications to amend a claim.

16. Ms Niklas indicated in submissions that the claimant had always intended to bring a claim for disability discrimination and it was the claimant’s lack of knowledge of the law and weak English that had caused the problem.

17. Mr Brewer accepted that the requirements relating to early conciliation were satisfied and did not impact on the application to amend. He further submitted that the amendments were not relabeling of the existing claim but that the that the

amended Details of Claim were new “claims”, this was not disputed by Ms Niklas. Mr Brewer also submitted that the amended claim was not properly pleaded as it did not provide sufficient details of the alleged harassment, there were no new facts being relied on and that it was not just and equitable to extend the time limits prescribed by statute.

CONCLUSIONS

18. Having considered all the evidence, representations by and on behalf of the parties and the documents to which I was referred, I am satisfied that the amendments sought amount to new claims and that these new claims are out of time.
19. The claimant has been represented throughout these proceedings and has indicated that she was aware that a claim for race discrimination had been submitted on her behalf. I do not accept the claimant’s assertion that she had always intended to bring a claim for disability discrimination as had that been so she would have advised Mr Ariel of this and amended her claim much earlier. I am not satisfied that the claimant has been misguided by Mr Ariel, nor is the claimant able to provide an explanation as to why no amendment application was made until nearly a month after she notified the Tribunal that she was now being represented by Ms Niklas. The pleaded amendments are also unclear and incomplete.
20. I am not satisfied that it is just and equitable to extend the time limits prescribed by statute and in the circumstances, the tribunal does not have jurisdiction to here the additional claims submitted by the claimant on 16th October 2017. As the claimant has already withdrawn her claims for breach of contract and race discrimination there are no live claims before this Tribunal.

**Employment Judge Choudry
18 December 2017**