



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Ms L Mezzone v Governing Body of Felpham College

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Southampton **ON** 20 April 2018

EMPLOYMENT JUDGE PSL Housego

Representation

For the Claimant: in person

For the Respondent: Ms F Gardiner, of Counsel

JUDGMENT

The judgment of the tribunal is that:

1. The claim for unfair dismissal was filed within the statutory time limit.
2. The claim for disability discrimination was filed within the statutory time limit as far as dismissal is concerned.
3. The remaining claims for discrimination were not a series which culminated in dismissal, but are unrelated claims.
4. The discrimination claims other relating to dismissal are out of time and it is not just and equitable to extend time and they are dismissed.
5. The unfair dismissal claim has no reasonable prospect of success and is dismissed.
6. The dismissal was not disability related and the remainder of the claim under the Equality Act (relating to dismissal) is dismissed.

7. For the avoidance of doubt all the claims are dismissed.

REASONS

1. This is the judgment at a Preliminary Hearing to determine whether or not the claimant's claim was presented in time.
2. I have heard from the claimant both in oral evidence and in submissions, and I have heard submissions from Ms Gardiner on behalf of the respondent. I find the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
3. The facts are not in dispute. They are:
 - 3.1. The claimant worked at the respondent school, in reprographics. She once had an assistant but he was made redundant in 2014.
 - 3.2. The appellant makes a series of claims starting from then, that she did not have enough help after her assistant left, that there were noxious fumes emitting from the machine which caused her eczema and respiratory conditions. Some of these are unconnected with her disability. Others are connected, such as the assertion that she had to carry more boxes of paper after her assistant left and that was difficult for her, and that when she raised this she was verbally abused. She says that she should not have had to apply for voluntary redundancy when her job was restructured, but should have been given it as of right.
 - 3.3. The claimed disability is osteoarthritis in her hands. The respondent accepts that the claimant is disabled from that cause and that they knew of this at all material times.
 - 3.4. In February 2017 the respondent decided to make the claimant's role redundant, with effect from 28 February 2017. This was in the context of a wider restructure of support staff. In the claimant's case this was because with the increasing use of technology and computers less printing was required. Handouts and homework books have been replaced by worksheets accessible online, for example. The claimant also thinks that some work has been outsourced. It is not disputed by the claimant that this was a genuine redundancy situation. The needs of the employer for an employee to carry out the work carried out by the claimant had diminished.
 - 3.5. The claimant accepts that while she is sure that those in the school whom she dealt in line management may have been pleased to see her go, because of irritation about the consequences for them of her disabling osteoarthritis,

this was not the reason why her role was restructured, and nor does she suggest that the restructure was a cover to make her redundant.

3.6. The claimant was the only person carrying out her role. It was a pool of one, and it is not suggested that anyone else should have been “bumped”. It is not disputed that the selection of the claimant for redundancy was fair: it cannot therefore be discrimination on the basis of disability. The thrust of the complaint of the claimant about her redundancy was that she was entitled to a payment, once her job was removed, and it was unfair to suggest to her a job instead that she did not want, and she did not accept that this job would have been suitable alternative employment. She says that she would have liked part time work but it was not offered, and she did not ask.

3.7. The particulars of this are that in early April 2017 the claimant was offered alternative employment instead of being dismissed for redundancy. This offer was for the reduced work in reprographics and in addition work as a study supervisor. This would have involved pupil contact. The claimant did not want pupil contact, and said so. She did not consider this suitable alternative employment. The reason she felt the job unsuitable was because she did not want pupil contact: the reason is unconnected with her disability of osteoarthritis in her hands. In fact that part of the job would have been easier on her hands. This job offer therefore cannot be a detriment or disability discrimination. The claimant does not say that the role offered was unsuitable for disability related reasons.

3.8. It was explained to the claimant that she could, if she wished, apply for voluntary redundancy. This would mean that she would get a redundancy payment. She was told that if she did not apply she might get nothing as the offer was of suitable alternative employment. This is also unconnected with the claimed disability. Whether the statement that she would get nothing if she did not accept the new role is correct or not is not to the point. This is because the claimant did not want that role, and so she wanted a redundancy payment, which she got. In addition she was allowed to take her pension at 59 without actuarial reduction for taking it 6 years early.

3.9. The appellant applied for voluntary redundancy, she says on 03 May 2017, the respondent says on 07 April 2017. The difference is immaterial.

3.10. On 08 May 2017 the head teacher approved this application, and it was then approved by West Sussex County Council with a termination date of 31 August 2017, which was when the claimant's employment ended. The letter giving notice to end the employment of the claimant is dated 25 May 2017. There was no delay in the claimant receiving this letter.

3.11. The claimant was signed off sick on 19 June 2017 with work related stress, and did not return to work before 31 August 2017 when her employment ended.

3.12. The claimant says that the restructure has not worked as the study supervisor part of the role takes too much time, so that her previous line manager is in effect now carrying out the role she used to do, and they also outsource some work. She does not say that this was not a genuine redundancy at the time, and outsourcing is often a reason for the redundancy of employees whose work is outsourced.

3.13. On 06 October 2017 the ACAS early conciliation notification was made, and the certificate issued the same day.

3.14. On 26 October 2017 this claim was lodged.

Relevant law

4. This is a claim alleging unfair dismissal under the Employment Rights Act 1996, and discrimination on the grounds of a protected characteristic, disability, under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges direct discrimination, indirect discrimination, harassment; and victimisation.
5. The claim for unfair dismissal must be filed within 3 months of the effective date of termination, with an extension of time for the Acas procedure, continued in S207B of the Employment Rights Act 1996. If not so filed, time may be extended for such further time as is reasonable, but only if it was not reasonably practicable for the claim to have been filed in time.
6. Section 120 of the EqA confers jurisdiction on claims to employment tribunals, and section 123(1) of the EqA provides that the proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of three 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. There is a similar extension of time for the ACAS early conciliation procedure.
7. I have considered the case law summarised and explained in Robinson v Bowskill & Ors (p/a Fairhill Medical Practice) (Jurisdictional Points : Claim in time and effective date of termination) [2013].
8. In this case the claimant's effective date of termination of employment was 31 August 2017. However no other act is complained of since the claimant ceased to work on 19 June 2017, and in her oral evidence she accepted that there was nothing since October 2016. The only allegations between October

2016 and 19 June 2017 to that are that the claimant says that she was "forced" to apply for voluntary redundancy, which she says she did on 08 May 2017. That application was approved and notice of termination of employment was given on 25 May 2017. The claimant asserts that dismissal was both unfair and a disability related detriment.

Application of law to facts - out of time application

9. The effective date of termination was 31 August 2017. The claim was lodged on 26 October 2017, which is less than 3 months, and no point is taken about the dismissal claim being in time, nor is it asserted by the respondent that the claim that dismissal was disability discrimination is out of time.
10. As the claimant was away from school after 19 June 2017 there was no action that could be a detriment after that date, other than dismissal, and the claimant does not say that there is any such claim.
11. For the reasons that follow, the dismissal and the matters surrounding it do not form a series with earlier matters.
12. Three months from 19 June 2017 is 18 September 2017, which is before the Acas notification date, and so out of time.
13. However the period is longer than that, as in her evidence to me the claimant accepted that there was nothing after October 2016, other than the dismissal, that was claimed to be disability discrimination. The claim was not filed until October 2017, which is a year, and it is 9 months out of time (the Acas notification and certificate bearing the same date, 06 October 2017).
14. The claimant said that the reason she had not brought a claim before she did was because she wanted to work at the school until the age of 65 and thought she would be victimised if she brought a claim. While not making any finding of fact that this would have been so, that, as a reason for not claiming, falls away after receipt of the letter of 25 May 2017. This letter gave her notice to end her employment, with the terms as to redundancy payment and pension having been agreed by that time. That is 5 months (save a day) before the claim was lodged.
15. These circumstances do not fall within the factors in section 33 of the Limitation Act 1980 which is referred to in the BCC v Keeble [1997] IRLR 336, cited in *Robinson*.
16. As was said in by Auld LJ in Robertson v Bexley Community Centre [2003] IRLR 434 (again cited in *Robinson*) "*It is also important to note that time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and*

equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of discretion is the exception rather than the rule".

17. Accordingly the disability discrimination claims save relating to dismissal are out of time and it would not be just and equitable to extend time.

Application to strike out the claims for unfair dismissal and remaining discrimination claim, or order a deposit to be paid as a condition of continuing

18. This is a preliminary hearing within Rule 53 and there is the power to order a deposit, and the power under Rule 37, to strike out, is also available. The respondent has applied for both these orders, strike out, or in the alternative, a deposit order. For a deposit order there must be little reasonable prospect of success, for a strike out there must be no reasonable prospect of success.
19. The claimant gave her evidence and made her submissions clearly and directly. She is very clear about what she thinks was unfair. That, when examined, is not dismissal by reason of redundancy. She objected to being spoken to in a private conversation in a playground when she was told an application for voluntary redundancy would be approved - who told her interlocutor? When? Why was she having to ask for voluntary redundancy anyway if they were taking her job away and knew that she did not want (and was not going to be comfortable in) classroom related work? Why did they offer her that role anyway knowing that she did not want it? The basic premise - that her role was redundant for non disability related reasons in a wide ranging restructure - is not challenged by the claimant. She is unhappy that she was made to apply for voluntary redundancy when she should have been made redundant without application. That may be correct or not: but she got exactly what she thought she should get, and the big benefit of no actuarial reduction to her pension.
20. None of this is disability related. The unfairness asserted is unfairness at getting everything the claimant thought she should get, and that she was offered a job she thought inappropriate for her with the threat that she might get nothing if she did not take it and did not apply for voluntary redundancy.
21. Most fundamentally, the claimant accepts that her employment should have been ended through redundancy. It is not said by her that she was picked on for dismissal because of her disability. She now says she would have liked part time work, but did not mention this at any time before this hearing.
22. In these circumstances the two remaining claims can have no reasonable prospect of success, and so I dismiss them under Rule 37.

Employment Judge PSL Housego
Dated 20 April 2018

Judgment sent to Parties on
