



EMPLOYMENT TRIBUNALS

Claimant
Mrs S Wood

Respondents
v (1) London Borough of Barnet
(2) Parkfield Primary School
(3) Elliot Foundation Academies Trust

Heard at: Watford

On: 27 June 2018

Before: Employment Judge R Lewis

Appearances

For the Claimant: In person.

For the 1st Respondent: Mr D Hodge, Solicitor.

For the 2nd Respondent: Did not attend and was not represented.

For the 3rd Respondent: Mr N Caiden, Counsel.

JUDGMENT

The claimant's claims are struck out.

REASONS

1. These reasons were requested by the claimant after Judgment had been given orally.

Findings of fact

2. By a claim form presented on 3 April 2018 the claimant brought a claim of disability discrimination. At all times she acted in person.
3. In accordance with the usual practice of the Employment Tribunal, the claim was listed for a preliminary hearing in private for two hours for case management purposes, and then served. When the file was reconsidered after receipt of the responses from the first and third respondents, the preliminary hearing was extended to three hours and converted to a hearing in public to consider applications to strike out.

4. By separate correspondence, Employment Judge Manley directed that any witness statement relied on at this hearing was to be served by 22 June 2018.
5. At the start of this hearing there was a modest bundle of pleading documents prepared by the third respondent. Mr Hodge and Mr Caiden had each prepared written submissions, and the third respondent had prepared a short witness statement from Ms Alison Holding. The claimant confirmed that she had received all of these documents in sufficient time before the hearing.
6. The claimant had brought to the Tribunal office before the hearing a set of papers arranged by document item, but not otherwise bundled or paginated. I estimate them to have been about 400 pages, or the equivalent of a full lever arch file. She had sent copies electronically to both respondents. From that material I read the claimant's agenda, a document which she had prepared entitled "Prospects" which summarised the other documents and her reliance on them; and on skimming through the documents (but no more) I noted and read a letter from Unionline, solicitors, of 6 June 2015, which was clearly a crucial document. It was referred to at length in the ET1. I made no other reference to the claimant's documents.
7. The claimant brought to the Tribunal working papers which she unpacked before the hearing. I estimated them to be about two feet high. The claimant said that they represented about half of her total paperwork on the matter.
8. At the start of the hearing, I discussed with the parties the issues to be decided, and the approach. It followed:-
 - 8.1 The claimant confirmed that she brought no claim of unfair dismissal, but a claim of disability discrimination only.
 - 8.2 The respondents' representatives agreed that as a result of a TUPE transfer, all liabilities of the first respondent had passed to the third some 18 months before the claimant's dismissal.
 - 8.3 The parties agreed my proposal, which was that the third respondent should speak first as to reasons for strike out; followed by the first respondent. I proposed then an adjournment to enable the claimant to finalise her reply, with the respondents having a right of reply again in the event of the claimant raising some new material. The parties agreed and this order was followed. Ms Holding adopted her witness statement on oath and was briefly cross examined.
 - 8.4 I was not referred by any party to any document other than those mentioned above.

9. The material findings of fact are limited to the following:-
- 9.1 The claimant, who was born in 1962, began working as a teaching assistant at Parkfield Primary School in 2001. Her employer was then the first respondent.
- 9.2 Ms Holding became head teacher in September 2012.
- 9.3 On 1 August 2013 the third respondent assumed responsibility for the employment of all Parkfield Primary School staff in accordance with the provisions of TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006). The claimant transferred to the employment of the third respondent.
- 9.4 Following stress related absences, the claimant was on 13 February 2015 given notice of dismissal. Her notice expired on 8 May 2015.
- 9.5 By letter dated 6 June 2015 Unionline, solicitors, advised the claimant at length about her employment law rights. Their advice was that claims in the Employment Tribunal had little prospect of success and could not be supported by her Trade Union (GMB). The letter included a lengthy section headed "Time Limits". It should be read in full. It opens:
- "If, notwithstanding my advice, you wish to lodge a claim at an Employment Tribunal yourself, I am obliged to inform you of the time limits which apply.
- If you do intend to proceed with your case, please note that the vast majority of Employment Tribunal proceedings are subject to strict three month time limit which is three months minus one day from the date of the unlawful act that you wish to complain about. There are very limited circumstances in which this deadline may be extended by the Tribunal, however this is very much the exception rather than the rule."
- 9.6 The letter deals expressly with potential claims for discrimination. It deals in terms with limitation for a claim of a failure to make reasonable adjustments, and this portion of the letter concludes:
- "Please note that I have provided you with the limitation advice so that you are aware of the time limits involved in these types of claim and not to prompt you to make a claim."
- 9.7 A little later, the letter states:
- "In order to bring a claim in the Employment Tribunal it is advisable to complete the ET1 claim form online at the link below. You will need to enter the ACAS early conciliation reference number. Please note that an issue fee will be payable, unless you are exempt from fees."

- 9.8 The claimant said that she took a second opinion about her employment law rights from another solicitor, instructed through a legal expenses insurance policy. Although the claimant produced no paperwork about this, I accept her evidence, which was that the second solicitor gave her broadly the same advice as Unionline.
- 9.9 The claimant at the same time sought advice from GMB and its solicitors about a potential personal injury claim, and received advice, which in turn led her to engage in correspondence in which she complained about the solicitor's services. She pursued a complaint to the Legal Services Ombudsman.
- 9.10 In due course after her dismissal, the claimant researched the law about discrimination. She came to form a conviction that she had been discriminated against during her employment.
- 9.11 The claimant described a period of depression following her dismissal. She used language compatible with a significant decline in her ability to function and care for herself. She confirmed however that she had been referred to specialist mental health services, and that she continued to undertake online research and writing, as well as dealing with personal matters such as her social security entitlement.
- 9.12 The claimant entered early conciliation in February or March 2018. (The certificate was not on the tribunal file, and not provided by any party).
- 9.13 The claim was presented on 3 April 2018.
- 9.14 As the claimant did not enter into early conciliation during the primary limitation period, there is no application of the "stop the clock" provisions for early conciliation. The limitation period for presentation of this claim expired on 7 August 2015. The claim was presented 4 days short of 33 months late.
- 9.15 The third respondent's paperwork about the claimant's employment history was sketchy or non-existent. The respondents had no paperwork about the claimant's employment dated before 2012.
- 9.16 Ms Holding has remained in post as head teacher. There has been turnover at the school such that no classroom teacher who was in post when Ms Holding joined in September 2012 now remains at the school, although a handful of the teaching assistants who were in post then are still employed. The governor who led the claimant's dismissal procedure is no longer a governor and no longer lives in the United Kingdom.

The legal framework

10. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides as follows:-

“(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;”

11. S.123 of the Equality Act 2010 provides insofar as material:

“(1) proceedings on a complaint 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.”

Discussion and Conclusions: first and second respondents

12. In a brief closing submission, Mr Hodge said that the first respondent’s case could be summarised in the sentence, “Why are we here?” Mr Caiden accepted on behalf of the third respondent in opening that liability for any discrimination experienced by the claimant before the TUPE transfer had transferred to it. In closing, the claimant said that she had not understood the effect of the TUPE transfer until she heard it explained by representatives at this hearing.
13. I agree that the claimant’s claim against the first respondent may be struck out under the provisions of rule 37 because it has no reasonable prospect of success, all rights and liabilities having transferred from the first respondent to the third respondent on 1 August 2013 in accordance with TUPE .
14. In reply to my question, the claimant was unable to formulate a claim against the second respondent which was in any way additional to or separate from her claims against the first and third respondents.
15. The claim against the second respondent has no reasonable prospects of success because it has not been shown that the named respondent is a legal entity in a relationship with the claimant to which the Equality Act 2010 applies. The claimant is not prejudiced by that conclusion, because any acts of discrimination found to have taken place at the school were matters for which the third respondent either accepts liability, or is liable as a matter of law.

Discussion and conclusions: third respondent

16. Mr Caiden submitted that the first task of the Tribunal was to ask what was the reason for delay. I find that the claimant accepted the legal advice she was given from at least two sources in or about June 2015 to the effect that she had no reasonable prospect of success in Employment Tribunal proceedings. I accept that she subsequently became unwell, and was confused about her legal rights as she understood them. I do not accept that her mental state deteriorated to a point at which she was incapacitated, such as to lose the ability to manage her own affairs, or make a decision about her legal claims, or initiate the online claim procedure.
17. Mr Caiden's helpful submissions were broadly, "That it should not be assumed that time will be extended, and that it is for the claimant to make good the case in favour of an extension of time."
18. He submitted that the claimant had not made out reasons for delay in bringing proceedings, and had not shown that ill-health was a pertinent factor, that the reality was that the claimant had full knowledge of the material facts at the time. He submitted that damage to cogency of evidence was a particularly powerful factor, and that there was nothing in the case to indicate a claim of any merit. He further submitted that the third respondent's ability to defend the claims was severely prejudiced.
19. The claimant's primary case was that she had been wrongly advised in 2015; that she was not then aware of discrimination law rights; and that it was through substantial research that she came, long after the event, to understand that she had been discriminated against. She was however unable to draw to the attention of the tribunal any specific matter of wrong advice; or to identify an event, or a time, when she had found out something which she could not have found out earlier.
20. The claimant submitted that any prejudice caused by passage of time, poor paperwork, and staff turnover, could be overcome by general evidence from past or present staff at the school about the stressful working environment. I do not accept that workplace criticism, given years after the event, by other people, speaking in general terms, is necessarily of assistance to the Tribunal, or could overcome the prejudice to the respondent (whether or not it had the potential to assist the claimant).
21. I find that the claim has been presented substantially out of time and that it is not just and equitable to extend time for the following broad reasons:-
 - 21.1 I make no finding as to the merits of the claimant's proposed claim. I attach no weight against the claimant to the fact that Unionline and at least one other solicitor advised against pursuit of a claim in or about 2015.
 - 21.2 The claimant had, at the time of dismissal, all the facts upon which to base her claim. It was not put to me that any new factual matter

had arisen (such as a concealed event or document, not previously made known) which shed light on previous events.

- 21.3 By about 6 June 2015 the claimant had the benefit of a detailed discussion of her rights in discrimination law, including advice about the tribunal process and time limits. The vocabulary of the Equality Act 2010 was plainly engaged in the advice given to the claimant, and I do not accept her assertion that she did not know what discrimination was.
- 21.4 In closing submissions, the claimant repeatedly said that what she had done wrong was to accept legal advice which at the time she thought was right, but which she now thought was wrong. Her analysis of what was wrong with the legal advice went no further than her assertion that she was now convinced that she had been discriminated against. I find that the claimant accepted the advice of at least two solicitors that she should not pursue an Employment Tribunal claim in 2015.
- 21.5 I find that the claimant subsequently became confused about the relationship between the processes and time limits for bringing Employment Tribunal and personal injury proceedings arising out of the same events (as she saw it) and that she then became absorbed in pursuing complaints against Unionline, including a complaint to the Legal Services Ombudsman.
22. The fundamental reason for delay was that the claimant accepted the advice of Unionline and other solicitors. She understood that she had been advised that her potential claim was without merit. Subsequently, her own research, largely online, led her to form the view that the previously given advice was wrong, that she was wrong to accept it, that she had been discriminated against contrary to the Equality Act 2010, and that she had a strong claim to that effect.
23. I repeat that I make no finding on the merits of the claim which the claimant now wishes to present. I do however find that making every allowance for the difficulties of a claimant in person, the claimant in writing and at this hearing demonstrated an exceptionally poor ability to understand legal language, concepts, and advice, or to apply them to her own circumstances. The language of box 8.2 of her claim form is no more than an example. I do not make this finding as a gratuitous criticism of the claimant, but because it is relevant to my finding that the claimant has not shown any error in the legal advice given to her upon which I might rely in the exercise of discretion.
24. I accept Ms Holding's evidence that delay (which would continue until a listing well into 2019 if the case proceeded) has prejudiced the ability of the third respondent fairly to defend itself at a fair hearing.

25. For the avoidance of doubt, my findings on limitation would apply, if appropriate, to all three respondents, although strictly, in light of paragraphs 12-15 inclusive above, they need only apply to the third respondent.

Employment Judge R Lewis

Date:13/07/2018.....

Sent to the parties on:

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For the Tribunal Office