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EMPLOYMENT TRIBUNALS

Claimant: Mr U Gondal
Respondent: Sodexo Limited
Heard at: East London Hearing Centre
On: 16 July 2018
Before: Employment Judge O'Brien sitting alone

Representation

Claimant: In person
Respondent: Mr B Randle of Counsel

JUDGMENT having been sent to the parties on 25 July 2018 and reasons having been requested in accordance with Rule 62(2) of the Rules of Procedure 2013.

REASONS

1. The claimant presented complaints of unfair dismissal, sex discrimination and discrimination on the grounds of religion or philosophical belief by ET1 presented on the 22 January 2018. The unfair dismissal claim was withdrawn on 12 June 2018 and is hereby dismissed. The respondent defends the remaining claims.
2. At a case management preliminary hearing on 16 April 2018, the claims of sex discrimination and discrimination on the grounds of religious or philosophical belief were clarified as follows:
 - a. Varshaa Desai asked the claimant on 22 May 2017 and 25 August 2017 if he was comfortable taking instructions from a female. These are allegations of sex discrimination.
 - b. On a date in June 2017, Ms Desai told the claimant during Ramadan that his breath stank, that she would buy him some mints, that he would need eat them and that he should visit the dentist. This is an allegation of discrimination on the grounds of religion or philosophical belief.

- c. Ms Desai told the claimant after Ramadan that his breath stank, that she would buy him some mints, that he would need eat them and that he should visit the dentist. This was previously thought to be another allegation of discrimination on the grounds of religion or philosophical belief but was confirmed today not to be an allegation of discrimination.
3. This preliminary hearing was listed consider whether any or all of claimant's claims were brought out of time and, if so, whether it would be just and equitable to extend time.
4. The claimant had been directed to provide a witness statement dealing with that preliminary issue. Regrettably, none was provided. Nevertheless, I permitted the appellant to give oral evidence, asking relevant questions myself about the chronology of events and bringing the claim, and he was cross-examined by Mr Randall. Mr Randall also provided a bundle of documents relating to the claimant's employment and including the respondent's grievance and redundancy policies.

Findings of Fact

5. The respondent is a facilities management company. The claimant was employed by the respondent as an assistant finance manager from 22 May 2017 until dismissed for the stated reason of redundancy on 12 January 2018.
6. The claimant's line manager was Varshaa Desai. The claimant believes that Ms Desai is a Hindu. It appears to be agreed that she is not a Muslim. The claimant is a Muslim.
7. The claimant complains that Ms Desai asked him about whether he was comfortable taking instructions from a female on 22 May 2017 and 25 August 2017. The claimant alleges that these are acts of sex discrimination. However, he described the first incident as "minor". Certainly, it was not as serious in his mind as the incidents of discrimination on the grounds of religious and philosophical belief. The claimant alleges that Ms Desai told him that his breath stank, that she would buy mints, that he should eat them and that he should visit the dentist. This happened on two occasions: in June 2017, during Ramadan; and in August 2017, after Ramadan. However, the claimant clarified today that only the first occasion related to his religious and philosophical belief (and is probably best categorised as religious harassment).
8. The claimant was very offended by the June incident but needed financial stability and so overlooked the incident, as indeed he had overlooked the alleged sex discrimination incident in May 2017.
9. The claimant's relationship with his wife started to deteriorate in August 2017 and she left him on 15 November 2017. The claimant undertook internet research on either 15 or 16 November 2017 into "what can I do to stop my wife taking my child overseas", and obtained and filled out an application for a Prohibited Steps Order which he submitted to the Family Court on 17 November 2017.

10. Throughout this time, from 1 September 2017, the claimant was absent from work with a fit note showing initially “stress at work” and subsequently “anxiety state”. He has not at any material point been prescribed any medication for his mental health.
11. At a welfare meeting on 20 October 2017, the claimant raised Ms Desai having said that he had bad breath and that she would buy mints for him and also Ms Desai asking if he was comfortable working for a woman. This was treated as a grievance which was investigated and the outcome communicated to the claimant on 7 December 2017.
12. In the meantime, the claimant resigned by email on 7 November 2017 with immediate effect and also indicated, "I need an immediate response from HR regarding the grievance raised by myself." The claimant also entered into correspondence on 21 November about his resignation, returning items and also enquiring about the grievance.
13. The claimant emailed the respondent on 14 December responding to the outcome of the grievance and raising concerns; this was treated as an appeal against the grievance.
14. The claimant went online to commence ET proceedings on or around 18 December 2017 but was redirected to ACAS to commence early conciliation, which he did. When he contacted ACAS again approximately one month later to find out what had happened, he was issued with a certificate on 18 January 2018.
15. The claimant submitted his ET1 on 22 January 2018.

The law

16. A claim can be made to an Employment Tribunal regarding unlawful discrimination pursuant to s123 of the Equality Act 2010 (EA). The time limit is three months beginning with the date of the act in question or such time as is just and equitable in all the circumstances. Time stops running during a period of early conciliation, in which case the time limit is extended if necessary to end one month after the issue of an early conciliation certificate.
17. It is for the claimant to persuade the tribunal to extend time.
18. Pursuant to s33 of the Limitation Act 1980 (power to extend time in personal injury actions), a court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

19. In **British Coal Corpn v Keeble [1997] IRLR 336**, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (**Southwark London Borough v Afolabi [2003] IRLR 220**).
20. The starting point is the ordinary time limits are to be observed. The burden lies on the claimant to persuade the Tribunal that it should exercise its discretion.

Findings

21. The most serious incident by far, by the claimant's own admission, was the incident in June 2017, when Ms Desai had demanded in Ramadan that the claimant eat mints to mask his bad breath. The time limit for bringing a claim about this allegation would have expired in September 2017. The claimant chose not to pursue this complaint at the time because he wanted to remain in employment. At the time, the claimant had no marital issues and could have researched his rights had he wished to do so. Similarly, the claimant also overlooked the first alleged act of sex discrimination for the same reasons.
22. By the time of the second allegation of sex discrimination and the second "breath" incident, the claimant had begun to suffer of marital difficulties and subsequently took time off work with stress. However, he was not at this point so unwell that he could not have brought a claim or researched his rights. Indeed, the claimant was sufficiently well to undertake research into his family rights. He also entered into correspondence in respect of his grievance. In fact, the claimant prioritised other matters over taking action in respect of the alleged discrimination. Of course, the claimant was entitled to do so but must bear the consequences. The claimant was able to and did in fact commence proceedings in the Family Court and so could easily have done the same in the Employment Tribunal.
23. The claimant claims that he was ignorant of his rights; however, he could easily have made attempts to discover his rights. The claimant was aware of the services provided by the Citizens Advice Bureau. Indeed, he had sought advice from the Citizens Advice Bureau before in respect of immigration matters and so could have spoken to them.
24. The claimant says ACAS did not mention time limits when he contacted them on 18 December 2017. I find this very surprising but, even if true, the time-limit had already passed in respect of all of the claimant's allegations of discrimination. The claimant confirmed today that he was not alleging that the second "breath" incident was connected to religion or philosophical belief.
25. The length of delay in this case is four months in respect of the religious discrimination allegation. The length of delay in respect of allegations of sex discrimination is at least two months. The reasons for the delay were primarily a choice on the part of the claimant to remain in employment and secondly to prioritise family matters above employment law proceedings.

The claimant also relies on a claimed ignorance of his employment rights; however, in this instance I consider that the ignorance was not reasonable. The claimant could easily have discovered the applicable time-limits.

26. For the same reasons, of course, the claimant did not act promptly once he was aware of the facts which gave rise to his causes of action.
27. Inevitably any delay will affect the cogency of evidence to a certain extent. However, in this case, the claimant has demonstrated that the cogency of his own evidence has already materially deteriorated as a result of the delay.
28. The claimant made no attempt to obtain professional advice despite the fact that he continued to be paid for a number of months after he tendered his resignation and so theoretically could have afforded to pay for professional advice at that time.
29. In all of the circumstances, including the fact that the claimant is representing himself, I find that the claimant has not persuaded me that it is appropriate in this instance to exercise discretion and to extend the ordinarily applicable time limit. All of the allegations have been brought out of time. The Tribunal does not have jurisdiction and therefore the Equality Act claims must be dismissed.

Employment Judge O'Brien

15 August 2018