



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mrs. L Bartlett-Truslove

Islamic Relief UK

## PRELIMINARY HEARING

Heard at: London South Croydon

On: 10 September 2018

Before: Employment Judge Sage

### Appearances

For the Claimant: In person

For the Respondent: Mr. Parks Solicitor Advocate

## JUDGMENT

1. *The discrimination complaint was presented in time.*
2. *The hearing is listed for **21 March 2019** as further detailed below.*

## REASONS

Requested by the Respondent.

1. The Respondent made an application dated the 16 July 2018 for the Claimant's claim to be dismissed on the ground that her pregnancy and maternity claim was not presented in time. They stated in this application (and before the Tribunal) that it was an agreed fact that the decision not to recruit the Claimant was communicated to her on the 10 November 2017 therefore her claim that was presented on the 17 April 2018 was out of time.

### **Respondent's primary submissions.**

2. The Respondent produced a written submission to the Tribunal stating that the claim was out of time and further that the Tribunal should not exercise its

discretion to extend on just and equitable grounds. The Respondent referred the Tribunal to Section 123 of the Equality Act 2010. They stated that the Claimant's only claim was that she was not recruited into a permanent role because she was pregnant. The Claimant was informed of the decision not to recruit her into the role on the 10 November 2017. The Respondent relied on the case of *Viridi v Commissioner of Police of the Metropolis [2007] IRLR 24* where it was stated that time began to run when the decision not to recruit was communicated to the Claimant. They submitted that the decision not to recruit the Claimant was made on the 10 November, time therefore started to run from that date; therefore, the claim is out of time. They further stated that there should be no presumption that a Tribunal should extend and referred to the case of *Bexley Community Centre v Robertson [2003] EWCA Civ 576* stating that the Tribunal should not extend its discretion in this case.

3. The Respondent added in oral submissions that this was a pure pleading point. The respondent referred to documents which showed the Claimant 'pushing back' and referred to paragraphs 53 and 58 of the ET3. The respondent also referred to the grievance outcome document provided by the Claimant at the Hearing at paragraphs 4.8 where it was indicated that the Claimant knew of the final decision and she was not satisfied with the feedback. At paragraph 5.3 where the Claimant was not satisfied with the feedback and at paragraph 5.6 which confirmed that the Claimant was aware of the decision on the 10 November.

#### **Respondent's response to the Claimant's submission.**

4. After hearing the Claimant's submissions (referred to below at paragraphs 6-7), the respondent replied as follows: In this case there is no question of conduct extending over a period. This is a single act and it is non-appointment. The Respondent stated that it could only be the 10 or the 21 November and the Respondent did not know why the Claimant says it is the 21 November. The Respondent conceded however that if the date was the 21 November, it would be in time, taking into account Section 207B(4) Employment Rights Act 1996 (as it was confirmed that Day A was the 19 February and Day B was the 19 March. The Claimant presented her claim on the 17 April 2018).
5. With regard to the issue of whether it is just and equitable to extend, the Respondent stated that the Tribunal had a wide ambit, but time limit extensions should be exercised strictly. The Claimant said that the birth of her son was a reason, however the Respondent stated that this was not a reason as she had been proactive in pursuing her claim and she participated in the (grievance) investigation. The Respondent was not denigrating what the Claimant had gone through, but the Claimant could have submitted her claim in time, she went to ACAS and she was chasing the CEO by email (regarding a conflict of interest). The Respondent says that it is not just and equitable to extend time; it is 10 days late. The respondent does not see why it is just and equitable to extend time where there are no grounds to do so.

**The Claimant's submissions which were oral and written**

6. The Claimant read from her written submissions (which had been handed to the Respondent and read prior to the hearing). The Claimant stated that it was unclear to her when the decision was reached regarding her non-appointment to the full-time role. The Claimant disputed that it was an 'agreed fact' that the 10 November was the last date of discrimination.
7. The Claimant stated that she contended that the last date of discrimination was the 21 November, and this was the date that "it was clear to me when the recruitment decision against me was final". She also referred to the SAR request which suggested that Ms Haq also did not think that a decision had been reached on the 10 November" as the matter would be finalised "once Mr Madden returned from paternity leave on the 20 November". The Claimant therefore stated that the decision was confirmed to her on the 21 November after the Respondent told the agency Harris Hill that she had been unsuccessful. The Claimant stated that this was the standard procedure followed by the Respondent.

**Decision**

8. The Tribunal firstly conclude from the above submissions, that the facts were not agreed; the Claimant disputed that the last act complained of was the 10 November, she stated that it was the 21 November. Looking at the ET1 to see how the claim was put, it was noted that these two events were dealt with separately. The Claimant referred to a conversation with Ms Kashim on the 10 November where she was told that she was "considered "unsuccessful" at interview". She also referred to the communication relayed via Harris Hill on the 21 November to "inform me that I had been unsuccessful". The Tribunal conclude that there were two entirely separate acts involving different people (the latter decision followed a discussion with Ms. Adeshina).
9. The Tribunal conclude that the decision relayed on the 21 November 2017 by Ms Adeshina to Harris Hill and then relayed to the Claimant, was a specific and subsequent act of discrimination. Even if the Tribunal is wrong on this point, it will be a matter for evidence for the Tribunal hearing the case; it is not a matter that can be decided as a preliminary point without hearing the evidence. It is accepted that discrimination cases are highly fact sensitive and where there is a dispute on the facts, as we see here, it is a matter that should proceed to a full hearing.
10. As the Tribunal conclude that the 21 November was the final act of discrimination pleaded in the Claimant's claim form, the Claimant's claim is in time (as conceded by the Respondent above at paragraph 4).

**Case Number: 2301398/2018**

**Employment Judge Sage**

10 September 2018