



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms B Sule

**Respondent:** Shoosmiths LLP

**Heard at:** Manchester

**On:** 24 October 2018

**Before:** Employment Judge T Vincent Ryan

## REPRESENTATION:

**Claimant:** Miss Khan, Counsel

**Respondent:** Mr J Naylor, Solicitor

**JUDGMENT** having been sent to the parties on 1 November 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The case raises serious issues of alleged discrimination and concern for access to justice and the needs of litigants in person.
2. By way of chronological background, I noted that the claimant was employed by the respondent from 23 November 2015 to 22 July 2016 when she was dismissed. She presented a claim to the Tribunal alleging discrimination on 20 September 2016. The final hearing of those claims was on 1 and 2 March 2017, with oral judgment being given by Employment Judge Sherratt for that tribunal on 2 March (Case #1). The claimant succeeded, as a litigant in person, with a claim of harassment and was awarded £1,000 in damages, by the tribunal; her other claims of harassment, direct discrimination and victimisation were dismissed.

3. The claimant appealed the judgment in Case #1; the Employment Appeal Tribunal's judgment was given on 28 March 2018; the appeal was dismissed.

4. On 2 April 2018 the claimant applied to EJ Sherratt for reconsideration of the judgment in Case #1. The decision refusing her application was sent to her on 2 May 2018. The claimant then presented three claims to the tribunal on 4 and 8 May 2018 and these are the claims that we are considering today (referred to hereafter as "these claims").

5. These claims were clarified at a preliminary hearing (pages 150-151 of the bundle to which all page references refer unless otherwise stated). All the claims now advanced are claims of race discrimination; there is no longer any claim of age or sex discrimination. These claims are:

- (1) Direct race discrimination, where the claimant says she was not promoted by the respondent in 2016 when "AH" was promoted, in circumstances where the claimant knew in 2016 that "AH" had been given more responsibility; this matter was discussed by the parties at a grievance hearing on 6 July 2016, that is prior to the claimant's dismissal by the respondent.
- (2) Harassment in relation to race where the claimant complains of the following: –
  - (a) the way the respondent dealt with her flexible working application made during her employment by the respondent;
  - (b) that the claimant was required to work through her lunch breaks during her employment;
  - (c) that "B", a partner/director with the respondent shouted at her and threw documents at her on an occasion or occasions during her employment that ended on 22<sup>nd</sup> July 2016; and
  - (d) that the investigation into her informal complaint against "B" while she was still employed by the respondent was not properly investigated. I say "informal complaint" because it was not a formal written grievance, as I understand it from Ms Khan.
- (3) Victimisation, which again relates to her complaint about Mr B and specifically that she had no adequate response to that complaint before she was dismissed from her said employment.

6. At the outset of the claimant's difficulties at work she had some advice from the CAB and was referred for advice/representation to Merseyside Employment Law ("MEL"), professional legal advisers. The claimant had at least a telephone assessment and then subsequent correspondence from MEL which she chose not to pursue. We do not know the advice given or the amount of advice given but counsel has confirmed that it was the claimant's choice not to pursue subsequent follow-up

from MEL. The claimant was a litigant in person at the final hearing in Case # 1, and succeeded as above. The claimant also had legal advice and assistance at the appeal hearing stage, although she lodged the appeal herself. The claimant instructed GMSL Legal Services to advise and represent her in respect of these claims on or shortly before 11 May 2018.

7. All the information on which the claimant relies in respect of these claims was known to her by no later than 2 March 2017, and the claimant no longer claims that she obtained subsequent relevant information that was unknown to her by 2 March 2017. The significance of the 2<sup>nd</sup> March 2017 is that it was the date of judgment in Case #1. Specifically, the claimant knew and relied upon at that date, and still relies upon, the following:

- (1) The claimant was aware at the time in 2016 that AH had been given added responsibility and she, the claimant, was not; this was discussed by the parties as early as 6 July 2016. The claimant made claims in respect of this in May 2018 which were clarified in July 2018 at the preliminary hearing.
- (2) The flexible working application was made and dealt with approvingly by the respondent on 26 April 2016. The claim in respect of that was made in May 2018 and clarified at the preliminary hearing in July 2018.
- (3) The claimant was entitled to a lunch break and she believed that “B” shouted at her and threw documents; the claimant was aware of that alleged conduct on whatever date that is said to have occurred and it was during her employment by the respondent. She says that she complained to the respondent during her employment so it must have been before 22 July 2016. The claimant presented a related claim in May 2018, clarified again in July 2018.
- (4) The circumstances of the investigation into the complaint against “B”; the claimant made her complaint before 22 July 2016. She presented her claim in respect of the investigation in May 2018.
- (5) Claim of victimisation: similarly, because it relates to the complaint about “B”, the claimant was obviously aware of relevant circumstances before 22 July 2016; she presented her claim in May 2018.

8. On and off throughout the period from July 2016 to date the claimant has had legal advice, and access to further advice which she chose not to pursue. In and since July 2016 she has presented a claim in person, succeeded with a claim in person, appealed in person, applied for reconsideration in person and presented three subsequent claims in person; the claimant is clearly a resourceful and able person, and I do not doubt for a moment that she is capable of representing herself and making technical claims and applications if she so chooses.

9. The claimant has known everything she relies on to base these claims for at least two years and three months, that is since the effective date of termination of her employment with the respondent; that knowledge can be said to have crystallised by no later than 2 March 2017 (oral Judgment in Case #1), that is one year six months ago approximately.

10. It must be borne in mind, and I said so at the outset, how serious allegations of discrimination are; they are serious not only for the person who feels that they are the victim of discrimination but also those against whom the allegations are made where their management style, their conduct, is being scrutinised and called into serious question; they too may be suffering some anxiety because they have been singled out but in any event they stand accused of unlawful discrimination; the claims are denied.

11. All the claims before us today are late and out of time. They could and perhaps ought to have been included in Case #1, even if they appeared by way of amendment during those proceedings. They are said to be new claims, but there has been no reason preventing the claimant from bringing them sooner. It is not a reasonable explanation to say that she did not understand in the circumstances, and that she believed that she could not make claims that were different to the claims being pursued through appeal to the EAT.

12. The chronology is suggestive of this: that the appeal was in response to losing Case # 1; the reconsideration application was in response to the loss of the appeal; these claims are in response to EJ Sherratt's refusal to reconsider the tribunal's judgment in Case #1. Therefore, the appearance is that the claimant is still, perhaps understandably, aggrieved at the respondent's alleged treatment of her and the termination of her employment and that she is seeking to re-fight a lost battle but choosing alternative grounds.

13. Extension of time for the presentation of a claim to the tribunal is an exception not the rule. The time lapse between the termination of the claimant's employment and these claims is considerable. I must consider the likely implication if this case were to proceed that a final hearing on these claims would not be listed until mid-2019. I have not taken soundings today but yesterday I listed multi-day cases, as this would be, that are to be heard in July and August 2019. That must affect the cogency of the evidence to be given; it must influence Ms Sule personally and those against whom she is making the allegations for a considerable further length of time.

14. Prejudice weighs heavily, more heavily I would say against the respondent in this situation, because these newly made allegations are old facts which the claimant knew about and could have and should have raised much sooner, that was in her power. Parties to litigation are entitled to certainty of outcome and the time limits are there for a purpose. Given the evolution of these claims and all the circumstances described above, the judgment in Case #1, the claimant's delays, piecemeal and persistent re-arguing of matters that concerned her up to July 2016 at work, I consider that it would not be possible to hold a fair trial in respect of these claims.

15. The claimant has not advanced a good reason why (a) she did not raise these claims in Case # 1, and (b) she did not raise them before May 2018, because that is even two months after the EAT Judgment. It still took her solicitors a further one month after that to clarify the claims, and in fact a further month after that before the preliminary hearing which clarified the claims and in which some claims were withdrawn and dismissed. This has been a very long evolution without good reason for it taking so long.

16. For those reasons, and having considered the submissions of learned counsel and Mr Naylor, and having read the documents to which I was referred, in all the circumstances I find as follows:

- (1) The claims being advanced are out of time.
- (2) It would not be just and equitable to extend time.
- (3) Insofar as the claims duplicate or overlap allegations of discrimination and alleged treatment that had been dealt with by the tribunal in Case #1 in March 2017, they are res judicata, which means they have already been dealt with: decisions have already been made on them.
- (4) In the alternative, it would be an abuse of process to proceed further. The claimant has had every and ample opportunity to present and pursue these claims better and in a timely manner, or to justify not having done so, but she has not satisfied me as to why she has acted as she has.

17. These claims are therefore dismissed, as are those that were withdrawn on 4 July 2018 at the said preliminary hearing.

Employment Judge T V Ryan

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Date: 21.11.18

REASONS SENT TO THE PARTIES ON

.28 November 2018

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FOR THE TRIBUNAL OFFICE

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**Case Nos. 2410253/2018  
2410505/2018  
2410506/2018**