



EMPLOYMENT TRIBUNALS

Claimant: Miss B Featherstone
Respondent: Flair Flooring Supplies Limited

Heard at: Manchester **On:** 10 July 2018

Before: Employment Judge Sherratt

REPRESENTATION:

Claimant: Litigant in person
Respondent: Mr P Wilson, Counsel

JUDGMENT AT PRELIMINARY HEARING

The judgment of the Tribunal is that it is just and equitable to allow the claimant's claims under the Equality Act 2010 to proceed to the final hearing already listed to take place from Tuesday 11 to Thursday 13 September 2018.

REASONS

1. There was a preliminary hearing before Employment Judge Franey on 8 February 2018 when he recognised that the claimant's claims of harassment, direct sex discrimination and victimisation under the Equality Act 2010 were not brought within the normal time limit. He noted that the last unlawful act of which the claimant complained must have occurred on or before the claimant's resignation on 18 July 2017. The primary time limit allowing for early conciliation was around 15 November 2017. The claim form was received on 1 December 2017 but rejected for a reason related to the early conciliation certificate and then it was accepted when resubmitted on 11 December 2017, making the claim in the region of 26 days late.

2. This hearing was listed to deal with the time limit point and to consider whether it might be just and equitable to extend time to allow the claim to proceed.

3. From the claimant's evidence and her cross examination at today's hearing the following matters emerged.

4. The claimant contacted ACAS for advice around 24 or 25 July 2017. She was aware that she had a potential claim for sex discrimination. The early conciliation process was explained to her and she became aware of the time limit for bringing a claim. The claimant, for whatever reason, thought that following being notified of the failure of the early conciliation process that something would happen automatically to progress her case without the claimant having to do anything about it herself. At the end of November she must have realised that nothing had happened and she contacted someone, possibly the Employment Tribunal, on or about 1 December 2017, and she then became aware that she had to process something herself. She became aware of the ET1 form which she completed online and submitted on 1 December 2017. It was initially rejected then resubmitted and accepted on 11 December.

5. The claimant has put forward four matters as to things that prevented her from making her application to the Employment Tribunal in the period between resigning from employment and bringing her claim. Dealing with these matters very simply, the first she put forward is that she lived in rented accommodation, she was in financial difficulties having lost her employment, there were possession proceedings that she got to know about around 8 November 2017 and she was due in court, and attended court, on 6 December 2017. For that month she was involved in processing various matters leading to her being able to present information to the landlord and/or the court which led to a suspended possession order based on payment of the rent plus something off the arrears on 6 December 2017. The court proceedings were ongoing around the time the claimant submitted the ET1 form.

6. The second matter was a medical issue occurring around probably mid to late September 2017 going on to early October 2017. The claimant needed time mentally to recover from this. Whilst getting better towards the end of October she still seems to this day to have the matter hanging over her.

7. The third matter is that throughout the time period concerned the claimant was seriously hunting for new employment. She was preoccupied with this as she had a home and a young child to support financially.

8. The fourth matter the claimant has brought before the Tribunal is stress and anxiety. Before she left her employment she was taking medication, prescribed by her GP, to deal with stress and anxiety.

9. I accept the claimant's evidence.

10. The respondent called no evidence, relying on the submissions of counsel.

11. As to the balance of prejudice, he put it very simply and succinctly at the start: if the case is not allowed to proceed the claimant's claim has gone; if the claimant is allowed to proceed the respondent faces a claim which would otherwise be time barred.

12. Mr Wilson's submission considered the relevant factors from **British Coal Corporation v Keeble [1997] IRLR 336, EAT.**

13. In his submission there was no difficulty in terms of the cogency of the evidence given that this is a matter that occurred in July 2017 and was brought to the notice of the respondent in July 2017, although there is some dispute about whether the claimant did or did not state she wished to proceed with a complaint against the person concerned.

14. The claimant acted promptly to contact ACAS once she knew of the facts. She obtained advice in the week after her resignation and was made aware of the time limit for bringing a claim.

15. The claimant made herself aware of what she could do in terms of bringing a claim; she became aware of the time limit but the claimant failed to prioritise the ET1 claim process over the other issues in her life. The claimant should, in the submission of counsel, have prioritised matters so that the ET1 claim was foremost in her mind rather than letting it go whilst allowing the other matters to come to the forefront of it. The claimant, in his submission, could have acted sooner and got her claim in in time; the various issues did not and/or should not have prevented her from dealing with her claim at various points along the timeline.

16. Section 123 of the Equality Act 2010 provides that proceedings may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable.

17. This section was considered by the Court of Appeal in **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640** on 28 March this year. It held that section 123 gives the Tribunal the widest possible discretion to extend time with no list of factors to consider but the length of and reasons for the delay would almost always be relevant as would prejudice to the respondent.

18. The job of the Tribunal is to look at the facts and to consider the balance of prejudice to the parties.

19. It seems to me that the claimant was affected by the first three matters set out above whilst all the time being subject to the fourth matter. There were traumatic events going on in the claimant's life during the three month period following her resignation and she was devoting her energies to those rather than to the Employment Tribunal claim. These factors in my judgment explain the reason for the 26 day delay in bringing the claim.

20. Looking at the submissions on behalf of the respondent it does not put forward anything prejudicial other than having to face a claim which was brought out of time

21. Weighing these factors in the balance it seems to me that the consequence to the claimant of losing the ability to pursue her claim is much greater than the consequence to the respondent of having to defend it. Therefore, on the basis of the

balance of prejudice between the parties, it seems to me that this claim should be allowed to proceed to a final hearing.

Employment Judge Sherratt

26 July 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

7 August 2018

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