



THE EMPLOYMENT TRIBUNALS

BETWEEN

Miss H Aslam

AND

(1) Tees Esk & Wear Valleys
NHS Foundation Trust

(2) Mary Ann Heads

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Teesside

On: 5 January 2018

Before: Employment Judge Pitt

Appearances

For the Claimant: In person

For the Respondent: Mr McKeever, Solicitor

JUDGMENT

- 1 The respondent's application for the claim be struck out on the basis of unreasonable prospect of success is dismissed.
- 2 The respondent's application that the claim is out of time is refused.
- 3 The application to amend to include race discrimination is allowed.

REASONS

- 1 The claimant makes allegations under the Equality Act 2010 commencing in November 2016 up to September 2017. She presented her claim on 7 September 2017. In that claim her last allegation was relating to 5 September 2017.
- 2 The respondent replied on 6 October 2017. At a private preliminary hearing on 3 November 2017 before Employment Judge Shepherd the claimant was ordered

to provide specific details of her claim and to provide medical records. She e-mailed her further and better particulars on 17 May. They not only fully particularise her original claim but also expand upon it by adding in further allegations of age and disability discrimination. More importantly she also added in claims for race discrimination.

- 3 The respondent filed a response on 30 November, repeated its request for a hearing for strike out for no prospect of success and on the time limits.

The time limit point

- 4 Mr McKeever's argument is straightforward. The claim is in time as a result of the allegation of 5 September. However, this allegation he says has no reasonable prospect of success even when looking at the fully pleaded allegation. If that is correct then any allegations prior to 6 June 2017 must be dismissed unless the claim time can be extended. Mr McKeever brought to my attention the case of **Balls v Downham Market High School & College [2011] IRLR** which confirms that it is a high test, that there must be no reasonable prospect of success.
- 5 Having looked at the fully pleaded allegation the claimant alleges she was questioned about the nature of her dyslexia and was refused a reasonable adjustment. It seems to me this will be a factual dispute as to whether the words were spoken or not. Looking at the papers only there is a prima facie case.
- 6 However the claimant's case is that this also was a series of events. If a full panel conclude that some events did not occur or did not amount to discrimination the full Tribunal will be at liberty to revisit the issue of jurisdiction on the basis that there is a continuing series of events.

Reasonable prospect of success

- 7 Applying the same standard as above it seems that all the allegations will come down to the following:-
- 7.1 Was the claimant disabled either by in the way of dyslexia or hearing loss?
- 7.2 Did the events occur, which is a factual matter?
- 7.3 Are the acts discriminatory?
- 8 On that basis I cannot say that there is no reasonable prospect of success of any of them.
- 9 As to the disability the respondent concedes the claimant is dyslexic but not that this is a disability and the claimant will have to provide an impact statement on that point. The respondent does not concede the claimant has a hearing problem. The claimant at present has no medical evidence as to the hearing loss. If this is not forthcoming it maybe that this aspect of the disability claim will fail and I have advised the claimant of that.

Amendment

- 10 The claimant in her further and better particulars now raises the issue of race discrimination. She told me she did not know how to set her claim out and in particular because of her dyslexia she was not always able to process information. It was only as a result of Employment Judge Shepherd setting the law out for her she was able to fully particularise her claim.
- 11 Mr McKeever says this is a new claim and therefore an application must be made to amend. I have to consider, he says, is it a relabeling of the claim, delay in presenting the claim and prejudice. In relation to prejudice he says for the respondents the case will cost more money to defend as further witnesses will be required extending the hearing time and all the new matters will rely on peoples' memories only which may make it unreliable.
- 12 I agree with him this is not a relabeling exercise and an application to amend is required. I also accept the claimant's assertion she has difficulty processing information and that is why there was a delay in presenting the claim.
- 13 In the case of **Selkent Bus Company Limited v Moore [1996] ICR 836** Mummery J stated that the general guiding principle is that discretion should be exercised in a way that is consistent with the requirements of relevant reason, justice and fairness. I take into account that the original claim was presented within the relevant time limit and that the claimant's original claim was badly drafted but that the further and better particulars lay out her case clearly. That arose as a result of Employment Judge Shepherd's case management.
- 14 I must seek to do justice between the parties and weigh the prejudice between them. I conclude that the prejudice is greater to the claimant in that she will be unable to pursue a legitimate claim. Whilst I note Mr McKeever's argument as to finances the respondents are going to have to defend the claim in any event. Applying the numbering discussed at the hearing and marked on the ET1 and the Further and Better Particulars by me, the amendments are allowed as follows - Numbers 8, 15, 16, 17, 18, 19, 20 and 24.

EMPLOYMENT JUDGE PITT

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
10th January 2018**