



EMPLOYMENT TRIBUNALS

(RESERVED)

Claimant: Ms S Khan

Respondent: The Chief Constable of West Midlands Police (1)
Gail Rumble (2)
Stuart Gardner (3)

Heard at: Birmingham **On:** 13 November 2018

Before: Employment Judge Hindmarch

Representation

Claimant: In person

Respondent(s): Mr Rathmell (counsel)

JUDGMENT

1. The complaint of sex discrimination is dismissed on withdrawal.
2. The complaints of age, race and/or religious or belief discrimination are out of time. It would not be just and equitable to extend time and the Tribunal does not have jurisdiction to hear those complaints.

REASONS

1. By an ET1 filed on 12 February 2018 the Claimant brought proceedings against her employer the First Respondent and 2 of her previous line managers, the Second and Third Respondents. The Claimants employment with the Frist Respondent is continuing. The complaints in the ET1 were of discrimination because of the protected characteristics of sex, age, race and religion and belief. The Claimant agreed in cross-examination that she had not intended to bring a sex discrimination claim and that she was withdrawing that claim.
2. On 24 February 2018 the Tribunal ordered the Claimant to identify the date of the last alleged discriminatory conduct. The Claimant emailed that the last date of discrimination was when she *'left the department on*

24 August 2016'. On 9 April 2018 the Claimant sent a further email to the Tribunal stating *'the force (the First respondent) has continued to deal with this matter unfairly through the internal process'*. On 30 April 2018 the Tribunal wrote to the Claimant asking for further clarification and the Claimant replied on 4 May 2018 essentially giving more information about the internal resolution process.

3. The response on behalf of the First and Third Respondents was filed on 4 May 2018. The response on behalf of the Second Respondent, who has retired, was filed on 19 September 2018. The responses raised a jurisdiction point on the basis the claims were out of time and the Respondents requested an Open Preliminary Hearing on this point.
4. I heard evidence from the Claimant and from Inspector Mustafa Mohammed, current Chair of the Association of Muslim Police (AMP) who has played a supporting role to the Claimant. There was an agreed bundle, cast list and chronology. I heard submissions from both Mr Rathmell who represented all 3 Respondents and who handed up written submissions and case law, and oral submissions from the Claimant.
5. The Claimants complaints were about the conduct of her 2 line managers, the Second and Third Respondents, and about her pay whilst undertaking a previous role with the First Respondent. The Second respondent was the Claimants line manager from November 2012 to October 2013 however the Claimant was on sick leave from June to November 2013 so had little dealings with the Second Respondent in that time. On 30 July 2018 the Claimant raised a grievance against the Second Respondent. The outcome was provided to the Claimant in January 2014. She confirmed by email dated 16 March 2014, page 185, that she did not wish to appeal. She told me she was satisfied with the outcome which in part allowed her complaint to be recorded as a hate incident.
6. Unbeknownst to the Claimant in May 2014 the research officers, who she cites as comparators for her claim, had their pay upgraded. The Claimant discovered this through conversation with a colleague in August 2015. The Claimant had this confirmed to her by her union, Unite, on 11 November 2015, evidenced at page 191 of the bundle. The Claimant submitted a second grievance in relation to this pay and grading on 7 March 2016. Her grievance also cited concerns she had about her then line manager the Third Respondent.
7. In July 2016 the Claimant was put at risk of redundancy and secured an alternative role with the First Respondent. She moved to that role on 25 August 2016 and the Third Respondent ceased on that date to be her

line manager. The Claimant confirmed that she had no issues with pay from that date and whilst she felt the process to resolve her grievance was somewhat long winded and drawn out, that she had no complaints of discriminatory conduct after that date and in particular no complaints against Superintendent Kendrick who was appointed to deal with that grievance and reached a determination in July 2017.

8. In 2013 and 2014 the Claimant was not a member of a trade union so was supported by the Association of Muslim Police Officers. By 2015 the Claimant had joined Unite the union and took advice from both a local trade union representative and also the Chairperson. The Claimant told me that she felt let down by Unite and that they had not advised her about time limits or that she could bring Employment Tribunal proceedings. Within the bundle were relevant documents on what was in the Claimants mind at the relevant time. On 16 February 2016 the Claimant emailed her trade union representative, page 201, *'I've spoken to ACAS and they have advised me to go for a grievance and then to contact them to go to an employment tribunal'*. On 18 October 2016 the Claimant emailed her trade union representative, page 252, and included the comment, *'imagine what the tribunal would say to this'*. In cross-examination the Claimant confirmed she first considered instructing a solicitor on 14 February 2017. On 2 June 2017 she emailed her trade union representative *'I am in next week and then on leave, during my time off I will certainly be submitting my application to the tribunal.'* On 19 July 2017, page 291, the Claimant emailed her trade union representative again and stated *'I've made an appointment to see a solicitor'*. She told me she cancelled that appointment given the cost and the fact she was being assured by her union that matters could be resolved internally to her satisfaction. The Claimant did eventually instruct a solicitor in January 2018.

THE LAW

9. S123(i) Equality Act 2010 *'Proceedings on a complaint ... may not be brought after the end of;*
 - (a) *the period of 3 months starting with the date of the act to which the complaint relates, or*
 - (b) *such other period as the employment tribunal thinks just and equitable'*.

10. In submissions the Respondents counsel referred me to Ahmed v Ministry of Justice, paragraph 62 UKEAT/0390/14 as follows;

'The legal principles relating to S213(1)(b) (the 'just and equitable') are well-known. It is for the Claimant to satisfy the Employment Tribunal that time should be extended. There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be extended. The Employment Tribunal is required to consider all relevant circumstances including in particular the prejudice which each party will suffer as a result of granting or refusing an extension. Relevant matters will generally include what are known as the 'Keeble' factors: see British Coal Corporation v Keeble (1997) IRLR 336. These include: the length of and reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the Respondent had co-operated with any requests for information; the promptness with which the Claimant acted once he knew of the facts giving rise to the cause of action; and the steps taken by the Claimant to obtain appropriate professional advice once he knew of the possibility of taking action. But these factors are not a check list which must be slavishly followed by the Tribunal.'

11. The Respondents counsel also referred to Apelogun-Gabriels v Lambeth LBC (2002) ICR 713.

Conclusions

12. The last date of any act of alleged discrimination is the 25 August 2016. The three month time limit provided by S123 Equality Act 2010 therefore expired on 24 November 2016. The claim was not brought until 12 March 2018. The claim was therefore considerably out of time, indeed more than a year out of time. I had therefore to consider whether it was just and equitable to extend time. The Claimants suggested that she delayed because either a) she was badly advised by her union or b) she was concentrating on resolving matters through the internal processes.
13. It is clear to me that the Claimant had advice from senior members of her trade union from 2015 and had advice whilst time was running. She was aware she could bring Tribunal proceedings, having also taken advice from ACAS, from 2016. She was aware she could see a solicitor and booked an appointment in 2017 but made the decision not to keep that appointment. In my view the Claimant had an awareness, with appropriate advice, of the causes of action before time started to run but chose not to bring timely proceedings. Her reasons are twofold. Firstly being badly advised by her union. Even were she badly advised she had access to ACAS and was aware she could see an independent Solicitor.
14. Her second reason was that she was pursuing the internal processes. It is appreciated that employees should seek to use the internal resolution

procedures before litigation, however on these facts the Claimant delayed too long.

15. The limits are to be applied strictly and there is no presumption that time should be extended albeit S123 does allow this where it is just and equitable. The burden is on the Claimant to persuade the Tribunal to extend time. On balance and considering all matters the Claimant could have presented in time and it is not just and equitable to extend time having regard in particular to the length of delay, the fact the allegations date back to 2014 and one of the Respondents has retired, and evidence may be stale and memories affected. For the reasons above the Tribunal does not have jurisdiction to hear these complaints.

Employment Judge **Hindmarch**

20 November 2018