



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs C Giordano  
**Respondent:** K D Paine Associates Ltd

**Heard at:** Southampton **On:** 26 March 2019  
**Before:** Employment Judge Housego

## Representation

**Claimant:** In person  
**Respondent:** Mr I Wheaton, of Counsel, instructed by RBS & Natwest Mentor

## JUDGMENT

- 1. The claims are not out of time.**
- 2. The claims have no reasonable prospect of success, and are struck out for that reason.**

## REASONS

1. This is a preliminary hearing to decide whether the claims of the claimant are out of time, or not, and if they are out of time whether it is just and equitable to extend time. If so, the respondent seeks to have them struck out, asserting that they have no reasonable prospect of success. If that application is unsuccessful the respondent seeks an order that the claimant pay a deposit as a condition of being able to continue, asserting that the claims have little reasonable prospect of success. The claimant disputes that the claims are out of time, and says that if they are out of time it is just and equitable for them to be allowed to continue. She says that there are reasonable prospects of success, and points to supporting evidence from the human resources manager at the time, and from other colleagues.
2. The claims are of sex and nationality discrimination. The claimant is a French woman.
3. The claimant started work for the respondent on 19 June 2017. She brought this claim on 04 September 2018, and resigned on 16 October 2018. She is a CAD designer. The respondent is an architectural and design company which

specialises in the hospitality sector. The respondent employs 30 employees based at one site.

4. There is a chronology which is not in dispute.

- On 19 June 2017 the claimant started work for the respondent.
- On 13 October 2017 the claimant sent an email to the managing director Keith Paine expressing concerns about another director, Gregg Elliott. She said his comments and attitude were patronising and insulting.
- On 24 October 2017 the claimant was later asked if she was now happy, and said that matters had improved: her account being that she felt she had no alternative if she was to keep her job.
- On 25 October 2017 there was a 3 month appraisal meeting.
- On 26 October 2017 and on 17 November 2017 the respondent raised concerns about the work of the claimant. The claimant does not consider these to have been genuine.
- On Monday 05 March 2018 the claimant requested to have 08 and 09 March 2018 as holiday. Keith Paine refused that request as it was made less than 7 days before the holiday. The claimant says that others had short notice holidays approved.
- On 15 June 2018 another employee (Gabriella Rodriguez) filed a grievance about the claimant, saying that she had a negative attitude, was badmouthing management and swore a lot.
- On that date the claimant was off work through stress, and remained so until she resigned.
- On 26 June 2018 the claimant filed a grievance setting out 16 points from August 2017 onwards.
- On 26 July 2018 there was a grievance hearing.
- On 31 July 2018 the claimant applied to ACAS for early conciliation.
- On 31 August 2018 the ACAS early conciliation certificate was issued.
- On 04 September 2018 this claim was filed with the Employment Tribunal.
- On 13 September 2018 the respondent dismissed that grievance, the letter coming from David Carrington, an associate director of the respondent who had dealt with the grievance.
- On 20 September 2018 the claimant appealed that decision.
- In November 2018 the outcome letter was sent dismissing the appeal. That was dealt with by someone from RBS and Natwest Mentor, who as the insurer of the respondent, could be regarded as the independent person she claimed to be.

5. The pa to Keith Paine at the time, Karen Hilton, has since left the employ of the respondent. She has provided a witness statement dated 04 November 2018 saying that Keith Paine treated everyone badly, but that he singled out the

claimant for treatment that was of a different order to that meted out to others. Two other female colleagues, Nicola Hudson and Amanda Allen have similarly provided statements saying that the claimant was badly treated by Mr Paine.

6. The claimant asserts that she suffered persistent and consistent bullying and harassment by reason either gender or nationality. The claimant is a litigant in person and it is not a criticism of her to say that the claim is not well pleaded. Many of the things that she said today have not been said before.
7. There is strong witness statement evidence from Amanda Allen, Nicola Hudson and Karen Hilton that Mr Paine is, to put it bluntly, autocratic to the point that he is seen as someone who bullies his staff, strongly so in the case of the claimant. I make no finding of fact that this is so, and Mr Paine points out that he has many long serving members of staff, which is a contra indicator. It is nevertheless an allegation that cannot be said to have little or no chance of success were this a constructive dismissal claim.
8. That, of course, is not the test as this is not an unfair constructive dismissal claim in which the claimant would assert fundamental breach of contract by the employer. These claims have to be based on the bad treatment being connected with either gender or nationality, because the claimant did not have the necessary 2 years' service to bring an unfair dismissal claim.
9. The claimant refers, with some supporting evidence, to being referred to behind her back as "*the French*" and to one example of her accent being mimicked in her pronunciation "*JPEG*", with the first letter pronounced very softly, as a soft G. That is the only example of claimed discrimination which is within three months of the Acas certificate being sought.
10. The first question is whether the claims are in time, and if not whether to extend time. There are two separate claims, based on nationality and gender. One aspect of the nationality claim (the asserted mimicking of accent) is accepted to be in time. It is given as an example of a disparaging attitude towards her as a French national. The other example is her reported nickname, which is said also to be supportive of gender discrimination because the claimant says that only women were given nicknames.
11. The claimant's case is of a hostile attitude towards her throughout her employment and she picks out some examples. The witness statement of Karen Hilton, previously personal assistant to Mr Paine, is strongly supportive of that.
12. I consider that all the claims are in time, because the claimant's case is that her treatment was objectionable throughout her employment, and there is evidence supporting that. I make no finding of fact about it, but what is alleged is a course of conduct. The allegation is of consistent and persistent mistreatment which is said mainly to relate to nationality and with undertones of gender as well. I think it is a mistake to treat them completely separately. Put shortly (if the allegations were proved) it is logically possible that a French man might not have been so treated. The two strands of discrimination are intertwined, and both are in time.
13. The difficulty comes for the claimant with the prospects of success of her claims. There is no question but that a claim for unfair dismissal could not be said to have little or no reasonable prospect of success given the supporting evidence provided.
14. However that supporting evidence refers to bad treatment but does not establish (or assert) a causal link with either race or gender. I am very conscious that the treatment must "*in no sense whatsoever*" have been tainted by discriminatory

factors, and it is not particularly likely that (if the fact is found proved) that Mr Paine did not understand what the claimant meant by JPEG pronounced with a French accent. It is a long leap from that, and the reported nickname referring to nationality, to the claimant having any reasonable chance succeeding in her assertion that the matters of which she complains were all by reason of nationality or gender. This is because the evidence, unpalatable as it is, is that Mr Paine treated many people badly. He treated the claimant worse, according to Ms Hilton, but she does not attribute this to gender or nationality. The one (JPEG) example given by the claimant can be seen as lending credence to the whole claim, but even given the "*in no sense whatsoever*" consideration, and the shifting burden of proof and the possibility of an inference being drawn, this is too heavy a weight to place on one asserted remark, against the other supporting evidence that many were treated in a similar way. On its own I find that there is no reasonable chance that properly directed Tribunal would find this one matter (if proved, and it is denied) would amount to unlawful discrimination.

15. I am told that this is a multi ethnic workforce, with good gender balance. There is nothing to suggest a revolving door for women or non British citizen workers.
16. It is difficult to see the only matters which have a nationality basis succeeding as a claim of discrimination, to the point where I conclude that there is no reasonable prospect of success. There is no direct allegation of fact made about the gender discrimination claim. That claim relies on alleged bad treatment being by reason of gender, but that is by implication, and there is no concrete allegation on which to base it, only perception, or deduction conclusion or inference. It also runs into the difficulty that some matters resulted from a complaint made about the claimant by a foreign national female colleague.
17. With some regret I conclude that there is no reasonable prospect of success for either claim and so strike out the claims.

Employment Judge Housego

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Date 26 March 2019