



EMPLOYMENT TRIBUNALS

Claimant: Mr P Bennett

Respondent: The Commissioners for Her Majesty's Revenue & Customs

Heard at: Liverpool **On:** 26 February 2019

Before: Employment Judge T Vincent Ryan

REPRESENTATION:

Claimant: Litigant in person

Respondent: Mr S Lewis, Counsel

JUDGMENT having been sent to the parties on 7 March 2019 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 Issues

- 1.1 The claimant sought to amend his ET1 claim form received by the Tribunal on 1 October 2018 to add a claim that the respondent failed to make reasonable adjustments in October 2016 and again following a period of absence from work in May 2017 when he was under investigation for tax credit fraud.
- 1.2 I had to decide whether to allow the amendment by extending time on the basis that it would be just and equitable to do so.

2. The Facts

- 2.1 The claimant was employed by the respondent as a Compliance Officer from 4 November 2002 until 18 June 2016.

- 2.2 In October 2016 the claimant was accused of tax credit fraud, and at that time his duties included investigation into tax credit frauds by benefit claimants.
- 2.3 In his ET1 claim form at paragraph 8.2 the claimant says that his disabling stress and anxiety was exacerbated at the time of the allegations and he was absent from work for three months, returning to work in March 2017 (which he corrected at today's preliminary hearing to be a return to work date in May 2017). The respondent's allegations that the claimant was responsible for tax credit fraud were "dropped with no further charges" in May 2017.
- 2.4 The claimant last attended to work for the respondent on 6 March 2018 prior to his dismissal on 18 June 2018.
- 2.5 The claimant commenced early conciliation with ACAS on 16 July 2018 and ACAS issued a certificate of early conciliation on 31 July 2018. The claimant's ET1 claim form was received by the Tribunal on 1 October 2018. The claimant indicated on the claim form at paragraph 8.1 that he was claiming unfair dismissal and disability discrimination. In paragraph 8.2 setting out the narrative of the claimant's claim he did not include a claim that the respondent failed to make any reasonable adjustment with regard to his duties as a Compliance Officer investigating tax credit fraud when he was subject to investigation himself. The claimant says that a situation was constructed by the respondent to lead to his dismissal, that the respondent failed to act to fully protect him, that the accusation of fraud made his illness worse but that the allegation was "dropped without further charge" whereupon he was accused of travel pass fraud and received a warning. The claimant alleged that the respondent was trying to sack him or force his resignation.
- 2.6 In its ET3 response the respondent denied the allegations but said that the disability discrimination claims had not been fully particularised. A preliminary hearing was listed to consider the issues in the case and the respondent's request for further and better particulars of the claims.
- 2.7 On 26 November 2018 the Tribunal received the claimant's completed agenda for the preliminary hearing in which he stated that the issue to be decided by the Tribunal was "did the respondent not take fully into account the claimant's medical history?".
- 2.8 By email dated 28 November 2018 the claimant provided the requested further and better particulars of his claims in which he stated that the respondent failed to follow its own protocols in respect of employees at disciplinary proceedings with mental health issues, where they ought to be provided with mental health support.
- 2.9 A preliminary hearing of 4 December 2018 was conducted by Employment Judge Horne. It came to light that the claimant was suggesting he had a reasonable adjustments claim in respect of what he said was a provision, criterion or practice (PCP) on the part of the

respondent requiring employees who were subject to investigation for tax credit frauds to decide on tax credit cases; the claimant said this put him at the substantial disadvantage of not being able to cope where a reasonable adjustment to remove that disadvantage would have been to remove him from tax credit decisions and to provide counselling. The respondent indicated an objection but said that the claimant would have to make a formal application for amendment. The matter was listed for that to be considered on 26 February 2019 amongst other case management matters.

- 2.10 The respondent, in accordance with an order of Employment Judge Horne, presented to the Tribunal an amended ET3 response on 1 February 2019 in which it opposed the claimant's application to include a reasonable adjustment claim. The respondent relied on injustice and hardship to the respondent which would outweigh that to the claimant, stating that the amendment was not a re-labelling exercise but was the introduction of a substantial new claim not alluded to in the ET1 claim form. The respondent submitted that if the amendment was allowed there would be a significant increase in the scope of evidence, which would impact upon disclosure and the preparation of witness statements. The respondent submitted further that any such claim was substantially out of time as it dated back to events in October 2016 such that it would not be just and equitable to extend time in the absence of a satisfactory explanation for the delay. The respondent said in any event there was no PCP as alleged.
- 2.11 At the preliminary hearing on 26 February 2019 the claimant submitted that I ought to use my discretion under the just and equitable principle to extend time allowing him to advance this amended claim in circumstances where he felt it was improper for the respondent to rely on the time issue as a defence. He put forward his inexperience and naivety and confirmed that whilst he had at one point been a member of a trade union he had allowed his subscriptions to lapse and he therefore did not have the legal support required. The claimant further submitted that a claim of reasonable adjustments such as that now being put forward had not occurred to him before questions were raised by Employment Judge Horne at the December preliminary hearing. The claimant confirmed that the respondent had specified a number of reasonable adjustments in his Passport and he was therefore clearly aware of the principle behind the statutory duty to make reasonable adjustments and had availed of them. The claimant said the situation was stressful for him in 2016 when he was required to investigate tax credit fraud knowing that he was under investigation for the same thing, and that this led to his absence from work until May 2017. Upon his return to work the allegations were withdrawn by the respondent. The claimant was not altogether clear, therefore, as to whether the last time he had been required to investigate tax credit fraud was in 2016 leading to his absence from work or included immediately upon his return to work in May 2017 when the allegations were dropped.

- 2.12 Taking the claimant's submissions at their highest, it would appear that the claim relates to a brief period in May 2017 when he was both under investigation, or believed himself to be such, and also believed he was required to investigate tax credit fraud. It appears that by no later than 31 May 2017 the claimant's claim of a failure to make reasonable adjustments had crystallised as by that date he was no longer subject to investigation for tax credit fraud.

3. The Law

- 3.1 There is a three-month time limit for the commencement of Tribunal proceedings (subject to extension in respect of early conciliation), which time starts to run upon the date of the alleged discrimination or the date of the last incident in an alleged series of discriminatory conduct, and time ceases to run on presentation of the ET1 claim form to the Tribunal.
- 3.2 In respect of discrimination allegations, the Tribunal has a discretion to extend time if it considers it would be just and equitable to do so.
- 3.3 Extending time is not a given or default but is an exceptional action for particular circumstances where it would be unjust and inequitable not to do so.
- 3.4 In deciding whether or not to extend time the Tribunal must consider the balance of prejudice to the respective parties of allowing or disallowing the amendment, which will include the need for clarity and certainty without an open-ended risk of historical claims, also involving considerations of the evidential burden being placed on parties to investigate and prepare respective claims and defences. The Tribunal ought to consider the explanation for any delay on its merits, and then to consider whether a party has acted with reasonable promptness taking appropriate steps to advance any amendment application.

4. Application of Law to Facts

- 4.1 By his own admission the claimant did not think he had a potential claim of a failure to make reasonable adjustments as now alleged until December 2018, and even then it only occurred to him on being asked about his claim and potential claims by an Employment Judge at a preliminary hearing. Until that point it would appear that the claimant was satisfied that the problem he had encountered in October 2016 was rectified in May 2017 following a prolonged period of absence from work and upon his return to work, because that was the date that the allegations of tax credit fraud were withdrawn. On the basis of the claimant's version of events, there was in effect an adjustment of circumstances in May 2017, not by the variation in his duties taking him away from investigating tax credit frauds, but from removal of the allegation that caused him the stress whilst carrying out those duties. As of the end of May 2017, according to the claimant's explanation of this possible claim, he was not suffering a substantial disadvantage by the alleged PCP.

- 4.2 It follows that the claimant's claim is considerably out of time, as time either commenced to run in October 2016 or at latest upon his return to work and the withdrawing of allegations against him in May 2017; the claim form was received by the Tribunal on 1 October 2018.
- 4.3 Other than to say that he did not think there was a claim of failure to make reasonable adjustments as now alleged, the claimant has no other explanation for his delay.
- 4.4 If the amendment was permitted the respondent would have to investigate the circumstances surrounding the allegation of tax credit fraud and the considerations, if any, given to the duties to be carried out by the claimant prior to his absence from work in respect of tax credit investigations. This would necessitate additional witness evidence and disclosure involving further time and presumably expense in both exercises. The respondent can reasonably have expected that issues relating to the 2016/2017 allegations had been concluded and would not be resurrected opportunistically. This could cause some hardship and injustice to the respondent in all the circumstances, but less so to the claimant who had not ever considered this to be a viable claim until December 2018 and in circumstances where he has in any event claims against the respondent of unfair dismissal and of discrimination arising in consequence of something arising from disability (section 15 Equality Act 2010). The latter claim also relates to his dismissal and that was evidently the thrust of the claimant's claim from the outset, as opposed to historical matters that had been resolved. In saying "resolved" I am referring to the alleged issue of additional stress and strain caused to the claimant in 2016 when he was required to investigate matters similar to those of which he had been accused.
- 4.5 The claimant's sought-after amendment is a substantial one and is not a matter of re-labelling. It is not possible to read this amended claim back into the ET1 claim form.
- 4.6 In all the circumstances I did not consider it would be just and equitable to extend time in relation to the reasonable adjustments claim to 4 December 2018.

Employment Judge T Vincent Ryan

Date: 29.03.19

REASONS SENT TO THE PARTIES ON

2 April 2019

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.