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# EMPLOYMENT TRIBUNALS

## *Claimant*

Miss R Miah

## *Respondents*

Superdrug Stores Ltd

**AND**

**Heard at:** London Central

**On:**

13 February 2019

**Before:** Employment Judge Russell

## **Representation**

**For the Claimant:** Mr M Ahmed, Brother to the Claimant

**For the Respondent:** Mr O Holloway, of Counsel

## **REASONS**

### Background

1. Judgment in this case was given on 13 February 2019 with the decision being sent to the parties on 18 February 2019.
2. The Claimant's claims for discrimination and harassment were determined to be out of time under s.123(1)(a) Equality Act 2010 and as it was also determined that it was not just and equitable to extend time under s.123(1)(b) Equality Act 2010 the case was dismissed by virtue of the fact the Employment Tribunal had no jurisdiction to hear the claim.
3. Oral reasons were given for the decision on the day but the Respondent (perhaps surprisingly given the Judgment made and the fact reasons were given to their representative as well as the Claimant on the day) subsequently made a request for written reasons. Which are, in consequence, provided below.

### Reasons

4. The chronology of events is set out in Employment Judge Mason's record of the Preliminary Hearing on 9 January 2019. The narrative contained in that record was accepted by the parties and by me.

5. In particular that the Claimant's complaint related purely to an incident and altercation that took place on 10 May 2018 leading to a grievance and the issues identified in paragraph 12 of the record of the Preliminary Hearing which itself led to the further open Preliminary Hearing on 13 February 2019 before me to determine whether the claim (presented on 10 September 2018) was within time and, if not, whether it was just and equitable to extend time. I note that the Claimant is not claiming the grievance procedure (even if flawed) was discriminatory. The last (and only) alleged act(s) of discrimination therefore took place on 10 May 2018.

6. The Claimant give evidence under oath and was cross examined by the Respondent's Counsel, Mr Holloway. I also asked questions of the Claimant. My subsequent findings of fact include the following:

- (i) The Claimant knew her allegation of 10 May 2018 was a serious one. She accepted this and that she thought it a breach of the Equality Act 2010.
- (ii) She had subsequently said to the Respondent she would have no choice but to take it further unless it was quickly resolved.
- (iii) The Claimant threatened legal proceedings more than once but delayed action beyond this.
- (iv) She had internet access at all material times and, notwithstanding her dyslexia, was able to write cogent emails and had some knowledge of the Employment Tribunal procedure. She was also studying criminology and I find that, as a result she had more understanding of legal process than many.
- (v) During the period she had been signed off work she started work for the Co-Op having applied for this alternative job around a week after the outcome of her grievance to the Respondent in July 2018.
- (vi) During August when she had informed the Respondent she was unfit for work a more truthful position is that she felt unable to work for the Respondent and did not want to do so again.
- (vii) Although she did not contact ACAS before 4 September 2018 she knew that she could have done and had both the time and awareness that she could have also spoken to eg a solicitor, law centre, Employment Tribunal and/or done her own research as to the steps she needed to take to lodge a claim and the timing of such a claim.
- (viii) She may have thought she had to complete the Respondent's internal process first and only went to the law centre (and subsequently ACAS) after the appeal stage. However, she was not advised as much by the Respondent or ACAS or any third party and a simple search on the internet would have corrected her misunderstanding.
- (ix) The Claimant approached ACAS for an EC notification on 4 September 2018 with ACAS issuing a certificate the same day. Whilst this was soon after the appeal process she not only could but should have taken that step well before this. Three months less a day from the only alleged act(s) of discrimination takes her up to August 9 and she should therefore have contacted ACAS by then, over three weeks before she did. So, her claim is out of time under s.123(1)(a) Equality Act 2010.

7. As the claim is out of time I therefore have to consider whether a just and equitable extension of time is warranted. In this respect I am reminded that exercising a discretion to extend time is the exception not the rule although the just and equitable discretion for a discrimination claim is wider than the reasonably practicable test applicable to unfair dismissal complaints.

8. There is no substantive reason why the primary time limit was not met. The Claimant had determined she was going to make a claim. She had already committed to another job before the appeal hearing. It was perfectly possible for her to contact ACAS and/or present her complaint in the time and even if she then chose to continue the appeal.

9. I apply the Court of Appeal decision in Robertson v Bexley Community Centre t/a Leisure Link (2005) that when Tribunals consider exercising the discretion “there is no presumption that they should do so unless they can justify failure to execute the discretion. Quite the reverse a Tribunal cannot hear a complaint unless the [Claimant] convinces it that it is just and equitable to extend time”. The onus is therefore on the Claimant to convince me that time should be extended. And she has failed to do so. There was no incorrect advice given to her, she had made up her mind to instigate proceedings long before she did, she knew or ought to have known about the three month time limited and her belief that she should wait for the internal appeal was an unreasonable one that could easily have been corrected through her own enquiries.

10. In respect of the internal appeal I follow the approach of Robinson v PO (2000). Which authority stated that although the general principle is that a delay caused by a Claimant awaiting completion of an internal procedure may justify the extension of the time limit, it is only one factor to be considered in any particular case. In this case the other factors are persuasive in my decision not to exercise the discretion to extend the time limits. As a result, there is no jurisdiction for the Employment Tribunal to hear this claim and as a result, a possibility highlighted at first Preliminary Hearing, the Claimant’s case is dismissed and the Full Merits Hearing, listed for March 27 and 28 is vacated.

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Employment Judge Russell

Dated: 12 April 2019

Judgment and Reasons sent to the parties on:

12 April 2019

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For the Tribunal Office