



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mrs S Baidoo

Respondents: Royal Borough of Greenwich & others

Heard at: London South Tribunals
On: 19 November 2018
Before: Employment Judge Freer

Representation

Claimant: In person
Respondent: Ms J Danvers, Counsel

REASONS FOR JUDGMENT AT A PRELIMINARY HEARING

1. These are the Tribunal's reasons for the judgment promulgated on 07 February 2019 that:

"The Claimant's claim of breach of contract and the claims against Ms Gilbert and Ms Harrison under case number 2301557/2018 are dismissed upon withdrawal.

It is the judgment of the Tribunal that the Tribunal does not have jurisdiction to consider the Claimant's claims under case numbers 2302260/2018 and 2301557/2018 as they were presented to the Tribunal out of time and it is not just and equitable to extend time.

The Tribunal does have jurisdiction to consider the Claimant's claim of race discrimination pursued under case number 2300508/2018 as it was presented to the Tribunal out of time and the Tribunal considers that it is just and equitable for the claim to be considered.

However, the Respondent's application for a deposit order in respect of claim number 2300508/2018 is successful and is the subject of a separate Order".

2. Oral reasons were provided at the hearing and these written reasons are supplied at the request of the Claimant.
3. The Claimant pursues three claims under case numbers 2300508/2018 (“the first claim”); 2301557/2018 (“the second claim”); and 2302260/2018 (“the third claim”).
4. This is a Preliminary Hearing to consider the Claimant’s application to amend her Particulars of Claim and the Respondent’s applications that the Claimant's claims have been presented out of time and the Tribunal has no jurisdiction to consider them, or alternatively that they should be struck out for having no reasonable prospect of success or a deposit payable to proceed on the ground that they have little reasonable prospect of success.
5. It was confirmed by the Claimant at this hearing that she is withdrawing any claim of breach of contract and the claims against Ms Gilbert and Ms Harrison under case number 2301557/2018 are also withdrawn. The claims being pursued are all ones of race discrimination only.
6. The Tribunal has considered the Claimant’s application to amend as set out in her letter to the Tribunal dated 19 November 2018 and as further clarified at this hearing. They are allegations of direct race discrimination relating to an event that occurred on 18 September 2017 and also relating to information that Claimant argues she learned on 25 September 2018 regarding disparity of treatment compared with an event that allegedly occurred in September 2015.
7. The Tribunal has considered the factors in the well-established case of **Selkent Bus Co Ltd -v- Moore**.
8. The Tribunal concludes that the application to amend is not a simple relabelling exercise and raises substantial new factual allegations which change the basis of the claim.
9. The application to amend has been made around nine months after the presentation of the first claim and five months after the presentation of the second and third claims. No material reason has been provided for the late application. No date has been fixed for a final hearing of the consolidated claims, so no hearing date has been, or would be, lost through the making of the amendment. The claims are ten months out of time as at the date of the application to amend.
10. Having regard to all the factors the Claimant’s application is refused on the basis that when considering all the relevant matters the balance of prejudice tips in favour of the Respondent. In particular, the application raises significant new factual claims relating to historic issues of fact, one dating back four years. The Tribunal accepts the Respondent’s submissions that both allegations require material new witness and additional evidence. The Tribunal has

- carefully considered the exercise of its discretion and concludes on balance that the application to amend is refused.
11. Addressing the time limit issue, it has been established and confirmed at this hearing that the Claimant's claims are all ones of race discrimination only. Therefore the issues are whether or not the claims have been presented within the normal three month time limit and if not, whether or not it is just and equitable to consider them in any event.
 12. Section 123 of the Equality Act 2010 provides:

“Proceedings on a complaint within section 120 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.

(3) For the purposes of this section—

 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it”.
 13. The last acts of discrimination relied upon by the Claimant are: 13 July 2017 in her first and second claims and 18 September 2017 in the third claim.
 14. Therefore, the normal time limits and the dates in respect of the first and second claims the Claimant needed to have entered into ACAS early conciliation to take advantage of any time extension produce by that process was 12 October 2017 and with regard to the third claim the date is 17 December 2017.
 15. Conciliation was entered into on 05 and 06 December 2017 for the first claim, 31 May and 01 June 2018 for the second and third claims.
 16. Accordingly, the Claimant cannot avail herself of any time advantage by reason of early conciliation.
 17. The first claim was presented to the Tribunal on 09 February 2018, the second claim was presented on 31 May 2018 and third claim was presented on 16 June 2018.
 18. Therefore, all the claims were presented out of time.

19. With regard to whether or not it is just and equitable to extend the time limit in the circumstances of each of the three claims pursuant to section 123(1)(b) of the Equality Act 2010, the Claimant was dismissed on 25 September 2017 and there is no allegation of any act of discrimination extending beyond that time. Also, as no act of discrimination falls within time the Claimant cannot argue that there is an act extending over a period, where if one act falls within time the remainder may also do so (see section 123(3) of the Equality Act 2010 above).
20. Ms Baidoo states that she contacted ACAS before she entered into early conciliation on the first claim, which must have been some time after dismissal on 25 September and when the Claimant entered into ACAS conciliation
21. 6 December 2017. Ms Baidoo asserted in evidence that she was told by ACAS that she had three months from the date of dismissal to present her claim to the Tribunal. It is the conclusion of the Tribunal that this was unlikely to be advice provided by ACAS generally and particularly so if the Claimant had given a reasonable account and information of the claims that she now pursues. It is the conclusion of the Tribunal that it is more likely that Ms Baidoo misunderstood any advice provided to her from ACAS.
22. In any event that reason can only go towards explaining the first claim submitted to the Tribunal.
23. The second and third claims are around nine months out of time and there was an equally significant delay in first approaching ACAS for early conciliation. The Claimant argues that the reason for delay was that she had memory loss due to the stress of the circumstances. However, the Tribunal has received no medical confirmation of that diagnosis or condition.
24. The Claimant's first claim was against Ms Dixon, the second claim was against Ms Harrison, who the Tribunal understands is the person who dismissed the Claimant, and the second and third claims give details of a significant number of alleged acts dating back to around 2016. It is the conclusion of the Tribunal that it is unlikely that the Claimant had memory loss and certainly not to the extent relied upon such that it was an impediment to presenting a claim to the Tribunal within time.
25. The Tribunal has referred itself to section 33 of the Limitation Act 1980 which the Tribunal may consider in exercising its discretion. The Tribunal has also referred itself to the cases relied upon by Ms Danvers in her submissions, principally **Robertson -v- Bexley Community Centre**.
26. Addressing the second and third claims, the matters in section 33 of the Limitation Act that the Tribunal considers are particularly relevant to this issue are the length and reason for the delay, the extent to which the cogency of evidence is affected by the delay, the promptness with which the Claimant

acted once she knew the facts giving rise to the claim, and the steps to obtain advice.

27. With regard to the second and third claims, the length of the delay is significant: a period of nine months. The reason for the delay in the Tribunal's conclusion is not sufficient reason as set out above. The extent to which the cogency of evidence will be affected is significant given the nature of the allegations raised by Ms Baidoo and the lapse of time. The Tribunal also concludes that Ms Baidoo was not sufficiently prompt in acting once she knew the facts giving rise to the claim. The Claimant did not take sufficient action to obtain appropriate advice on those claims.
28. Therefore, on the second and third claims it is the judgment of the Tribunal that it is not just and equitable to extend time on those matters and therefore the Tribunal has no jurisdiction to consider them.
29. With regard to the first claim there is a shorter length of delay. The reason for the delay, in the Tribunal's conclusion, was a misunderstanding by the Claimant of conversations with ACAS on that claim. The cogency of evidence has not been as affected as with the second and third claims. The Claimant acted reasonably promptly and took some steps to understand her position both through contacting her trade union (although no advice was given) and contact with ACAS. With regard to the first claim the Tribunal concludes that it is just and equitable to extend time and that claim is allowed to proceed.
30. Therefore, on the application regarding time limits, only the first claim can proceed.
31. The Tribunal now moves on to consider the second application of whether that claim should be struck out or deposit paid having regard to the prospects of success.
32. The provisions are contained in rules 37 and 39 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
33. The claim is pursued on the protected characteristic of the Claimant's colour. Upon discussion regarding the less favourable treatment relied upon by the Claimant, she was unable to identify or articulate why she considered she had been less favourably treated because of her colour. The Claimant was informed that having a protected characteristic (in this case colour) and something bad happening was not enough to bring a successful discrimination claim, there needs to be something more and a causal link between the bad event and her colour. The Claimant remained unable to suggest the basis of any such causal link save for she stated that she and her colleague Leena, who the Claimant says is of Indian/Asian origin, were treated differently. However, upon examination of some of the circumstances the Claimant confirmed that her colleague Leena had been more favourably treated than the Claimant on a number of occasions.

34. The Tribunal has had regard to the established case of **Ezias -v- North Glamorgan NHS Trust** and the now trite law that discrimination claims are fact sensitive and unless the prospects are more than merely fanciful a strike out is not appropriate.
35. Having regard to **Ezias** and having also considered the point addressed in **Chandhok -v- Tirkey** as put to the Tribunal by Ms Danvers, it is the conclusion of the Tribunal that it is not appropriate to strike out the Claimant's claims on the basis the Claimant raises some comparison between the treatment received by herself and Leena with others. A number of allegations may also perhaps support the Claimant's view of why she felt she had been treated differently. However, on the face of those claims as set out it is the Tribunal's conclusion that they have little reasonable hospital success and therefore deposit should be payable for those matters to be pursued.
36. The affect of a deposit order was explained to the Claimant and a deposit sum was ordered, which is set out in a separate Deposit Order.

Employment Judge Freer
Date: 24 June 2019