



EMPLOYMENT TRIBUNALS

BETWEEN
AND

Claimant
Ms G Grozeva

Respondent
Hillside (Shared
Services) Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Newcastle-under-Lyme ON 23 November 2018

EMPLOYMENT JUDGE GASKELL

Representation

For the Claimant: In Person
For Respondent: Ms R Peck (Solicitor)

JUDGMENT

(Originally promulgated 23 November 2018)

The judgment of the tribunal is that:

The claimant's claims are dismissed for want of jurisdiction.

REASONS

Introduction

1 The claimant, Ms Gergana Grozeva, was employed by the respondent, hillside (shared services) Ltd from 13 April 2015 until 5 December 2016 when she resigned she was employed as a European customer service adviser

2 By a claim form presented to the tribunal on 25 May 2018, the claimant brings claims for "*Harassment, bullying, discrimination (inclusive of potential exploitation established by eventual work reports for the time of work with bet 365) and torture*". The claim form makes no reference to any of the Protected Characteristics set out in Section 4 of the Equality Act 2010 (EqA); nor does it provide any explanation for the delay in the presentation of the claim.

3 In its response to the claim, the respondent admits that the claimant was an employee between the dates set out above. The respondent maintains that the claimant has provided no details of any cause of action for which the Employment Tribunal has jurisdiction; and that, in any event, any claims brought appear to be out of time by reference to the time limits set out in Section 123 EqA.

4 On 29 June 2018, Employment Judge Broughton directed that there should be an Open Preliminary Hearing to determine the question of whether or not the claims were out of time. That is the hearing listed before me today. I have determined that the claims were out of time; and that the tribunal therefore had no jurisdiction to consider them. The claims were dismissed for want of jurisdiction. The written judgment was promulgated the same day – 23 November 2019.

5 On 4 March 2019, the claimant requested written reasons for the decision. Although that request is substantially out of by reference to Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, I consider it appropriate in this case to provide the reasons as I understand that the claimant is attempting to pursue an appeal.

The Evidence

6 Since presenting her claim form, the claimant has purportedly provided additional particulars of the claim on three occasions: -

- (a) On 8 November 2018, she submitted further particulars from which it is possible to discern that she claims unfavourable treatment by the respondent during the period of her employment - possibly by reason of her race and sex. In this statement, she also explains that the reason for the delay was because of a lack of clarity over the circumstances of the termination of a contract. (This lack of clarity arises from the fact that the claimant tendered her notice on 8 November 2016 to terminate her employment on 5 December 2016. However, in the intervening period, she claims to have been sent home by a manager on 11 November 2016; leaving uncertainty as to whether her employment ended by reason of her resignation on 5 December 2016 or by dismissal on 11 November 2016. I have determined this case on the basis of the later date as this is to the claimant's advantage when considering time issues.)
- (b) On 22 November 2018, the claimant submitted a further document headed "**Matters to be Verified Based on Self-confession and Internal Checks**". This describes conduct of which she suspects the respondent and which she feels warrants further investigation. It makes reference to the potential that the respondent's representatives have had the claimant under surveillance in 2017 and that this may have adversely impacted on the success of her business venture.
- (c) On the morning of the hearing, the claimant produced a further document headed "**Final Statement: Objection to the Resistance**". She complained of the conduct of her landlord some two months after leaving the respondent's employment - she gives no indication as to how this may be linked to her former employment.

7 The claimant gave oral evidence at the hearing. When asked to explain the delay in presenting the claim she offered the following explanations: -

- (a) She had continued to experience problems in her life following her employment with the respondent. She had no evidence that this was in any way connected to her employment with the respondent but wished the tribunal to investigate.
- (b) She has been the victim of criminal offences.
- (c) The longevity of the problems which she suffered at the hands of the respondent.
- (d) The fact that, despite the delay, she has presented all of the particulars showing that she was not treated correctly by the respondent.
- (e) The respondent's behaviour should be investigated. In particular, she wishes the tribunal to investigate the behaviour of the respondent's Bulgarian CS Team.

8 The claimant presented some brief evidence as to her current health. She had suffered from an ear infection in 2017 and 2018. The most recent medical evidence was dated 20 August 2018.

9 The claimant admitted that she had been advised by solicitors to "*follow up*" her case within 3 to 4 months of the last date of employment but that she had failed to do this.

The Law

10 The Equality Act 2010

Section 123: Time limits

(1) Subject to section 140A and 140B 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.

11 **Robertson -v- Bexley Community Centre [2003] IRLR 434 (CA)**

An Employment Tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. It is entitled to consider anything that it considers relevant. However, time limits are exercised strictly in employment cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. On the contrary, a tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to extend time. The exercise of discretion is thus the exception rather than the rule.

12 **British Coal Corporation -v- Keeble [1997] IRLR 336 (EAT)**

It may assist to the tribunal in considering the exercise of its discretion to consider the factors listed in Section 33 of the Limitation Act 1980. These include: -

- (a) The prejudice which each party would suffer as a result of the decision reached.
- (b) The length of and reasons for the delay.
- (c) The extent to which the cogency of the evidence is likely to be affected by the delay.
- (d) The promptness by which the claimant acted once she knew of the facts giving rise to the cause of action.
- (e) The steps taken by the claimant to obtain appropriate advice once she knew of the possibility of taking action.

Discussion & Conclusions

13 Subject to the claimant being granted permission to amend her claim form, it is now possible to discern that she is proposing to bring claims for direct discrimination and harassment on the grounds of race and sex. Her employment terminated on 5 December 2016 at the very latest; and she did not notify ACAS of her intention to bring a claim until 25 May 2018 - more than 14 months out of time.

14 It is also possible to discern the claimant is proposing to bring a claim for victimisation. Such a claim could of course include conduct occurring after the end of her employment – but, even on her pleading, there is no basis to suggest that the events occurring after employment are in any way related to her employment or her former employers. I would go so far as to say that the suggestion that her landlord has mistreated her on the instigation of her former employers is fanciful - likewise that she has been the victim of a number of criminal offences. And it is no part of the function or within the jurisdiction of the Employment Tribunal to launch an investigation as the claimant wants. In any event, the claimant has provided no dates for the post-employment incidents and on the balance of probabilities it is clear to me that the claim was presented substantially out of time.

15 The claimant has not provided any credible or satisfactory explanation for the delay. The medical evidence which she has produced provides no such explanation. Absent such explanation, and evidence to support it, my judgement is that there is no basis to conclude that it would be just and equitable to extend time. The claims are out of time and the tribunal has no jurisdiction to consider them.

16 Accordingly, the claims are dismissed for want of jurisdiction.

Employment Judge Gaskell
20 March 2019