



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mrs D Rose**

v

**West Yorkshire Police**

Heard at: **Leeds**

On: **19 August 2019**

Before: **Employment Judge O'Neill**

Representation:

Claimant: **In person**

Respondent: **Ms Checca – Dover of Counsel**

### **RESERVED JUDGMENT AT A PRELIMINARY HEARING**

1. The claims under the Equality Act 2010 for discrimination on the grounds of pregnancy / maternity and for indirect sex discrimination are dismissed because they are time barred and it is not just and equitable to extend time,
2. The claims for unfair dismissal and in respect of flexible working are dismissed because they are time barred and the Claimant has not shown that it was not reasonably practicable to have lodged them in time.

### **REASONS**

#### **Purpose of the preliminary hearing**

1. The preliminary hearing was listed to determine
  - a) whether it was not reasonably practical for the claimant to have lodged the unfair dismissal and flexible working complaints within the time limit
  - b) whether it is just and equitable to allow the claimant to proceed with her discrimination claims notwithstanding the fact that they were lodged outside the primary time limit
2. To identify the issues and make orders for further management of the case

## Evidence

3. The respondent produced a bundle of documents paginated and indexed .The claimant also produced a bundle of documents which included her response to the respondent's grounds of resistance , a letter from her solicitor advising on employment matters , the rota she proposed, various emails relating to alternative positions and a letter of resignation .
4. The claimant was the only person to give evidence she did so under oath. Apart from the documents referred to above she had no witness statement. To assist the claimant, I asked a number of questions to enable her to put her case before the tribunal and afforded her the opportunity of making further representations. She was cross-examined.
5. Counsel for the respondent made a submission and the claimant made further representations.
6. Because of the claimant's potential childcare issue, it was agreed that I would reserve my decision and the parties would deal with case management at a further hearing if required.

## Claims

7. The claims are for
  - a) unfair constructive dismissal
  - b) discrimination on the grounds of pregnancy/maternity
  - c) a failure to consider the claimant's flexible working requests appropriately
  - d) indirect sex discrimination - the claimant was unable to return to work on the terms which the respondent required because of her childcare commitments
8. The respondent accepts that paragraph 7(d) above reflects the narrative of the claimant in the ET1 form but does not accept that the circumstances fall within section 19 of the Equality Act because there is no PCP of general application. That is a matter which the respondent may pursue at a substantive hearing but for the purposes of this hearing I have considered the ET1 to contain a possible indirect sex discrimination claim.

## Law

9. in respect of the unfair dismissal and flexible working claims the provisions as set out in section 111 of the Employment Rights Act 1996 apply as set out below in relation to dismissal and similar provisions apply to flexible working claims.

### **111 Complaints to employment tribunal**

**(2) Subject to the following provisions of this section, an Employment Tribunal shall not consider a complaint under this section unless it is presented to the tribunal—**

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

10. In respect of the discrimination claim on the grounds of pregnancy maternity and the indirect sex discrimination claim the provisions of section 123 of the Equality Act 2010 apply as set out below

**123 Time limits**

(1...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.

**Findings of Fact**

11. The claimant was employed by the respondent in a clerical capacity as a public protection clerical officer at the police station at Stainbeck where she was already on time reflects the hours of 28 per week Monday to Friday (excluding Wednesday) between 7 AM and 7 PM. This position remained open to her.
12. The claimant has two children a baby girl born in November 2018 and boy in 2015. In anticipation of returning from maternity leave she had made two requests for adjustments to her current working arrangements namely
- a) that she be permitted to work from a station nearer home preferably Wakefield at which she could offer more hours if the respondent so required
  - b) a rota of hours which were the opposite shifts from her husband who is a serving police officer in order that they might between them care for the children.
13. Arrangements could not be made to the satisfaction of the claimant and on 20 November 2018 she submitted her resignation on notice to expire on 19 December 2018 which is agreed to be the effective date of termination. The

claimant used her accrued but untaken holiday allowance to enable her to give the requisite amount of notice so as to avoid the obligation to repay any part of the maternity pay she had received whilst on maternity leave. The claimant accepts that she was alert to the rights and risks of her contractual position and made enquiries to verify her position before she submitted her resignation to ensure she would be under no obligation to repay.

14. The claimant took no steps to raise a grievance and took no action regarding her situation until the end of May. The claimant says that she was not aware that she had any legal rights following her resignation or the refusal of her request for flexible working. The claimant says that she took no steps to investigate the position and took no advice until the end of May 2019. In her role with the police force the claimant undertook computer-based research and had advanced qualifications therein. She is plainly a literate and intelligent woman.
15. At the end of May to was experiencing financial difficulties. Her husband who is a serving police officer and a member of the Police Federation was acquainted with and had used the services of a Federation instructed solicitor called Mark. At her husband's suggestion she contacted the solicitor at about the end of May and he in turn referred her to a colleague who undertook employment advice. Following a telephone conversation with that solicitor the claimant received a letter of advice on 4 June 2019 and lodged her claim with Acas on 5 June 2019 and following the ACAS certificate of 11 June 2019 submitted her tribunal claim on the 27 June 2019. The claim should have been submitted by 17 March 2019 at the latest.
16. The claimant's only explanation for the delay is that she was unaware of her rights, preoccupied with her children and took immediate action when she was made aware of the possibility of a claim. The claimant had some financial worries but gave no medical or other reasons for her failure to lodge her claims in time.

## **Conclusions**

17. The claimant is a bright and literate woman, familiar with computers and had Internet research skills, she was alert to her rights and obligations under the contract and took steps to ascertain her position before resigning, she was married to a police officer who was a member of the Police Federation with links to a solicitor. I conclude that the claimant had the competence and capacity to lodge her claim within the primary timeframe of three months ie by 17 March 2019.
18. The burden of proof is on the claimant to show that it was not reasonably practicable to bring the claim in time and she has not done so. The claimant had some financial worries but gave no medical or other reasons for her failure to lodge her claims in time other than ignorance of the law and being preoccupied with the children. I do not find that such concerns are sufficient to find that it was not reasonably practicable to lodge the Unfair dismissal and flexible working claims in time.

19. In the circumstances I have no further discretion under S111 because I conclude that the Claimant has failed to show that it was not reasonably practicable to lodge her claims for flexible working and unfair dismissal in time are therefore time barred and I dismiss those claims.
  
20. The Claimant is unclear as to what her discrimination on the grounds of maternity or pregnancy is based on. She has never raised a grievance and following the birth of her daughter or her son before that and has never had cause to complain about her treatment including parental leave.  
In respect of the possible indirect discrimination claim which I have inferred from the narrative, she accepts that the respondent took some steps to try and accommodate her, including the possibility of a move to Wakefield with a possible job share provided that the claimant could suggest a more amenable Rota compatible with job share. The claimant was not inclined to accept this offer and saying in terms in an email that the one she proposed was the only Rota that she could work which she accepted was not easily compatible with a job share because it was framed to fit with her husband's shifts.  
The major difficulty in achieving her return to work appears to be not a general application of a PCP imposed by the Respondent but the Claimant's insistence on the acceptance by the respondent of an idiosyncratic rota which was compatible with her husband's shift pattern. It is this idiosyncratic requirement which renders it unlikely that the Claimant would succeed in a S19 claim.
  
21. As set out above the claimant is a bright and literate woman, familiar with computers and has Internet research skills, she was alert to her rights and obligations under the contract and took steps to ascertain her position before resigning, she was married to a police officer who was a member of the Police Federation with links to a solicitor. I conclude that the claimant had the competence and capacity to lodge her claim within the primary timeframe of three months ie by 17 March 2019.
  
22. Apart from being preoccupied with the children the Claimant has given no substantial reasons for the delay apart from lack of knowledge. She does not rely on ill health, incorrect legal advice or delay caused by the Respondent or through its procedures. The refusal of the flexible working request stems from a decision in October 2018 some 10 months ago. The EDT was about 8 months ago. She failed to raise a grievance at the time and thus the Respondent were not put on notice of a possible complaint and did not undertake a contemporary investigation while matters were fresh.
  
23. Considering all matters in the round and the relative prejudice to each party, I conclude that it would not be just and equitable to extend the time limit to allow the Claimant's discrimination claims to proceed and they are dismissed as time barred.

Case Management

24. Having found the claims to have been time barred there are no further case management orders to be made.

19 August 2019

**Employment Judge O'Neill**

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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