



EMPLOYMENT TRIBUNALS

Between:

Mrs J Daniel
Claimant

and

Derby City Council
Respondent

At an Open Attended Preliminary Hearing

Held at: Nottingham
On: Monday 14 October 2019
Before: Employment Judge P Britton (sitting alone)

Representation

For the Claimant: In person by telephone
For the Respondent: Ms P Brown, In-house Solicitor

JUDGMENT

1. The claim is not out of time and is permitted to proceed.
2. Otherwise for reasons hereinafter set out, all current directions are stayed, in the first instance a period of 28 days, in the hope that there will either be resolution of the matter or that the matter can proceed to Judicial Mediation.

REASONS

The time issue

1. At first blush, this case appeared to be out of time. In summary, the claims relate to constructive unfair dismissal and various claims made under the Equality Act 2010, although they need considerably more particularisation and labelling. The claim has been presented on behalf of the Claimant by the British Association of Social Workers.
2. By its Response, the Derby City Council made plain that it considered these claims to be out of time. It was relying in particular on section 207B(4) of the Employment Rights Act 1996; this subsection is part of what are somewhat complicated provisions as to time and the interface to ACAS early conciliation. There is a similar provision in the Equality Act 2010.
3. My initial view was that the Respondent was correct. However, in my preparation for today, I further closely considered the interface of s.207B(3) to s.207B(4). In so doing, I considered the relevant commentary on the matter in the current IDS Handbook on Employment Tribunal Practice and Procedure. To put it at its summary, the following applies. If the ACAS early conciliation procedure (EC) ends within the 3 month time limit which would apply otherwise to the claims before the tribunal, then the last date of the certificate (day B) has the effect of adding one to the time limit for presenting the claim. If this provision applies, then the claim is out of time..
4. However, the first stage is to look at matters under s.207B(3). Put in summary the period of the ACAS EC (ie between day A and day B), and which can extend to up to 6 weeks, is added to the three month time limit..
5. So, in this case put at its simplest, the ACAS EC ran between 21 February 2019 and 4 April 2019. That is a period applying the provision of 42 days. Thus, as the last day for presenting the claim absent the ACAS EC period was in this case 29 March, the adding on of 42 days actually takes it to 10 May. It was presented on 9 May and therefore is within time.
6. Upon reflection, Ms Brown does not seek to dissuade me.

The non attendance of BASW

7. However, this matter was clearly listed for an attended preliminary hearing today, it having already been listed for a telephone case management discussion. That BASW knew this is obvious from the fact that it replied to the notice arguing that the matter was not out of time. At that stage, I made plain

that as Derby City Council did not agree, there needed to be this hearing. Again, that was confirmed in correspondence.

8. Attempts to telephone BASW on both 'phone numbers today did not bear fruit. However, we were able to get hold of the Claimant on the telephone who was being driven in the family motor car by her husband from one appointment to the then planned dental appointment for her husband. They stopped the car and she was able to engage in an extensive discussion before the tribunal.
9. Suffice it to say that therefore I have proceeded and I will not strike out her claim, but I make it abundantly clear that if BASW is going to continue to act in this matter, then I require an explanation from it as to why it did not participate today.

Current schedule of loss and lack of particularisation of the claim

10. Also, I have concerns about the current schedule of loss, which it seems was prepared by them. How can they be claiming a full year's loss of earnings when the Claimant retired on her accrued local authority pension? It is a non-starter. So is the claim for failure to pay notice pay. She resigned on 8 weeks' notice which she was not required to work because she was off sick; but she was paid in full.
11. Thus, it means that the claims that proceed are the ones of constructive unfair dismissal and claims under the Equality Act (the EqA), none of which at present have been articulated in terms of reference to such as any section of EqA. If this case is going to continue, full particularisation will be required.

Possible resolution

12. However, in what was a most helpful discussion, suffice it to say that the real substance of the Claimant's claim became very clear. It has got to do with how, her already having poor health and it seems stresses at work, a grievance raised, it seems by her line manager Kam, was handled. What she is telling me, and she did so at considerable length, is that she was never given any formal document as to said grievance. The only meeting which she had was with Kam's line manager; and that she was thereafter left in limbo which only made her health worse, including suicidal thoughts, thus causing her doctor to urge that she retire because of the impact the issue was having upon her.
13. At the heart of what she is really claiming about is her own sense of grievance; that this matter was dealt with in this way and never effectively resolved at the time of her resignation. She stressed to me that as a committed Christian, she would never behave in a bullying or racist manner if that is what is being suggested.

- 14. However, from what she was telling me it seems this matter could be capable of resolution: putting it at its simplest by the Respondent accepting that the matter was not dealt with as well as it should have been and making plain that there has been no adverse finding against the Claimant and that it wishes her well so to speak given her previous long service career with it. She made plain to me today that she would be only too willing to try and resolve the matter in that way and including by way of Judicial Mediation.
- 16. Ms Brown has heard all of that and will now seek further instructions.
- 17. I therefore make the following orders.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

- 1. All current directions are stayed.
- 2. By not later than 14 days from today the Respondent will indicate whether or not it is therefore prepared to enter into Judicial Mediation. Of course it might otherwise be that the matter can be resolved by ACAS.
- 3. In any event, if the Respondent is so prepared, then there will be listed a very brief case management discussion to list a Judicial Mediation Hearing at the earliest available date.
- 4. If the Respondent does not agree to judicial mediation, then a further attended preliminary hearing primarily for the purposes of case management, will then be listed.

Employment Judge Britton

Date: 16 October 2019

JUDGMENT SENT TO THE PARTIES ON

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Case No: 2601800/19

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