



Case Number: 3319017/2019

## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mrs D Goodwin

and

**Respondent**

Mr George Knapp

**Held at Norwich on 6 December 2019**

**Representation**

**Claimant:**

Mr K Mizon, CAB

**Respondent:**

Mr J Colley, Solicitor

**Employment Judge Kurrein**

### JUDGMENT

1 The Employment Tribunal has jurisdiction to hear the Claimant's claim.

### REASONS

1 The background to the Claimant's claim is long and complex, but is largely not in dispute:-

1.1 She was employed by the Respondent as one of his carers from 1 August 2016. She received a statement of terms and conditions of employment that correctly identified him as her employer.

1.2 The Respondent is paraplegic.

1.3 The Claimant alleges the Respondent sexually harassed her throughout her engagement until she resigned forthwith on 3 December 2017.

1.4 On 3 January 2018 the CAB wrote to the Respondent's partner, a Mrs Easton (with whom the Claimant had dealt), to indicate the Claimant might make claims for payments due and sex discrimination.

1.5 Mrs Easton responded to that letter on behalf of the Respondent.

1.6 The Claimant then started early conciliation ("EC"), naming Mrs Easton as the proposed Respondent, and was given a certificate to that effect in February 2018.

1.7 The 2 March 2018 was the last day on which the Claimant would have been in time to start EC against the Respondent.

1.8 On 14 March 2018 the Claimant presented a claim to the Tribunal, Case Number 3304726/2018, naming Mrs Easton as the Respondent.

1.9 On 19 April 2018 a Response was presented that asserted that Mrs Easton was not the appropriate Respondent and that no EC certificate existed for the proper Respondent.

- 1.10 The Claimant then sought advice and saw a specialist employment adviser at the CAB on 10 September 2018, on which date an application was made to join the Respondent as the Second Respondent.
- 1.11 The parties attended a Preliminary Hearing on 1 October 2018 but were sent away as no-one was available to hear it.
- 1.12 A further hearing was also cancelled.
- 1.13 However, the application to join the Respondent was granted without a hearing, and the parties were informed of this by a letter of 18 October 2018.
- 1.14 The Second Respondent presented his Response to that claim on 15 November 2018 and asserted that he was not a proper party because there was no EC certificate relating to him.
- 1.15 On 3 January 2019 the Claimant was ordered to provide further particulars of her claim. She did so on 18 January 2019, in identical form to those relied on in the instant case.
- 1.16 On 6 June 2019 an Open Preliminary Hearing took place before EJ Postle. He struck out the claims:-
  - 1.16.1 Against the First Respondent, because she was not the employer; and
  - 1.16.2 Against the Second Respondent, because there was no EC certificate in his name.
- 1.17 On 10 June 2019 the Claimant started EC a second time, and was issued with a certificate on 11 June 2019.
- 1.18 Her claim in these proceedings was presented on 13 June 2019.
- 1.19 The Response was presented on 19 July 2019 and took the following points:-
  - 1.19.1 The claim was out of time by 1 year and 3 months.
  - 1.19.2 The claim was barred by Issue Estoppel arising from the earlier strike out Judgment
- 2 The Claimant has not given evidence, but I have heard the submission for both parties.
- 3 I was referred, or referred myself, to the following decisions:-
  - Robertson v Bexley Community Centre [2003] IRLR 434
  - Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119
  - British Coal Corp v Keeble [1997] IRLR 336
  - Chohan v Derby Law Centre [2004] IRLR 685
  - Drake International Systems Ltd v Blue Arrow Ltd UKEAT/282/15, [2016] ICR 445
  - Giny v SNA Transport Ltd UKEAT/0317/16
  - Mist v Derby Community NHS Trust UKEAT/0170/15, [2016] ICR 543
  - Virdi v Comr of Police of the Metropolis [2007] IRLR 24
- 4 The relevant time period is set out in S.123 Equality Act 2010

123 Time limits

(1) Subject to [[sections 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.

(2) ....

(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) ....

5 In applying the just and equitable test I have to have regard to all the circumstances of the case. The decision in *Keeble* assists me in setting out the following matters as worthy of particular consideration. I deal with each in turn

The length of and reasons for the delay

6 I accept the delay in this case, at first sight, appears to be very long indeed. However:-

6.1 The Claimant, who did so without assistance, acted promptly in starting EC and then presenting her claim.

6.2 When she was first made aware of the issue with her EC certificate she sought advice. I take Judicial notice of the long delays litigants in person face in obtaining such advice, particularly from a specialist.

6.3 She first saw Mr Mizon on 10 September 2019, who immediately made an application to join the Respondent, which was successful.

6.4 The issue decided by EJ Postle on 6 June 2019 should have been considered at the originally listed PH on 1 October 2018. Indeed, but for the backlog of cases in the ET system, even that hearing might have taken place considerably earlier.

6.5 Almost immediately after that hearing the Claimant started EC again, and presented her claim without delay.

6.6 In my view a very large part of the delay in this case is attributable to the Administration, rather than to the Claimant.

6.7 I accept that the CAB might have thought to re-start EC immediately on their being instructed. That could be seen as a “belt and braces” approach. However, I also accept that:-

6.7.1 once the application to join the Respondent had been granted that possibility was likely to fade in importance; and

6.7.2 the conflicting decisions of the EAT on the issue, *Drake*, *Mist* and *Giny* might have been thought to favour the Claimant’s position as *Drake* was a decision of Langstaff J.

The extent to which the cogency of the evidence is likely to be affected by the delay

- 7 I accept that delay will in every case raise a risk that the cogency of the evidence may be affected.
- 8 In this case the Respondent has had full particulars of the Claimant's claims since January 2019 and obtained basic unsworn statements from some of his carers at that time.
- 9 In my view the prejudice to the Respondent, if any, will be slight.

The extent to which the party sued had cooperated with any requests for information

- 10 In my view no issue arises here. Mrs Easton might have sought particulars at a much earlier stage, had she wished. The Claimant provided those asked for very promptly.

The promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action

- 11 As noted above, the Claimant acted without delay but, as a layperson, made a mistake.

The steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action

- 12 In my view the Claimant acted promptly in seeking expert advice at the point at which she believed she needed it. I have dealt with the delay in obtaining that advice, above.
- 13 I have also had regard to the possibility that the Claimant might seek a remedy against her adviser. I have concluded:-
- 13.1 In light of the state of the authorities that course is fraught with difficulties.
- 13.2 Any such claim would, as best, be for the loss of a chance.
- 13.3 It is far preferable that the Claimant should be in a position to face the alleged perpetrator, and gain such satisfaction as she is entitled to from that person, rather than face the uncertainties of an action for professional negligence, which may take years to resolve and offer lesser remedies.
- 14 In light of the decision in *Virdi* I have also concluded that even if there was fault on the part of the CAB this should not deprive the Claimant of an extension of time.
- 15 In light of all my above findings I have concluded, in all the circumstances of the case, that it is just and equitable to extend the Claimant's time to present her case so as to confer jurisdiction on the Tribunal.

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Employment Judge Kurrein  
6 December 2019

Sent to the parties and  
entered in the Register on 06:01:20

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For the Tribunal

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