



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE BRITTON (sitting alone)

**BETWEEN:**

**Claimant**

**MISS AMY MAYNARD**

**AND**

**Respondent**

**HELGOR TRADING LIMITED**

**ON:** 6 JANUARY 2020

**APPEARANCES:**

**For the Claimant:** In Person

**For the Respondent:** Ms P Hall, Consultant at Peninsula

## JUDGMENT

**The Judgment of the Employment Tribunal is that:-**

The claim is dismissed. It being out of time and it not being just and equitable to extend time.

## REASONS

1. My task today as directed by Employment Judge Ross at a preliminary hearing on 5 November 2019 is to determine whether the Tribunal has jurisdiction to entertain the claim, it having been presented out of time. To turn it around another way, in exercising my judicial discretion I have to decide whether given that there is a three-month time limit for bringing

claims such as that before me, whether or not it is just and equitable to extend that time pursuant to Section 123 of the Equality Act 2010 ( the EQA).

2. Before getting into the issues in that respect suffice it to say that the Respondent is a business which inter alia operates emergency accommodation which I might otherwise describe as refuge centres. The Claimant was employed by the Respondent between the 17 March 2017 and the 29 May 2018 when she resigned. She was employed as a welfare officer. The principle reason for her resignation as is clear from the resignation letter in the bundle before me was because the environment in which she worked brought her into contact with persons who could cause her anxiety and fear, and which could trigger her post-traumatic stress disorder. As to the PTSD, suffice it to say that she has eloquently set out the history of the same in the impact statement which Judge Ross ordered that she provide. In that respect the Respondent has now conceded that she was at the material time a disabled person. I do not intend to get into the reasoning for her suffering from PTSD as it is highly sensitive and does not need to be broadcast for the purposes of these reasons; suffice it to say that I can well see given the trauma that caused her to become disabled that some of those that she would have had to deal with in the course of tis employment would be likely to cause her very severe anxiety. The issue that caused her to resign is that her employer had, as far as she was concerned, failed to make the necessary reasonable adjustments. She set out what they were in that resignation letter.
3. The problem is that the last event therefore being the 29 May 2018, she did not bring her claim to the Tribunal until its presentation on the 16 April 2019. Of course, that is nearly eight months outside of the three-month time limit. As to the extension of that time limit by reason of the provisions as to ACAS early conciliation, it cannot assist because the EC period as per the certificate is only the 16 April 2019. That is to say, the same day as the presentation of the claim. Therefore, it cannot come to the rescue and extend time. So the issue before me is to decide, dependent upon the explanation of the Claimant, as to whether or not it is just and equitable to extend time.
4. I have a wide judicial discretion in that respect; but I start from the obvious which is that time limits are essentially to be applied strictly subject, of course, to the just and equitable jurisdiction. The onus is on the Claimant to satisfy the Tribunal dependent, upon her explanation, that it is just and equitable to extend time.
5. The Respondent has no such obligation. Furthermore as is obvious a Respondent is prejudiced if a claim is left late in terms of filing even if it could still deploy the evidence to defend, by the fact that it will be put to the expense of having to defend a claim which on the face of it is out of

time. That is why the onus is on the Claimant.

6. I have before me, as I have already said, a bundle which I have considered and I have also taken due consideration of the Claimant's statements at the back of that bundle which are the impact statement for the purposes of the disability issue, which has now gone, and her statement in terms of the extension of time. I have heard her sworn evidence and she has been cross examined.
7. In essence the position is, as she has honestly put it to me, as follows:-
  - i. When she resigned the employment, she, being an intelligent and articulate person, she made it her business to find out what her rights were as she had in the back of her mind the potential to bring a claim for disability discrimination. Thus, she learnt on-line about the basics of the EQA relevant to her case and she learnt about the time limits
  - ii. However, by the time that the Claimant started to work for Helgor, and the person that she was particularly directed by was Angelique Proctor, one of its directors based in Brighton, Helgor had given a contract to a company known as Contrast Security Limited. This had started in mid-Summer 2016 and it had two directors, the active one, so to speak was the Claimant's partner, Terry. They both had 50% of the shares. That contract with Helgor was absolutely crucial to Contrast, in fact it provided very much the lion's share of its income; and so the Claimant having resigned took a conscious contractual commercial decision not "to rock the boat" by bringing a claim against Helgor on the basis that she predicted that if she did, Angelique would ensure that the contract with Contrast was ended. So that remained the position all the way through to material events as per the email chain that starts on or about 8 April 2019.
  - iii. In passing, it is clear to me from the bundle that the Claimant and Angelique did not get on well. Thus, taking into account the submissions of Ms Hall, Angelique did not know to start with of the Claimant's involvement with Contrast, but as the months went by she realised that the Claimant was now taking an active role in its affairs. One of the reasons being, of course, that the Claimant was anxious to see the business expand; but she was also taking on roles within the Helgor contract. Thus it would appear that Angelique required Terry to enter into an agreement to the effect that the Claimant would not be involved in Contrast's business with Helgor. As it is, reading the emails, Angelique then realised the Claimant was so involved and as at the 8 April, she clearly wanted to discuss matters with Terry. The Claimant wanted to be present at any such meeting. Angelique originally did not want her to be

present but eventually relented. That meeting took place on 9 April. Reading between the lines it was not an easy meeting and suffice it to say for reasons which Angelique then set out, she decided to terminate the contract. Matters thereafter only worsened because Angelique then alleged that the Claimant had sabotaged Helgor's activities, so to speak, because security guards supposed to be work on its contracts relating to the respite units in the Brighton area, which I detect up to then would still have been run by Contrast, did not turn up: so the termination of the contract was brought forward.

- iv. This, of course, explains the timing of when the Claimant brought her claim to the Tribunal. She brings it almost immediately after Angelique, on behalf of Helgor, has terminated the contract.
  - v. What was interesting to me this afternoon is that when Ms Hall engaged issues to do with the PTSD in terms of remission periods, there did not appear to be in that sense a link to any impediment upon the Claimant bringing her claim. The Claimant very strongly confirmed that the stressors for her PTSD had to do with the working environment when she had been with Helgor at the respite centres; and for reasons I have touched upon, would not engage when it came to commercial pressures such as the potential the loss of the Helgor contract. In passing post the loss of the Helgor contract this led to the eventual folding of Contrast because it did not pick up enough business to cover the difference. But that has nothing to do with the disability claim.
  - vi. Also there is an issue about the Claimant having obtained a loan from a company called Amigo. Put at its simplest, she obtained that loan for some £5,000 over four years, it seems shortly after entering into the employment with Helgor, and with Angelique being the guarantor. Almost immediately after the contract was terminated, the Claimant ceased to make the payment to Amigo who then came calling to Angelique. I can see that from the emails. The Claimant's submission in that respect, in so far as it matters to me, is that the reason that she could not continue to make the repayments is because of the loss of income for the purposes of her being paid out of Contrast in terms of a wage. It is not a matter for me today, but it seems to me as an observation that timing is very short between the termination of the contract and the starting to default on the loan.
8. So, that is the explanation. It has got nothing to do with the disability. On the Claimant's own evidence, it does not engage as a reason why she could not have brought her claim before she did. It is not a classic case of where the Claimant has obtained incorrect advice or was justifiably ignorant of her rights. It is also not an instance where there is an on-going

internal procedure such as an appeal which a Claimant believes stops him or her bringing a claim until it has been resolved.

9. So, boiled down, is it just and equitable to extend time where a conscious decision has been made for a commercial reason not to bring a claim within time to the Tribunal?
10. There are no examples, i.e., as to which see the latest edition of the IDS Employment Law Handbook on Employment Tribunal Practice and Procedure, which assist in this somewhat unique scenario. Those examples that there are come really within the category of the headings to which I have, of course, now had regard. In so doing, I have addressed the checklist, as set out in **British Coal Corporation v Keeble and Others 1997 [IRLR 336EAT]**. What it means is, and the applying the seminal judgment of **Roberts v Bexley Leisure Community Centre trading as Leisurelink 2003 [IRLR434CA]**, that I am not convinced by the Claimant's explanation that it is just and equitable to extend the time. Bearing in mind that to do so is the exception rather than the rule.
11. Thus, it follows that I have decided that it is not just and equitable to extend time and therefore the claim must fail, for want of jurisdiction.

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Employment Judge Britton

Date: 13 January 2020

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