



EMPLOYMENT TRIBUNALS

Claimant: Mr A Castle

Respondent: Wm Morrison Supermarkets PLC

**2nd
Respondent:** Neerock Limited

Heard at: Manchester

On: 28 February 2020

Before: Employment Judge Grundy

REPRESENTATION:

Claimant: Ms Quinn, Solicitor
Respondents: Miss S Saroo, Counsel

JUDGMENT

The ex tempore judgment of the Tribunal is that:

1. Firstly the claimant has permission to amend his claims to include those claims particularised in the further and better particulars of claim of 18 December 2019.
2. The claimant has permission to amend the claim to include the additional acts of unfair treatment and harassment as pleaded in the amended grounds of claim at paragraphs 14, 17, 18, 19 and 20 as applied for on 27 February 2020.
3. The claimant has permission to amend his claims as applied for on the 27 February 2020 to include a claim for perceived disability discrimination that perceived disability being depression and/or anxiety.
4. Further, the Tribunal declares that it is just and equitable to extend the time limit for all of those amended claims to proceed.

5. By consent, the Tribunal amends the name of the first respondent to Wm Morrison Supermarkets Plc.
6. By consent the Tribunal joins Neerock Limited as the second respondent and the Tribunal orders that the need for service of the Claimants claims and amended claims on the second respondent shall be dispensed with.

REASONS

1. Firstly, the applications so far as amendment of the name of the first respondent and the addition of the second respondent is concerned were both by consent and as there is no prejudice to the second respondent as Miss Saroo has indicated she can protect their interests today there is no need for the claims to be served on them.
2. This is a Preliminary Hearing to determine whether the Tribunal has jurisdiction to consider the claimant's claims in respect of alleged disability discrimination. The Employment Judge hearing the Preliminary Hearing on 16 December 2019, page 42, ordered as follows:-

The Employment Judge will decide whether to exercise discretion to extend time to allow the claim to proceed on the basis that it would be just and equitable to do so.
3. The time limit referable to the claimant's claim is set out in Section 123(1) of the Equality Act 2010, "Proceedings on a complaint within Section 120 may not be brought after the end of -
 - (a) the period of three 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."
4. The claim relates to the claimant's employment as a cleaner at an Abattoir premises. He previously withdrew his unfair dismissal complaint. It has not been a straightforward question to answer how the time limits fall, in this case as in effect the claimant's claims have been made in three separate parts, given the amendments sought by the claimant.
5. So far as the chronology is concerned the ET1 was presented on 5 August 2019, further and better particulars of amendments were provided on 18 December 2019. On 27 February 2020 the claimant made further application to amend to include additional acts of unfavourable treatment and acts of harassment, those already being claimed under Section 15, 26 and 27 in the original ET1 and the additional acts of unfavourable treatment and harassment were acts that were already pleaded in the amended grounds from December. There was also a further claim for perceived disability discrimination in the email seeking amendment sent to the Tribunal on 27 February 2020.

6. The relevant dates going back to the original claim are that the claimant's employment ended in terms of the effective date of termination on 30 January 2019 (although the last date worked actually in work was 22 January 2019). The primary limitation would then be 22 April 2019 subject to whether or not the claimant was in on 23 January, which would make it 23 April 2019. Early conciliation was 3 July 2019 and the ET1 was presented on 5 August 2019. On any view, the claimant was therefore ten weeks outside the primary limitation period.
7. The original claim form makes reference to events in April 2018, November 2018 and 14 January 2019 leading to the dismissal. Essentially, these are allegations of poor treatment. The further and better particulars give further details over the same period but in more detail. The further and better particulars being provided on 18 December would then make the application eight months out of time. The further factual matters and application in respect of perceived discrimination being presented on 27 February 2020 would make the claimant's claim ten months out of time. The Tribunal also has to consider whether or not to allow the amendments proposed by the claimant.
8. The Tribunal has given consideration to Section 123 as stated above and to Section 33 of the Limitation Act 1980. The Tribunal has considered the length and reasons for delay, the effect of prejudice which each party would suffer as a result of the decision reached on each of the parties, the conduct of the parties, all the circumstances of the case and whether or not the claimant has acted promptly and whether he took steps to obtain proper advice. The Tribunal also considered the extent to which the cogency of the evidence is likely to be affected by the delay.
9. The Tribunal has considered the Selkent principles regarding amendments. *Selkent Bus Co Ltd v Moore* 1996 ICR 836 EAT endorsed by the Court of Appeal in *Ali v ONS* 2005 IRLR 201 The Tribunal has considered the Court of Appeal authorities regarding the exercise of the Tribunal's discretion in considering whether to extend time limits. (*Robertson v Bexley Community Centre t/a Leisure Link* 2003 IRLR 434. *CC of Lincolnshire Police v Caston* 2010 IRLR 327)
10. The Tribunal has heard the claimant's evidence on oath, and read the bundle of documents, which unfortunately was not available to the Tribunal at the outset of the hearing and so meant a slightly late start and has meant a slightly late finish. The Tribunal has heard the submissions of both representatives for the claimant and the first respondent.
11. The claimant says that his GP medical records, which are in the bundle of documents, do not represent the totality of the matters for which he has sought assistance from his doctors. The Tribunal cannot deal with that matter today but that is what the claimant says. Ms Saroo on the respondent's behalf took the claimant through some of the records, particularly those pertaining to the material times given the expiry of the primary time limit in late April 2019.

12. The GP records show that the claimant is a very vulnerable adult. In February 2019 he took a knee complaint to his doctor but gave evidence that he hadn't spoken up about anxiety and difficulties of that kind that he was having at that time. Page 58 on 16 April 2019 shows that the claimant was struggling with his anxiety, the GP documents that attendance as "a mental health assessment," that the problem was "anxiety state", that he was advised to see GP so it may be that he attended at a different clinic, it is hard to tell on the notes because some of them are obscured but the problem was said to be "suicidal ideation" and "that he had texted his brother saying he was going to end his life", "now states has no intention to harm himself or take his own life."
13. The claimant gave evidence that at that time he had taken himself away from his friends, family and support, that he had deleted social media and that he was effectively not in contact with those that could help him. The Tribunal considers that his suicidal ideation are significant and serious matters affecting the claimant's ability to properly and fully deal with the matter.
14. In May 2019, page 58, he sought consultation with the GP saying, "he had been feeling low in mood the last few months, his sleep was poor, he had been losing weight and he had thoughts of deliberate self-harm." He was prescribed Setraline for a couple of weeks and sought to be reviewed a few weeks after that. In the middle of May again the problem was recorded as "depressive disorder "he was said to be feeling more positive and was advised to contact Minds Matter who assist in mental health matters.
15. On 6 June, again he was seen with "depressive disorder but said not to have negative thoughts at the moment", on 17 July again he was seen in respect of depressive disorder and the same on 18 September. The timing of the complaint in the original form was 5 August 2019.
16. The claimant confirms that he consulted the Citizens Advice Bureau on 3 July 2019 and lodged the claim after early conciliation had broken down. Those matters were relatively prompt.
17. In the Tribunal's judgment taking into account paragraphs 6 to 8 of the claimant's written witness evidence it is likely with the backdrop of those matters set out in those paragraphs that this claimant would have significant difficulty in accessing legal advice in respect of his employment situation and in setting out what it was he was complaining about in logical and appropriate form. Those matters in paragraphs 6, 7 and 8 the Tribunal does not intend to repeat for the purposes of what would ultimately be a public judgment but they are significant matters in the Tribunal's view, which directly affect the claimant's vulnerability and ability to access advice and bring a claim.
18. The Tribunal heard submissions on behalf of both parties. Miss Quinn on behalf of the claimant invites the Tribunal to grant the amendments and allow the claims to proceed. She submits that the balance of harm to the claimant would be too substantial and in effect if the Tribunal did not allow the claims to proceed they would not be able to go forward and the claimant would have no recourse.

19. Although the application to amend yesterday was significantly late the Tribunal accepts that the difficulties in obtaining instruction given the medical history of the claimant and it would be likely that in taking instructions, matters might come to light in the way that they have later and in a piecemeal fashion. Miss Quinn also submitted it would be unfair to exclude the perceived disability discrimination claim.
20. Miss Quinn also submits regarding paragraph 35 there is potentially a relabelling exercise regarding earlier matters, which should not be fatal to the claim proceeding.
21. Miss Saroo for the first respondent has valiantly attempted to persuade the Tribunal not to allow an extension of time for the claimant's claims to be brought and to oppose the amendments. She points to the Court of Appeal's decisions and submits that allowing the claims to proceed is the exception rather than the rule given that the original claim was outside the primary time limit. She draws the Tribunal's attention to a number of matters, not least she says that the matters within the medical records are perhaps not of the seriousness that the Tribunal considers, she indicated in respect of the suicide attempt that it would not appear as significant per the respondent but the Tribunal rejects that submission.
22. Miss Saroo also submits that there are gaps when the claimant might very well have been able to take advice when perhaps the medication was taking effect, the Tribunal rejects that submission also. She submitted many of the anxiety issue consultations post date the primary time limit expiry.
23. She points to the prejudice to the respondent because the respondent have now transferred ownership of the business to the 2nd respondent and it is said the witnesses are unlikely to be easy to trace.
24. Miss Saroo made submissions regarding the amendment to the claim as pleading new claims both within the 18 December further and better particulars and the 27 February email. Particularly as the 18 December document mentions new individuals and the 27 February a new head of claim.
25. Plainly the burden to exercise the discretion in favour of the claimant is on the claimant. The Tribunal considers that the transfer of ownership is a significant matter, however this is likely to have overtaken the life of the claim if allowed to proceed after the first claim form, it is highly unlikely witnesses would have been proofed in very early course in any event.
26. The Tribunal has exercised its discretion essentially by placing weight on the plain vulnerability of this claimant. The Tribunal has taken into consideration in the balance of prejudice that the 2nd Respondent may have to do more than usual to trace witnesses but the Tribunal's conclusion, it would be more unfair for the claimant not to be able in the first instance to pursue these matters than the respondent's attempt to trace the witnesses fall flat which may or may not still be employed in any event by the new owners at the Abattoir. The Tribunal accepts that memories can fade but so far as that is concerned that is the same for the respondent as it is for the claimant.

27. The Tribunal has also taken into consideration the length and reasons for the delays and the timing and manners of the application. In the Tribunal's judgment the delay from mid April to August 10 weeks then to December -8 months and February -10 months are consistent with the claimant's presentation and something which the respondent will have to bear. They are measured in months and are not inordinate given the original 10 week delay before the primary claim was presented.
28. So far as relabelling is concerned there does appear be some relabelling and there is the new claim. The Tribunal has considered also the overriding objective is to do justice to the parties and to not allow the claims to proceed would amount to a gross injustice to the claimant where the matters alleged are serious. To do justice here the Tribunal considers it should allow the claimant's claims to proceed and to allow the amendments.
29. The claimant is a very vulnerable young person who has suffered as a child. The respondent may face evidential obstacles to tracing witnesses but so might the claimant. This is not a particularly historic matter. The first claim, which was 10 weeks out of time, was 10 weeks out of time because the claimant was unable to deal with it due to his ill health related to mental illness. The amendments on 18 December 2019 were because of the claimant's difficulties in giving instructions, and that is also the situation in relation to the amendments for 27 February 2020.
30. Taking all the circumstances into account, the Tribunal considers the exercise of discretion to be just and equitable to allow the amendments and to allow the claims to be brought out of time emanating in the first place from the claim brought 10 weeks out of time. Further case management orders are contained in a separate case management order.
31. Written reasons have been requested and are now provided.

Employment Judge Grundy
1 April 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
3 April 2020

FOR THE TRIBUNAL OFFICE

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