



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Pryor

**Respondent:** Cambian Childcare Ltd

**HELD AT:** Remote Hearing by Telephone **ON:** 2 April 2020

**BEFORE:** Employment Judge JM Wade

**REPRESENTATION:**

**Claimant:** In person

**Respondent:** Mrs Williams (solicitor)

## JUDGMENT

The claimant's complaint of harassment related to disability is dismissed, having been presented outside the relevant time limit.

## REASONS

### Introduction

1. This hearing was arranged by Employment Judge Lancaster because it was clear from the chronology of ACAS conciliation and presentation in this case that the claimant's sole Equality Act complaint of alleged disability related harassment from July/August 2018 had been presented outside the three month time limit in the Act. The only issue was whether I considered it just and equitable to fix a different time limit. This hearing was converted to a remote hearing by telephone, subject to recording, because of the Presidential Direction in response to Covid 19.
2. The parties had both provided electronic bundles of papers, and the claimant had prepared a statement setting out, in clear terms, why she considered it just and equitable for the time limit to be extended and the complaint to be permitted to proceed.

3. She took the oath by affirmation and confirmed that her evidence to the Tribunal was true. Her complaint and allegation was that a colleague, CH, had said words to the effect “all her colleagues were shit, they were dyslexic”, and when the claimant then informed her that she, too, was dyslexic, CH had “dismissed her”, that is, she had also considered the claimant incapable of checking work for typos and so on.
4. Findings of fact as to the chronology and circumstances
5. The alleged facts above had first been raised by the claimant in a grievance in November 2018, and then clarified as a complaint of alleged disability discrimination in an appeal in February 2019. The claimant had had union advice in relation to her suspension in September 2018, and thereafter. The suspension was in response to an allegation of inappropriate comments by the claimant about a service user. She had been a member of the union since late 2017, on the recommendation of a previous employee of the respondent. She had previously worked in addiction services in the private and state sector. The respondent operates facilities for looked after and vulnerable children.
6. The claimant was dismissed following a long suspension in June 2019; she commenced ACAS conciliation 5 August 2019,, which ended on 17 September 2019, and she presented her claim on 10 October 2019.
7. The claimant was herself assessed as suffering from dyslexia (those papers were contained in her documents for today), and it is clear she had been open about that with the respondent during her employment.
8. Submissions
9. The claimant had done a great deal of documentary preparation for this hearing. In short, her just and equitable grounds for the complaint being permitted to proceed included the fact of her dyslexia and that she had never hidden it, the delays of the respondent in dealing with the allegation against her, the lack of accommodation for her dyslexia in the disciplinary process, that she did not know she could bring a claim about the remarks of CH, the handling and alleged wrongs of the grievance process, and the late submissions of the respondent’s submissions for this case. She also believed CH had been re-employed by the respondent in a management position.
10. The respondent had produced written submissions for today, but as they were only sent by email yesterday they were not before me. Ms Williams presented oral submissions. She referred to the prejudice from memories being faded; the length of the delay which was considerable; the fact of union representation; the proportionality of permitting the claim to proceed which would inevitably impact the two days already listed to address unfair dismissal and holiday pay complaints. She considered the prejudice was less for the claimant when a) it was unlikely she would meet the statutory definition of a disabled person; and b, the remarks would be unlikely to cross the equality act threshold.
11. Consideration and Decision

One can see why the claimant considers it unjust that a manager should be able to make such comments, without that matter being determined, whereas she was dismissed because, on the respondent’s case, she had made inappropriate comments. This is part of her unfair dismissal case and forms some background to

it. I consider the lack of proportionality in extending a time limit to permit one alleged interchange in July/August 2018, to outweigh the matters of injustice the claimant relies upon. To that extent I agree with the respondent. I also consider the length of delay, and the fact that the claimant had union representation throughout and could reasonably have known she could complain about that comment to the Employment Tribunal, also to be persuasive.

12. I do not consider the complaint has little prospects of success, however; it seems to me that such an interchange could well cross the threshold for harassment in the Equality Act; it was crass and rude, but also for someone with a specific learning disability, reasonably to be perceived as humiliating, associating, as it does, lack of ability with a particular condition.
13. As I have said, these are background matters to the unfair dismissal complaint already; in light of my comments above, but particularly proportionality and the need for certainty in time limits, I do not consider it just and equitable to permit a different time limit to allow the complaint to proceed. It is dismissed.

Employment Judge Wade

2 April 2020