



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs D Eastham

v

**The Chief Constable of West
Yorkshire Police**

PUBLIC PRELIMINARY HEARING

Heard: By Skype for Business **On: 6 April 2020**

Before: Employment Judge JM Wade

Representation:

Claimant: Mr J Boumphrey, of Counsel

Respondent: Mr S Mallett, of Counsel

JUDGMENT

All the claimant's complaints of part time worker detriment, direct and indirect discrimination and harassment because of, or related to, sex, other than those included within the annex to today's case management orders are dismissed, having not been presented within the relevant time limits.

REASONS

Introduction

1. This has been a remote hearing to which the parties consented. The form of remote hearing was Skype for Business. A face to face hearing was not held because Presidential Guidance had directed conversion to a telephone hearing. In discussion with the parties this morning, there was agreement that "audio only" may prejudice a fair hearing and arrangements were made instead for this Skype hearing to determine limitation issues and if appropriate any other matters arising.
2. The parties said this about the process: they considered the Skype hearing to have been satisfactory and fair in all the circumstances and they extended their heartfelt thanks to the administrative staff for enabling it to take place.
3. This judgment was delivered on an extempore basis but I provide these written reasons today from memory and without reference to the recording in order to assist the parties (it is not currently clear how transcription of judgments delivered at such hearings is to operate in this Tribunal).

4. The documents before me were the pleadings and orders in the case and the claimant's witness statement. She provided evidence in support of me setting a just and equitable time limit and allowing all claims to proceed. I also heard oral evidence from the claimant: she was subject to cross examination by Mr Mallett; I consider her a witness of truth.

Findings of fact including the chronology

5. The chronology in this case is not a happy one even without the current Covid circumstances. The claimant was a serving police sergeant at the time she presented her claim, and had been with the force for many years. She has since resigned and taken up employment in the retail sector.
6. She had two children between 2014 and 2016; and for that reason had reduced her hours to around 29, latterly offering 35, in comparison with a full time officer's 40 hours per week.
7. By 2018 she had been successful in obtaining a "Staff Officer" post in the Chief Constable's office; she was due to swap with a male colleague who would take on her duties at "the Hub"; her case includes that she submitted a suggested rota for the Staff Officer post which included Tuesday as a non working day; she alleges a remark by Inspector Ware at a meeting on or around 3 July: "you need to decide what's important, your family or your career", and by August she had also withdrawn from an alternative post which had been offered.
8. The claimant's statement today identified the last alleged detriment on which she relies as on or around 27 July 2018, (which, from the grievance, I can see appears to be the sending by Inspector Ware of an amended rota involving working on a Monday morning and Tuesday afternoon, when these days had previously been non working days.
9. The first limitation date prescribed by the Equality Act, and indeed the Part Time Workers Regulations, would require presentation of a complaint by 26 October 2018, and the commencement of ACAS conciliation by that date, in order to benefit from any conciliation related extension of time.
10. In August 2018 the claimant had submitted a grievance about the July turn of events, having had a brief conversation with a police federation representative the same month. She did not at that stage discuss a Tribunal claim, or have any knowledge of Tribunals. She did know the outline of the complaints she sought to make in that grievance, sex discrimination, and because of working part time; and she knew or believed these were matters covered by the Equality Act. She included this within a focussed two page grievance form.
11. From 22 September 2018 she became unwell with anxiety and depression; was prescribed medication and undertook counselling; her symptoms were significant - I simply adopt into these findings, the third paragraph of page 7 of her lay claim details.
12. On or around 9 January, being unclear as to the state of her grievance but feeling a little more able to deal with matters, she learned from a federation representative that "the panel had found in her favour"; she did not have a great understanding of what that would mean but hoped she would be appointed to the post; she was advised to contact ACAS, and she did so; initially ACAS identified the "three months less a day" time limit issue; and she had also free advice from a solicitor specialising in these types of claims. The claimant commenced formal conciliation, the certificate records, on 19 January 2019, with a certificate issued on or around

5 March, the maximum time for conciliation. The claimant gives reasons as to why she found that process upsetting, but suffice it to say that she presented her own claim on line, without federation representation on 29 March 2019. That was a day when, I know from my papers, it appeared resolution through a further grievance process had still not yielded a conclusion.

13. The claimant's eight page details of claim narrated allegations and events going further back to 2015, all on a theme of treatment because of part time working, children and sex discrimination. In her evidence today, the claimant identified that she had simply "put up" with those earlier matters, but when it came to a head of not achieving the post she had so wanted, it was the final straw which led to the grievance, illness and then claim.
14. An Employment Judge identified a limitation issue in May 2019, which was self evident from the claim and response; had the claimant remained a litigant in person, no doubt at the subsequent hearing the complaints would have been identified with her, and a hearing would have been fixed to decide limitation. By a hearing in July 2019, to the claimant had legal representation through the police federation and an order was given for "an amended claim form and/or further particulars of claim" by 15 August 2019. When those were provided, the amended response pointed out that there was still not the required clarity.
15. At a hearing on 2 December 2019 at which the advocates before me also appeared, further orders were made as follows:

*"By no later than **20 December 2019**, the claimant is to provide to the respondent and to the Tribunal, further particulars of the direct sex discrimination, part time workers (less favourable treatment) and harassment related to sex complaints by reference to paragraph numbers of the amended claim:*

- 15.1. *For the part time worker (less favourable treatment complaint) the date of each alleged act of less favourable treatment, what is the treatment, and who is the full-time comparator relied upon (regulation 5 of the Part Time Workers (prevention of less favourable treatment) Regulations 2000.*
 - 15.2. *For the direct sex discrimination complaint, the date of each alleged act of less favourable treatment, what is the treatment and who is the actual comparator if none what are the circumstances of the hypothetical comparator relied upon.*
 - 15.3. *For the harassment related to sex complaint, what is the unwanted conduct, how does the claimant say the conduct relates to sex and what effect did it have.*
 - 15.4. *If a complaint of indirect sex discrimination the legal and factual basis of that complaint".*
16. The Employment Judge's reasons for making those orders said this:

"I was concerned that it has taken so long to get proper clarification of the claimant's complaints. Despite being given an opportunity at the last hearing the legal and factual basis of the complaints made is still unclear.

While I can see the merit in the parties resolving matters without continuing these proceedings, the claimant has brought this complaint. It is therefore incumbent on her to provide the clarification sought and either actively pursue her claim or resolve it in an alternative way. The claimant has made the application for the stay and the respondent has agreed it. The parties should make the best use of the time that has been given in the circumstances."

17. On 6 December a further short set of particulars (referred to here as “the third particulars”) were provided which:
 - 17.1. Did not provide the dates as ordered; and
 - 17.2. Did not provide the legal or factual basis of any indirect discrimination complaint.
18. The case was then the subject of a stay agreed by the parties to promote settlement and today it comes before me to determine the limitation issue.
19. Discussion and Conclusion
20. Mr Boumphrey fairly accepted that given the last alleged detriment contained in the claimant’s statement, all the matters in the third particulars relating to the handling of the grievance could be dismissed: they were not relied upon by the claimant and no dates of allegations had been provided. Those matters may sound in remedy or be relevant to a just and equitable time limit, but they were not relied upon as Equality Act or PTWR detriments.
21. As to the allegations of remarks, and treatment, by people other than Inspector Ware, and before June/July 2018, he advanced no argument that these could be treated as continuing conduct.
22. As to his submission that I fix a different, and just and equitable time limit for events for which I have not been provided dates as ordered, allegations 3(a) (i) to (iv), and which were not the subject of the claimant’s grievance in August 2018, I do not exercise my discretion to do so. Similarly I do not do so in relation to 3(c)(d) and (e) with the exception of e(i), which is the same allegation of Mr Ware’s July 2017 comment.
23. I have been properly taken through the Limitation Act factors. The length of the delay – in relation to allegations earlier than June and July 2017, they are very stale indeed, if heard in Autumn 2020; the reason, in relation to those allegations, was that the claimant just put up with matters, so much so she did not include them in her grievance. The prejudice caused by that, is that there will be little contemporaneous investigation of alleged remarks and day to day interactions, and they would be subject to trial “by hindsight”. Finally, albeit there is force in a Mr Boumphrey’s submission that it is not always just to visit on a claimant failings by representation, and the reasons for failing to comply with the orders have not been explored here fully, the prejudice to the respondent in trying before this Tribunal matters which it has not had the chance to investigate at the time, overrides the prejudice to the claimant in giving up a claim about matters with which she had simply “put up” previously.
24. As to the complaints which were the subject of the grievance, prejudice by degradation of evidence is not there: the matters are far more proximate and there was internal investigation. The reason for the delay in presenting those complaints was, in my conclusion, ill health, upset, and a hope that the internal process, albeit it had been delayed, would provide a fair outcome, recognising the claimant’s complaint was essentially losing out on a post she had openly won in competition, simply because of her part time hours. Her wish was to be appointed to that post. The delay in that grievance process arose in circumstances of ill health. I cannot be clear today about delay by the respondent between August 2018 and January

2019 and whether that is properly to be criticised – as we have discussed, that may sound in remedy should the complaints succeed. Even if delay in the grievance only arose because of the claimant's ill health, that simply supports her case on an extension. I do, in those circumstances exercise my discretion to fix a later time limit with regards to those complaints only: I permit the claimant until 29 March 2019 to present Equality Act and PTWR complaints about being able to take up the staff officer post in July 2018.

25. I will set out the precise complaints permitted to be tried in an Annex to my orders, taking into account what has (and has not) been provided in the third particulars.

Employment Judge JM Wade
6 April 2020