



THE EMPLOYMENT TRIBUNAL

BETWEEN

Claimant

and

Respondent

Ms T McGaghey

Youngs and Co's
Brewery PLC

Held at LONDON SOUTH (CROYDON)

On 11 May 2020

By telephone

BEFORE: Employment Judge Siddall (Sitting Alone)

Representation

For the Claimant: In person

For the Respondent: Mr R Hignett

JUDGMENT ON PRELIMINARY HEARING

The decision of the tribunal is that:

1. The claim for sexual harassment is out of time and is dismissed
2. The claim for unlawful deduction from wages is dismissed upon withdrawal.
3. The proceedings are therefore at an end.

REASONS

1. The claimant brought claims for harassment because of the protected characteristic of her sex and for unlawful deduction from wages. A case management hearing took place on 4 March 2020 and the claimant noted that

her claim for outstanding wages had been settled. The judge determined that a preliminary hearing should take place to determine whether the claim for sexual harassment was out of time and if so whether it was just and equitable to extend time. Since the hearing was listed, restrictions on hearings have been introduced as a result of the coronavirus pandemic.

2. This has been a remote hearing on the papers which was not objected to by the parties. The form of remote hearing was A – an audio hearing conducted by telephone. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are set out below. The order made is described at the end of these reasons.
3. The claimant had produced a witness statement as ordered which she supplemented by providing answers to additional questions from me. Her account was as follows.
4. The claimant started work at the Bear pub in Cobham on the 1 March 2019. She asserts that she was subjected to unpleasant treatment from a manager, KR. She said that much of this was ‘general’ harassment in that she was shouted at and unpleasant remarks were made to her. However KR also made comments about her to customers and colleagues that were of an offensive and sexual nature.
5. The claimant disclosed what had happened to the respondent and provided them with a written statement. KR was called to a disciplinary hearing but he resigned around the 21 May 2019. The claimant agrees that she was advised about his departure on this date. She carried on working for a couple of weeks but she felt isolated and unsupported. She resigned on the 4 June 2019.
6. The claimant had suffered from anxiety and depression in the past. She had recovered by the time she started work for the respondent, but she continued to take propranolol throughout her employment. She told me and I accept that as a result of how she had been treated by KR her anxiety became worse and she increased the amount of propranolol that she was taking.
7. After leaving her employment the claimant felt unwell. She suffered from migraines and nightmares. However she continued to look for work over the

summer of 2019. She did not consult her GP and was not signed off as unfit for work.

8. The claimant went to see her GP in September and was prescribed additional medication which she continued to take from September to December. She found new work with her old employer in September. She told a colleague about what had happened to her at the Bear pub and it was suggested to her that she could bring a claim. She contacted ACAS straight after this conversation, on 12 September 2019 and lodged her claim with the tribunal the following day.
9. The claimant says that she was not aware of her right to bring a tribunal claim under the Equality Act until she spoke to her colleague in September. She had not researched her rights or contacted the Citizens Advice Bureau or anyone else.
10. Having considered the claimant's evidence and the submission of Mr Hignett I made the following decision.
11. The claimant agrees that the unpleasant treatment she experienced must have ceased by 21 May 2019 when KR resigned. The initial three month time limit under the Equality Act would therefore have expired by 20 August 2019 at the latest. Even if I calculate the period of three months from the date she left her employment, time would have run out on 3 September 2019. The claimant did not contact ACAS until 12 September 2019 and put in her claim on 13 September 2019. The claim for harassment under the Equality Act 2010 was therefore out of time.
12. Under section 123(1) I have considered whether it would be just and equitable to extend time in this case.
13. I am sure that the treatment that the claimant describes in her claim would have caused anxiety and distress if proven. I accept that such treatment would have been likely to have caused an exacerbation of any existing mental health problems. I have noted that the claimant increased her medication while working at the pub and that she started to experience migraines and nightmares after she left.
14. I must also take into account however that after leaving her job with the respondent, the claimant did not consult her GP until September 2019. She

was not signed off as unfit for work over the summer of 2019 and she continued to look for another job. I am not satisfied on the evidence that she felt so unwell that she would have been unable to progress a claim to the employment tribunal had she wished to do so.

15. The claimant represented herself at the telephone hearing today in a commendable manner. She produced a well-written witness statement and she answered questions in an articulate and open manner. I note also that she had provided a written statement to the respondent about the treatment she was being subjected to, when asked to do so. She was clearly aware that the treatment she was receiving was wrong, yet she seems to have made no efforts to investigate her rights until she started a new job in September 2019. I am satisfied that if she had wanted to take forward her complaints about KR's conduct in the period after leaving her employment she would have been able to do so.
16. The treatment described by the claimant would no doubt have caused anxiety and distress to anyone who was subjected to it. Had this claim proceeded, the tribunal would need to decide whether the claimant's account should be accepted and whether the respondent was liable for it under the Equality Act. This decision does not seek to belittle the account of what had happened. It is therefore unfortunate that the claimant did not investigate her rights sooner and that her claim was lodged a few weeks out of time. However this is not a case where there are sufficient grounds for me to conclude that it would be just and equitable to extend time.
17. The claim for harassment brought under section 26 of the Equality Act is therefore out of time and is dismissed.

Employment Judge Siddall
Date: 11 May 2020.

