



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Barette

**Respondent:** Asda Stores Limited

**Heard at:** North Shields Hearing Centre **On:** Wednesday 26<sup>th</sup> February 2020

**Before:** Employment Judge Speker OBE DL

**Members:**

***Representation:***

**Claimant:** In Person

**Respondent:** Mr Mortin (Solicitor/Advocate)

## JUDGMENT

The tribunal makes the following judgment:

1. The application to strike out this claim is refused.
2. A deposit order is made on the grounds that the case has little reasonable prospect of success. The deposit order will be in the sum of £1,000 to be paid within twentyone days from the date this order is sent out as a condition of the claimant being permitted to continue to proceed with the claims. A separate deposit order will be sent out.

## REASONS

1 This preliminary hearing is to determine two issues:

- (i) Whether the claim should be struck-out; and
- (ii) Whether a deposit order should be made.

2 I was provided with a bundle of one hundred and sixty-three pages of documents together with a separate bundle containing reports of sixteen authorities. I heard detailed submissions from Mr Mortin on behalf of the respondent and from Mr Barette on his own behalf.

3 This case involves four claims of disability discrimination:

- (i) Direct discrimination
- (ii) Disability arising from disability
- (iii) Failure to make reasonable adjustments
- (iv) Victimisation

4 It is clear that the first three are substantially out of time taking into account the statutory three-month time limit which applies. The claim form was presented to the tribunal on 11<sup>th</sup> July 2019. The first three complaints arise out of events during July to September 2018. The fourth arises out of events said to amount to victimisation in or around February 2019. It is clear that all of the complaints presented are out of time.

5 The claimant submits that the various claims should be regarded as a continuing act of discriminatory behaviour and that the relevant timing should relate to the victimisation claim which is only one month or thereabouts outside the statutory time limit. He argues that it would be just and equitable to extend the time limit in order to give the tribunal jurisdiction to hear all of the claims.

6 The respondent's submission is that the claims of Mr Barette have no reasonable prospect of success both in substance and in relation to them being out of time and there being no prospect of a tribunal extending the statutory time limit under Section 123 of the Equality Act 2010.

7 As stated, it is clear that all of the claims are out of time. I have considered all of the relevant legal authorities to examine the prospects of a tribunal extending time on the basis that it is just and equitable to do so.

These cases include:

Barclays Bank v Kapur 1991 ICR 208 HL

Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530 CA

British Coal Corporation and Ors v Keeble [1997] IRLR 336

EAT Robinson v The Post Office [2000] IRLR 804 EAT and the

other cases in the bundle.

8 The main force of Mr Mortin's submission is that the claims are very clearly out of time and that the delay in presentation is very long with regard to the first three heads of claim. He submits that there was no basis for linking the victimisation claim with the other claims and that even though that claim is less out of time, it would not be reasonable to link the four together and treat them as a continuum.

9 The claimant states that he had been considering over a period of many months trying to resolve matters internally in accordance with the company ethos and that he did not contemplate the possibility of an employment tribunal claim until well into 2019. He also stated that he has no knowledge at all with regard to statutory time limits applying to employment tribunal proceedings although he conceded that he was aware of the threeyear time limit which applies in relation to bringing personal injury claims. With regard to the application to strike out the claims I do not find that I can categorise these proceedings as having no reasonable prospect of success and this is the basis upon which the application to strike out is refused.

10 I consider that there are some prospects that the tribunal could find in the claimant's favour both on the substance of the claim and as to the extension of the statutory time limit.

11 I move on to determine the application for a deposit order. Having considered all of the documents referred to and the submissions made, I find that there is little prospect of success that the claimant will be successful with these claims. I say this because I find that there will be considerable difficulty in establishing on the facts that the victimisation claim is part of a continuing pattern and that all of the claims should be treated as linked. As to the three other claims presented, I find that there is no likelihood of a tribunal finding that these should be linked. However I do find that there is some prospect that the case must on any view be regarded as weak. I say this taking into account all of the relevant authorities.

12 With regard to the substance I find that the details provided lead them to being considered as very weak cases. There is very little basis upon which to find that the claimant has suffered a detriment with regard to disability. The details given as to the expiry of the company sick pay scheme appeared to have involved the application of the company policy which gave the claimant extra pay taking into account his status and his length of service. I consider that it would be difficult to persuade a tribunal that this amounted to discrimination. Similarly, the reasonable adjustments claim with regard to the adapted desk appears not to be strong bearing in mind that the adjustment was made within what seems to have been a reasonable time.

13 Accordingly the impression from all of the documentation and the submissions is that these claims have little prospect of success both in relation to the substance of them and in relation to the possibility of persuading a tribunal that they should be allowed to proceed notwithstanding that they are outside the statutory time limit.

14 As stated in the reported cases, the statutory time limits imposed on tribunals are intended to be strictly applied other than in exceptional cases. The information given here does not persuade me that this should be a case regarded within that exceptional category.

15 I raised with Mr Barette the making of a deposit order and his ability to pay. The figure I suggested to him that I intended to include is £1,000 and he stated that this would not be a figure which he would argue.

16 Accordingly a deposit order will be made to the effect that I consider the claimant's allegations of disability discrimination and his application to extend time on the grounds of being just and equitable to do so have little reasonable prospect of success. The claimant is therefore be ordered to pay a deposit of £1,000 not later than twenty-one days from the date this order is sent out as a condition of being permitted to continue to proceed with his claims. I have had regard to information available as to the claimant's ability to pay. The timetable already made and the case management orders will continue in force subject to the claimant paying the deposit ordered.

**EMPLOYMENT JUDGE SPEKER OBE DL**

**JUDGMENT SIGNED BY EMPLOYMENT JUDGE  
ON 23<sup>rd</sup> March 2020**

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