



EMPLOYMENT TRIBUNALS

Claimant

Mrs T Smagacz

v

Respondent

Mercury Personnel Solutions Ltd

Heard at: Bury St Edmunds

On: 07 February 2020

Before: Employment Judge Laidler

Appearances:

For the Claimant: Mr M Szalanski (Friend)

Assisted by an interpreter: Ms M Dubiel (Language: Polish)

For the Respondent: Mr R Carter (Managing Director)

JUDGMENT having been sent to the parties on 21 February 2020 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The ET1 was received on the 19 August 2019 in which the claimant brought complaints of race discrimination. ACAS Early Conciliation was invoked on the 6 August 2019 and the date of the certificate is the 8 August 2019.
2. In its response received on the 2 October 2019 the respondent defended the claims but also submitted that they had been received out of time. It stated that the last complaints received by the claimant were at a meeting she attended on the 27 March 2019 and that she had then been on sick leave from the 2 April until the 30 June 2019. By the time the claimant started ACAS Early Conciliation it argued that the claim was already out of time.
3. By order of the 19 November 2019 the claimant was required to provide further details of the alleged discrimination. This she did by letter of the 27 November 2019. The claimant stated that she had been an agency worker with the respondent and placed by it at Erms Fresh Solutions. Racial discrimination problems had started during her first week when Lithuanian workers referred to her Polish nationality in derogatory and she alleges discriminatory terms. No dates of incidents were provided.

4. By notice of hearing sent to the parties on the 12 January 2020 this Preliminary Hearing was listed to determine whether the claims should be struck out as having no reasonable prospect or alternatively if found to have little reasonable prospect whether a deposit should be ordered as a condition of continuing to advance the claims.
5. The tribunal heard evidence from the claimant and submissions made on her behalf and on behalf of the respondent.
6. This Tribunal has considered whether the claims brought have been submitted in time. The Equality Act section 123 provides that the complaint must be presented within 3 months of the date of the act complained of. Where there have been acts extending over a period of time, these are treated as done at the end of that period. There is a discretion to extend time where it is just and equitable to do so. The Tribunal must have regard to the prejudice caused to each party and all the circumstances of the case including but not limited to the length of any delay, the reasons for it and steps taken to obtain advice.
7. There is no dispute that the claimant had a meeting with Mr Carter of the respondent on 27 March to discuss her concerns. She was then signed off sick and did not return to work. Any acts of discriminatory conduct must therefore have occurred before the 27 March as she does not allege any during her sickness absence. The claimant's fit notes show her as being signed off with stress at work. She explained she was very tired, did not go out much but was able to deal with household tasks and cooking.
8. The claimant was made aware of her now representative in or about May or June as someone who was a good interpreter and may be able to help her. She told this Tribunal that in or about June she was told by friends that she may be able to claim against the company because they had called her names, treated her badly and caused her health problems.
9. Also, in or about June the claimant was told by friends that she had the ability to put a claim to the Employment Tribunal. She confirmed she had access to the internet and could have made enquiries about putting in such a claim.
10. The claimant commenced new employment on 1 July, working variable hours and is still in that employment.
11. ACAS Early Conciliation was not invoked until 6 August 2019 by which time the 3 month time limit had already expired so it does not give the claimant any further extension. The Tribunal must balance the prejudice to the claimant by not granting an extension against that to the respondent of having to defend a claim that it is on the face of it out of time.
12. In this case the Tribunal must take account of the fact that the named respondent is the agency that provided the claimant to the company where she worked and Mr Carter has told this Tribunal that his company does not employ the people the claimant names as her discriminators.

13. The Tribunal has therefore had to conclude in all the circumstances that it is not just and equitable to extend time. Although signed off sick from the respondent the claimant was able to continue to perform household tasks. She was informed about the possibility of bringing a claim to the Employment Tribunal in June but took no action until contacting ACAS on the 6 August. She had been able to obtain new employment which she started on 1 July 2019 and has continued in that new role.
14. The claims were submitted out of time. The tribunal must therefore consider whether it is just and equitable to extend time. It has not heard any evidence to persuade it that it would be appropriate to do so. The claimant was not so unwell that she was unable to do household tasks and find and continue with new employment. There is also the issue that she has brought the claim against the agency that employed her rather than the employer of her alleged discriminators and that claim may have little prospect of success.
15. The claims will therefore be dismissed and not proceed further.

Employment Judge Laidler

Date:3 June 2020.

Judgment sent to the parties on

3 June 2020

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For the Tribunal office