



# EMPLOYMENT TRIBUNALS

## Claimant

Ms Jill Marshall

v

## Respondents

AECAT Ltd  
Mr Gary Britnell

**Heard at:** Cambridge

**On:** 14 August 2020

**Before:** Employment Judge S Moore

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr T Hussain, Legal Consultant

## JUDGMENT ON PRELIMINARY ISSUES

- (1) The claims for discrimination on grounds of sex and/or disability are struck out on the basis that they are out of time.
- (2) The claim of institutional abuse is struck out on the basis that it does not give rise to a claim in respect of which the tribunal has jurisdiction.

## REASONS

### Introduction

1. The Claimant's employment ended on 5<sup>th</sup> April 2019. She notified ACAS on 4 July 2019, and an ACAS certificate was issued on 8 July 2019. On 22 September 2019 she submitted an ET1 naming Mr Gary Britnell (case no 3323408/19) as her employer. The ET3 noted that the set of facts relied upon by the Claimant related to her employment with Aircraft Engineering Consultancy & Training Ltd ("AECT Ltd"), which was both the current

employer of Mr Britnell and the Claimant's former employer, and stated that the ET3 was being submitted on behalf of both parties. On 4<sup>th</sup> December 2019 the Claimant submitted what was essentially the same claim against AECT Ltd (case no 3326444/19), having notified ACAS on 2 December 2019 and been issued with an ACAS certificate of the same date.

## **Evidence**

2. The Claimant says she began experiencing anxiety in October 2018 when she ended an 8-month personal relationship with Gary Britnell, Training Manager at AECAT. She says that on 8 November 2018, an independent contractor visiting the office, Peter Cubitt, made the comment, "Gary says I've got to give you one, and it's about 6 inches long," directed at her while holding a pencil in front of him. From 28 November 2018 until 24 December 2018 she was signed off work with menopausal problems and migraines. On 9 December 2018 she complained in writing to her manager David Hudson about the incident on 8 November 2018. She also complained that on 16 November 2018 Mr Britnell had sent her email informing her that Mr Cubitt would be coming back into the office, which she considered to be threatening, that she had received nasty and intimidating stares from Mr Britnell in the office, and that when she contacted Mr Cubitt about the incident on 8 November 2018 she had to push him for an apology.
3. Two grievance hearings were conducted on 17 and 31 January 2019 by two different external consultants. The Claimant's grievance was partially upheld in that it was found that the independent consultant had made an inappropriate comment, although there was no evidence Mr Britnell had instigated it. The other complaints were not upheld. The Claimant remained off-work and continued to present sick notes for stress related problems. Her last sick note was for 3 weeks dated 24 February 2019. The Claimant resigned by letter dated 12 March 2019 and her employment ended on 5 April 2019. As regards the period of time between leaving her place of work on 28 November 2018 and the termination of her employment on 5 April 2019, she complains about the fact that Mr Hudson treated her complaint through a formal grievance procedure, rather than trying to resolve the matter informally in a suitable private location, and that during that same period of time Mr Hudson and/or the Respondent purposely provided her with missing and confusing information in order, she says, to trigger and exacerbate her anxieties. Further, since the Respondent was paying for the external consultants who were conducting the grievance hearings the Claimant was not satisfied they were independent. On 4 February 2019 she wrote to Mr Hudson that "For an impartial process you would have to select an organisation such as ACAS."
4. As regards the Claimant's anxieties, she described how from November 2018 she became increasingly convinced that someone was entering her house and moving various items, and that cars were following her when

she walked her dog or went shopping. She complained several times to the police. A letter from her GP, Dr Asim, dated 9 January 2020 states that on 29 August 2019 she was referred to a Consultant Psychiatrist for assessment for anxiety and paranoid beliefs. The report from that Consultant Psychiatrist states that "Over time [the Claimant] began to misinterpret what should have been innocuous and non-sinister events as in some ways being related to her. Paranoid and persecutory ideation crept in over time with [the Claimant] interpreting those atypical events as part of a larger conspiracy to harm her in some way..."

5. As regards her delay in bringing proceedings, the Claimant's claim form commences with the statement, "This claim has been outstanding in my mind for some time and I apologise that it is well overdue."
6. She also gave frank and honest evidence about the fact that she received legal advice from an early stage in the proceedings.
7. On 5 December 2018 she had an appointment with an employment specialist solicitor at Ringrose Law to discuss Mr Cubitt's comment and what she considered to be intimidatory stares from Mr Britnell, which resulted in her raising her grievance.
8. During the period January to March 2019 she also saw employment law specialists at two different Citizen Advice Bureaus about six times in total, and also an employment advisor at an NHS Resource Centre three or four times.
9. On 23 April 2019 she saw the Head of Employment at Ringrose and said he raised the possibility of her pursuing a case in the Employment Tribunal. She said this surprised her because she thought she was already too late to make a claim as more than three months had passed since Mr Cubitt's comment.
10. At the beginning of July 2019, the Claimant also saw Mr Bloom of Hegarty Solicitors and she spoke again to the solicitor from Ringrose and also to another solicitor from a third firm, Hunt and Coombes. She also explored the possibility of obtaining legal representation through her house insurance and spoke to legal consultants that her insurers put forward, but she was concerned that since she had changed her insurance provider she might not be entitled to free representation after all.
11. The Claimant says she received contradictory and confusing advice from these various legal sources and that because of her levels of stress and anxiety was unable to take the decision to bring legal proceedings until September 2019, when she decided it would be better for her health to face the issues surrounding her employment and the people who had treated her badly. She accepted she had deliberately not bought proceedings earlier but said that she had been too scared to do so.

## Conclusions

12. Pursuant to section 123 Equality Act 2010 a complaint of discrimination must be brought within three months of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. For the purpose of this section conduct extending over a period is to be treated as done at the end of the period. That time limit is extended by section 140B Equality Act 2010 to facilitate conciliation proceedings.
13. The claim against Mr Britnell appears to arise from the comment made by Mr Cubitt on 8 November 2018. However, the Claimant's complaints of intimidating and unpleasant staring in the office could potentially relate to conduct continuing until 28 November 2018, when she went on sick leave. If this were the case, pursuant to sections 123 and 140B, ACAS should have been notified by 27 February 2019 and, if the certificate had been issued after one month, the Claimant would have had one further month to submit her claim. Instead the first claim was not submitted until 22 September 2019, approximately five months out of time.
14. As regards the claim against the Respondent, assuming that the alleged discrimination might potentially have continued until the date of termination on 5 April 2019, ACAS was notified in time on 4 July 2019. Since the ACAS certificate was issued on 8 July 2019, time expired on 7 August 2019 so that the (first) claim was lodged approximately six weeks late.
15. In the light of this delay, the question is whether it is just and equitable to extend the time limit and, on balance, I am not satisfied that it would be just and equitable to do so.
16. First, the starting point is that there is no presumption in favour of extending time; an extension of time, even on grounds that it is just and equitable to do so, is the exception from the rule.
17. Secondly, from the evidence it is clear that the Claimant received legal advice from 5<sup>th</sup> December 2018, and it is clear that as at 4 February 2019 she was aware of ACAS, and that by 23 April 2019 she was aware of the time limits for making a claim and knew her complaint about Mr Cubitt's comment was already out of time. I accept that the Claimant was suffering from stress and anxiety however she was able to take regular advice from the CAB and the NHS employment consultant throughout the early part of 2019 and continued to seek out different sources of legal advice during the summer months. In June 2019 she was actively looking for work and she also notified ACAS in time on 4 July 2019. Accordingly, I do not accept that she was so unwell between February and August 2019 that she could not have protected her position and lodged her claim in time. It appears to me that the Claimant decided not to pursue matters and then subsequently changed her mind.
18. Secondly, the matters complained about in the office in November 2018 occurred already more than a year & ½ ago. The point of time limits is legal certainty and to try to ensure that matters are litigated before

memories have faded. By the time this matter comes on for trial most of the events in question will have occurred more than two years earlier and probably at least three years earlier. That will prejudice the Respondent and their ability to defend the claim.

19. Thirdly, I also take into account that the Claimant presented more than 300 pages of evidence for this hearing, including witness statements running to 34 pages, and I am bound to say the merits of the claim appear weak. Although, if proved, the comment by Mr Cubitt is certainly capable of constituting sexual harassment, it is common ground that he was not the Respondent's employee but an independent contractor. Further, realistically, it is difficult to see how Claimant might establish that the conduct alleged against Mr Britnell and Mr Hudson, particularly as regards the handling of the Claimant's grievance and her sick-leave from 28 November 2018 until the termination of her employment, amounted to discrimination on grounds of sex or disability.
20. Accordingly, the claims of discrimination on grounds of sex and/or disability are struck out because they are out of time and the Tribunal has no jurisdiction to hear them.
21. The claim of institutional abuse is also struck out on the basis that it does not give rise to a claim in respect of which the tribunal has jurisdiction.

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Employment Judge S Moore

Date: .....16.08.2020.....

Sent to the parties on: ..02.09.2020.....

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For the Tribunal Office