



# EMPLOYMENT TRIBUNALS

**Claimant**  
Ms R Howell

v

**Respondent**  
Tesco Stores Limited

**Heard at:** Watford

**On:** 1 July 2020

**Before:** Employment Judge R Lewis, sitting alone

## Appearances

**For the Claimant:** No attendance or representation

**For the Respondent:** Mr J Platts-Mills, Counsel

## JUDGMENT

1. The claimant's claim is struck out. The tribunal has no jurisdiction to hear it, as it was presented out of time and it has not been shown that it is just and equitable to extend time

## REASONS

1. I give these reasons of my own initiative. It is in the interests of justice to do so as the claimant did not attend the hearing.
2. **Tribunal chronology**

The tribunal file shows the following:

- 2.1 Day A, Day B and date of presentation were all 28 August 2019. The ET1, which the claimant presented in person, made claims of disability discrimination and sex discrimination and claims for 'other payments'.
- 2.2 The claimant wrote in the ET1 that her employment had ended on 5 March 2019. In box 15 she explained that she should be "exempt from the time limits imposed on other cases" due to health reasons which she specified. I do not repeat those reasons in this document, which, like all judgments of the tribunal, will be posted online by HMCTS.

- 2.3 The tribunal served the claim on 16 October and the respondent replied on 13 November. Its response was accepted and copied to the claimant on 17 November. Although portions of the ET3 were left blank, the grounds of resistance stated that the claim was out of time, and that the claimant had resigned on 8 February 2019. The respondent's case on what was the date of termination of employment was not made clear, then or subsequently.
- 2.4 On 14 January 2020, the tribunal wrote to the claimant to ask her to clarify her claim, and there is no evidence on the tribunal file of any reply.
- 2.5 On 18 February, the tribunal sent the parties notice of this preliminary hearing to decide whether the tribunal had jurisdiction to hear the claims in light of limitation.
- 2.6 On 25 February 2020, the tribunal, of its own initiative, sent out a short case management order in preparation for this hearing.
- 2.7 On 11 June 2020, the tribunal wrote to the respondent in reply to its request for additional information. No order was made.
- 2.8 As was widely publicised, the employment tribunal was closed to public hearings between 23 March and 26 June 2020 inclusive. The parties to this case were at no stage notified that this hearing might be conducted remotely (as happened in some other cases).
- 2.9 On 27 June 2020, the tribunal wrote to the parties to confirm that this hearing remained listed and that the parties should attend in person.
- 2.10 Before starting this hearing, I asked a member of tribunal staff to check the tribunal inbox to see if there was communication from the claimant: there was not. The clerk telephoned the mobile number on the ET1 a number of times and reported that it was permanently engaged.
- 2.11 Mr Platts-Mills referred me to correspondence between the respondent's solicitors and the claimant in the course of June. On 24 June the claimant had emailed the solicitor to say that she wished the tribunal to see a sick note relevant to her health at the relevant time. The respondent's solicitor asked for it to be provided so it could be added to the bundle, but I was told that this had not happened.
- 2.12 I considered, of my own initiative, whether to adjourn. There was no request before me to do so and no material on which I could decide to do so. The tribunal file showed that after the claim had been issued the claimant had been in no communication with the tribunal at all. She had been on notice of this hearing since 18 February and had been given no grounds to believe that it would not proceed: On the contrary, confirmation had just been sent. She had indicated that she wanted the tribunal to see a document, but had not provided it either to the respondent or direct to the tribunal. The letter of 18

February advised parties of their right to submit written representations, but the claimant had not done so.

**3. The facts**

- 3.1 The respondent's bundle did not include any document relevant to the claimant's resignation. I therefore, in the claimant's favour, took it that the employment ended on 5 March 2019.
- 3.2 I identified the claims as broadly in two headings:
  - 3.2.1 The first group of claims related to members of management and how they responded to being told of a life event affecting the claimant during her employment; and
  - 3.2.2 The second group focussed on an allegation that a manager had used inappropriate language to her.
- 3.3 I accepted the logic of Mr Platts-Mills' submission that all those events must have ended when the employment ended, ie at the latest on 5 March 2019. There was no indication in the ET1 that that might not be the case.
- 3.4 Primary limitation therefore expired on 4 June 2019. ACAS was not contacted by then, so time was not extended. The claim was presented on 28 August 2019, about 10 weeks out of time.
- 3.5 While in principle a health issue may be the basis upon which a tribunal would consider it just and equitable to extend time, the claimant had placed no evidence before the tribunal in support of her submission that that should be done in this case. The assertion to that effect in the ET1 suggested that medical evidence would in all likelihood exist, but it was not made available to the tribunal. The claimant had on 24 June written that she would provide it to the respondent's solicitor, but she had not done so.
- 3.6 In the absence of such evidence, and in the absence of the claimant to speak about delay, the tribunal simply had no material upon which to find that it was just and equitable to extend time, and, accordingly, the claim has been struck out.

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Employment Judge R Lewis

Date: 03.7.20.....

Sent to the parties on: 7/9/2020

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For the Tribunal Office