



EMPLOYMENT TRIBUNALS

Claimant: Mr D Price

Respondent: PIQ Laboratories Ltd

Heard at: Cardiff by video hearing **On:** 8 February 2021

Before: Employment Judge R Harfield

Representation:

Claimant: Ms Dainton (lay representative)

Respondent: Mrs Chisholm (Director)

RESERVED JUDGMENT

It is the decision of the Employment Judge sitting alone that the claimant has a sufficiently arguable case that his claim of harassment related to sex was presented in time such that it should proceed to a full hearing. Whether such harassment in fact occurred, and if so on what dates, and whether the claim is ultimately in time (including considerations of whether there was a continuing course of discriminatory conduct and/or whether there should be an extension of time on a just and equitable basis) will be decided at that full hearing having heard all the relevant evidence.

REASONS

Introduction

1. On 15 August 2020 the claimant presented an ET1 claim for complaining of unfair dismissal and sex discrimination. The claimant worked for the respondent from 27 January 2019 until his dismissal on 28 May 2020 and he therefore had less than 2 years qualifying service. Acas early conciliation took place between 8 July 2020 and 15 July 2020. The respondent filed their ET3 response form on 20 October 2020. A case management hearing took place before Employment Judge Sharp on 11

December 2020. Judge Sharp identified that the claimant was unable to bring an unfair dismissal claim because of a lack of qualifying service. She identified that the claimant was however bringing a separate harassment related to sex claim relating to alleged incidents that occurred prior to the claimant's dismissal. These were recorded as:

- (a) Ashleigh Knowles in 2019 telling the Claimant that "men are not usually employed as they are less organised";
 - (b) Every other month Ashleigh Knowles (and occasionally Debbie Powell) would tell the Claimant to "get back to work, we're talking" between August 2019 and May 2020;
 - (c) The claimant was told to "man up" around February 2020 by Ashleigh Knowle when he objected to moving boxes
2. Judge Sharp identified that there appeared to be a time limit issue and therefore listed the case for a preliminary hearing on time limit issues. In particular:
- a. Was the claim made to the Tribunal within 3 months (plus early conciliation extension) of the act to which the complaint relates?
 - b. If no was there conduct extending over a period?
 - c. If so, was the claim made to the Tribunal within 3 months (plus early conciliation extension) of the end of that period?
 - d. If no, where the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i. Why were the complaints not made to the Tribunal in time?
 - ii. In any event, is it just and equitable in all the circumstances to extend time.
3. Judge Sharp directed the claimant to provide a written witness statement. I had that before me together with the ET1 claim form, ET3 response form and an amended response provided by the respondent in compliance with Judge Sharp's orders. I heard oral evidence from Mr Price and closing comments from the representatives. I reserved my decision to be sent out in writing.

Mr Price's case

4. In his witness statement Mr Price gives more information about the exact allegations he is making under the three types of allegation recorded by Judge Sharp in her case management order. These are as follows:
 - a. On 17 June 2019 AK said (about a potential new recruit) "but it will more than likely be a girl because women tend to be better and more organised in the lab" and to the claimant "you are lucky to have your job because everyone was shocked that it was a guy

- being employed – we normally only employ females because men are less organised”;
- b. On 5 September 2019 AK was in the office talking to MS and as the claimant tried to enter she said “go back to work, we are talking in here”;
 - c. On unspecified dates the claimant was asked by AK to carry boxes that had been delivered “because you’re a man.” Again on unspecified dates the claimant says he challenged AK that the tasks should not lie solely with him because he was male and he was threatened with action against his insubordination;
 - d. On 29 October 2019 the claimant received a Whats App from AK talking about a visit from a colleague from another branch and saying “Use an extra set of hands when you can... He could always move boxes too”;
 - e. On 22 November 2019 again AK and MS were in the office and as the claimant tried to enter AK said “go away, we are talking about woman stuff”. The claimant replied “it’s ok, I have three sisters and I’m used to it” and AK further said “no, you’re a man and you don’t need to be listening to this.”
 - f. On 6 January 2020 AK, MS and DP were in the office and as the claimant entered DP said “you should leave, this conversation doesn’t involve you.” The claimant remained on that occasion and says that the atmosphere was very tense as he did his work and nobody was talking in the room;
 - g. On 16 March 2020 the claimant was asked to carry boxes and on this occasion refused due to a hernia. AK told him to “man up and get on with it, its only a few boxes.” The claimant says that after this the environment in work was very tense as AK told other staff members that he had refused to complete the task.
 - h. On 26 May 2020, the claimant returned to the office where AK, DP and CO were and AK stated “this conversation isn’t for you to hear, girls only”.

The law relating to time limits

5. Section 123(1) of the Equality Act 2020 says that proceedings:

“may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable”.

5. The section goes on to say:

“(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

Discussion and conclusions

6. As this is a jurisdictional preliminary hearing, it is not for me to conduct a “mini trial” to establish whether or not the allegations that the claimant makes, as summarised above, actually happened or not or the context in which they occurred. Those kind of finding of facts are for a full Tribunal to determine having heard all the evidence. Instead, I have to approach matters taking the claimant’s case at its highest and therefore I have to presume he has an arguable case that these things occurred as he says they did. These principles were most recently reiterated by the Employment Appeal Tribunal in Sridhar v Kingston Hospital NHS Foundation Trust [2020] UKEAT/0066/20.
7. The last act of alleged discrimination identified by the claimant is now identified as 26 May 2020. That was not known at the time of the preliminary hearing conduct by Judge Sharp. It does, however, fall within the broad categories of allegations that Judge Sharp identified that the claimant’s claim covers.
8. That last act (if the claimant ultimately establishes that it happened and that it was discriminatory) would be within the primary time limits. The date given is 26 May 2020. Acas early conciliation took place between 8 July 2020 and 15 July 2020 and the claim was presented on 15 August 2020. The primary limitation date would have been (as extended by the early conciliation period) 1 September 2020.
9. That leaves the position of the earlier incidents that the claimant complains about. In a discrimination case a claimant can argue that what appear to be apparently separate acts of alleged discrimination, together amount to a continuing act of discrimination. It was termed by the Court of Appeal in Hendricks v the Commissioner of Police for the Metropolis [2003] ICR 530 as a “continuing discriminatory state of affairs”. If that is established then the time limit runs from the last

discriminatory act in the series. Here (if the claimant proves his case) that is the in time act of 26 May 2020.

10. On the claim as presented by the claimant he does appear to be arguing that there was a ongoing discriminatory state of affairs during the period covered by this allegations. For example, he refers to there being “extreme discrimination against males within the workplace, again leading to a toxic work environment for myself.” If the claimant succeeds in establishing this at the full hearing there would be no need to consider whether time should be extended on a just and equitable basis.
11. As such, in my judgment, the claimant’s case is sufficiently arguable in relation to time limit issues that it should proceed to a full hearing. It is for the Tribunal at that full hearing to hear all the evidence and then decide whether and which alleged acts (as summarised above) happened and their context. The Tribunal will then decide whether the acts as found meet the threshold to be harassment related to sex applying the law as identified by Judge Sharp in her case management order. The Tribunal will then go on to consider what date any established discrimination occurred and where that leaves the issue of time limits. This would involve consideration of whether, on the facts as found, any discriminatory acts as found can be linked together so to be considered to amount to a continuing act of discrimination. If that is established and the last act in that chain is in time, then the whole chain will be in time. If that is established and the last act in the chain is out of time, then the Tribunal will have to consider whether it is just and equitable to extend time. If the Tribunal is not satisfied that there was a continuing act of discrimination then the Tribunal will have to look at the time limits for each individual act and then decide whether to extend time on a just and equitable basis. That assessment can only be sensibly made once all the evidence in the case has been heard.
12. I have issued some separate case management orders to get this case ready for that full hearing.

Employment Judge R Harfield
Dated: 8 February 2021

JUDGMENT SENT TO THE PARTIES ON 11 February 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS