



EMPLOYMENT TRIBUNALS

Claimant
M

v

Respondent
P

Judgment

Heard at: Southampton

On: 1 March 2020

Before: Employment Judge Rayner

Appearances

For the Claimant: In person

For the Respondent: Mr Potterton

1. The claimant's application for anonymity was granted unopposed to the extent of anonymizing the name of the claimant and of the respondent in this Judgment.
2. The claimant claims of race and sex discrimination are dismissed for want of jurisdiction. The claims were filed out of time and it is not just and equitable to extend time.
3. Oral reasons were provided to the parties at the end of the hearing. The claimant requested written reasons at the end of the hearing.

Written reasons

The Hearing

1. The hearing was conducted by the parties attending by telephone. It was held in private in accordance with the Employment Tribunal Rules. It was conducted in that manner because such initial case management hearings are always listed in that manner within the Region and it was in accordance with the overriding objective to do so.
2. The claimant is a Hungarian national and has acted as a litigant in person throughout.
3. The claimant has also suffered with poor mental and physical health at various stages over the last few years, and from the various medical reports she has submitted it is not unreasonable to assume that her health has had an effect on her ability to manage the claim since the filing in March 2020. It may have affected her ability prior to that date and this is considered below.
4. The claimant has filed claims against two successive employers and has provided information which she says is relevant to the issues she wishes to pursue. She has provided a bundle of documents of 281 pages for today's hearing, as well as a number of letters from her GP, and other medical information.

5. The hearing today was listed for hearing by CVP. The claimant does not have an Internet connection and was not able to connect to the CVP plus hearing. The claimant had previously indicated that she wanted matters to be dealt with in writing and had contacted the tribunal in advance of the hearing, giving the impression that she did not intend to take part in today's hearing.
6. At the start of the hearing, the clamant did not join and as she had indicated that she did not intend to attend the hearing, the hearing commenced in her absence.
7. At 10.44am an email was forwarded to me during the hearing, stating that the claimant had telephoned the tribunal and did not want the hearing to continue in her absence. She did not have an internet connection but would be able to join by telephone.
8. I therefore adjourned the hearing so that the hearing could be converted to a hybrid hearing, and so that the clamant could be contacted by court staff and assisted to join the hearing.
9. The claimant was contacted and joined the hearing by telephone and the hearing recommenced at 11.30am.
10. The respondent was represented by Mr Potterton, of counsel, who joined by CVP with both audio and the camera. The claimant joined by telephone, and although her line was faint on occasions she confirmed that she was able to hear and she was able to be heard and was able to take part, both in questioning the witness called by the respondent, and in answering questions asked by me and by Counsel for the Respondent Mr Potterton.

The anonymity application

11. Prior to today's hearing, the claimant made an application in writing for anonymity. The claimant has significant health problems and I have seen letters from her health advisers which tell me that the claimant has been finding the entire process extremely stressful. I accept that this is the case. Mr Potterton for the respondents did not object to the parties' names is being anonymized and letters being used instead of their names, given the severe distress that may be caused to the claimant by the publication of her name. I have determined that it is in the interests of justice to do this and that it is also a reasonable adjustment in the light of the claimant's health, and possible disability, to anonymize both the claimants name and the respondent's name, in order that she can take part in the hearing.
12. The claimant will therefore be referred to as M and the respondent as P. I have also referred to the claimant's successor employer as W. Both are NHS organisations. I have by agreement referred to the witness as Mr D.

The hearing bundle and witness evidence

13. There have been three case management hearings with orders in respect of this hearing and case management orders have been made for the provision of a hearing bundle and for witness evidence to be exchanged and served on the ET. Mr Potterton has produced a bundle of documents for the ET and a witness

statement for Mr D, his witness. These had been served on the claimant. The claimant produced a file of documents which she sent to the ET the evening of 28 February 2021, the Sunday evening before Monday 1 March 2021 when this hearing was listed. She did not submit any written witness statement for this hearing.

14. I discussed the practicalities in respect of the claimant's documents with the parties and determined that I would allow the claimant to submit the documents and that I would allow her to give evidence under oath without a witness statement. In making this decision, I took into account the interests of justice, and the need to ensure that the claimant was able to take a full and proper part in the hearing. I also took into account the apparent deterioration in the claimant's mental health since issue of proceedings as evidenced by various letters and information from her doctors. I considered that it is a reasonable adjustment given the claimant's possible disability at the point of this hearing on grounds of a mental health condition to allow her to submit her documents late and to give evidence in chief under oath. Mr Potterton did not object to this course of events.
15. I therefore adjourned the hearing for a short time so myself and Mr Potterton could read the additional documentation.
16. I heard evidence from the claimant under oath and adduced her evidence in chief by asking her a series of questions relevant to the time limit point. She then answered questions in cross examination.
17. Mr Potterton called one witness Mr D, who was the employee of P who had written the reference that the claimant raised concerns about.

The claimants claim and background

Brief over view

18. The claimant brings various discrimination claims on grounds of race and disability against a former employer, referred to as P in this judgement.
19. It is not in dispute that the claimant stopped working for P in March 2015 when she resigned, having been offered a new job with a different health service employer.
20. The claimant had some difficulties with her new employer and brought proceedings against them in the employment Tribunal. The claimant says that during the course of those proceedings, disclosure of documents and information led her to believe that her former employer P may have discriminated against her. She therefore filed a claim against P in March 2020.
21. At the point she filed her claim, it was almost 5 years out of time, if time runs from the end of her employment with P.
22. The claimant says that she has been subjected to ongoing and continuous discrimination because of the effect of various actions of P in respect of references provided.

Detailed background and chronology to the claim

23. The Claimant brings her claim against P Clinical Commissioning Group, which is an organisation that she worked for prior to her employment with her current employer.
24. The claim was listed for a one-day hearing, to determine whether or not the case should be struck out. The claim issued by the Claimant is in respect of employment with the respondent P which ended on 12 March 2015.
25. The claim to the Employment Tribunal before me was filed on 16 March 2020. The Claimants ACAS dates in respect of this claim are 6 March 2020 with the certificate being issued on 13 March 2020. The time limit for bringing a claim of discrimination under the Equality Act 2010 is three months from the last date relied upon. If the last date was the date the employment terminated, then, on the face of it, the Claimants claim is 4 years and 9 months out of time. The Claimant therefore needed to explain either why it had been brought within time, or why it would be just and equitable to extend time.
26. The Claimant had previously made a separate claim to the Employment Tribunal, numbered 1404979/2019. That claim was brought against most recent employer, the NHS W Clinical Commissioning Group.
27. The Claimant applied to amend that claim by adding to that claim the matters that the Claimant now relies on in this claim. That application was refused by EJ Emerton.
28. Following issue of this claim, claim number 1401324/2020, the claimant applied to join the two claims. That application was refused by EJ Salter.
29. This means that the Claimant has two separate claims running at the same time, against two different but successive employers.
30. The claimant has alleged that there has been some collusion between them, and relies on the alleged common Human Resources provider as the source of this collusion.
31. The claim was originally listed for a one-day hearing on the 21 December 2020 , but was adjourned and relisted for a hearing on 1 March 2021, which is this hearing. The reason for the adjournment was that the claimant did not attend on the date listed in December 2020. By my case management order of 21 December 2020, the matter was set down for this one day preliminary hearing, to consider whether or not this claim should be struck out on the grounds that it is out of time, or whether alternatively it would be just and equitable to extend time in respect of any or all of the claimants claim.
32. On her claim form the Claimant states that she has claims of
 - 32.1 direct race discrimination,
 - 32.2 discrimination for a reason arising from disability,
 - 32.3 failure to make reasonable adjustments;
 - 32.4 victimisation;
 - 32.5 bullying and harassment.
33. In the addendum to her claim, the claimant made reference to her poor health and also stated that

I have been suffering from a continuous, ongoing linked series of disability and racial (national origin) discrimination by the NHS since January 2015. I applied to

work for NHS CW CCG in Dec 2014, while on sick leave from NHS P, F&G and SEH CCG (4 people out of 8 have decided to leave this team prior to my departure due to stress, my co-worker's view he informed me was that EU workers are taking away jobs from local people, and I was unsupported to allow to manage my flared-up LTC triggered by a daily commute including a three-mile cycle ride in the winter). Both CCGs are serviced by the HR function of the regional NHS x CSU. I have never had to take any long-term or regular sick leave prior to this in my history of employment since 1996.

It has been revealed by some internal correspondence as circumstantial evidence by the Subject Access Request in July 2017 that the recruiters in Spring 2015 were withholding final offer of employment upon learning of being on sick leave at the time, despite satisfactory references received from my previous employer and employers. This corroborates to my belief that further informal discussions has led to the recruiters' decision to unfairly band and pay the role offered lower than advertised, as they knew how much in need I was at the time to find alternative, better employment that offered progress. N.B. This was supposed to be a new employment with a new organization advertised within the NHS.

34. It appeared that the claimant was complaining about things that happened whilst she was employed by P, and in connection with a reference which was written for her, which, according to the ET1 addendum, she became aware of following a subject access request in 2017.
35. The Claimant stated in a subsequent email to the Tribunal, dated 25 June 2020, that corroborative evidence in the form of previously unseen medical notes confirmed detrimental acts and that the Claimant only saw these at a case management hearing on 20 February 2020. This was a case management hearing held in person in respect of the Claimants separate claim against her subsequent employer and not P. The Claimant said that it was only at this point that she became aware of the wrongdoings of P.
36. The Claimant says that she then made a freedom of information and subject access request to the first Respondent, that is P, and received responses on 1 June 2020 and 6 of June 2020.
37. The Claimant also stated in her information that in the intervening period of time, her health had affected her ability to properly prepare for any hearing. She stated that she contracted coronavirus, which made it very difficult for her to manage the process of preparing for a court hearing. The Claimant also makes reference in that email to having been hospitalised with what she feared was a heart attack, in February 2020.
38. The claimant did then file a second ET, this claim on the 16 March 2020, but does not say what it was that she became aware of in February 2020, if anything, that prompted her claim to the ET. The claimant has not explained to me today either, what it was that was disclosed in February 2020 that was relevant to her claim, and what impact if any it had on her decision to file a claim in March 2020.
39. I accept that the claimants health was a reason for her not filing a claim between February 2020 and March 2020.

40. During these proceedings and in correspondence before this hearing, the claimant has been given every opportunity to state what it was that happened that may have had an effect on her bringing a claim in March 2020. Of course if she did discover new information in March 2020 which was not available to her before that date, that the new information, could be a just and equitable reason for extending time.
41. On 9 July 2020 the Claimant provided further particulars of her claim to the Employment Tribunal. The further particulars are a 29-page document and appear to be a composite of her allegations against both P and her subsequent employer.
42. The Claimant also wrote a letter to the Tribunal stating that she would not be able to attend the hearing because of her ill health.
43. The Claimant further attached an Excel spreadsheet setting out her various medical conditions in columns stating
 - 43.1 when she was first diagnosed
 - 43.2 when the Respondents should have been aware of the conditions
 - 43.3 the effects of her various conditions on day-to-day activities during the relevant periods;
 - 43.4 when adjustments should have been made and the details of the facts she relied upon.
44. The table also includes a description of symptoms and a description of the treatment and control in respect of each condition.
45. The claimant provided various letters and other information to the ET prior to the hearing on 21 December 2021. From all that information I summarised her possible claims at that point as,
 - 45.1 A claim of harassment resulting from a comment made by a former colleague to the effect that EU nationals were taking jobs from locals;
 - 45.2 and a possible claim of post-employment discrimination arising from the Claimant's former employer allegedly providing inaccurate or unfair references in respect of jobs the claimant had applied for.
46. It remained unclear at that point when the claimant alleged that she first knew or became aware of or suspected an issue of discrimination with her reference or of information given to her potential employer by P. It is not clear from the Claimant's information whether there was some information she received for the first time in 2020, that caused her to believe that she had been discriminated against, and prompted her to make this claim.

The issues and evidence

47. Prior to today's hearing, the claimant had been asked to provide responses to various questions aimed at identifying with some greater clarity precisely what she was raising complaints about.
48. When the claimant gave evidence, I asked the claimant a number of questions about the scope of her claim.
49. She told me that she had a range of different claims, but in particular set out the following issues;

- 49.1 The claimant had made reference in documents sent to the tribunal about the previous colleague making comments to her that EU workers were taking jobs from British workers. She confirmed that this had been an issue for her whilst employed by P, but told me that this was not a main issue, and that she did not consider the individual had been malicious, but rather that he was a very religious person who felt he could not be dishonest and that he had trouble filtering what he said. She said she had raised her concern about this with her employer, not because she wanted any action taken over discrimination, but because she wanted the respondent to deal with the issue. She confirmed that she had known about this issue at the point that she resigned from her employment with the respondent. She said she had not taken further action because it was not the most serious matter for her. She also said that she was not aware of the possibility of bringing a claim in the employment tribunal.
- 49.2 The claimant raised an issue about an aspect of her job and a requirement that she was able to drive. She said she could drive, but that she did not and has not driven for many years. The claimant suggested that this became an issue for her when she became ill and when she was struggling with work. She says that she expected the respondents to make reasonable adjustments for her because she was having difficulty travelling to work, and this was because she had a very long cycle ride. Again, the claimant accepted that this was a matter which arose whilst she was employed by P and that when she left, she didn't want to make a complaint because she didn't want the conflict and wanted to move forward. She also said that she had no knowledge of the words *reasonable adjustment* in any event.
- 49.3 The claimant suggests that she was not paid correctly, either in respect of holiday pay or sick pay whilst she was employed by P. She accepted that she received a final payslip and suggests that she only realised she had not been paid properly in June 2020 when she received information following a subject access request. This was after she had filed her claim to the Employment Tribunal. She said that at the time she resigned that she had been distraught and desperate to leave that she had spoken to her manager, but she found her manager very difficult, so just assumed there was nothing she could do about it and focused on getting out and moving on.
- 49.4 The claimant was particularly concerned that when she had applied for a new job, the reference provided by P had not been a fair reference and had been potentially discriminatory. She says that the reference which was provided by Mr D, which both she and the respondents provided to the tribunal, was not a positive reference. She has been critical of the content, suggesting that the comment made by Mr D that her skills would *fair* her well, rather than *Fare* her well in the new job, was a covert reference to her poor health. She was also concerned that the reference contained information about her ill-health record and her sickness

absences. She suggested that the content may not have been entirely correct. The claimant was aware that P had made reference to her ill-health absences because she was told so, in a letter from the prospective new employer. They wrote to her before offering her the job with a conditional offer, asking her to attend at an occupational health appointment. The claimant did this and was subsequently offered the job.

- 49.5 The claimant was concerned that she has subsequently come into possession of some information, in the form of emails sent by the HR Department of her subsequent employer, which she thought might mean that there had been some collusion over her reference. She also said that she had received information from her GP, which was incomplete. She considered that her GP was closely connected with her to employers.
50. The respondent called Mr D who had written the reference for the claimant in 2015, to give evidence. Mr D confirmed that he had been asked to provide a reference and had been asked questions as set out in the standard form reference. He could not now recall putting together the information for M's reference but said that he would have contacted human resources for the information about the claimant's sickness absences. He would not have known the dates of her absences otherwise.
51. The claimant stated that she did not consider that Mr D has discriminated against her but considered that there had been a collective failure by the recruitment team and said that she did have evidence linked to people named on the documents.
52. The claimant said she made a subject access request in June 2020. By that time, she had already filed this claim to the employment tribunal and therefore anything that was disclosed to her in June 2020, can have had no impact on her decision to file her claim, or on the timing of the filing of her claim.
53. The claimant submitted a number of medical letters dated at various times between 2019 and 2021. These refer to the difficulty the claimant was having with the tribunal process, and were taken into account both when making various case management orders in respect of this hearing, specifically allowing for the claimant to make written submissions rather than attending in person, if she so chose, and were also taken into account when considering whether or not to grant the claimant anonymity at today's hearing.
54. However, none of the medical information that I have been provided with suggests that the claimant was prevented from making a claim to the employment tribunal before February 2020 because of her ill-health. The claimant had in fact filed a claim against her subsequent employer earlier in 2020 and has suggested to me in her evidence that it was as a result of discussion about that claim, that she considered bringing a claim against P.
55. The claims and complaints made by the claimant can be divided into two distinct groups. The first group of complaints are in respect of acts or omissions that the

claimant says took place whilst she was still employed by P and which she accepts she knew of at the point that her employment terminated. For example the claim in respect of holiday pay and sick pay. She suggests that she received further information subsequently but it is not at all clear even at this point what it is that she says that information was.

56. The second set of complaints are those the claimant says only arose when she became aware of the difficulties with the reference provided by the respondent. The claimant says that a reference was provided for her by P and complains about the treatment she received from her employer as a consequence of the reference.
57. The claimant raised a grievance against her subsequent employer in the summer of 2019. Part of her grievance was about her job and her grade. Her evidence to me was that in 2019 when she got information she had concerns that there may have been conversations between P and W about her employment before she joined W. She says that she first received information about the reference in June 2019. The Claimant also referred me to notes of a grievance hearing against her subsequent employer, in which she raised concerns about her band and the job. This was a grievance hearing on 15 August 2019.
58. From her evidence, and from the documents it is unclear when she first saw the reference, but she has asserted to me that she did not see it until after she had filed her claim against P to the employment tribunal.
59. If that is right, then the text of the reference itself did not affect the filing or the timing of the filing of her claim to the employment tribunal.

The legal principles in respect of time limits.

60. Section 123 Equality Act 2010 requires that a claim is filed within 3 months less one day of the act or omission relied upon by the claimant, or the last act or omission in a continuing act of discrimination. If the claim is not filed within that time, the ET will only have jurisdiction to hear it, if it is considered to be just and equitable to extend time.
61. The test of whether or not an ET can extend time in a discrimination case is whether it is just and equitable to do so. The discretion for tribunals to hear out-of-time claims within whatever period they consider to be 'just and equitable' is clearly broader than the discretion to allow late claims to proceed where it was not 'reasonably practicable' to present the claim in time (and then only if the claim was presented within a reasonable time thereafter).
62. To establish whether a complaint of discrimination has been presented in time it is necessary to determine the date of the act complained of, as this sets the time limit running. A dismissal, for example, is considered to be a single act and the relevant date is the date on which the employee's contract of employment is terminated. The question of when the time limit starts to run is more difficult to determine where the complaint relates to a continuing act of discrimination, such as harassment, or to a discriminatory omission on the part of the employer, such as a failure to confer a benefit on the employee.

63. S.123(3) EqA makes special provision relating to the date of the act complained of in these situations. It states that
- 63.1 conduct extending over a period is to be treated as done at the end of that period (see S.123(3)(a));
 - 63.2 That a failure to do something is to be treated as occurring when the person in question decided on it (S.123(3)(b).
 - 63.3 In the absence of evidence to the contrary, a person is taken to decide on a failure to do something either when that person does an act inconsistent with doing something, or, if the person does no inconsistent act, on the expiry of the period within which he or she might reasonably have been expected to do it — S.123(4).
64. When Employment Tribunals consider exercising the discretion under S.123(1)(b) EqA, 'there is no presumption that they should do so unless they can justify failure to exercise the discretion. A tribunal cannot hear a complaint unless **the applicant convinces it that it is just and equitable to extend time** so the exercise of the discretion is the exception rather than the rule.' The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit. This does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable.
65. In determining whether to exercise discretion to allow the late submission of a discrimination claim I remind myself that I *may* consider any or all of the factors listed in S.33(3) of the Limitation Act 1980 (see for example British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT) I also remind myself that what I must consider are all the circumstances of the case, and any relevant factors in the case.
66. S.33(3) of the Limitation Act 1980 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.
67. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the claimant ought to have submitted his or her claim in time. In this case I reminded myself that it might be just and equitable to extend time if a person did not know or could not have discovered the information which gives rise to a possible discrimination claim. If a claimant discovers facts which she considered may point to discrimination, it may be just and equitable to extend if the claimant has filed a claim within a reasonable period of time after she has discovered the information.

68. I also considered in this case the prejudice to the parties, and remind myself that I must weigh up the relative prejudice that extending time would cause to the respondent. (Pathan v South London Islamic Centre EAT 0312/13)

Discussion and conclusion

69. In this case, I have given the claimant further opportunity to identify what her claim is about, so that I can then identify when time would start to run in respect of her claims, and whether there was any continuing act, or any post employment event that would mean that time did not start to run for her until a much later date, or that it would be just and equitable to extend time to allow for a later filing date. I have considered whether there is evidence that she only became aware of alleged acts or omissions in later 2019 or early 2020 for example.
70. In respect of the first group of complaints I have considered whether or not it is just and equitable to extend time in respect of matters which happened 5 years before the claim was filed and are now events of over 6 years ago.
71. I have considered the prejudice to the parties.
72. For the respondent there is a significant prejudice in having to deal with matters which occurred over 5 years ago. It was clear from the evidence Mr D gave that he has some recollection of the claimant's employment and the fact that he wrote a reference, but he accepted that he could not remember detail. After 5 years it is inevitable that everybody's memory will have faded and such a delay is prejudicial to the respondents ability to properly defend the claim that the claimant is bringing.
73. For the claimant, she had many opportunities to raise concerns whilst she was employed by the respondent and has said that she did indeed raise some issues. She has also stated that it was her decision not to raise concerns after she left, but to move on and avoid the conflict. I accept that she may not have been aware of the precise process for complaining to an employment tribunal, but I am satisfied that had she wanted to raise a complaint, she was capable of finding out how she might do so. This is demonstrated by the fact that she has now made two claims to the ET.
74. I have also considered the reason for the delay. The claimant has told me that it was not until she became unhappy with her subsequent employer that she considered raising a complaint about her former employer. She also refers to discovering further information on a range of dates, first in 2017 (the ET1) then in 2019 (the grievance) and then in 2020 during disclosure, and after filing her claim to the ET.
75. I have also considered in brief, the relative merits of the claims that the claimant brings on the basis of the information I have before me. The claims are very unclear, even a year after them being filed to the tribunal and even following at three case management hearings.
76. The claimant states that she did not believe Mr D was discriminating against her, and the only race discrimination she alleges is in respect of the comment made

about EU nationals which took place whilst the claimant was employed by P, and which the claimant raised at the time.

Conclusions

77. In respect of the issues that arose during the claimants employment, which she knew off whilst she was employed, and which were ended when her employment ended, I conclude that there is no continuing act and that it is not just and equitable to extend time. This includes the allegations of race discrimination over a comment about EU nationals; any issues over driving; and lack of reasonable adjustments made and any issues the claimant had over pay or holidays. The issues that arose during her employment with P are significantly out of time and the claimant has not satisfied me that it is just and equitable to extend time in respect of any of the allegations. Those claims will now be struck out.
78. In respect of any claims the claimant has arising from the reference written by Mr D, I have first considered when the claimant first became aware of any potential discrimination issue. I am satisfied that the claimant became concerned in 2017, as she states in her ET, and that it was her choice not to take action against P, but to seek further information. I conclude that any information which she did discover which raised concerns about the reference or any collusion was either known by the claimant, or suspected when she raised a grievance in August 2019, or did not come to light until after she had filed her claim.
79. I have considered the delay between the claimant becoming concerned about the circumstances of the reference and its impact upon her subsequent employer. The claimant is vague about when she first started to think that there may have been something wrong with her reference.
80. The claimant has not given me any clear reason why she did not make a claim at an earlier stage than March 2020, having come across information which raised concerns for her, but has said that she considered that there might be more to it, and she wanted to look into matters. She says that she therefore made a subject access request and received further documentation. I conclude that she filed her claim to the ET before she received the information. It cannot have caused her to file a claim. She has not explained what caused her to file her claim in March 2020, or why she filed it then as opposed to any earlier point in time.
81. I have also considered the reference itself and the merits of the claim that the claimant wishes to bring in respect of it. Her claims are claims of race discrimination or victimisation or discrimination for a reason arising from her disability. She complains that because of the reference she was required to attend at occupational health and that her pay scale and her job details were affected.
82. Any claim of disability discrimination in respect of the reference appears to rely upon the respondent P providing details of the claimant's sickness record to her prospective employer, on the basis of her recorded sickness absences. The criticism she seems to make of the respondent P, is that it reported, as it was asked to, the fact of her sickness absences in the reference. I find that this was the only information provided by Mr D, and that the claimant knew that this

information had been provided in 2015, because she was asked to attend at occupational health as a result.

83. The information provided by Mr D was standard information, and the claimant knew about it at the time. Any claim of discrimination in respect of that information, in the absence of any other specific allegation that the information was incorrect, or should not have been provided is very weak indeed with little reasonable prospects of succeeding. In any event, it is wholly unclear what the claimant says the detriment was. She accepts that she was offered the job and appointed to the post once the reference had been given and once she had been referred to OH.
84. She has also suggested that the reference is not positive because of the misspelling of the word *Fare*, and because it does not contain sufficient description of the work she has done for P.
85. On the face of it, the reference appears to be a standard form of reference, which is positive in tone; which sets out in brief the scope of the claimant's job and her skills, and which also records the fact of the claimant's sickness absences. I accept the evidence from Mr D, that he had simply misspelt the word *fare*, and that it was in effect a typographical error.
86. Looking at the reference provided it is very difficult to see how it could be considered as unfavourable treatment or how it might be considered as an act of victimisation. Whilst I bear in mind that I have not had the benefit of a full hearing on the merits, on the basis of the information and evidence I have heard I consider that the claimant would have little reasonable prospects of succeeding in a claim of discrimination of any type based on the giving of this reference by Mr D. I bear in mind that she has said to me today that she did not consider that Mr D had committed an act of discrimination.
87. I also bear in mind that the concern she has is in respect of the job she was subsequently offered. I note that she was offered the job she had applied for and in respect of which the reference was given and that she was offered it as a band 7.
88. The fact that she was referred to occupational health is a standard stage of any recruitment process where there are concerns about potential employees health and in this case the claimant was nonetheless offered the job which she accepted.
89. Whilst I accept that the claimant did not necessarily know the content of the reference until later in the chronology, I find that it was not the content of the reference which motivated her to file her claim in any event. It did not cause her to file a claim and thus does not influence the question of whether it is just and equitable to extend time because of the date of filing.
90. I have considered whether or not it would be just and equitable to extend time to allow for a claim in respect of the reference in any event and I conclude that it is not. The balance of prejudice is against the respondent having to defend a claim with little merit, 5 years after the event, which still remains unclear.

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91. Taking into account the facts and matters in this case, the claimant has not satisfied me that it is just and equitable to extend time in respect of any issue arising from the giving of the reference by P in these circumstances. The claimant will now be struck out.

Employment Judge Rayner

Date: 30 March 2020

Judgment and Reasons sent to the parties: 01 April 2021

FOR THE TRIBUNAL OFFICE