



EMPLOYMENT TRIBUNALS

Claimant: Mrs F Amin

Respondent: First West Yorkshire Limited

Heard at: Manchester

On: 22 June 2021

Before: Employment Judge Hill

REPRESENTATION:

Claimant: In person

Respondent: Mr Hutchison

JUDGMENT having been sent to the parties on 15 July 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided derived from the notes of the hearing and the transcript of the oral decision delivered at the hearing:

REASONS

Background

- 1) The Claimant presented a claim form (ET1) on 26 May 2020. Her employment terminated on 12 June 2020 with a payment in lieu of notice. Her claim form was not particularised well, but it appeared that she was bringing the following claims:
 - a Unfair Dismissal
 - b Race Discrimination on the grounds of the colour of her skin. The Claimant describes herself as brown.

- c Religion and belief discrimination: the claimant describes her faith as Islam and refers to the fact that she wears a headscarf;
 - d Flexible working – refusing to accommodate her requests as a carer
 - e sex discrimination on the basis that the claimant is a woman; and
 - f other payments: the claimant is alleging she was paid less than others because of her sex/religion and/or race.
- 2) The Respondent by way of a response form (ET3) defended the claims and stated that the reason for her dismissal was redundancy, and the claim was premature. The Respondent denied the other allegations although from the claim form it was not clear what the Claimant was claiming. The respondent said:
- “The Claimant’s Claim Form, as currently pleaded, is inadequate and it is not possible to sensibly respond to it. The Respondent respectfully requests that a Preliminary Hearing be arranged to identify the issues to enable proper progression of the matter which may include further Preliminary Hearings to consider issues such as Jurisdiction and prospects of success.”*
- 3) A Preliminary Hearing was listed for 11 December 2020 before Employment Judge Rice-Birchall. At that hearing EJ Rice-Birchall stated that the claims currently lacked particularity and it was not possible to determine the issues. Orders were made for the Claimant to prepare and serve a Scott Schedule setting out her claims.
- 4) EJ Rice-Birchall listed a further Preliminary hearing, the purpose of which was to consider any application made by the respondent as regards jurisdictional time limits; the Respondent’s application to strike out the claim and/or for the Tribunal to make a deposit order(s) and for general case management.
- 5) The Claimant provided a Scott Schedule although the date it was filed with the Tribunal is not clear, but the Respondent has not taken any issue with non-compliance with any orders, however the Scott Schedule contain a number of allegations not referred to in the ET1 and the Respondent’s argument is that many of them are out of time and/or require an application to amend the claim to be made.

Preliminary Hearing 22 June 2021

- 6) The Claimant represented herself at this hearing and at the beginning of the hearing the Tribunal spent some time discussing with the parties how the hearing would be structured and identifying the matters which needed to be resolved. I explained to the Claimant the reason for the hearing and what the role of the Tribunal was and the possible outcomes.
- 7) The Respondent asserted that some of the claims were not included in the ET1; some were out of time and/or the Tribunal did not have jurisdiction to hear them and should be dismissed and in addition that those claim/s that were potentially in

time or were not dismissed had little or no prospect of success and should be struck out or a deposit order made.

- 8) The Tribunal ensured that the Claimant understood the possible outcomes and that some or all of her claims could be dismissed for being out of time or because the Tribunal did not have jurisdiction to hear them; some of her claims could be struck out or the Tribunal could make a deposit order on some or all of her claims because they had little or no prospects of success. In the latter case this would mean that the claims could not proceed unless the Claimant paid an amount of money, to be determined by the Tribunal, the claims would not progress and that if she went on to win her case her money would be returned to her but if she lost, she would lose the money paid and potentially be liable for the costs of the Respondent defending the claim.
- 9) The Claimant said that she understood the purpose of the hearing and the possible outcomes although the Claimant considered that it was wrong that a Tribunal is allowed to make a deposit order.
- 10) The Claimant was a litigant in person and the Tribunal is used to dealing with people who do not have representation. The Tribunal ensured that the Claimant understood what was happening and that she was given an opportunity to present her case and raise any arguments she wished the Tribunal to consider. Whilst the Tribunal appreciates the difficulties posed to litigants in person and that it is not always easy to understand legal points, the Tribunal found the Claimant was reluctant to engage in the proceedings and would not respond to direct points in relation to why she had not complied with times limits or included claims in her ET1. The Claimant appeared to be annoyed and often repeated the same allegation in relation to being recruited due to her colour.
- 11) The Tribunal agreed with the parties that it would be sensible to split the hearing into two parts and that it would first consider the jurisdictional and time limit points and any applications to amend the claim form and then in the second part it would consider whether to strike out or make a deposit order on any remaining claims.
- 12) The first part of the hearing was to consider:
 - a) Whether the Tribunal had jurisdiction to hear the unfair dismissal claim – was it presented too early?
 - b) Whether the Claimant's claim for sex discrimination is out of time – the Claimant made two allegations one in 2018 and one on 18 February 2020. The second allegation was not included in the ET1.
 - c) Whether the Claimant's claims that she was discriminated on the grounds of her race/colour are in time. The Claimant made two allegations one in 2015 and one in 2019. A third allegation was made which was not included in the ET1 around February 2020.

d) During the course of the first part of the hearing the Claimant made an application to include a claim of harassment on the grounds of her religion or belief. The Tribunal had to decide if the application to amend and whether it was in time.

13) The second part of the hearing would consider

a) Whether the following claims should be struck out on the grounds that they have no reasonable prospects of success or a deposit order made:

i) The claimant's claim for harassment on the grounds of her race/colour

ii) The claimant's claim in respect of flexible work

iii) The claimant's claim for 'other payments' which included a sex discrimination claim

The Evidence

14) The Tribunal had a bundle of documents numbered 1- 63, which included the ET1, ET3 and the Claimant's Scott Schedule. Witness statements had not been prepared but the Claimant was asked questions by the Tribunal and made submissions. The Respondent had helpfully prepared a skeleton argument which assisted the Tribunal.

The Law – Time Limits for the purposes of the Equality Act Claims

15) The relevant time limit is set out in section 123 of the Equality Act 2010 ("EqA"). Complaints must be presented to an employment tribunal within three months from the date of the act to which the complaint relates, or within such other period as the employment tribunal thinks just and equitable.

16) Conduct extending over a period is to be treated as being done at the end of that period, and a failure to do something should be considered done when something inconsistent occurs or on the expiry of the period in which a person might reasonably have been expected to do something.

17) Section 140B EqA, like section 207B ERA, provides for an extension of time when compulsory early conciliation has been entered into. Section 140B(4) provides that if a time limit would expire during the conciliation period, it will instead expire one month after the end of the conciliation period.

18) As to the approach to asking whether it is just and equitable to extend the limitation period, as the **Court of Appeal set out in Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327** at paragraph 26, the burden is on the complainant who is seeking the exercise of the discretion in her favour. Lord Justice Sedley summarised it thus: "There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal in the EAT is a well known example) policy

has led to a consistently sparing use of the power. This has not happened and ought not to happen in relation to the power to enlarge the time for bringing ET proceedings.”

- 19) The tribunal takes into account anything which it judges to be relevant; this is the exercise of a wide general discretion and may include the date from which the claimant first became aware of the right to present a complaint. The existence of other timeously presented claims will be relevant because it will mean on the one hand that the claimant is not entirely unable to assert her rights and on the other that the very facts upon which she seeks to rely may already fall to be determined. Consideration here is likely to include whether it is possible to have a fair trial of the issues.
- 20) In **British Coal Corp v Keeble [1997] IRLR 336** it was suggested that a comparison with the factors listed in s33 of the Limitation Act 1980 might assist tribunals in considering their discretion to extend time. This lists the following matters to be taken into account:
- a The length of and reasons for the delay
 - b The extent which the evidence is likely to be less cogent
 - c Whether the respondent’s conduct contributed to the delay
 - d The duration of any relevant disability, that is something which deprived the claimant of the mental capacity required in law
 - e The extent to which the claimant acted promptly once she knew that act or omission might be capable of giving rise to a claim; and
 - f Steps taken to receive relevant expert advice.

The Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] ICR** held that Keeble “did not more than suggest that a comparison with the requirements of section 33 of the limitation act might help illuminate the task of the tribunal by setting out potentially relevant matters. It is not to be understood as a checklist or framework for the decision. The ET has a very broad general discretion. The approach to be taken is “to assess all the factors in the particular case which it considered relevant to whether it was just and equitable to extend time, including in particular the length of, and the reasons for, the delay.

First Part of the Hearing to determine time limits and jurisdiction issues and to consider application to amend the ET1.

Does the Tribunal had jurisdiction to hear the unfair dismissal claim – was it presented too early?

- 21) The Claimant’s employment terminated on 12 June 2020, and she was paid a payment in lieu of notice. The Claimant was informed on 8 June 2020 that she

was to be made redundant and her employment would terminate on 12 June 2020. This was agreed between the parties.

- 22) The Claimant contacted ACAS on 5 May 2020 and the ACAS Certificate of Early Conciliation was 5 May 2020. The Claimant's claim form (ET1) was presented to the Tribunal on 26 May 2020.
- 23) The Claimant's evidence was she 'held her hands up' and that she was aggrieved about the situation so she submitted her claim because she felt she could not trust her employer. The Claimant also confirmed that she had sought advice from a Law Centre and also from a friend who is a solicitor and had been given advice. She had not instructed anyone to represent her but understood about time limits and what claims she wished to bring and on 6 August wrote to the Tribunal to correct an error that she had ticked the wrong box and claimed constructive unfair dismissal and it should have been unfair dismissal. The Claimant could not explain why she had not submitted a further claim or why she did not make an application to amend her claim form after the first Preliminary Hearing.
- 24) The Respondent's case was that the Claimant had had the benefit of legal advice, had not made an application to amend her claim or put a further claim in despite being aware that she had made a premature claim.
- 25) The law in respect of unfair dismissal claims and time limits is contained within S.111(2)(a) of the Employment Rights Act, which provides that a Tribunal shall not consider a claim unless it is presented to a Tribunal before the end of the period of three months beginning with the effective date of termination. S111(3) however, allows a tribunal to consider a claim if it is presented after notice has been given but prior to the effective date of termination.
- 26) In this case the Claimant presented her claim 13 days before she was notified that she was being dismissed and 17 days before the effective date of termination. On any construction the claim was presented prematurely. The Tribunal does not therefore have jurisdiction to hear the claim and the Claimant's claim for unfair dismissal is therefore dismissed.

Is the Claimant's claim for sex discrimination is out of time – the Claimant made two allegations one that had occurred in 2018 and one on 18 February 2020. The second allegation was not included in the ET1

- 27) The ET1 contains an allegation in respect of a remark made to her regarding her salary and that she considered it was a sexist remark. The Claimant's evidence was that the remark referred to in her ET1 occurred in July 2018.
- 28) The Claimant's ET1 was presented on 26 May 2020. The time for presenting her claim in respect of this allegation was at the latest the end of October 2018 and the claim was therefore 19 months out of time.

- 29) In her Scott schedule the claimant refers to a second incident that occurred on 18 February 2020. Taking into account the extension of time conferred by ACAS early conciliation which means that the deadline for submitting this claim was 4 June 2020, this allegation was presented in time. The Claimant did not make an application to amend her claim for this allegation. The Claimant did not give any explanation why the second allegation had not been included in the ET1.
- 30) The Respondent stated that staff members had now left the company and one having left to live abroad and the prejudice to the Respondent outweighed the prejudice to the Claimant in this case because the allegation in itself was unclear and how it related to her sex and was not specific other than the claimant's assertion that a male would not have been 'yelled' at.
- 31) Looking at the first allegation as pleaded this is a one-off allegation. The Claimant did not rely on a continuing course of conduct and the second allegation that a colleague had 'yelled' at her was unrelated to the allegation in 2018. The Tribunal finds that the first allegation did not form part of a series of events or a continuing course of conduct that this claim is out of time. Although the Claimant did not make any application for an extension of time the Tribunal finds that it is not just an equitable to extend time because the allegations were significantly out of time and the Claimant was unable to explain or provide any explanation for the delay in bringing the claims.

Were the Claimant's claims that she was discriminated on the grounds of her race/colour are in time. The Claimant made two allegations one in 2015 and one in 2019. A third allegation was made which was not included in the ET1 around February 2020 – application to amend the ET1.

- 32) The Claimant's ET1 referred to an allegation of direct race discrimination that alleged that she was chosen for projects on the basis of the colour of her skin. In her Scott Schedule the claimant states that these allegations refer to a period between 2013 – 2015. The Claimant confirmed the allegation did not go beyond 2015.
- 33) The Claimant also referred to additional allegations that were not contained in her ET1 about events in December 2018 to around July 2019, when she alleges, she was selected to another role, the Infor Project, because of the colour of her skin and had to report to five managers and she says no one else had to report to so many managers. The Claimant alleges that she was only given these roles because of the colour of her skin.
- 34) The Respondent asserts that these events are significantly out of time. The Claimant did not make any application for an extension of time or demonstrate how it amounted to a course of conduct that continued until the end of her employment.
- 35) The Claimant referred to these allegations in her ET1. The Claimant said that it took her some time to process this as discrimination. The Claimant also said that she had undergone therapy and was on medication. The Claimant did not provide

any medical evidence to support this and while I did not consider this evidence I accepted the Respondent's argument that both these allegations occurred a considerable time ago and the prejudice to the respondent in gathering evidence to defend these claims now outweighed the prejudice to the Claimant. The Claimant provided inconsistent evidence on when she became aware that she had been discriminated against saying that she had been recruited because of her 'face' referring to her colour and that she had had to have therapy for it. The Claimant said she had sought advice a couple of times but was hesitant because 'of a lot of unscrupulous activity' but did not explain what she meant by this.

36) I found that these claims were out of time and that it was not just an equitable to extend time in these circumstances.

37) When discussing these claims the Claimant made other allegations in relation to harassment and her working environment over a period of time up to February 2020. These allegations would be considered separately in the second part of this hearing when looking at strike out or making a deposit order.

38) It was explained again to the Claimant that this part of the hearing was to look at the allegations that were potentially out of time. The parties accepted that these allegations related to specific events that occurred in 2013 – 2015 and December 2018 to July 2019 and they were specific claims about being chosen for roles solely on the basis of the colour of her skin.

Considering the application to include a claim of harassment on the grounds of her religion or belief.

39) The Claimant makes two allegations in her Scott Schedule that occurred on 24 February 2020. Neither allegation was made in her claim form (ET1)

a) *The Infor project team were having a team dinner. The guys were talking about bestiality. Caroline Wilde asked them three times to stop as they laughed and indicated her head towards me warning them I might take offence. I got the gist of what they were saying but it didn't bother me immediately. Later I realised how bothered I did get. I got bothered for being singled out to being seen as someone getting bothered for such an embarrassing and inappropriate subject. John Gray recalls some aspects of this event in his statement as part of the investigation process.*

b) *B. Adele (Infor consultant) spoke with me about religion. She said to me that she had had an interesting conversation about religion with other team members the night before. I felt it may have been due to the fact that I am visibly religious. I did not allude further to this conversation.*

40) The Claimant made an application to amend her claim to include a claim of harassment on the grounds of her religion and belief and I also considered the application on the basis that it was now out of time.

- 41) The Tribunal asked the Claimant to explain why she had not included the allegations in her original claim form. The Claimant was extremely dismissive and said “seriously did you want me to write a book. It is not realistic; it is not human”. The Claimant also said that she was unwell, and it took time to get through what she wanted to say.
- 42) The Claimant did not provide any medical evidence of why she would have been unable to bring the claims in time. The Claimant confirmed that she had taken initial advice and was aware of time limits. The claimant was also aware that she was able to amend her ET1 and had done so to correct the constructive dismissal error. The Claimant did not provide any cogent evidence at all to explain either the delay or why they were not included in the original ET1.
- 43) The Respondent argued that the allegations were not in the ET1 and that the Claimant had had the benefit of legal advice and on the basis of that advice had made an application to the Tribunal to change her claim from a constructive unfair dismissal claim to an unfair dismissal claim and the Claimant could therefore have made amendments at an early stage and the claims are now out of time.
- 44) I reviewed the Claimants ET1 form and noted that the claimant had been extremely brief and at section 8.2 it comprised of only 19 lines. The Claimant makes clear reference to her race/colour of her skin; her sex; her carers rights; being harassed over work demands, a serious injury, being humiliated by colleagues for work related issues beyond her control. All references in the ET1 are brief but does not make any reference to this allegation. Whilst the Claimant was dismissive when asked why it had not been included and suggested that she could not be expected to include everything I found that the ET1 was extremely brief and that and neither did the Claimant make any attempt after receiving legal advice to amend her claim form.
- 45) I considered that the Claimant had not demonstrated any reasonable grounds for her failure to include the allegations in her ET1 or why she had not made any application to amend sooner than the hearing today. The Claimant throughout the hearing was reluctant to explain her reasons for not including events or comply with time limits and often repeated that she was recruited because of the colour of her skin and given projects because of the colour of her skin.
- 46) I rejected the Claimant’s application to amend and considered that she had had the opportunity and the understanding to have included the allegations at the time of her ET1 or shortly thereafter once she had received advice and had an understanding of time limits. I do not consider the Claimant acted in a timely manner once she was aware that time limits applied to her claims either shortly after she submitted her ET1.

Consideration of strike out or deposit order for the remaining claims

- 47) I delivered my judgment on the time limit, jurisdictional and application to amend points and then considered further submissions on the remainder of the claims in respect of possible strike out or deposit orders.
- 48) The Tribunal broke for lunch, and it was agreed that the Tribunal would take additional time over the lunch period to consider the remainder of the issues and it was agreed that the Tribunal would reconvene after lunch to confirm whether the Tribunal was in a position to provide judgment on the remaining matters.
- 49) The Tribunal retired to consider whether to strike out the remainder of the claims or make a deposit order. The Tribunal did not make any findings of fact or make any further decisions but returned to discuss with the parties what further time would be required to deliver judgment.
- 50) The Claimant was extremely unhappy at that stage and stated that she did not consider the Tribunal had the power to make a deposit order and that it was unfair. I attempted to explain the powers of the Tribunal, but before I could do so the Claimant said that she did not want me to deliver a judgment on the remainder of her claims and that she wished to withdraw all remaining claims.
- 51) I probed the Claimant further and asked her whether she was sure she did not want me to give a judgment on the other matters. She was adamant and very clear that she just wanted to withdraw. I spoke to the Respondent to raise the issue of costs. I considered it was appropriate before the Claimant took the step of withdrawing her claims that she understood whether there would be any cost implications in her doing so. The Respondent confirmed that it would not be seeking costs. I explained this to the Claimant and again asked her if she was sure that she wanted to withdraw the claims or whether she wanted me to consider the remainder of the claims and deliver a judgment.
- 52) The Claimant confirm that she would withdraw the remainder of the claims and I informed the Respondent that I would include in the judgment that there would be no order for costs.

Employment Judge Hill

Date: 22 October 2021

JUDGMENT SENT TO THE PARTIES ON
27 October 2021

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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