



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss Maria Bartzsch

v

British Airways Plc

Heard at: Cambridge (by CVP)

On: 15 November 2021

Before: Employment Judge Ord (sitting alone)

Appearances

For the Claimant: Miss C Urquhart, Counsel

For the Respondent: Ms H O'Kelly, Solicitor

JUDGMENT

on the

RESPONDENT'S APPLICATION to STRIKE OUT the CLAIMANT'S COMPLAINT

No Order is made on the Respondent's Application to strike out the Claimant's case on the basis that it is presented out of time and the Tribunal therefore has no jurisdiction to hear it.

REASONS

1. This matter came before me as a preliminary issue to strike out the Claimant's claim of age discrimination on the basis that it was presented out of time.
2. The claim arises out of a redundancy exercise conducted by the Respondent following the Covid-19 pandemic. The Claimant was previously employed as a Cabin Service Director within the Respondent's worldwide fleet. The redundancy process included a re-casting of roles and the nearest role to the Claimant's was that of In-Flight Manager.
3. The Claimant says that the process was a discriminatory one and that she did not score high enough to secure the role of In-Flight Manager.

4. The key dates are as follows:
 - 4.1 6 August 2020, the Claimant was told she had not secured her preferred role and was, according to the Respondent's Response "*offered*" a position as Cabin Crew. On a date unknown, the Respondent says the Claimant accepted that role.
 - 4.2 10 August 2020, in a letter which I have not seen, the Claimant was apparently "*waiting for legal advice*" to determine whether to continue with an internal process, or "*let the employer terminate my employment on 31 August 2020*". Absent sight of that letter and the other relevant correspondence, I cannot come to any conclusion as to why the Claimant felt that her employment was to be terminated, or in fact, if it was.
 - 4.3 On another date unknown, the Claimant raised a Grievance. The result was an increase in her score, but not sufficient to secure the role of In-Flight Manager. Counsel for the Claimant has told me today that it was on 16 September 2020 that the Claimant received the outcome of that Grievance.
 - 4.4 On another date unknown, the Claimant was placed in a "*hold pool*" for the role of In-Flight Manager or In-Flight Lead.
 - 4.5 On 12 October 2020, the Claimant had begun and ended her Early Conciliation through Acas.
 - 4.6 On 1 November 2020, the Claimant began her new role. Until that date there had been no alteration in her Terms and Conditions of Employment.
 - 4.7 On 29 January 2021, the Claimant presented her claim form to the Tribunal.
5. The Claimant says the decision of 6 August 2020 was not a single act. It was an act which created an ongoing state of affairs which crystallised on 1 November 2020, when the Claimant was actually, in her words, "*double demoted*", until then the position was not clear.
6. The Respondent's case is that the decision of 6 August 2020 was a single and, presumably on their case, the only act about which the Claimant could allege discrimination.
7. I am guided by the decisions of the Employment Appeal Tribunal in this area, in particular the case of E v X UKEAT0079/20, and I reflect on the decision in Hale v Brighton and Sussex University Hospitals NHS Trust UKEAT0342/16.
8. I am not satisfied that the Claimant has no reasonable prospect of establishing that there was a continuing series of acts, the last of which

was on 1 November 2020 when her demotion or moving to a new role took place. From that date her salary was reduced and her role changed.

9. Equally, the Claimant may be able, if that line of argument fails, to establish that it is just and equitable to extend time.
10. I am not satisfied that either of those lines of argument has no reasonable prospects of success.
11. That is the key question for me, as set out in E v X. I can only strike out the Claimant's case if I am satisfied that the Claimant's arguments on time have no reasonable prospect of success and I am not so satisfied. The issue of time, therefore, remains in dispute and will be determined as part of the Final Hearing.

18 November 2021

Employment Judge Ord

Sent to the parties on: 9/12/2021

N Gotecha
For the Tribunal Office