



# EMPLOYMENT TRIBUNALS

**Claimant**  
M Vajagic

v

**Respondent**  
Mitie Aviation Security Limited

**Heard at:** Watford by CVP  
**Before:** Employment Judge Anderson

**On:** 9 February 2022

## Appearances

**For the Claimant:** Mr A Vajagic (claimant's son)

**For the Respondent:** Mr MacMillan (counsel)

## JUDGMENT

1. The claimant's claim for unfair dismissal was not presented in time and the claimant was not able to show that it was not reasonably practicable for the claim to have been presented in time, in accordance with s111(2)(b) Employment Rights Act 1996. The tribunal has no jurisdiction to hear the claim.
2. The claimant's claim of disability discrimination was not presented in time and the tribunal found that it was not just and equitable to extend time for the filing of the claim in accordance with s123(1)(b) Equality Act 2010. The tribunal has no jurisdiction to hear the claim.

## REASONS

### Claims and issues

1. The claimant brings a claim of unfair dismissal and discrimination on the grounds of sex and disability against the respondent. The claimant was dismissed on 12 February 2020. The claim of disability discrimination relies on an act that took place in October 2019, and if the claimant claims a continuing act up until dismissal, the last date of any disability discrimination would be on 12 February 2021. The act relied upon by the claimant in her claim of sex discrimination took place on 20 July 2020.
2. The respondent says that all claims are out of time and applied to the tribunal on 14 September 2021 requesting an order that the claimant's

claims be struck out as they are out of time and the tribunal has no jurisdiction to hear them.

3. The claimant sought a postponement of the hearing on 4 February 2022. The postponement was refused by Employment Judge Anstis on 8 February 2022.

### **The Hearing**

4. The respondent provided a bundle of documents which included the claim form and response along with the claimant's application for a strike out order. The claimant did not have this bundle, but Mr Vajagic agreed that the claimant had copies of all of those documents. The claimant was represented by her son, Mr Alex Vajagic. The hearing was by CVP and the claimant and Mr Vajagic were seated in the same room, next to each other. The claimant has a hearing impairment and Mr Vajagic was able to assist the claimant by repeating questions from Mr MacMillan and me when the claimant had difficulty in hearing us.

### **Findings of Fact**

5. The claimant suffers from migraines, which started many years ago, and worsened in October 2019.
6. The claimant was dismissed by the respondent on 12 February 2020.
7. On or around the time of her dismissal the claimant contacted ACAS for advice.
8. The claimant appealed her dismissal, and an appeal hearing took place on 27 February 2020. The claimant said that she did not receive an outcome to the appeal. The respondent in its grounds of response said that the claimant was informed that the dismissal would be upheld. I find on the evidence available to me that the claimant did not receive a letter setting out that her appeal had been dismissed.
9. Between 27 February 2020 and July 2020, the claimant continued to look for alternative jobs with the respondent online and either the claimant or her son contacted the respondent, namely Mr Tariq Ali, during that time in the belief that Mr Ali was looking for alternative employment for the claimant.
10. In July 2020 the claimant concluded that the respondent was not going to offer her alternative employment and she was not going to receive an appeal outcome letter. The claimant contacted a specialist employment law solicitor. She also contacted ACAS at this time.
11. On 20 July 2020 the claimant received from an employee of the respondent an unwelcome explicit photograph or photographs. The claimant took no action in response to this photograph. The claimant had

requested from this employee a reference. The claimant received a reference from the employee.

12. On 11 February 2021 the claimant contacted ACAS for the third time in order to begin early conciliation. Early conciliation ended on 12 February 2021 and the claimant filed a claim with the employment tribunal on 12 February 2021.

### **Submissions**

13. For the respondent, Mr MacMillan said that all of the claimant's claims were out of time. For the unfair dismissal claim, Mr MacMillan said that the claimant had not proven that it was not reasonably practicable for her to file her claim within the time limit. He said that the claim was filed a year after she was dismissed and her chief reason for not filing a claim was that she was waiting for an appeal outcome letter, and for Mr Ali to provide redeployment options. He noted that the claimant had said she had stopped waiting on these events in July 2020 but had decided to wait longer before submitting her claim, although she had spoken to an employment solicitor. Mr MacMillan said that although the claimant had represented herself previously and now had the help of her son this was not a case where there was a lack of awareness of employment law or cut off dates on the part of the claimant. He said that in terms of the claimant having any real prospect of success that the respondent had clear grounds for a capacity dismissal. Mr Macmillan referred to the claimant's pleaded case that she delayed on submitting a claim as she was fearful of repercussion after receiving unwanted explicit photographs from an employee of the respondent, but said the conduct was restricted to a single day and no reference had been made to reasons for possible retaliation. He noted that the claimant was well enough to look online for jobs during the period she delayed in filing her claim and had the benefit of advice from ACAS and a solicitor.
14. For the discrimination claims, Mr MacMillan said there was overlap in reasons as to why time for filing the claim should not be extended. He noted again that the claimant had resources including contacting a solicitor but had delayed a further four months after contacting a solicitor. Mr MacMillan noted the substantial length of delay in filing in respect of both discrimination claims. He said the impact of the delay was such that there was a real risk that the quality of the respondent's evidence would be diminished and said that the evidence required to defend the claims was not simply documentary but would involve witness evidence, for example from those involved in making the decision to call in the claimant for tests in October 2019 and those who had made decisions at the three meetings she had attended about her dismissal and redeployment. He noted also that the test the claimant referred to in her claim for reasonable adjustments was a test of eyesight and not one of hearing.
15. For the claimant Mr Vajagic said that the delay was significant, but many things had happened in this period. He said that this was during the time of the pandemic, there had been a lot of uncertainty and people were scared

to leave the house. When the claimant was dismissed both he and the claimant had believed that the respondent would provide other employment as this is what the claimant had been told. When calling the respondent about jobs, specifically Mr Ali, the claimant had been told to wait as the pandemic meant Mr Ali did not know what was going to happen. Mr Vajagic said that the claimant had given the respondent every chance to provide her with employment. Mr Vajagic said the claimant required significant assistance in making calls and submitting a claim and that as he had been working long hours to make up for her lost wage, he had not been able to help quickly. He said also that her anxiety, particularly after receiving the photographs on 20 July 2020, was such that she was less able to act.

**Decision and reasons.**

16. It is not in dispute between the parties that the claim was submitted outside of the three-month time limit (as extended for early conciliation) for bringing a claim in the employment tribunal. There is no dispute about the dates on which the relevant time limits expired. The claimant states that time should be extended for the filing of her claim and the respondent says it should not.

17. I will deal with the unfair dismissal claim first. The relevant law on time limits is at s111 of the Employment Rights Act and is as follows:

*an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—*

*(a) before the end of the period of three months beginning with the effective date of termination, or*

*(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

18. Evidence from the claimant was that it was not reasonably practicable to bring a claim as she was anxious and suffering from migraines, she required assistance from her son to bring such a claim, and she was hoping, up until July 2020, to receive an offer of alternative employment and/or an appeal outcome letter. Other evidence from the claimant was that she was actively looking for jobs online, she had contacted ACAS for advice twice before entering into early conciliation on 11 February 2021 and she had contacted an employment law solicitor on July 2020.

19. I find, as the claimant had sought advice from ACAS before dismissal, was able to look for work and wanted to work in the period February to July 2020 and had the able assistance of her son, it was reasonably practicable for her to have brought her claim for unfair dismissal within the relevant

time period. Having contacted ACAS the claimant is likely to have been aware of time limits and I find that having the knowledge to contact ACAS, and that she was using online services for a job search, is evidence that she was able to apprise herself of the relevant information she needed in order to bring a claim in time.

20. I find that the claim for unfair dismissal is out of time, and it is struck out.
21. Moving on to the discrimination claim, the relevant law on time limits is found at s123 of the Equality Act 2010.

*Subject to section 140B proceedings on a complaint within section 120 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.*

22. In considering whether it is just and equitable to extend time I need to consider a number of factors including the length of the delay and the reasons for it, how the delay might have prejudiced the respondent's ability to defend the claim, the prejudice to the claimant in being time barred from bringing her claim and I should include a consideration of the merits of the claim. This list is not exhaustive and no one factor is necessarily more important than another.
23. The length of the delay here is significant. The claimant was dismissed on 12 February 2020. The disability discrimination claim, taken at its highest, was filed a year after dismissal. In the case of the sexual harassment claim, the event complained of took place on 20 July 2020. The reasons given by the claimant for the delay have been set out above, and in addition she pleaded that she was concerned about repercussions if she raised a claim after receiving the unwanted photographs on 20 July 2020. The claimant did not explain why she was concerned about this and also did not explain why this concern had changed by the time she decided to issue a claim in February 2021.
24. Mr MacMillan noted, for the respondent that by the time the claim was heard, likely not until the end of this year or early next, the events would have taken place three years ago, and that it would be prejudiced in terms of providing witness evidence on the events complained of so long after the events. He disagreed with the claimant's position as set out in pleadings that the evidence would be largely documentary and I accept that there would be a significant need for witness evidence. I have noted too, that unless time is extended the claimant will not be able to have her

claim heard by the tribunal and Mr Vajagic, for the claimant, said that so many things happened to stop the claimant issuing a claim earlier that were out of her control (these were: the reasons set out above, the pandemic, Mr Vajagic's need to work long hours to support them both thus meaning he had less time to assist his mother in making a claim, that his help was required because the claimant has a hearing impairment and has difficulty using the telephone) that it would be just and equitable to extend time.

25. On the merits of the claim, I have not heard evidence on the claim or seen any documents but note as follows: the claimant intends to bring a claim for a failure to make a reasonable adjustment and her stated disability is a hearing impairment. The PCPs relied upon are the need to take work related tests seven days apart and having a set pass rate. On her own admission, in evidence, the claimant said that her problems with the test were not related to her disability. I conclude that claim has little or no prospect of success. The claim of post termination sexual harassment relates to a single event that took place five months after the claimant was dismissed and which the respondent (other than the specific employee concerned) had no knowledge of, and which was not raised with respondent at any time, until the claim was filed almost seven months later. I cannot make a judgment on the prospects of success of this claim, but I note Mr Vajagic's submissions on why time should be extended were focused on the desire to prove to the tribunal that the claimant had been treated badly in respect of the tests in October 2019 and the dismissal process.
26. Taking all of these factors into account I find that it is not just and equitable to extend time for the claimant to bring a claim of discrimination.
27. I find that the claim for sex and disability discrimination is out of time, and it is struck out.

**Employment Judge Anderson**

Date: 9 February 2022

JUDGMENT SENT TO THE PARTIES ON

27 February 2022

FOR THE TRIBUNAL OFFICE