



EMPLOYMENT TRIBUNALS

Claimant: Christopher Beales
Respondent: Nicola Beales
Heard at: Leeds, by CVP **On:** 16 March 2022
Before: Employment Judge Buckley

Appearances

For the claimant: In person

For the respondent: Mr. Sutton (lay representative)

Judgment having been sent to the parties 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:

REASONS

1. In deciding whether or not it is just and equitable to extend time, case law suggests that it is appropriate for the tribunal to consider all the relevant factors. These are likely to include:
 - a. the overall circumstances
 - b. the prejudice that each party would suffer as a result of the decision
 - c. the particular length of and the reasons for the delay
 - d. the extent to which the cogency of evidence is likely to be affected by the delay
 - e. the promptness with which the claimant acted once he knew of facts giving rise to the cause of action
 - f. the steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action
 - g. and the knowledge of time limits by the claimant
2. At present the claim, as set out in the claim form, is limited to a statement in October 2020. No amendment has been made to include a statement in early November 2020. As the claimant indicated in the preliminary hearing that he also wished to

rely on a statement in November 2020, I have reached my decision on the basis of an assumption that the claim also includes a statement in early November 2020.

3. The claims under consideration are therefore claims for direct sex discrimination and harassment related to sex based on statements by the respondent in October 2020 and repeated in early November 2020 that she wanted a female carer and not a male carer.
4. I have heard no evidence on prejudice to the respondent and I have heard no submissions as to any prejudice to the respondent. There is no suggestion that the cogency of evidence will be affected. I find that there will be no significant prejudice to the respondent in allowing the claim to proceed, although that is only one factor that I have to take into account.
5. There is a clear public interest in the enforcement of time limits. It is in the interests of justice that claims are heard and brought promptly. That is one of the reasons why there is a relatively short time limit in discrimination cases of three months.
6. In terms of prejudice to the claimant I have taken account of the fact that he will be deprived of the possibility of bringing a discrimination and a harassment claim against the respondent. For the purposes of this application I assume that there is at least an arguable claim.
7. The length of the delay is significant. There is a short time limit of three months in discrimination and harassment claims. Assuming that the comments took place in the first week of November, the claimant should have started early conciliation by the first week of February 2021. The claimant did not start early conciliation until July 2021 and issued the claim in August 2021. This is a delay of five months. That amounts to the entire time limit again plus another 2/3 of another three month time limit. This is a significant delay looked at in the context of the strict 3 month time limit.
8. I consider now the explanation for the delay. The evidence of the claimant is that at the time he was upset by the statement. He stated that he knew it amounted to discrimination at the time, and that he raised this with the claimant at the time. He stated that he was at least partially aware that there were time limits for bringing discrimination claims. He said that he had this at the back of his mind throughout the period. He did not use the Internet to find out what the specific time limit was, but I find that it would have been reasonable for him to do so. The claimant has also had advice from ACAS and from a union representative. Taking all this into account I find that the claimant ought to have known that there was a three month time limit for bringing this claim.
9. The claimant relies on a number of factors to explain why he did not bring the claim. Up until about the end of November the claimant was under bail conditions restricting his access to the respondent. That is not, in my view, of much assistance. It did not prevent the claimant either contacting ACAS or issuing the claim, and there was plenty of time between the end of November and the expiry of the time limit.
10. The claimant then brought an internal grievance which was heard on the 10th of December. Even allowing for waiting a reasonable period for a conclusion to be issued, this does not adequately explain why the claimant delayed until July before early conciliation was commenced. This could perhaps explain a delay until about the end of January/February. I am not persuaded that after that point there is an

acceptable explanation of the delay, given that the claimant ought to have been aware of the time limits.

11. The claimant's explanation of the remainder of the delay is, in essence, that he was hoping the claim would be settled. It is reasonable for a claimant to attempt to negotiate a settlement of a dispute before issuing a claim, and therefore to delay for a reasonable period while those negotiations take place. However a claimant that was or ought to have been aware that the clock was ticking cannot simply wait, in the hope that things might be resolved, for a further six months until approaching ACAS in July.
12. I have taken account of the unusual circumstances in this case. I note in particular the fact that the respondent is the claimant's ex wife and therefore he was hoping to preserve at least a friendship between them. I have also taken into account the fact that the claimant had in mind the vulnerable circumstances of his ex wife and the fact that the negotiations were on going.
13. In my view these circumstances are not sufficient to explain a delay of this extent. A claimant cannot simply wait and let time run and run before deciding that he finally needs to issue a claim. The claimant knew that he had a discrimination claim at the time. He knew or ought to have known the time limits. There is a lack of a clear explanation as to why he waited so long before he commenced early conciliation and then issued the claim. There is a clear public interest in the enforcement of time limits. It is in the interests of justice that claims are heard and brought promptly.
14. For all the above reasons, even in the absence of prejudice to the respondent and even though the claimant will be deprived of the chance to bring a discrimination claim, I find that it is not just and equitable to extend time. For those reasons the discrimination and harassment claims are struck out.

Employment Judge Buckley

Date 30 March 2022