



EMPLOYMENT TRIBUNALS

Claimant: Miss G Concannon

Respondent: South Central Ambulance Service NHS Foundation Trust

PRELIMINARY HEARING

Heard at: Reading (by CVP)

On: 10 March 2022

Before: Employment Judge Reindorf (sitting alone)

Representation:

Claimant: In person

Respondent: Ms S Robertson (counsel)

JUDGMENT

1. The complaints of disability discrimination in case number 312155/2020 are presented out of time and the Tribunal does not have jurisdiction to determine them.
2. Permission to amend the ET1 in case number 3312682/2019 is refused.

RESERVED REASONS

INTRODUCTION

3. The Claimant was employed by the Respondent as a Paramedic until she was dismissed with effect from 7 December 2018 on the ground of capability. After a partially successful appeal against dismissal she was reinstated on 18 September 2019 to the demoted role of Emergency Care Assistant on a lower salary (“the Demotion”). The Respondent declined to implement a recommendation made by a disability adviser that the Claimant should have another paramedic operating with her at all times (“the Recommendation”).
4. On 15 March 2019 the Claimant lodged an ET1 (case number 3312682/2019 – “the First Claim”) complaining of unfair dismissal. She withdrew her unfair dismissal complaint, but continued with the First Claim as a complaint of unauthorised deductions from wages. This complaint related to payment of wages during the reengagement period. The unfair dismissal complaint was dismissed on withdrawal by judgment dated 16 April 2020.
5. On 8 January 2020 the Claimant lodged an internal grievance in which she complained about the outcome of her appeal against dismissal and the Demotion. Her grievance was dismissed on 4 March 2020.
6. On 12 March 2020 the Claimant made an application to amend the First Claim to add claims for disability discrimination relating to the dismissal appeal on 18 September 2019 (“the First Amendment Application”). The disability upon which the Claimant relied was dyspraxia. She alleged that:
 - 6.1. The Respondent’s refusal to implement the Recommendation was an act of discrimination arising from disability and a failure to make reasonable adjustments.
 - 6.2. The Demotion was an act of direct disability discrimination, indirect disability discrimination and harassment.
7. The Respondent resisted the First Amendment Application.
8. The Claimant appealed to the Respondent against the outcome of her grievance. Her grievance appeal was heard on 29 June 2020 and dismissed on 31 July 2020.
9. After a period of ACAS Early Conciliation from 6 August to 5 September 2020, the Claimant lodged another ET1 on 4 October 2020 (case number 312155/2020 – “the Second Claim”). This contains complaints of disability discrimination and details of the deductions from wages claim. It alleges that:

- 9.1. The refusal to implement the Recommendation was a failure to make reasonable adjustments.
- 9.2. The Demotion was an act of discrimination arising from disability, direct disability discrimination, indirect disability discrimination, and harassment.
10. It is also possible to read the Second Claim as including a complaint of disability discrimination about the conduct and outcome of the grievance. The Second Claim does not, however, contain any discernible complaint about the grievance appeal. It merely mentioned that the grievance appeal took place and that the appeal was not upheld.
11. In Box 8 of the ET1 form for the Second Claim the Claimant ticked “arrears of pay”, but her Particulars of Claim gives no details of this.
12. In its ET3 the Respondent resisted the Second Claim on the basis that it was an abuse of process. It argued that the First Claim already contained a deductions from wages claim and that the Claimant’s amendment application of 12 March 2020 already contained the disability discrimination complaints. The Respondent also argued that the Second Claim was out of time.
13. A Preliminary Hearing for case management took place on 20 November 2021. At that hearing the Claimant withdrew the First Amendment Application and said that she wished to pursue the First Claim (as a deductions from wages complaint) and the Second Claim (as a disability discrimination complaint).
14. At the Preliminary Hearing the Employment Judge listed the current hearing to determine whether the Second Claim was presented in time and if not whether it would be just and equitable to extend time.
15. On 11 February 2022 the Claimant submitted another application to amend the First Claim (“the Second Amendment Application”). The amendment seeks to add complaints of disability discrimination to the effect that:
 - 15.1. The refusal to implement the Recommendation was an act of discrimination arising from disability and a failure to make reasonable adjustments.
 - 15.2. The Demotion was an act of discrimination arising from disability, direct discrimination, indirect disability discrimination and harassment. It was also a failure to make reasonable adjustments in that the Respondent should have consulted with organisations and charities specialising in dyspraxia to obtain a formal assessment which could suggest adjustments that might be made.
 - 15.3. On 18 September 2019 the Respondent had denied the Claimant a phased return to work. This appears to be a complaint of failure to make reasonable adjustments.

- 15.4. The outcome of the grievance on 4 March 2020 was an act of (unspecified) disability discrimination.
- 15.5. The failure to uphold the Claimant's grievance appeal on 29 June 2020 was an act of (unspecified) disability discrimination.
16. The Second Amendment Application also contains details of the complaint of unauthorised deductions from wages for back pay between 7 December 2018 and 27 September 2019.
17. On 18 February 2022 the Respondent objected to the Second Amendment Application, arguing that it was largely a repetition of the First Amendment Application which had been withdrawn. The Respondent argued that the Claimant was estopped from pursuing the Second Amendment Application on that basis.
18. It appears from the file that on 21 February 2022 the Tribunal ordered that the Second Amendment Application be considered at this hearing (although I have not seen a formal Order to that effect).
19. On 24 February 2022 the Claimant informed the Tribunal that she had made the Second Amendment Application on advice from an employment solicitor. She said that her "intention is to simplify matters by going forward with only one claim which is the claim for unlawful deduction of wages amended to include disability discrimination". She requested that this Primary Hearing be used to determine her amendment application and to "dispose of" the Second Claim.

THE EVIDENCE AND HEARING

20. The hearing took place by video (CVP).
21. I had a bundle of documents of 200 pages, including a witness statement from the Claimant entitled "Statement Relating to Delay in Registering Claim". I also had a skeleton argument, bundle of authorities and chronology from Ms Robertson for the Respondent.
22. The Claimant gave evidence and was cross examined.
23. Judgment was reserved.

THE ISSUES

24. At the beginning of the hearing the Claimant said that she wished to pursue the Second Amendment rather than the Second Claim. However she declined to withdraw the Second Claim, on the basis that she might not obtain permission to make the Second Amendment.
25. The matters before me for determination were therefore:
 - 25.1. whether the Second Amendment application should be allowed; and if not

- 25.2. whether the Tribunal has jurisdiction to determine the Second Claim.

FINDINGS OF FACT

26. The explanation in the Claimant's statement for the timing of the Second Claim is, in essence, that she understood from having read the ACAS website that she had to exhaust internal procedures before she could bring a claim, and that the time limit ran from the end of the internal proceedings.
27. The Claimant said in cross-examination that she had read the ACAS website in late 2018 or early 2019. She could not recall what it was that she had read that led her to form the impression that she did. She acknowledged that the current iteration of the ACAS website does not say that internal processes must be completed before a claim can be brought, and nor does it say that time runs from the end of the internal processes. However, the Claimant did not wait until the end of the internal processes before submitting her First Claim or her First Amendment Application.
28. I find that the Claimant did not read on the ACAS website that she should exhaust internal procedures before starting a claim. It is highly improbable that the ACAS website contained any such advice at the time that the Claimant was consulting it. I also find that whatever the Claimant did read on the ACAS website, it was not reasonable for her to reach the interpretation that she did. It is not credible that the ACAS website could have contained information at that time which would be reasonably capable of leading to the Claimant's interpretation.
29. During the course of this litigation the Claimant has consulted various advisers at various times:
- 29.1. She was assisted by her union from July 2019 and throughout the dismissal and grievance processes.
- 29.2. She spoke to advisers on the union's telephone service, Union Line.
- 29.3. The union referred her to Thompsons solicitors, who declined to assist because she had not been a union member for long enough.
- 29.4. She consulted a Citizens Advice Bureau by email, but did not ask for advice on time limits.
- 29.5. On 7 February 2020 she had a conference with a barrister, apparently on a Direct Public Access basis.
- 29.6. From around March 2020 she was receiving advice from a friend of a former colleague who was a specialist in employment law and who the Claimant believed to be a lawyer. He helped her with some of the terminology in the First Amendment Application. At the end of March 2020 he specifically advised her about time limits, in light

of which she wrote an email to the Tribunal on 31 March 2020 addressing the *Selkent* principles in relation to the First Amendment Application.

- 29.7. She took legal advice from a solicitor on 28 January 2022. She had had to save up to pay for this advice. She was advised to lodge the Second Amendment Application.
30. I find that the Claimant was aware from March 2020 at the latest of the correct position on time limits.

THE LAW

Time limits

31. By s.123(1) of the Equality Act 2010 (“EqA”):
- ... 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.*
32. An additional period of time is allowed for ACAS Early Conciliation, which has the effect of “stopping the clock”.
33. For the purposes of the time limit provisions, an act extending over a period is treated as done at the end of that period.
34. Time limits are exercised strictly in employment cases and time should not be extended unless the Claimant can convince the Tribunal that it is just and equitable to do so (*Robertson v Bexley Community Centre* [2003] IRLR 434; *Thompson v Ark Schools* [2019] ICR 292). The Tribunal should have regard to such factors as are relevant from the list in s.33(3) of the Limitation Act 1980 and *British Coal Corp v Keeble* [1997] IRLR 336.

Amendments

35. The principles relevant to the amendment of claims are described in *Selkent Bus Co v Moore* [1996] IRLR 661. The Tribunal should consider:
- 35.1. the nature of the amendment;
- 35.2. the applicability of statutory time limits; and
- 35.3. the timing and manner of the application.
36. The Tribunal should take into account all the circumstances and balance the hardship and prejudice of allowing the amendment against the injustice and hardship of refusing it.

37. The discretion to permit a party to amend its claim is not unconfined. An ET1 is “not something just to set the ball rolling “ (*Chandhok v Tirkey* [2015] IRLR 195).

CONCLUSIONS

The Second Amendment Application

38. I do not grant permission to the Claimant to amend the First Claim in the terms sought in the Second Amendment Application.
39. The amendment is substantial. As it stands, following the withdrawal and dismissal of the unfair dismissal complaint, the First Claim is for unauthorised deductions from wages only. The amendment seeks to add several wide-ranging complaints of disability discrimination. The factual issues involved go far beyond those which are relevant to the complaint of unauthorised deductions from wages.
40. On the questions of the applicability of time limits, the last act complained of in the Second Amendment Application took place on 29 June 2020. The application was made on 11 February 2022, around nineteen and a half months later. The normal time limit for the presentation of complaints of disability discrimination is three months from the act complained of, plus any allowance for ACAS Early Conciliation. If a series of incidents forms a continuing act (an “act extending over a period”), time runs from the last date.
41. Therefore, taken on its own and even assuming for present purposes that the Claimant would be able to show that there was a continuing act, the complaints were presented very significantly out of time.
42. However, it is relevant that the Respondent was informed of some of the complaints before the Claimant made the Second Amendment Application, by way of the First Amendment Application and/or the Second Claim. This could mean that the prejudice to the Respondent of facing complaints that are significantly out of time is less than it otherwise might be.
43. The complaints previously made were as follows:
- 43.1. Complaints relating to events on 18 September 2019 and first raised by the Claimant almost six months later in the First Amendment Application on 12 March 2020. Thus even when they were first raised, they were out of time. The claims are:
- i. The complaint that the Respondent’s refusal to implement the Recommendation on 18 September 2019 was an act of discrimination arising from disability and a failure to make reasonable adjustments.

- ii. The complaint that the Demotion on 18 September 2019 was an act of direct disability discrimination, indirect disability discrimination and harassment.
 - 43.2. Complaints first raised in the Second Claim on 4 October 2020, the last of which occurred on 2 March 2020, seven months before the claim was presented. Again, when these complaints were first raised they were already out of time. The claims are:
 - i. The complaint that the Demotion on 18 September 2019 was an act of discrimination arising from disability.
 - ii. A complaint that the handling and outcome of the grievance on 4 March 2020 were discriminatory, although this is not clearly set out in the Second Claim.
44. Therefore whether the Second Amendment Application is viewed alone or in the context of the history of the proceedings, none of the complaints in it were presented within the normal time limit.
45. The timing of the application has caused the Respondent substantial detriment. I take account of the fact that the Claimant is an unrepresented litigant. However, at the outset she adopted an unreasonable interpretation of the information on the ACAS website about time limits. She was then in receipt of correct advice on time limits from March 2020. Prior to that, she had had the opportunity to take advice on time limits from several sources, but had not done so. She took advice from a specialist solicitor on 28 January 2022, which led to the Second Amendment Application. Yet on each occasion that she has sought to expand her claim she has done so significantly outside the normal time limit. The Second Amendment Application itself is over one and a half years after the last of the events complained of.
46. The manner of the application has been such that the Respondent was entitled to regard it as an abuse of process. The Claimant first lodged a version of the disability discrimination claim in the First Amendment Application. Seven months later she lodged the Second Claim containing another version of the claim with additional details which could have been put in the First Amendment Application but were not. Thirteen months later she withdrew the First Amendment Application and said that she wished to pursue the Second Claim. Three months after that she lodged the Second Amendment Application containing another version of the claim with yet further additional details which could have been put in the Second Claim but were not. At the hearing the following month, she sought to keep in reserve the Second Claim in case the Second Amendment Application was not permitted. This course of conduct is inconsistent with the principle that there must be finality in litigation.
47. The Respondent is significantly disadvantaged by having to respond to a claim presented out of time, well over two years since the events complained of and when recollections will inevitably have faded, in circumstances where it would otherwise be responding only to a simple

complaint of unauthorised deductions from wages based on much narrower facts. Furthermore the claim as articulated in the Second Amendment Application remains inadequately particularised. If the discrimination complaints were to proceed the Respondent would be required to expend further resources seeking to understand the scope of the claim against it, obtaining further particulars and engaging in another complex and lengthy case management hearing.

48. I take account of the Claimant's assertion that the Second Amendment Application is merely an attempt to streamline the claim so that it is all contained in one amended ET1. However I do not regard this to be a sufficient explanation, since it does not account for the addition of complaints which could have been raised earlier.
49. I have regard to the fact that the Claimant will not be able to pursue her complaints about the manner in which she was dismissed and reinstated if neither the Second Amendment Application nor the Second Claim is permitted to proceed. However, in the circumstances of this case I do not consider that hardship and potential injustice to outweigh the hardship and potential injustice to the Respondent of having to defend the complaints in the particular circumstances.
50. Taking into account all of the factors referred to above, I consider the prejudice to the Respondent of allowing the Claimant to pursue the complaints in the Second Amendment Application to outweigh the prejudice to the Claimant of dismissing the application. I therefore refuse the application.

The Second Claim

51. The Claimant seeks to rely on the Second Claim in the event that the Second Amendment Application is not permitted.
52. I find that the complaints of disability discrimination in the Second Claim were presented out of time. The claim was lodged on 4 October 2020. The last act complained of occurred on 4 March 2020. ACAS Early Conciliation suspended time in respect of acts occurring on or after 7 May 2020. If the claim had included a complaint about the grievance appeal outcome issued on 31 July 2020, that complaint would have been presented within time. However, it does not. It merely states that the grievance appeal hearing took place and that the appeal was not upheld. The claim was therefore lodged two months and three days out of time in respect of the last act complained of.
53. The Claimant offered no explanation for the delay other than that she had misinterpreted the advice on the ACAS website. I have already found that this was an unreasonable interpretation and that in any event she received correct advice on time limits in March 2020. She was aware of *Selkent* and other case law on time limits when she wrote to the Tribunal on 31 March 2020, six months before she presented the claim.

54. For the reasons I have already explained in relation to the First Amendment Application (paragraphs 47–50 above), the balance of prejudice lies in favour of not granting an extension of time.
55. In that light I find that it is not just and equitable to extend time for the presentation of the complaints of disability discrimination. The Tribunal does not have jurisdiction to determine the complaints.
56. I was not asked to consider and have not reached any conclusions about the particulars of the unauthorised deductions from wages complaint which are contained in the Second Claim. I observe that these are likely to amount to further particulars of the First Claim. This will need to be considered at a further Preliminary Hearing for case management, at which directions will need to be made to bring the matter to trial. The parties will be sent a Notice of Hearing accordingly.

Employment Judge Reindorf
Date: 9 May 2022

Sent to the parties on:

10 May 2022

For the Tribunal:

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.