



# EMPLOYMENT TRIBUNALS

**Between:**

Miss M Torrellas Torres

**Claimant**

**and** Lloyds Bank plc

**Respondent**

**Heard at:** Leeds

**on:** 8 July 2022

**Before: Employment Judge Cox**

**Representation:**

Claimant: In person

Respondent: Mr Singer, counsel

## REASONS

1. The Claimant presented a claim of race and disability discrimination on 5 January 2022. She had contacted ACAS under the early conciliation procedure on 7 November 2021 and an early conciliation certificate was issued on 5 January 2022.
2. A Preliminary Hearing was held to decide whether her claims should be dismissed because they had been brought outside the time limit in Section 123 of the Equality Act 2010. That section states that a claim of discrimination may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the Tribunal considers just and equitable. There is provision for the time limit to be extended to allow for a period of early conciliation through ACAS (Section 140B), but this can apply only when the Claimant has contacted ACAS to begin the early conciliation process within the basic limitation period.
3. For time limit purposes, conduct extending over a period is to be treated as done at the end of the period. In order for acts to be viewed as part of conduct extending over a period, the Claimant must have a reasonably arguable basis for saying that the various allegations are so linked as to be continuing acts or an ongoing state of affairs (Aziz v FDA [201] EWCA Civ 304).

4. It is the exception rather than the rule that a Tribunal will allow a late claim. The onus is on the Claimant to show that it would be just and equitable to do so (Robertson v Bexley Community Centre t/a Leisure Link [2001] IRLR 434).
5. In her claim form, the Claimant did not make clear what the alleged acts of race and disability discrimination were. At the beginning of the Preliminary Hearing, the Claimant confirmed that her allegations were as set out in a document headed "Claimant's further information", which her then legal representative supplied in response to an Order that had been made requiring her to provide further details of her claim. Other than a mention of an appeal outcome in February 2022, which post-dated the claim, the Tribunal took this document as a statement of her allegations. The Claimant clarified at the Preliminary Hearing that allegation 8 (that the Claimant was told that she was not likely to be promoted) involved Lee Marshall, senior manager.
6. The Tribunal first decided when the acts of discrimination occurred. It considered the allegations of disability discrimination and race discrimination separately.
7. For the purposes of its decision, the Tribunal assumed in the Claimant's favour, but without finding, that the Claimant had a reasonably arguable case that the earlier allegations of race discrimination, which related to her being told she would not be promoted and being reprimanded by her managers, might amount to conduct extending over a period from October 2018 to 15 April 2020. They all involved her managers Mr Miller-Woods, Ms Murdoch and Mr Marshall allegedly treating her badly in various ways because, she says, of her race. The remaining allegation, which related to her grievance being dismissed, happened on 30 April 2021, a year after the earlier acts. This was an act of an entirely different nature, involving another person, Ms McCrory, whom the Claimant did not in any event name in her "further information" document as having discriminated against her. The Tribunal does not accept that this later allegation was part of conduct extending over a period with the earlier acts.
8. The Claimant's claims of race discrimination should therefore have been brought by July 2020 in relation to the earlier acts and July 2021 in relation to the grievance outcome (subject to any extension that would have applied to take into account a period of early conciliation, had she contacted ACAS at that time). The claim was therefore presented around 17 months late in relation to the earlier allegations and five months late in relation to the later allegation.
9. There were two acts of alleged disability discrimination, relating to a comment made by Ms Brown in September 2020, and Ms McCrory's grievance outcome on 30 April 2021. The Tribunal can identify no basis on which it could

reasonably be argued that these two acts formed part of conduct extending over a period. They were acts of an entirely different nature, committed by two different people at an interval of several months. In relation to the earlier allegation, the claim should have been presented by December 2020. In relation to the later allegation, it should have been presented by July 2021 (subject to any extension that would have applied had the Claimant contacted ACAS for early conciliation at that time). The claim was therefore presented over a year late in relation to the earlier allegation and five months late in relation to the later allegation.

10. The Tribunal heard evidence from the Claimant at the Preliminary Hearing on why her claim was not presented until January 2022. Her sole explanation was that her trade union representative had told her that she could not bring a claim to the Tribunal until her grievance appeal was resolved. The Tribunal does not find that explanation credible: the Claimant in fact brought her claim before she knew the outcome of her grievance appeal in February 2022.
11. Further, the Tribunal accepts the Respondent's contention that, if the earlier allegations of race discrimination were allowed to proceed out of time, the Respondent would be under a substantial disadvantage. Although the individuals said to have discriminated in relation to the earlier allegations still work for the Respondent, their memory of events is likely to be significantly impaired by the passage of time, particularly given the number of employees with whom they have dealt over that period.
12. For these reasons, the Tribunal does not accept that the Claimant has shown that her claim has been brought within another just and equitable period. The claim is dismissed on that basis.

Employment Judge Cox

Date: 25 July 2022