



EMPLOYMENT TRIBUNALS

Claimant

Mrs Donya Henson

v

Respondent

Milton Keynes Further
Education Corporation (1st)
Secretary of State for Justice (2nd)

PRELIMINARY HEARING

Heard at: Cambridge (via CVP)

On: 30 June 2022

Before: Employment Judge Ord

Appearances:

For the Claimant: Ms M Sharpe - Counsel

For the 1st Respondent: Ms H Pryce – Solicitor

For the 2nd Respondent: Mr L Dilaini - Counsel

JUDGMENT

1. No order is made on the second respondent's application to strike out the claimant's complaints against it on the basis that they are in whole or in part out of time. The time for presenting the claim against the second respondent is extended to the 3 September 2021 in accordance with s.123(1)(b) of the Equality Act 2010 on the basis that it is just and equitable to do so.

REASONS

1. This matter came before me to determine the second respondent's application to strike out the claimant's complaints against it on the basis that they are presented out of time.
2. The relevant history of the matter is agreed as follows:
 - 2.1 The claimant is employed by the first respondent and has been since the 22 July 2015.
 - 2.2 The claimant is disabled within the meaning of s.6 of the Equality Act by virtue of a condition of cerebral palsy.
 - 2.3 The claimant is employed as an offender learning lecturer and has worked for the first respondent at the second respondent's premises at HMP Woodhill since the 5 February 2018.

- 2.4 The claimant has raised questions regarding her working hours and her means of access to and from the prison and the way her information relating to the need for such changes has been dealt with. Her requests for changes in her working hours were rejected by the first respondent most recently on the 17 June 2021 but it is said that decisions had been made and communicated before then.
- 2.5 The claimant, acting in person, commenced early conciliation on the 24 June 2021 solely against the first respondent. Her early conciliation certificate is dated the 4 August 2021. By the 21 July 2021 solicitors had been instructed on behalf of the claimant via her trade union, but it was not until a claim was being presented to the Tribunal on the 3 September 2021 that the possibility of the second respondent being a party to the proceedings appears to have been properly considered.
- 2.6 On 3 September 2021 early conciliation between the claimant and the second respondent began and ended. The certificate is dated the 3 September 2021 and on the same day the claim against both respondents was presented to the Tribunal.
- 2.7 On the 20 October 2021 the second respondent presented a response relying solely on the question of time limits.
- 2.8 The claimant's complaints against the second respondent are under three headings. First, a failure to make adjustments. Secondly, harassment under s.26 and third discrimination because of something arising from disability under s.15.
- 2.9 In relation to the discrimination arising or harassment claims the last matter which the claimant relies on is said to have occurred "on a day in May" which means that the presentation of complaints in that regard were out of time by four days if the event took place on the 31 May or as much as thirty-five days if it occurred on the 1 May or somewhere in between.
- 2.10 I take into account that the length of delay there is short. I accept Ms Sharpe's submission that it was reasonable for the claimant to look to her employer as the potential respondent in these proceedings initially. The relationship between the first and second respondent is not clear from the papers I have before me.
- 2.11 To what extent the difficulties faced by the claimant as she sets them out relate to decisions solely of the first respondent or to what extent they were influenced or directed by the second respondent is not clear.
- 2.12 It was wrong of the claimant's solicitors not to have realised the relevance of the second respondent's position in time. They were instructed by the 21 July 2021 but apparently failed to properly consider the position of the second respondent until on or just before the 3 September 2021. They did act promptly thereafter.

3. I have had regard to the list of factors taking into account the well-known case of British Coal Corporation v Keeble in relation to those matters insofar as they are relevant the delay here is very short. There is no evidence that the cogency of the second respondent's evidence is likely to be affected and the fact that the claimant obtained legal advice and that her solicitors acted promptly once the possibility of a claim against the second respondent had been realised by them were all relevant issues.
4. Further I am guided by other authorities. In particular, Adedeji v University Hospitals Birmingham warning against treating the list of factors used in British Coal Corporation v Keeble as a checklist and that the overriding question is whether it is just and equitable to extend time based on the balance of prejudice. In my view, the balance here weighs firmly in favour of the claimant. The length of the delay is very short. The claimant had placed the matter in the hands of lawyers who were in error, but it is inappropriate to visit that error on that claimant. There are clearly issues to be determined in the case between the claimant and the second respondent which on their face are not lacking in merit. There is no suggestion that a fair trial the issues is not possible.
5. The claimant will suffered prejudice if the claim against the second respondent is not allowed to proceed. Some of the claims are identified against both the first and second respondents. Some solely relate to the first respondent and some solely relate to the second respondent. The only prejudice which is said to inure to the second respondent if these claims proceed is that they will be required to respond to it and defend the claim.
6. In this case I am satisfied that there is insufficient prejudice to the second respondent to outweigh the prejudice to the claimant in losing the opportunity of pursuing potentially valid claims against the second respondent. I am satisfied that the balance of prejudice lies firmly in favour of allowing the claims to proceed and accordingly I refuse the second respondent's application and extend time under s.123(1)(b) for the presentation of the claims against the second respondent. In those circumstances I do not need to determine whether the question of the failure to make reasonable adjustments claim was in fact presented in time. Time would be extended if it was not and is unnecessarily extended if it was not.

12 August 2022

Employment Judge Ord

Sent to the parties on:

1/9/2022

For the Tribunal:

N Gotecha