



EMPLOYMENT TRIBUNALS

Claimant

Mrs Adenike Glenn

Respondent

Peterborough City Council

v

Heard at: Bury St Edmunds (by CVP)

On: 25 August 2021

Before: Employment Judge Laidler

Appearances:

For the Claimant: Mr O A Ogunbiyi, Counsel

For the Respondent: Mr T Perry, Counsel

JUDGMENT

The claims under the Equality Act 2010 were received out of time. It is not just and equitable to extend time and the claims are dismissed as the tribunal does not have jurisdiction to determine them.

REASONS

1. This matter was last before the tribunal on 25 August 2021 when it was determined that the unfair dismissal complaint had been submitted out of time. Further orders were made concerning whether it would be just and equitable to grant an extension with regard to the Equality Act claims. The Tribunal determined that the fairest way to deal with that was to give the claimant one more opportunity to answer the Order made by Employment Judge King and to properly particularise the claims being brought. Therefore, the Claimant was given 14 days from the hearing date to

provide the particulars required under her Orders 2.1.5, 2.1.6 and 2.1.7. Guidance was given as to what was required when those orders sent to the parties on the 29 September 2021.

2. By letter of 20 January 2022 the claimant was given an extension of time to provide her response to E J King's orders. These were provided by the claimant on the 4 February 2022 and the respondent given an opportunity to respond to them.

3. There have been regrettably delays in dealing with the matter due to various administrative reasons.

4. There was a request for written reasons following the last hearing and these were signed by the judge on the 14 December 2021 and sent to the parties on the 20 February 2022.

5. The claimant applied for a reconsideration and the judgment dismissing the application was sent on 4 March 2022.

6. A full merits hearing had been listed to take place on 11 March 2022. That should have been postponed in view of the tribunal's decision reached after the August 2021 hearing but it was not. Employment Judge Reindorf and members were listed to hear the case which then had to be postponed.

7. When the respondent sent it submissions on 14 March 2022 in relation to the extension of time for the Equality Act claims it was sent by the administration to Employment Judge Reindorf and not this Judge who needed to see it. It did not reach this Judge until May by which time due to annual leave and sitting commitments it was not possible for her to deal with the application until now.

The claimant's further information

8. The initial orders for further information were made by E J King at her hearing on the 14 May 2020. The claimant's further information drafted by her solicitors who appeared before this tribunal were dated the 18 June 2020. The respondent filed a response dated the 13 August 2020 and the respondent still relies on those submissions together with its more recent submissions of the 14 March 2022.

9. In relation to the Equality Act claims the original further information provided on the 18 June 2020 stated as follows:

'This Claim is made pursuant to section 27 Employment Rights Act 1996

1. The Claimant believes she was victimised for complaining about racism, staff shortages and raising a Grievance formally on 30 May 2018 when an application for annual leave was ignored and for bullying generally and in particular against Darren Walker who had written an email to

her which was copied to Kenny Christine in which he falsely claimed that she had failed to keywork a YP [Young Person] when she had not been assigned any YP to keywork. This Grievance was never considered by the Respondent until the Claimant's dismissal. The Claimant was allowed to go on annual leave with a promise to look into the Grievance on her return. This never happened.

2. The Claimant believes she was victimised by the failure to properly investigate the complaints against her. The investigator and panel never took evidence from Dave her colleague who was on duty with her on the morning shift and was with her in the garden when assaults took place in the morning. The panel claimed to have accepted his evidence but failed to take into consideration in its decision.
3. The Claimant was not allowed to work through a Personal Improvement Plan which had just been agreed.

Harassment

The Claim is brought pursuant to section 26 Equality Act 2010.

1. The Claimant was constantly shunned by a number of her colleagues who went to the extent of sitting with the YPs at a different table at mealtimes leaving the Claimant sitting isolated and humiliated, conduct which she believes was due to her race. On one occasion when the Claimant asked one of the YPs why they were not sitting with her she was told 'this job is not for you'. When asked the YP confirmed that this is what they had been told by the Claimant's colleagues.
 2. On one occasion the Claimant had been asked by the YPs whether she ate bananas. Only one of her colleagues present showed any interest. A complaint to Kenny Christine elicited disapproval but no action with a suggestion that the YP should be marked a level down (ticking off) which was not done.
 3. The Claimant was referred to a psychologist without any prior discussion and for no stated reason. The psychologist's report was not shared with the Claimant but was cited and relied upon in her dismissal letter. There is no evidence that other members of staff were routinely referred to a psychologist.'
10. This information did not identify the protected act relied upon as the order required. At the hearing on 21 August 2021 the grievance of 30 May 2019 was considered and it was not clear how it was relied upon as a protected act. It was also not clear how not been allowed to work through a performance improvement plan could be an act of detriment within the meaning of section 27.
11. Regarding the harassment claim this was also discussed at the 21 August hearing and it made clear that the claimant needed to set out how she alleges the

matters complained of related to her race. Also it was noted that no dates had been provided as ordered.

Further information 3 February 2022

12. This was provided in the form of a table. The acts of harassment were said to be: –

12.1 22 April 2018 a Young Person asked the claimant “do you eat bananas”. The alleged detriment was said to be the failure to act when the claimant reported this comment to Kenny Christine her line manager.

12.2 Undated – bullying by Darren Walker. The alleged detriment is that the claimant’s complaint was not dealt with

12.3 Undated – bullying by Amanda Peberdy. The alleged detriment is that the respondent continued to pair the claimant with this lady despite the claimant’s complaint of her bullying.

12.4 4 March 2018 - claimant referred to a psychologist. The alleged detriment is this was cited and relied upon in the claimant’s letter of dismissal

12.5 18 January 2019 – appeal hearing the claimant alleges she was followed by a lady to the toilet who stood outside the door whilst she was using it.

13. For the victimisation claim the claimant relied upon making complaints and referred to one about being threatened by Pamela Laverton. The acts of the victimisation were said to be : –

13.1 The disciplinary hearing proceedings – the disciplinary chair dismissed my complaint.

13.2 The failure to improperly investigate the allegation against the claimant the length of the disciplinary investigation

The respondent submissions

14. In its original submissions in response to the further particulars the respondent stated that acts of the Young Person could not amount in law to a detriment because it was not treatment of the claimant by the respondent and the respondent is not vicariously liable the actions of the Young Persons in their care.

15. The claimant has still failed to identify how the failure to take action against the Young Persons, or the alleged actions of Darren Walker or Amanda Peberdy were in any event related to the claimant's race.

16. Regarding the victimisation complaint the claimant has still not clarified the protected acts relied upon.

17. All the acts are out of time it was submitted by the respondent save the allegation about being followed to the toilet during the appeal hearing but the respondent argues no connection has been suggested with race and that allegation has no reasonable prospects of success.

The tribunal's conclusions

18. The claimant was dismissed on 19 November 2018. She invoked ACAS Early Conciliation on 19 February 2019 and the certificate was issued on 29 March 2019. The ET1 was received by the tribunal on 3 April 2019. The claimant did not benefit from any extension of time as she only contacted ACAS after the expiration of the primary 3-month time limit. Obviously in relation to dismissal claims the date of dismissal would be the relevant date from which time ran. It was important to clarify the Equality Act claims to understand whether they also ran from that date or earlier. Taking the claimant's case at its highest and saying that they ran from the date of dismissal the claim was still received 5 to 6 weeks out of time. The claimant would however have to establish that there was a continuing course of conduct up to and including the dismissal otherwise some of the acts relied upon as discrimination occurring in around March/April 2018 and would be even further out of time

19. The tribunal has already come to the following conclusions:

19.1 That although unwell the claimant was able following her dismissal to submit her appeal, attend the appeal hearing and contact ACAS

19.2 She had assistance from her husband and with that was able to submit the ET1 form

19.3 She had access to a trade union and a barrister for advice

19.4 No evidence was provided as to why having contacted ACAS on the 19 February 2019 the claim was not issued until 3 April 2019.

19.5 That it was reasonably practicable to have presented the claim in time.

20. The test for the Equality Act claims is whether it would be just and equitable to extend time. The tribunal should consider all relevant factors including:

1. The length and reasons for the delay
2. The prejudice which each party would suffer as a result of granting refusing to grant an extension
3. The potential merits of the claim.

21. The claimant relies upon ill health as the reason for the delay but the tribunal has already found that did not prevent her dealing with matters and that it was not an impediment preventing her submitting her claim. There was no evidence in support of that.

22. Whilst the respondent has not pointed to particular prejudice in defending the claim so far as calling witnesses and presenting evidence is concerned it will clearly be prejudiced in having to defend a weak claim as this is. Whilst accepting that the tribunal has not heard any evidence and is not at this stage conducting a trial there have now been three attempts to clarify the Equality Act claims. They are either still not clear and/or look very unlikely to have reasonable prospects of success. The tribunal is entitled to take that into account in deciding whether to exercise its discretion.

23. Taking all these matters into account it would not be just and equitable to extend time. Greater prejudice would be caused to the respondent in having to defend the claim than to the claimant. The claimant has not shown how the respondent would be liable for the acts of the Young Person(s). The other acts of alleged harassment are vague with little particularisation and no dates. The protected act crucial for a victimisation claim has still not been clarified.

24. The Equality Act claims were submitted out of time; the tribunal does not exercise its discretion to extend time and the claims are dismissed.

Employment Judge Laidler

18 August 2022

Sent to the parties on:

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For the Tribunal Office:

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