



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Ahmed
First Respondent: The Priestley Academy Trust
Second Respondent: Sian Porter

HELD by: CVP

ON: 9 March 2022

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person
Respondent: Mr P Menham, Solicitor

JUDGMENT

The claimant being out of time and it not being just and equitable to extend time the claims of race, discrimination and discrimination religion and belief are hereby dismissed.

REASONS

1. Claims

- 1.1. Race discrimination
- 1.2. Discrimination religion or belief

2. Issues

The issues in this case are set out at paragraph 6 of the case management orders made on 9 February 2022. They are time issues.

3. The law

The Tribunal has to have regard to the following provisions of the Equality Act 2010:

3.1. Section 123 time limits

(1). Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of –

(a) the period of three 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

and it is section 123(b)(1) which is relevant in this case

4. Facts

The Tribunal, having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

4.1. The claimant is a long serving early years practitioner at Margaret McMillan Primary School. She is of Pakistani race and Muslim religion.

4.2. The claimant alleges that she was discriminated against on the grounds of race and religion or belief on four occasions by the second respondent, Sian Porter, the incidents occurring in September/October 2019, early September/mid-October 2020, October 2020 and a further incident in October 2020. For the purposes of this hearing it is not necessary to go into the detail of the claims save to say that the claimant was very upset about what happened on each occasion.

4.3. Bearing in mind the latest dates of the incidents, the claimant continued working from those dates until 7 February 2021, when she was off sick for anxiety and depression, in relation to her epilepsy and incidents of self-harm. She returned to work on 13 May 2021. She had another day off sick on 7 July 2021 and worked until 3 December 2021, since which time she has been off sick for similar reasons to the first bout of sickness, which commenced on 7 February 2021.

4.4. The claimant says that her periods of sickness were related to the incidents about which she complains, but she was unable to provide evidence to the Tribunal to substantiate that. She did produce a letter dated 1 February 2022 from her doctor, but that letter did not specify the reasons for her illness.

- 4.5. On 9 July 2021 the claimant lodged a grievance. I did not see this grievance but I understand the heading referred to racism.
- 4.6. The claimant consulted Unison just after lodging her grievance and they advised her that she could lodge a claim at the Tribunal for the claims which are now in her claim form.
- 4.7. The claimant had her grievance hearing on 30 September 2021 and mediation was recommended but not taken up by the claimant as she did not then feel up to it.
- 4.8. It was not until 2 December 2021 that the claimant issued her application.
- 4.9. The claimant appealed her grievance after she had issued her claim to the Tribunal.
- 4.10. The last possible date for issue for her to be in time was 31 October 2020.
- 4.11. The claimant told us that she did not know that she could take the respondents to the Tribunal before Unison told her about this in July 2021.
- 4.12. The claimant said that during what is the out of time period she said that she was quite depressed.
- 4.13. She became aware of the time limit, she says, when Unison told her in July 2021 and admitted therefore that she knew this from then and that she was in trouble.
- 4.14. In her claim form the claimant gave the reasons for delay as her health (see above) and that she had only just received her grievance outcome (see above).
- 4.15. Unison did in fact fill out the out of time application form for her in December of 2021.
- 4.16. The claimant told us that her husband could have helped her with making an application to the Tribunal.
- 4.17. The claimant was intelligent in her answers to questions. Her level of education for her job is knowledge of maths, English and healthcare.
- 4.18. The claimant was aware that solicitors could act in discrimination cases from adverts she had seen on the television and that she knew this as long ago as the first incident.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. I find the claimant's explanation for the delay in issuing proceedings testing. Whilst I accept she had health problems the first incident occurred as long ago as September/October 2019 and she had no period of sickness until 7 February 2001. The three later incidents the subject of complaint from September/October 2020 until that sickness were also extensive periods. The claimant then had a further period at work from 13 May 2021 to 3 December 2021, which nearly coincided with the date of issue.

- 5.2. It is difficult to comprehend that during periods of work the claimant could not have issued proceedings in the Tribunal, which actually she did do on her last working day.
- 5.3. It is true that her health is a factor in this case but is it a factor which tilts the balance in her favour, having regard to the evidence?
- 5.4. Furthermore even if the claimant only found out about her rights in July 2021, with her husband's help she could easily have issued much earlier than she did.
- 5.5. In any case I find that if she did not know of her rights before July 2021 she ought to have done.
- 5.6. It is also relevant that she took advice from Unison and the claimant knew from then that she was in trouble.
- 5.7. I can take into account the ongoing grievance but that works against the claimant because of the title she herself put on her grievance application, including as it did the word racism. It was the grievance itself that according to her boosted her knowledge of her rights.
- 5.8. In all the circumstances I do not think that the facts relating to why the complaints were not made in time are helpful to the claimant and that it is not, therefore, just and equitable to extend time and her claims are therefore dismissed.

Employment Judge Shulman

23 March 2022

Date _____

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.