



EMPLOYMENT TRIBUNALS

Claimant: Mr Mark Woods

Respondent: NHS Property Services Limited

Heard at: Manchester **On:** 24 June 2022

Before: Employment Judge Liz Ord

Representation:

Claimant: In person
Respondent: Ms Niaz-Dickinson (Counsel)

JUDGMENT

The claimant's complaints of sex discrimination relating to events between 7 February 2020 and 21 April 2020 were presented outside the primary time period of 3 months, and the tribunal finds that it is not just and equitable to extend time. Consequently, the tribunal does not have jurisdiction to hear those complaints.

REASONS

Background

1. On 3 July 2021 the claimant presented a claim of sex discrimination and unfair dismissal following a period of Early Conciliation, which started on 29 June 2021 and ended with an early conciliation certificate on 30 June 2021.
2. At the hearing I asked the claimant to confirm what acts of sex discrimination he wished to pursue. He confirmed they were 1) the outcome of his grievance. In particular being told he was not punched with force; and 2) being told to "man-up".

3. These events occurred between 7 February 2020 and 21 April 2020.
4. In response to a question put by the respondent's representative, the claimant confirmed he was not pursuing any discrimination claim relating to his redeployment in June 2020 on a fixed-term contract.
5. The claimant was not arguing that the allegations amounted to conduct extending over a period, and he accepts that his discrimination claims are out of time.

Issues

6. As the claimant admits that his discrimination claims were presented outside the three month time limit, the issue for the tribunal is:
 - 6.1. Whether the claim was made within such further period as the tribunal thinks is just and equitable. The tribunal will decide:
 - 6.1.1. Why the complaints were not made in time.
 - 6.1.2. In any event, whether it is just and equitable in all the circumstances to extend time.

Evidence

7. I had before me a bundle of documents of 73 pages, the claimant's witness statement and written submissions from the respondent.
8. The claimant gave evidence on oath.
9. Both parties made oral submissions.

Findings of Fact

10. The claimant worked for the respondent from November 2018 until June 2021 when he was dismissed. On 22 January 2020 he raised a grievance about a female colleague punching him three times the day before on 21 January.
11. On 7 February he received the grievance outcome, which partially upheld the complaint in that it accepted the claimant had been punched by his colleague, but held that the action was not malicious in intent and there was insufficient evidence to demonstrate strong force was used. An apology from the colleague and mediation between her and the claimant was recommended and the claimant was advised to remain professional with her.
12. The claimant then took 3 months' sick leave due to stress at work and was absent from 7 February to 13 April.
13. The claimant appealed on 10 February, attended an appeal hearing on 28 February and received the appeal outcome on 5 March, which was that the appeal was not upheld.

14. The claimant indicated he did not feel comfortable or safe working with the female colleague and entered into discussions about redeployment. On 21 April he spoke with an HR Business Partner, who, the claimant says, told him to “man-up” and return to his role.
15. He was offered re-deployment on 2 June, although there were discussions about whether it would be permanent or a fixed term contract. On 12 June 2020 he received a letter amending his terms and conditions, which only changed his job title and line manager, and confirmed all other terms and conditions remained the same. He accepted this.
16. On 10 March 2021 the claimant was notified that his employment would be terminated on 31 March 2021. On 11 March he made a formal grievance regarding his contract and employment status, as he said he was led to believe his new role was permanent.
17. On 24 March 2021 the respondent wrote to him indicating that the amendment to terms and conditions letter of 12 June 2020 failed to note that his new role was on a fixed term contract basis with an end date of 31 March 2021. His grievance was not upheld and the reasons for this were set out in the outcome letter of 30 March which, amongst other things, referred to discussions regarding fixed term status.
18. The claimant received another letter on 29 March offering him an extension to his contract until 30 June 2021.
19. On 30 March he commenced a period of sick leave, which lasted until the end of his employment. An Occupational Health report of 11 May 2021 records that he reported low motivation, low mood, loss of appetite, problems relating to sleep and exhaustion and generalised anxiety symptoms, relating to him coming to terms with his contract ending in June. He reported that he was under the care of his GP but was not on medication.
20. An email of 26 May advised that there was no further work for him and his contract would end on 30 June.
21. He contacted ACAS on 29 June.

The Law

Legislation

22. s123 Equality Act 2010

- (1)proceedings on a complaint within s120 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.
- (2) ..

- (3) For the purposes of this section-
- a. Conduct extending over a period is to be treated as done at the end of the period;
 - b. Failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –
- a. When P does an act inconsistent with doing it, or
 - b. If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Caselaw – Just and Equitable

23. ***Robertson v Bexley Community Centre t/a Leisure Link*** 2003 IRLR 434, CA - It is for the applicant to convince the tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather the rule.
24. However, this does not mean that exceptional circumstances are required before the time limit can be extended. The law simply requires that it should be just and equitable – ***Pathan v South London Islamic Centre*** EAT 0312/12.
25. ***British Coal Corporation v Keeble and ors*** 1997 IRLR 336, EAT – referred to S33(3) of the Limitation Act 1980 (civil courts – personal injury) – consider all circumstances of the case, in particular: the length of, and reasons for delay; extent to which cogency of evidence likely to be affected by delay; extent to which party sued has co-operated with any requests for information; promptness with which claimant acted once s/he knew of facts giving rise to cause of action; steps taken by claimant to obtain appropriate advice once s/he knew of the possibility of taking action.
26. ***Southwark London Borough Council v Afolabi*** 2003 ICR 800, CA - whilst S33 Limitation Act provides a useful guide for tribunals, it need not be adhered to slavishly, provided it left no significant factor out of account in exercising its discretion. The Court suggested there are almost always two factors which are relevant: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent.
27. ***Adedeji v University Hospitals Birmingham NHS Foundation Trust*** 2021 ICR D5, CA – in the Court’s view, the *Keeble* factors are not a healthy starting point for tribunals to approach “just and equitable” extensions. Rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion. The best approach is for the tribunal to assess all the factors that it considers relevant.
28. The respondent’s counsel also referred me to the following two cases:
29. ***Department for Constitutional Affairs v Jones*** [2007] EWCA Civ 894, where Pill LJ stated that “*The guidelines expressed in Keeble are a valuable*

reminder of factors which may be taken into account. Their relevance depends on the facts of the particular case.....”

30. **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] IRLR 10 with respect to the *Keeble* factors where Leggatt LJ stated that “*the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account.....”*

Submissions

Claimant

31. The claimant says that he did not present his sex discrimination case earlier because he believed the respondent was doing the right thing by offering him redeployment in June 2020 and was not putting him at a disadvantage.
32. He did not pursue a claim in March 2021 when he found out his redeployment was on a fixed term contract because he wanted to try and resolve the situation by submitting a grievance. Whilst he knew his grievance had not been upheld on 30 March, he did not receive a formal letter from the respondent confirming the end of his employment and so did not pursue a tribunal claim at that stage.
33. From 30 March 2021, he was on sick leave due to anxiety.

Respondent

34. By the time the claimant commenced sick leave, he was already significantly out of time. He has not put forward any good reason for being late with his claim.
35. The respondent would suffer prejudice if time is extended, as memories of witnesses will have faded during the passage of time and the hearing would take place at least a year later than it would have done if he had presented his claim on time.

Discussion and Conclusions

36. No argument has been advanced that the events complained of amounted to conduct extending over a period, and indeed they were distinct acts and not part of a series of events.
37. The outcome of the grievance appeal was on 5 March 2020 and therefore the limitation period for this allegation expired on 4 June 2020. Consequently, this claim was presented about 13 months out of time. The “man up” comment occurred on 21 April 2020 and therefore the limitation period for this allegation expired on 20 July 2020, over eleven months out of time. These are significant delays.
38. Although the claimant was absent from work with stress for three months from 7 February to 13 April, he was well enough during this time to lodge a

grievance appeal. In any event, he returned to work part way through the limitation period concerning the grievance allegation, and before the “man up” incident occurred.

39. From then onwards until his sickness absence in March to June 2021, the only reason he put forward for the delay was that he thought the respondent was doing the right thing by redeploying him and not putting him at a disadvantage, and he wanted to try and resolve matters. Even when he discovered his new role was on a fixed term contract, he still wanted to try and resolve the issue internally rather than present a claim.
40. Time limits for presenting claims to an employment tribunal exist for public policy reasons, namely that employment related disputes should be resolved promptly. Whilst tribunals have discretion to extend time limits, extensions should be the exception rather than the rule.
41. It appears that the claimant had no intention of bringing a discrimination claim until his dismissal, which acted as a catalyst for action. This was a calculated choice that he made. Whilst he was ill between March and June 2021, he has demonstrated no good reason for delaying his claim before then.
42. If time is extended, the delay in bringing the claim would prejudice the respondent, as memories fade and the ability to produce cogent witness evidence reduces. On the other hand, the prejudice to the claimant of not granting an extension is mitigated by his ability to continue with his dismissal claim.
43. For the reasons given, it is not just and equitable to extend time. The claim is therefore out of time and the tribunal does not have jurisdiction to hear it. The claim is dismissed.

Employment Judge Liz Ord
Date 21 November 2022

JUDGMENT SENT TO THE PARTIES ON
5 December 2022

FOR THE TRIBUNAL OFFICE