



EMPLOYMENT TRIBUNALS

Claimant: Ms Maria Keep

Respondent: First Greater Western Ltd

Heard at: Reading **On:** 4 November 2022

Before: Employment Judge Liz Ord

Representation:

Claimant: Ms S Chan (Counsel)
Respondent: Ms M Bouffe (Counsel)

JUDGMENT

To the extent the claimant's sex discrimination, sexual orientation discrimination and disability discrimination complaints were presented out of time, they were presented within such further period as the tribunal considers just and equitable. Therefore, the tribunal has jurisdiction to consider the complaints.

REASONS

Preliminary

1. There were two applications before the tribunal, one to strike out the claimant's complaints on the basis they were out of time, and the other for amendments to the particulars of claim. Separate written reasons have been produced for the case management order relating to the amendments.
2. There was some overlap in the matters to be heard, in that both applications required a consideration of time limits and whether there was conduct extending over a period. The order in which the applications were to be heard was discussed with the parties' representatives at the start of the hearing, and it was agreed by both counsel that the amendment application

should be heard first. This was so the tribunal could better understand the nature and scope of the range of matters relied upon by the claimant and their timescales, which would be more fully covered in the amendment application.

Background

3. The claimant was seriously abused sexually as a teenager, and other female members of her family were also abused. In 2015 she was diagnosed with anxiety and later became depressive.
4. The claimant is a lesbian. She complains of being sexually abused in the respondent's workplace by a male colleague (JB) from about November 2018. Thereafter, from December 2018 and during 2019 and 2020, she was absent from work for significant periods.
5. On 22 April 2020 the respondent suggested possible redeployment to the claimant.
6. After receiving a significant number of allegations against JB, he was suspended on 11 July 2020 and dismissed from employment on 30 April 2021. The respondent does not dispute that JB committed acts of harassment of a sexual nature. On 21 March 2021 the claimant raised a grievance of sexual harassment against JB.
7. The respondent accepts that, on 29 April 2021 it erroneously disclosed information about the claimant's past sexual abuse to two people who should not have seen it. The claimant says one of those people was JB. Thereafter, the claimant was absent from work for a significant period. On 6 May 2021 she raised a grievance about this matter.

Medical information

8. The claimant's GP notes record her as suffering from stress, anxiety and depression on occasions during 2019, 2020, and 2021. An entry in December 2018 cites a panic attack. In January 2022, the GP records mental health difficulties triggered by alleged sexual harassment, exacerbating PTSD from childhood.
9. There are recorded instances of her being tearful during consultations and counselling being recommended. She was prescribed antidepressants and issued with a number of FIT notes from December 2018 and during periods in 2019 and 2020.
10. There are also three Occupational Health Reports (OHRs) dated 21.01.2019, 1.3.2019 and 10.5.2019, which record absences due to stress, anxiety and depression.
11. A Psychological Assessment on 16.9.2020 discusses the past sexual abuse of the claimant and female family members, and the alleged harassment by JB. It records that she was having flashbacks and suggests she was likely to be experiencing PTSD.
12. Another Psychological Assessment on 4.10.21 records her historical abuse

being disclosed to the person who harassed her, and the claimant having attended 16 sessions of therapy from 26.11.20 to 18.9.21. It indicated no current symptoms of depression or anxiety.

Tribunal proceedings

13. The claimant commenced ACAS early conciliation on 23 May 2021 and presented an ET1 on 6 July 2021. She was a litigant in person at this stage. She claims discrimination on the grounds of sex, sexual orientation, and disability. Further and Better Particulars of Claim (FBPC) dated 23 June 2022 clarify the acts relied upon.
14. The amended disability discrimination claim has been separately dealt with in the amendment order and corresponding written reasons and, as the claimant has withdrawn her original direct disability discrimination complaint, there is no need to address these matters further here.
15. The FBPC provide the timeframe for the sexual and sexual orientation harassment complaints. They suggest that the harassing incidents started after an event in November 2018 and occurred on multiple occasions from the beginning of 2019 until JB was suspended on 11 July 2020.
16. Various examples of what happened are set out. Two specific dates are referred to, namely 16 April 2020 regarding JB showing a photo of a male bat's genitals, and 3 July 2020, concerning JB's comments about the claimant opening her legs.
17. The claimant contends that her mental health conditions impacted on her ability to bring her claims on time, and that these conditions were exacerbated by the respondent on three counts, namely, the harassment by JB, the suggestion of redeploying her, and the disclosure of her past sexual abuse.

Issue

18. The issue for the tribunal is whether it has jurisdiction to hear the complaints, based on time limits, namely:

Were the discrimination complaints made within the time limits in section 123 of the Equality Act 2010?

The tribunal will decide:

- 1.1. Whether the claim was made within three months (allowing for any early conciliation extension) of the act complained of.
- 1.2. If not, whether there was conduct extending over a period.
- 1.3. If so, whether the claim was made within three months (allowing for any early conciliation extension) of the end of that period.
- 1.4. If the claims were out of time, whether they were made within such further period as the tribunal thinks is just and equitable.

The Law

Legislation

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

19. The onus of proving it is just and equitable to extend time is on the claimant.
20. **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 than the rule.
21. 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**.
22. In **Southwark London Borough Council v Afolabi 2003 ICR 800, CA** 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.

23. The merits of the claim may be a relevant factor in deciding whether to extend time: *Lupetti v Wrens Old House Ltd* [1984] ICR 348.
24. *Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR D5, CA* – The best approach to what is just and equitable is for the tribunal to assess all the factors that it considers relevant.

Discussion and Conclusions

25. From the evidence I have seen and heard, it would appear that JB's acts amounted to conduct extending over a period, which ended when he was suspended on 11 July 2020. As the claim was not brought until 6 July 2021, it was about nine months out of time.
26. The claimant was sexually abused as a young person and suffered from anxiety and depression and it is likely that the actions of JB and the respondent's disclosure of her sexual abuse, exacerbated these mental health problems. This is corroborated by the entries in the GP records and Psychological Assessments, the latter of which suggests she was suffering from PTSD.
27. Whilst she was well enough to raise two grievances in March 2021 and May 2021, helped by counselling, this does not mean she had the mental capacity to take the greater step of commencing proceedings.
28. I accept that the distress and adverse impact on her mental health would make it difficult for the claimant to bring proceedings. I am also mindful that it was the actions of employees of the respondent that caused the exacerbation of the claimant's mental health conditions.
29. When considering prejudice, I note that this is a well-documented case and includes the records of two grievances and several OHRs and Psychological reports. Consequently, there is a significant amount of preserved evidence, which will assist witnesses when giving evidence.
30. The claimant's case has merit and she would be greatly prejudiced if it was not heard. The prejudice to the respondent on the other hand would not be so significant.
31. Therefore, taking account of all matters raised and the overriding objective, I find that it is just and equitable to extend time. Consequently, the tribunal has jurisdiction to hear the claimant's complaints.

Employment Judge Liz Ord

Date 30 January 2023

Case No: 3312875/2021

JUDGMENT SENT TO THE PARTIES ON

31 January 2023

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgements 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.