



EMPLOYMENT TRIBUNALS

Claimant: Ms B Sam

Respondent: Department for Work and Pensions

Heard at: Manchester Employment Tribunal (by CVP)

On: 6 and 7 March 2023

Before: Employment Judge Holmes

Representation

Claimant: In Person

Respondent: Ms E Hodgetts (of Counsel)

JUDGMENT ON PRELIMINARY HEARING

It is the judgement of the Tribunal that :

1. The claims at (a) to (ww) in the agreed List of Issues were presented out of time, and there is no reasonable prospect of the Tribunal finding that it would be just and equitable to extend time for their presentation, save in respect of claim (ss). They are accordingly struck out as having no reasonable prospects of success, pursuant to rule 37(1)(a) of the rules of procedure.

2. Claim (ss) , however, does have reasonable prospects of success, and will not be so struck out. That claim may proceed. The Tribunal does not, however, determine whether the claimant be granted an extension of time for the presentation of that claim as preliminary issue.

3. The hearing of the remainder of the respondent's applications for orders striking out the claims, or for deposit orders, and of its application to strike out allegation (aaa) made in its email of 10 March 2023 will be heard on **14 July 2023** at 10.00 a.m. at **Manchester** by CVP, listed for 1 day.

REASONS

1. The Tribunal heard the respondent's application to strike out claims (3(a – ww) (Issue (1) in the respondent's Skeleton Argument) on 6 and 7 March 2023. It

determined that save in respect of allegation (ss) , the claims had no reasonable prospects of success, and they were struck out pursuant to rule 37(1)(a) of the 2013 rules of procedure.

2. Reasons were given orally at the time, and, pursuant to rule 62, written reasons will therefore not be provided unless application was made at the hearing (none was) , or within 14 days of the judgment being sent to the parties.
3. To the extent that the judgment, as announced at the end of that hearing, determined that the claimant's application for an extension of time to present claim (ss) out of time was granted , as a preliminary issue, the Employment Judge does not, on reflection , make such a determination. He appreciates that the terms of the preliminary hearing were framed in respect of whether striking out , or deposit, deposit orders should be made, and not for the determination of any application by the claimant for an extension of time to present any out of time claims, which she had not made, and only made in the course of the hearing.
4. Whilst the Employment Judge has found that the claimant has good (nay very good) prospects of successfully seeking such an extension of time, and he declined to strike out that claim, or make any deposit order, for that reason, he appreciates that a final determination of such an issue was not what the hearing was listed for, and the respondent can legitimately complain that the Tribunal exceeded the listed purposes of the hearing by going further than its terms, and determining the merits of an application that the claimant only made, in effect, in the course of the hearing. To that extent, and on a rather technical basis, the judgment of the Tribunal is now as set out above, and not as announced in the hearing.
5. That may be, however, something of an academic issue. Whilst not entitled to make a final determination of the claimant's application to extend time for any out of time claims on the basis that it would be just and equitable to do so, not only did the Employment Judge consider that this claim should not be struck out, or a deposit order made, on the basis that the claimant had little or no reasonable prospects of successfully , he considered that she had very good prospects of success, primarily because this allegation is admitted, at least to some extent by the respondent, which has not pleaded the statutory defence under s.109(4) of the Equality Act 2010, and so will be liable for the discriminatory conduct of its employee.
6. Indeed, rather than the claimant having little or no prospects of success in this claim, it is the respondent who has little or no reasonable prospects of successfully defending it. That may entitle the Tribunal to consider striking out the response to that claim, or to make a deposit order in respect of it, but there is no application before the Tribunal for one , and the Tribunal is not minded to propose making such an order of its own volition.
7. Time did not permit the determination of the respondent's remaining application, Issue 2 in its Skeleton Argument, which relates to the claimant's claims of race discrimination outside those already dealt with, which are said by the respondent to lack reasonable prospects of success. Additionally, the respondent has made

**Case Numbers: 2408890/2021
2403961/2022
2409368/2022
Code V**

further application, by email of 10 March 2023, in respect of the particulars the claimant has provided under claim (aaa).

8. The Tribunal, therefore, will reconvene on the above date to continue the hearing to determine these remaining applications. There was a suggestion that the final hearing was listed for 19 to 21 June 2023, but this is not in fact so. In any event, that would be before the resumed preliminary hearing.
9. The Tribunal has accordingly listed the resumed hearing as indicated above.

Employment Judge Holmes
16 March 2023

Sent to the parties on:
17 March 2023

For the Tribunal Office: