



EMPLOYMENT TRIBUNALS

Claimant: Mr C Hughes

Respondent: Swisslog UK Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Midlands West (by CVP)

On: 1st March 2023

Before: Employment Judge Steward

Appearances

For the claimant: In Person

For the respondent: Ms S Sodhi

JUDGMENT

The Claim for Sex Discrimination fails and is dismissed.

REASONS

1. The claimant was employed by the respondent, an engineering company that specialises in providing warehouse logistics automation, as an engineering team leader, from 26 December 2013 until 13 December 2020. Early conciliation started on 22 December 2020 and ended on 12 January 2021.
2. The claim form was presented on 3 February 2021.
3. The claim is about constructive unfair dismissal and direct sex discrimination. The respondent's defence is to say the allegations relate to a period in 2019 and certainly before September 2020 and so the claims are out of time. All the allegations are in any event denied. It is averred the claimant's resignation on four weeks' notice was entirely voluntary and no allegations of unfair or discriminatory treatment were made at the time.
4. The claimant verbally confirmed at the preliminary hearing that his grievance was about the conduct of his colleague, Jason Cuttill, towards him and was raised in January 2020, and his appeal against the outcome was dealt with later that month. His claim for direct sex discrimination is solely based on two aspects arising from that. Firstly, he alleges his grievance would have been fully (instead of partially) upheld if he had been a woman. Secondly, he claims that, if a woman

had brought the same allegations against a male colleague, the male colleague (rather than the woman) would have been re-located at the very least. In his case, he says he was forced to change his working hours and self-manage to avoid contact with Mr Cuttill. These are the only claims of unfavourable treatment by reason of direct sex discrimination and there are no other discrimination claims. The Claimant relies on ill health for the delay in bringing the claim.

5. The complaint of unfair dismissal originates from the grievance and the way it was handled by the respondent. After that the claimant alleges there continued to be problems due to the respondent's failure to re-locate Mr Cuttill, including being forced to reduce his overtime as a result. Further, he claims he was insufficiently supported, was harassed about his working hours and conditions, also threatened with the termination of his contract due to his sick leave, that he was denied promotion and that he was forced to take his remaining holiday by December 2020 or lose it.
6. At the preliminary hearing on the 8th September 2022 Employment Judge Battsby gave directions for the case to be set down for a final hearing on the 12th 13th and 14th July 202 but also directed an open preliminary hearing on the 1st March 2023 to deal with the following as set out in the case management order of the 8th September 2022 namely
 - a. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 23 September 2020 may not have been brought in time.
 - b. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - (i) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - (ii) If not, was there conduct extending over a period?
 - (iii) If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - (iv) If not, were the claims made within a further period that the Tribunal thinks it is just and equitable?

The Tribunal will decide:

- (v) Why were the complaints not made to the Tribunal in time?
 - (vi) In any event, is it just and equitable in all the circumstances to extend time?
 - c. Was the constructive unfair dismissal complaint made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:
 - (vii) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
 - (viii) If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - (ix) If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

7. The Law

S.123 of the Equality Act states

(1)Proceedings on a complaint within section 120 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

S.111 Employment Rights Act states

(1)A complaint may be presented to an against an employer by any person that he was unfairly dismissed by the employer.

(2) an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a)before the end of the period of three months beginning with the effective date of termination, or

(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

8. I have had the opportunity of reading the bundle in full and hearing evidence from the Claimant. I also heard submissions from both the Claimant and the Respondent. The Respondent did concede that the unfair dismissal claim was presented within the correct time period pursuant to S.111 of the Employment Rights Act 1996 even though they dispute the facts of the claim. The hearing today was to consider the time limits and as the claim for unfair dismissal has been made in time that claim shall proceed to the final hearing.
9. The sex discrimination claim was not made to the tribunal within three months, including early conciliation extension, of the act to which the complaint relates. The claim seems to refer to the Claimants grievance about the conduct of his colleague, Jason Cuttill, towards him and was raised in January 2020, and his appeal against the outcome was dealt with later that month. His claim for direct sex discrimination is solely based on two aspects arising from that. Firstly, he alleges his grievance would have been fully (instead of partially) upheld if he had been a woman. Secondly, he claims that, if a woman had brought the same allegations against a male colleague, the male colleague (rather than the woman) would have been re-located at the very least. The Claimant in evidence produced a sick note from the 8.4.20 which covered his absence for a period of 13 days. However, the claim was still not presented until the 3.2.21 and there was no other

evidence, medical or otherwise, that explained the delay in presenting the claim. Indeed, the Claimant was able to find alternative employment.

10. Was there conduct extending over a period? It would appear there wasn't. The grievance originated in January 2020 and was the same grievance that was dealt with in the appeal process at that time. There was no further conduct complained of.
11. Were the claims made within a further period that the Tribunal thinks it is just and equitable? The Claimant said in evidence that he had never been through this process before. He accepted he had access to the internet. He stated he had ill health but only produced a sick note for a limited 13-day period. The Claimant also accepted that meeting he thought he had with Faye Mellor was not in September 2020 but on the 10th of August 2020. The allegations date back to the start of 2020. There has been no just and equitable reason advanced by the Claimant to extend the period. Ignorance of the time limits is not a just and equitable reason to extend the time period.
12. Therefore, the sex discrimination claim is out of time and fails. The case will remain listed for final hearing to determine the unfair dismissal claim on the 12th and 13th July 2023 before an employment judge sitting alone. The 14th July shall be vacated.

EMPLOYMENT JUDGE STEWARD

1st March 2023