Case Number: 3315864/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms C Punshon	**v**	National Education Union

Heard at: Cambridge ET (parties via CVP) **On**: 3rd March 2023

Before: Employment Judge Conley

Appearances
For the Claimant: Ms Chandrika Punshon, litigant in person
For the Respondent: Mrs J Bevan, solicitor

JUDGMENT

The Claimant's claim is out of time, has no reasonable prospects of success and is struck out.

REASONS

1. This is an application on behalf of the Respondent to strike out the claim on the grounds that the claim is out of time and/or that it stands no reasonable prospects of success. Although these applications are different in their emphasis there is a degree of overlap and as such they will be dealt with together.

The Claim

2. The claimant is a member of the respondent, the National Education Union, which is a trade organisation that had been providing her with support and legal

representation in relation to a disciplinary procedure arising from her occupation as a teacher.

3. By a claim form submitted on the 2nd September 2021, she has sought to make complaints against the respondent of direct discrimination on the grounds of sex and victimisation.

4. The statutory basis of the claims is as follows. Section 57(2) of the Equality Act 2010 provides that:

A trade organisation 'A' must not discriminate against a member 'B' -
(a) in the way it affords B access or by not affording be access to opportunities for receiving a benefit, facility or service
(b) by depriving B of membership
(c) by varying the terms of which B is a member
(d) by subjecting B to any other detriments.

5. Section 57(5) of the Equality Act 2010 provides that a trade organisation must not victimise a member, and mirrors the provisions of s57(2), paragraphs (a) to (d).

History

6. The claimant submitted her claim form to the tribunal alleging both Unfair Dismissal and Sex Discrimination on 2nd September 2021. In relation to the details of claim she stated the following :

'I have suffered ongoing a clear abuse of authority against me by the National Education Union. I am currently suspended for trying to make a complaint about a specific individual, Paul McLaughlin for his steps in my unfair dismissal and continued disenfranchisement from the union. He was in a position again to hear a complaint of clear sexism which was followed by a threat that was followed up with the punishment threatened. The HQ idea of investigating my complaint was to hear out his part and drag it out and not see any evidence from me. This was also discriminatory and did not follow their own procedures. I only learned years later

than the denial of a solicitor as a separate complaints department. The unions actions against me have resulted in apparently permanent mark against me resulting in more unemployment and a ceiling on job roles I can take. This is serious and ongoing.'

7. In paragraph 9.2, under 'What compensation or remedy are you seeking' she said the following:

'I have had a loss of income due to the acts of mostly one individual. I would like the union to compensate me and undertake the clearing of my DBS until complete and for the judge to recommend that Paul McLaughlin be dismissed for abuse of authority etc'

8. Pausing there momentarily, although not directly relevant to this application, there has been extensive discussion during the course of today's hearing as to the remedies that this Tribunal has available to it. From that part of her claim, the claimant appeared to have a misundertanding of the powers that this Tribunal has at its disposal and the remedies that might be available to her in the event that her claim were to be successful. I only add this as it seemed to me to be illustrative of the way in which several aspects of the claim are misconceived.

9. The respondent filed its response on the 17th November 2021. Paragraph 5 of the response states as follows:

'The claimant has provided very scant information on her claims as appears at 8.1 9.2 and 15. From this information it is not realistically possible to discern with any degree of specificity, (a) what specific act or acts of discrimination are being alleged against which individual (b) when the alleged act or acts of discrimination took place (c) any argument in support of the alleged bad treatment by the respondent as to why such detriment was racial sex discrimination, including by reference to any comparator .

10. The matter came before Employment Judge Anstis for an initial consideration pursuant to rule 27(1) on 17th January 2022. The Judge on that occasion said

that he was of the view that either the Tribunal has no jurisdiction to consider the claim at all, or the claim has no reasonable prospect of success, for the reason that the basis of the claim is unclear, and that to the extent that she intended her claim to be a claim of unjustifiable trade union discipline it appears to be brought outside the statutory time limit and she has not set out any basis for extending the time limit.

11. The Judge ordered that the claim would be dismissed 21 days from that notice without further order. That didn't happen; it would seem because on the 22nd February 2022 (some 15 days beyond the 21 day date), the claimant sent an email to the Tribunal. I need not refer to the content. Suffice it to say that she raised objection to the possibility that the matter would be dismissed without further order.

12. The matter next came before Employment Judge Gumbiti-Zimuto on 22nd of September 2022. The respondent did not appear at that hearing but the claimant did. The Judge on that occasion also noted, as had both the respondent and Judge Anstis, the lack of specifics in relation to the basis of the claim, and so ordered that by 20th October 2022, further and better particulars must be provided.

13. The Judge stipulated that the claimant must set out in date order: what was said or done; by whom; to whom; when and where; and in relation to the question of comparator, whether there was someone not of the same sex as herself that the claimant was comparing herself with as being treated better than her. In other words, trying to drill down into the detail of the claim and establish exactly what was its basis.

14. That document was provided by the claimant on the 20th October 2022 and I have considered it carefully. It can be found at page 23 of the Bundle prepared for today’s hearing.

15. Even with the benefit of this document, it was still unclear to me what is the precise nature of the claim. In my judgment, many of the complaints remain

unspecific, nebulous and are not, as presented, indicative of being discriminatory acts in and of themselves.

16. I have engaged in lengthy discussion during the course of today's hearing with the claimant in which I have invited her to clarify and crystallise the subtance of her claim. I have referred on several occassions to EJ Gubiti-Zimuto's formula of what, who, when, where and how and have offered her as much guidance as possible in pursuit of the foundation of her claim. Unfortunately what has happened is that rather than providing the clarity that I have sought, the claimant has instead introduced a mass of further information in the form of a somewhat unfocussed narrative of events spanning many months which has made the task rather more difficult.

17. As a result of these discussions, and with the assistance of Mrs Bevan on behalf of the respondent, my understanding is that the claimant has identified only one act which she considers to be overtly discriminatory, namely an e-mail sent to her on the 12 February 2019 by Darren Smith, an office holder of the respondent, in which the following passage is contained:

'Chandrika, my experience of people is that they respond more favourably to a smile and a pleasant attitude. I haven't threatened you - you wish for support, Alan other colleagues and I will continue to ensure we provide effective support where we are able as I've noted they that may not always be to timescales you wish set (sic)*.There are sound operational reasons why this might be. If we make mistakes, we'll apologise, I have endeavoured to help you now. Please be nice'*

18. It should be noted that the claimant has focused most of her assertions of discrimination on the use of the word 'smile' in that passage removed from its context; coming as it does in the body of an email which is by and large polite and placatory in its tone; and in amongst a thread of emails between the claimant and various representatives of the respondent in which, it has to be said, the claimant displayed a largely hostile tone, accusing the respondent of amongst other things, unprofessionalism and dishonesty. Be that as it may, I am not required at this stage to make any determination as to whether this amounts to discrimination.

19. What *is* clear to me from my extensive attempts to particularise the claim by hearing from the claimant today is that it is through the prism of this email, and her perception that the email is indicative of sex discrimination, that she has come to the view that any subsequent alleged shortcomings in the service that she received from the union were, by inference, founded in sex discrimination.

20. The complaints are, as I have previously indicated, nebulous in their nature but broadly amount to assertions that the respondent deliberately delayed her case and removed access to her legal advice.

21. There are a number of key staging posts, or to use Mrs Bevan's phrase in submissions, 'lilypads' along the way.

i. 23th April 2019 : An email from the claimant to the respondent raising a number of complaints about Darren Smith, Paul McLaughlin and Alan Warner amongst other matters, citing the 'Smile' email.
ii. 18th June 2019 a letter from Avis Gilmore, then the Deputy General Secretary of the Respondent, dealing quite comprehensively with the complaints made and directing the claimant to the complaints procedure on the website - this is in my judgment relevant in assessing the submission made by the claimant that part of the cause of the substantial delay in bringing the claim was the lack of knowledge as to the complaint procedure.
iii. 9th September 2019: a complaint from the claimant regarding Ms Gilmore in which once again the 'Smile' email is referenced, and on this occasion is identified expressly as amounting to 'clear sexism'.
iv. 23rd September 2019: Letter from Paul McLaughlin, Regional Secretary for the Eastern Region of the respondent, dealing, once again, comprehensively, with a range of allegations levelled at the respondent including the allegations of sexism, and once again inviting the claimant to pursue the matter through appropriate channels should she wish to.
v. 3rd October 2019: Email from the claimant to the membership of the union at large, which contained an online survey inviting comment upon a

number of derogatory statements made about members of the respondent's employees. This email was referred to the respondent's National Disciplinary Committee as being an alleged breach of the respondent's Code of Conduct and which may have amounted to conduct likely to cause injury or discredit to the union.

vi. 3rd November 2020: Suspension of the membership of the claimant for 12 months, following a hearing of the union's National Disciplinary Committee, with effect from 12th November 2020.

vii. Most recently, there is an exchange of emails between claimant and Amanda Brown, Deputy General Secretary of the respondent from 19th November 2020 to 28th January 2021, concluding:

"I see that you joined the NUT in July 2017, having previously been a member of the ATL. I understand that the ATL defence committee had previously withdrawn support for an employment issue. By Union rule, you would not have been able to access legal support for any matter which predated membership of NUT. I understand that you have been supported by the Union in relation to an induction matter and a referral to the TRA which was being handled by the regional solicitor, but you had concerns about your representation. I have to inform you that cannot be the subject of an appeal to the subcommittee, so I cannot help further."

22. The claimant made reference in her 20th October 2022 document to further communication (unspecified) in February 2021 and today has, for the first time, alluded to yet more communication as recently as June 2021 (again unspecified) and indeed February 2023 (last month) but it is entirely unclear what those matters amount to and why they should or even could amount to either part of an ongoing act of discrimination or further acts of discrimination in their own right.

23. In the absence of any application to amend her original claim I simply cannot consider them in the context of this application. I must make this decision based on the matters originally pleaded in the form ET1 together with the clarification provided in the document of the 20th October 2022 and the information provided by the claimant during this hearing.

<u>Time limits</u>

24. Section 123 Equality Act 2010 states:

> (1) Subject to sections 140A and 140B, Proceedings on a complaint within section 120 may not be brought after the end of-
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> *(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.

25. As previously stated the claimant's claim was presented on 2 September 2021 and with the addition of the ACAS early conciliation period, the respondent calculated the earliest in-time date as the 10th May 2021. This is not disputed by the claimant and I respectfully agree with that calculation.

26. It was submitted by the claimant that her ongoing communications with different offices of the respondent, which she says have, essentially, resulted in doors to redress being closed in her face (my phrase); and as such represent ongoing acts of discrimination which flow from the earlier alleged discriminatory acts. The claimant relies upon this as a sign that the union has a culture of discrimination and each officer of the Union is simply covering for their colleagues and covering up the earlier discrimination.

27. I have considered this submission very carefully. I have also considered the respondent's submissions about this, and have been referred to two cases in particular of the Court of Appeal *Lyfar v Brighton and Sussex* [2006] EWCA Civ 1548 which held that two acts do not become a single act extended over period merely because one leads to another, and the case of *Aziz v FDA* [2010] EWCA Civ 304, also a claim involving a trade union member, which held there was no basis for treating the conduct of successive case handlers at the Union in dealing with her file, as a continuing act, extending over a period.

28. This is directly applicable to the pleaded facts of this case and leads me to the conclusion that the Amanda Brown emails (and indeed many of the other communications to which the claimant alludes, including, for the first time today, yet more emails sent by her to other officers of the respondent) cannot possibly

amount to a continuation of alleged discriminatory acts done months or even years earlier. I consider that to conclude otherwise would effectively enable this or indeed any claimant to extend in perpetuity any complaint of discrimination that had, as here, been reported fully, investigated thoroughly and dismissed, by simply contacting another member of the organisation and effectively re-litigating the issue anew. That in my judgment seems to be an unsustainable argument.

29. I should also add that even if it were the case that the January 2021 Amanda Brown communications were part of an ongoing act of discrimination (which I do *not* accept) they would still be substantially out of time for the reasons given previously. Given I cannot consider matters raised for the first time today concerning yet more communications in the months following the Brown communications I am confined to consider

30. Time limits are exercised strictly in employment cases and the exercise of discretion is the exception rather than the rule *Robertson and Bexley Community Centre* [2003] EWCA Civ 576. The burden is on the claimant to persuade the tribunal that it is just an equitable to extend time *Abertare Morgannwg University v Morgan* EAT/0305/13. The EAT in that case stated that a litigant can hardly hope to satisfy the burden unless she provides an answer to two questions. The first in deciding whether to extend time is why it is that the primary time limit has not been met and, in so far as it is distinct, the second is the reason why after the expiry of the primary time limit, the claim was not brought sooner than it was.

31. In this case, in fairness, the claimant hasn't really sought to do so. Perhaps this is because, given her references to taking the respondent to an ET in an email to Kit Armstrong of the Respondent as long ago as the 6th January 2020 and a similar claim in her email to Amanda Brown on the 28th of January 2021, she recognises that she cannot possibly claim that she was unaware of her right to pursue the claim until it was too late.

32. I have to have regard to the fact that the claimant is a litigant in person. These are complex proceedings and as such she is at a significant disadvantage. This is a factor that I must have regard to, and I do. However she is without question a highly intelligent, well-educated and articulate person and as such I have no doubt

that she is well equipped to have brought a claim in a timely way should she have wished to do so.

33. I have carefully considered all of these matters and I have reached the conclusion that the claim(s) in this case are out of time, and in any event it is a claim that has no reasonable prospect of success.

34. In accordance with rule 37 of the Employment Tribunal Rules I order this claim be struck out. In reaching this decision I have had regard to the overriding objective, the fairness of the proceedings, and the consequences to the parties.

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Employment Judge Conley

3 March 2023

Sent to the Parties on: 07/4/2023

Naren Gotecha - For Employment Tribunal