



EMPLOYMENT TRIBUNALS

Claimant: Ms A Moffatt

Respondent: Home Office

Heard by Cloud Video Platform (CVP) ON: 12 April 2023

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Mr A Kelly, son of the Claimant

Respondent: Mr A Tinnion, Counsel

Taking Judgment for the respondent: Ms N Talwar, Solicitor

JUDGMENT

The claims of the claimant are dismissed, the claims having been presented to the Tribunal out of time and it not being just and equitable to extend time.

REASONS

1. Claims

- 1.1. As yet the claims are undefined in the pleadings but there are generic claims of sex, age and disability discrimination.

2. Issue

- 2.1. The issue in this case relates to the fact that the claims are out of time, whether the time for presentation of the claims should be extended pursuant to section 123(1)(b) Equality Act 2010 (EA) to the date of the presentation of the claim, which was on 19 December 2022.

3. The law

The Tribunal has to have regard to the following provisions of the law:

- 3.1. Subject to section 140B(EA), proceedings on a complaint within section 120(EA) 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.
- 3.2. The onus is on the claimant to convince a Tribunal that it is just and equitable to extend the time limit – see *Robertson v Bexley Community Centre trading as Leisure Link* [2003] IRLR 434 CA.

4. **Facts**

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant is a civil servant and has worked for the respondent since 2002. The Tribunal finds as a fact that the claimant was uncertain in the giving of her evidence.
- 4.2. The claimant makes claims over a period commencing 8 March 2022 and ending on 18 July 2022. On the available evidence the Tribunal cannot find as a fact that the conduct extending over that period is or is not to be treated as done at the end of that period, but other findings of fact will make such a finding unnecessary.
- 4.3. Throughout most of that period the claimant was assisted by Mr Joel Heyes of the PCS Union. The Tribunal finds that he was a person of adequate experience for the purposes of the claimant's requirements.
- 4.4. The claimant first contacted Mr Heyes in March or April 2022 concerning the problems to which her claims relate, in other words at or about the beginning of the claimant's allegations.
- 4.5. The claimant's issues related to travel and overnight stays and the claimant contacted Mr Heyes as and when she needed information and support.
- 4.6. The claimant says she possibly knew that she might have a tribunal claim. This Tribunal finds this was fairly early on in the process but the claimant denies that she discussed time limits for issuing a tribunal claim with Mr Heyes.
- 4.7. However, around about the end of July 2002 the claimant says she became aware that there was a time limit for issuing an employment tribunal claim of what she described as three months less one day.
- 4.8. The claimant had done research on the Citizens Advice Bureau (CAB) website in March 2022 and several times thereafter. She said that that research related to internal grievances. She had also been on the ACAS website visiting it frequently in April and May 2002.
- 4.9. Although these visits started off as visits for internal grievance matters, later the claimant told the Tribunal that she researched employment tribunal claims.
- 4.10. Eventually on 12 November 2022 the claimant says that she was told by ACAS that she had a minimum of one month to submit this claim. I find as a fact that being told to comply with a minimum of time simply does not

make sense in the context of time limits, particularly when the claimant had been taking advice and researching earlier.

- 4.11. For clarity and disregarding the extension over a period, incidents occurred in March 2022, April 2022, on 12 July 2022 and 18 July 2022. Using, for the sake of argument, the date 18 July 2022 the claimant had three months, until 17 October 2022, to contact ACAS for early conciliation and she did this on 29 September 2022, obtaining a certificate on 10 November 2022. The claimant therefore had until 10 December 2022 to present her claim, but she waited for another nine days, blaming ACAS on the “minimum conundrum” as set out in paragraph 4.10 above.
 - 4.12. The claimant did not blame her disability of menopausal symptoms nor anything else for waiting the nine days. She gave no reasonable explanation for the delay.
5. **Determination of the issues (After listening to the factual and legal submissions made by and on behalf of the respective parties):**
- 5.1. What we are dealing with here is justice and equity and the onus as I have said is on the claimant to convince the Tribunal accordingly.
 - 5.2. The claimant’s witness statement was mainly about her grievance but in the end she did not hang her hat on that. Instead she chose to blame ACAS for what was really an inexplicable wait of nine days.
 - 5.3. Even if she had blamed her grievance, this is only one matter to take into account and the result can go either way. There was nothing to stop the claimant issuing, on the evidence, nine days earlier, irrespective of her grievance or otherwise and had she issued on 10 December 2022 the grievance was still there on 19 December 2022 and is today, so what was the difference?
 - 5.4. The claimant, for whatever reason, involved herself in her trade union representative, ACAS, in person and by the website and the CAB website. She says she finally came across the employment tribunal time limit issues as early as July 2022 and she clearly had many tools at her disposal to find out about the time limits.
 - 5.5. I found the claimant a very pleasant witness but she did avoid answering key questions, for whatever reason, in a way that made me doubt her account of her knowledge about time limits and when she obtained that knowledge and bearing in mind the onus on her she did not do enough to persuade me to extend time on the grounds of justice and equity.
 - 5.6. In the circumstances I do not extend time and the claimant’s claims are dismissed.

Employment Judge Shulman

Date: 25 April 2023