EMPLOYMENT TRIBUNALS

Claimant: Ms K Breed

Respondent: Altran UK Ltd

Heard at: Cambridge **On:** **16 May 2023**

Before: Employment Judge R Lewis

Appearances
For the claimant: In person
For the respondent: Mr H Zovidavi, counsel

RESERVED JUDGMENT

The respondent's applications to strike out all or part of the claim fail and are dismissed.

REASONS

Introduction

1. This was the hearing which I directed in February 2022 should consider the respondent's applications to strike out the claim or parts of it on a number of jurisdictional grounds. It is deeply regrettable that it has taken so long for this case to progress to this stage.

2. In the preparation for this hearing the claimant had asked to be assisted or supported by HMCTS. I may have misunderstood the nature of her requests. There was discussion at the start of the hearing of whether the tribunal should appoint an intermediary, and about the practical implications of doing so.

3. In the event, it seemed to me right to proceed. Today's points had been set out in written submissions on both sides, including by counsel then instructed on the claimant's behalf. I did not anticipate oral evidence or cross examination today. I retained the options of adjourning this hearing if need be pending appointment of an intermediary; and if the case were not struck out, there would then be time and opportunity to appoint an intermediary.

4. I had a bundle of 307 pages today. Mr Zovidavi had updated his predecessor's written submissions. His update included one new point of substance from those set out in my Order of February 2022: he submitted that the claimant had conducted the case abusively. The claimant said, correctly, that that was a new point.

5. I had had the advantage, before the start of this hearing, of being able to read the submissions, and parts of the bundle. Both sides made submissions which were courteous and concise: I am grateful to both for their efficient use of time. We took a number of short breaks during the morning. I reserved Judgment, and released the parties, shortly before the lunch break on the first listed day, but made contingent arrangements for a third preliminary hearing, and for final listing. Those arrangements are confirmed in a separate Case Management Order, in which I have also directed appointment of an intermediary.

Chronology

6. At this hearing I heard no evidence and found no fact. I here set out a summary, which I intend to be neutral, and which I believe not to be disputed in any important respect, of the relevant background dates.

7. Ms Breed was employed by the respondent from September 2017 until 31 October 2020.

8. In 2018, a document called 'Ways of Working' came into being. There is considerable disagreement about it, and I record here only that its intention was to provide work place ground rules for the claimant.

9. Ms Breed says that there was disagreement about the WoW during 2019; the respondent says that the disagreements arose in 2020.

10. In the course of 2020, and possibly before, Ms Breed alleged to the respondent that it had discriminated against in relation to her disability. She contacted ACAS to start early conciliation on 15 July 2020 (Day A), and ACAS issued an early conciliation certificate on Day B (29 August 2020).

11. On 7 October a single event took place: Ms Breed emailed two colleagues an item which has been described as a distressing, graphic image. As a result of doing so, she was suspended.

12. A disciplinary meeting took place on 14 October. The claimant did not attend. On 28 October, the claimant was informed that she had been dismissed. Her dismissal took effect on 31 October.

13. The dismissal letter is set out in full in the ET1 attachment. The letter says clearly that the claimant was not dismissed for sending the graphic image, but for some other substantial reason, which was stated to be a breakdown in working relationships.

14. The claimant presented the ET1 on 5 January 2021. She ticked boxes for unfair dismissal, and discrimination on grounds of disability, religion / belief and sex,

and for other payments. In box 8.2, she wrote, 'I cannot do summaries. Pleadings to follow.'

15. On 20 January Employment Judge Bax directed that the claim was accepted against the respondent, and rejected the claim against a second individual respondent (in relation to whom the claimant had not entered into early conciliation).

16. On the judge's instruction, the claimant was by letter dated 26 January directed to provide additional information about her claims by 9 February. The judge also directed that the claim was not to be served until the additional information had been provided. Therefore the respondent was unaware of the claim.

17. There was further correspondence between the claimant and the tribunal about time for her to provide a pleading, or additional information. The claimant requested more time to do so. As the claim had not been served, none of this correspondence was copied to the respondent. In due course, she was informed that a final extension of time was granted, to expire on 21 May. The claimant submitted her full, pleaded grounds of claim on 18 May, which were served on the respondent early in June.

18. I understood the grounds for strike out to fall into six broad categories, which Mr Zovidavi confirmed:

- That the early conciliation in July and August cannot have been about the matter of the claimant's dismissal in late October, and therefore all claims relating to dismissal should be dismissed, as they had not been the subject of early conciliation;

- That presentation of the entire claim was too late, as the claim was presented over four months after Day B;

- That alternatively events and complaints which took place over three months before Day A were out of time, and it was not just and equitable to extend time;

- That the orders made between January and April 2021 for time for the claimant to provide additional information had been made without the respondent having had the opportunity to comment, and should be set aside, alternatively that the claimant's pleading of May 2021 was an amendment, for which leave had not been required or given.

- That the claimant's language in correspondence was abusive, and rendered a fair trial impossible, so that the claim should be struck out under rule 37;

- That passage of time in any event rendered a fair trial impossible.

The first point

19. Shortly before this hearing, the Court of Appeal gave judgment in Sainsburys v Clark CA-2022-001965. Opening the only judgment of the Court, Bean LJ said,

> *'When industrial tribunals were established more than half a century ago the purpose of Parliament was to create a speedy and informal system free from technicalities. It has been repeatedly stated that employment tribunals should do their best not to place artificial barriers in the way of genuine claims.'*

20. I note also that the Court ruled that Sterling v United Learning Trust, on which the respondent's written submissions placed some reliance, had been wrongly decided.

21. Approached with those two developments in mind, this point can succeed only if I find that the 'matter' on which early conciliation took place in July and August was not the same matter as the claimant's dismissal. I should give the word 'matter' the broad, purposive approach approved by the EAT in Compass Group UK v Morgan, UKEAT/0060/16/RN, which expressly ruled that an early conciliation certificate may validly cover future events.

22. Mr Zovidavi's point would have been a strong, troubling one if the claimant had been dismissed for the single, unforeseen event of sending the graphic image, several weeks after Day B. But the dismissal letter said the exact opposite: she was not dismissed for that, but for a breakdown in working relations. The employment relationship had lasted a fraction over three years. I accept that it would be artificial and unfair to try to separate the respondent's reason for dismissal into the periods before and after early conciliation. I am confident that it could not be said or shown that the breakdown began or took place wholly after Day B. In my judgement, this point is not well made.

The second point

23. The second point, advanced by Mr Zovidavi's predecessor, was that the claim was presented too late, because it was presented over four months after Day B. It was however presented within the statutory primary limitation period of three months (which, without counting in any 'stop the clock' period, expired on 30 January 2021).

24. The logic of that point would be that the claimant, a litigant in person, had reduced the limitation period afforded to her by Parliament as a result of making a mistake about early conciliation. That cannot be right, and the point is without substance.

The third point

25. I agree in principle that events which took place more than three months before Day A (ie on or before 15 April 2021) are on their face out of time. I agree that there are cases in which it is possible and suitable, at a preliminary hearing, to find that events before a date found by the tribunal cannot be the subject of a free standing claim.

26. I add, as comment, that it is not for the tribunal to set an arbitrary date and direct that events before that date are not to be heard. It must find as fact that there is a date or period from which it is not just and equitable to extend time, or which breaks the continuity of what would otherwise be a continuing act. Examples in practice include a period of absence; or a change of workplace or line manager; or a period of harmonious working.

27. The claimant's case is that there has been a prolonged sequence of discriminatory events. I do not say that the tribunal at final hearing will have to hear about each and every thing that happened in that period. I do say that in this case, at this hearing, on the material before me now, it is not fair to strike out allegations about events which precede 15 April. I accept that the respondent may of course advance a limitation defence in relation to any such event. I accept that the claimant may persuade the tribunal to rely on some past events as relevant background. However, I urge the claimant to prepare her case with focus on the most important and recent events in the sequence.

The fourth point

28. I appreciate that the respondent may not have known about the detailed sequence of events before service of the claim, until I went through the tribunal's file at this hearing and explained it. I accept that between January and April 2021 case management decisions were made without the respondent having had the opportunity to comment on them.

29. I have no power to review or reconsider case management decisions made by other employment judges in 2021. It would in any event be absurd and disproportionate to strike out a claim, and deprive the claimant of her opportunity to be heard, on this basis at this stage.

30. Although it is therefore not a matter for me, I do not accept in any event that the claimant's pleading of May 2021 required leave to amend. It was clarification of blanks in the ET1.

The fifth point

31. The claimant has in correspondence with this tribunal on a number of occasions applied the word 'fuck' and variants to aspects of the tribunal and employment appeal process. She has used language which expresses anger and frustration, and has at times been addressed at tribunal staff and judges. I agree that on paper her language has at times been offensive, and I record that in reply today the claimant expressed regret and apology for its use, and attributed its usage, at least in part, to disability-related issues.

32. I agree that there may be occasions when a party's language to the tribunal may be such that it renders a fair trial impossible, and that strike out of the claim is in the interests of justice.

33. I do not agree that this is such a claim. The advice of Nurse Parsons, and the guidance in the Equal Treatment Bench Book, alert me to the reality that the claimant's language is, in the language of the tribunal, something arising in

consequence of her disability. I accept that as a result of disability the claimant is unlikely to have conventional social or linguistic filters. I do not consider that it would be proportionate to deprive her of access to the tribunal as a result. I also note: that the respondent, having employed the claimant for three years, is unlikely to be intimidated by her language or impeded in its access to justice; and that to the extent that the language has been directed at the tribunal or judges, the role of a judge requires, among other attributes, a thick skin.

34. I remind the claimant that there are nevertheless boundaries in how the public deals with the tribunal system, staff and judiciary. She should not read this portion of this Judgment as a statement that there are no boundaries, or no boundaries which apply to her.

The sixth point

35. Finally, while I regret the delay in this case, and while I note that the listed hearing will take place over four years after dismissal, I do not consider that I have any basis for finding that delay has rendered a fair trial impossible.

36. I attach a little weight in that conclusion to the fact that the tribunal has unfortunately become accustomed to delays in some cases which in principle are unacceptable. It is a regrettable fact that they are sometimes the result of mistakes made by the tribunal staff or judges; but often they are the result of the tribunal having insufficient resources to meet public demand.

37. In this case, I am confident that those who worked with the claimant, or who managed her, understood the importance of clear communication, and therefore of accurate keeping of notes and records. (I note for example that the dismissal meeting was recorded and transcribed). I am confident that the material events have been well documented. I am also confident that the tribunal will apply a realistic standard to evidence at the final hearing, and will understand that not every witness in 2024 will be able to remember every word of interactions some years in the past.

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Employment Judge R Lewis

17 May 2023

Sent to the parties on:

21 May 2023

For the Tribunal:

GDJ