



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Goodwin

Respondent: Luton Borough Council

UPON APPLICATION made by letter dated **14 November 2022** to reconsider the judgment dated **9 November 2022** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT

1. The claim for Unfair Dismissal (s.98 ERA 1996) is dismissed as being issued out of time and the Tribunal has no jurisdiction to hear it.
2. The Judgment of 9 November 2022 in relation to claims under Equality Act 2010 remains unchanged.

REASONS

Background

3. A Public Preliminary Hearing was held on 1 July 2022 to consider strike out on the basis that that claims had not been made within the statutory time limits, or alternatively to strike out for no prospects of success or to a deposit order to be made.
4. The parties both provided skeleton arguments and oral submissions. The decision was reserved. Unfortunately it took some time for the decision to be promulgated. This was done on 9 November 2022.
5. The Respondent applied, by way of an email dated 14 November 2022 for reconsideration of the judgment. An additional application was made on 12 December 2022, adding to the grounds for reconsideration.

6. A response to the application of 12 December was made by the Claimant who objected to the second application on the basis that it was made more than 14 days after promulgation of the judgment. No formal submission in response to the original application to reconsider has been received from the Claimant.
7. The Respondent replied to this objection, also on 12 December outlining their reasons why time should be extended to allow the application.
8. The Tribunal acknowledges that there has been a further delay in addressing these applications and apologises to both parties for the delay.
9. The Tribunal considers that both applications for reconsideration should be considered as they raise issues in the interests of justice. I take into account the fact that the second application was made prior to consideration of the reconsideration, that the Claimant has had ample opportunity to respond to both applications and has not done so in detail. The interests of justice therefore indicate that both applications should be considered.

Claims in time to proceed

10. Firstly it is important to highlight that the Judgment outlines at paragraph 40-
“Much of the Claimant’s case which forms the basis of her claim occurred before the time limit date. There are two claims which arose after this date, set out at paragraphs 34(a) and (b) of the Particulars of Claim. These relate to “excessive period of time to consider my grievances” and “whitewashing my grievances”. The Respondent conceded that these two claims arose after the time limit cut off. As they are in time based on the EC certificate dates, they must be allowed to progress”.
11. This identifies that there are two claims which will proceed to final hearing. The following paragraph (41) also makes it clear that the remainder of this part of the decision addresses the other outstanding, out of time claims.

Unfair Dismissal

12. I accept that the remainder of the Judgment refers to the discrimination claims, as it refers only to the test of ‘just and equitable’. It does not refer to the claim of Unfair Dismissal separately, nor to the separate test of ‘reasonably practicable’. It should have dealt with this point separately and I now do so;
13. It is noted that the Claimant had legal advice throughout the relevant period and at the point of her dismissal. It is also noted that the Claimant did not obtain an EC certificate at the point where her employment terminated. She had done so in March 2020 and did so again in April 2021.
14. The Claimant’s witness statement made no reference to the fact that her employment terminated on 30 June 2020, nor to any reason why she was not able to bring an unfair dismissal claim within 3 months of that date. The Claimant’s witness statement also showed that she was able to continue to engage with the Respondent in respect of her grievance at that time and so it can be concluded that she therefore would also

have been able to deal with the administration of a tribunal claim.

15. I am satisfied that it was reasonably practicable for the Claimant to have issued her unfair dismissal claim within the statutory time limit for such claims, immediately following her termination on 30 June 2020. The claim was not in fact brought until 18 July 2021 and therefore was over 1 year after her dismissal.
16. I do not therefore allow the claim under s.98 Employment Rights Act 1996 (unfair dismissal) to proceed.

Discrimination Claims

17. In respect of the decision over the discrimination claims which have been made out of time, I was asked to consider whether time should be extended on a just and equitable basis. The Respondent asserts that the balance of prejudice favoured them, as the cogency of their evidence is affected by the Claimant's delay in issuing proceedings.
18. The Respondent relies upon paragraph 57 of their skeleton argument as to the reasons for the existence of prejudice; firstly, the Respondent asserts that they will have to redraft their Grounds of Response and pursue lines of enquiry. Neither of these points indicates a lack of cogency of evidence available to the Respondent. They may indicate further work to be done, but that work would have had to be done if the claims had been made in time. I therefore did not accept this to be a valid point weighing in favour of the Respondent.
19. The Respondent's skeleton argument also refers to the Respondent having conducted a number of grievances. Assuming that the contemporaneous records of these grievances have not been disposed of (and the Respondent has been aware of the claims of the Respondent since April 2021 when EC was started), it is not accepted that the cogency of the evidence is at risk.
20. The argument that the Respondent would have been able to 'pursue prompt and fruitful lines of enquiry' is vague and does not indicate that anything specifically is not now possible. Given that they have asserted that they dealt with the Claimant's grievances, it is not clear exactly what prejudice there is – as investigations have occurred and records made.
21. The assertion that the number of witnesses would be lowered and the hearing shorter if the extension of time were not allowed, is not a valid reason to prevent claims from being pursued. This does not prevent a fair trial from occurring and is a matter that can be dealt with in costs orders, if valid reasons are asserted. The Tribunal wishes to ensure that the interests of justice are served.
22. The fact that the parties have engaged in correspondence prior to the claims being brought, thus adding to costs, is not a reason why a fair trial cannot now proceed. Again, this is a matter which can be dealt with by a costs order, if valid reasons are asserted.
23. I therefore do not accept that any of the reasons asserted by the Respondent in paragraph 57 of their skeleton argument indicate that the balance of prejudice weighed in their favour.

Witness no longer employee

24. With regard to the fact that Ms Osime no longer works for the Respondent; this was

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set out at paragraph 57(b) of the Respondent's skeleton argument in general terms. I also noted that the Respondent referred to the fact that Ms Osime left their employment in January 2020. However, nothing was specifically asserted at the hearing to indicate that Ms Osime would not be available to be a witness or to assist the Respondent with defending the claims. I note that the reconsideration application does not specifically assert this either. It merely says that the fact that "Mrs Osime no longer works at the Respondent will affect its ability to defend the claim".

25. The consideration of the Tribunal is whether its discretion should be extended to the Claimant. The Judgment indicates (paragraph 43) that there are a number of managers who took various decisions which are the basis of the claims. This is not therefore a case where all of the allegations and evidence rests with one witness. The Respondent's application does not refer to any of the other witnesses being unavailable to assist them.
26. It is for these reasons that I remain of the view that the Respondent would not be placed at a greater disadvantage or prejudice if the claims proceed, than the Claimant would be if they were not allowed to proceed. A fair trial can still proceed. My Judgment in relation to the claims of discrimination outlined at paragraphs 2 to 8 remain unchanged.

Employment Judge Cowen

Date: 26 May 2023

JUDGMENT SENT TO THE PARTIES ON

2 June 2023

FOR THE TRIBUNAL OFFICE