



EMPLOYMENT TRIBUNALS

Claimant: Natassha Raj

Respondent: Abdul Aslam

HELD AT LEEDS

ON: 20 July 2023

BEFORE: Employment Judge Rogerson

REPRESENTATION:

Claimant: in person

Respondent: Ms Sophie Firth (counsel)

JUDGMENT

1. The complaints of unlawful deductions of wages (arrears of pay) and a failure to provide a written statement of employment particulars are withdrawn by the claimant and are dismissed.
2. The complaints of sex discrimination and religion/belief discrimination were presented out of time. Time is **not** extended on just and equitable grounds to the date of presentation of the claim and those complaints are presented late and are dismissed.

REASONS

1. Ms Raj represents herself and has provided evidence orally at this hearing and by way of the documents she relies upon sent by email before this hearing.
2. Ms Firth represents the respondent. She relies upon the claimant's evidence about the delay in presenting her claim and the preliminary hearing bundle prepared by the respondent for this hearing.

3. This preliminary hearing was to decide whether I should exercise my discretion on just and equitable grounds to extend time for the late discrimination complaints in accordance with section 123 (1)(b) Equality Act 2010. This provides that:

“... proceedings on a complaint within section 120 may **not** be brought after the end of –

 - 1) *the period of 3 months starting with the date of the act to which the complaint relates, or*
 - 2) *such other period as the employment tribunal thinks just and equitable”*
4. The claim was presented on 12 October 2022. ACAS conciliation began on 15 August 2022 and ended on 26 September 2022.
5. The date of the last alleged act of discrimination by the respondent was 24 December 2021 and so the claim had been presented more than 3 months after that last act and almost 7 months late.
6. The claimant relies on the protected characteristics of sex (she is female) and religion (she is Sikh). She worked in a mostly female work environment and was the only Sikh person employed. She complains of direct sex religion and belief discrimination.
 - 6.1 In November 2021 the respondent failed to give her a key. When she asked the Respondent, she was told a key would be provided but no key was provided before she left her employment. She alleges the respondent’s failure was less favourable treatment because she is Sikh.
 - 6.2 On 24 December 2021, the respondent shouted at and mocked the claimant because she was crying, saying: “*Your supposed to be a strong woman*”. After this incident the claimant avoided working in the same office as the respondent. She alleges the respondent’s failure was less favourable treatment because she is a woman.
7. The claimant explained the reasons for her delay from the last act on 24 December 2021 to the date she presented her claim on 12 October 2022 were as follows.
 - 7.1. She found a new job at the end of May 2022 and did not feel she could speak out against the respondent for fear of losing her job. This explanation does not fit with her evidence about the respondent agreeing in November 2021 to give her an interest free loan of £1000. The respondent agreed to the employer’s funding a loan on favourable terms for which no repayment was required until the claimant left her employment.
 - 7.2. In June 2022 she sought advice from “Pay and Employment Rights” about her pay but she did not raise any complaints about discrimination. Her advisers contacted HR for her in relation to the pay issues and would have helped her raise any other employment issues. She accepts she did not tell them she felt she had suffered sex/religion discrimination during employment and there was no discussion about a tribunal claim or time limits. She cannot explain this omission.

- 7.3. The claimant ended her employment with notice ending on 23 June 2022 (her last day at work was 6 June 2023). During June 2022 she explored with the respondent the possibility of continuing to work for the respondent as a consultant 10 hours per week. The respondent put that proposal to the management committee who decided against that option in July 2022. It is surprising that the claimant wanted the respondent's support to continue to an ongoing relationship if she felt he was subjecting her to direct discrimination.
- 7.4. In July 2022, the claimant was offered funding to obtain legal advice by an independent third party (Third Sector Leader). Despite the free funding the claimant was unable to arrange an appointment with a solicitor because she was too busy in her new role which involved extra travel and the solicitor could not offer any appointments.
- 7.5. After her employment ended, she believed the respondent had used her email account fraudulently and had impersonated her to mislead third parties.
- 7.6. Only after this discovery was made did she raise a grievance on 18 July 2022 about the respondent. The relevant parts of her grievance are:

"This email is a grievance and needs escalating to the Trustees. Please also see below really concerning information.

It has come to my attention that Mr Abdul Aslam have been using my email account was set up for me whilst working at Ravensthorpe Community Centre.

Mr Abdul Aslam has been impersonating me to ESF European funding and to Dash Media. He has also created an account in my name for Groundworks linking to ESF.

I have received legal advice and the usual protocol when an employee leaves a role that email is either deactivated or emails have been forwarded onto a manager. I do myself have a strong background knowledge in HR.

I am extremely concerned by what I have found out. Not only is this illegal this is fraudulent and he is impersonating me which again is unlawful. This is also a breach of GDPR and what is more concerning Mr Abdul Aslam is the named data protection contact for the centre".

- 7.7. The claimant was able to clearly articulate all the concerns she had at the time about the respondent. She made no mention at all any of the alleged discrimination she now complains which had occurred in November/December 2021. At the time of writing this grievance the claimant had secured alternative (better paid) employment.
- 7.8. On 17 July 2022 her grievance was acknowledge by her former employer and an investigation was promised.
- 7.9. On 19 August 2022 the claimant chased up her grievance which was never formally responded to. The claimant chose not to pursue a claim

after her employment ended because she wanted to move on. The only reason that changed was because she discovered the respondent had used her email account for work purposes after she had left. That and the respondent lack of response to her grievance was the trigger for the claimant's decision to take this further.

- 7.10. On the same day the claimant obtained free legal advice in a phone call with a solicitor who advised her to contact ACAS for the employment dispute and to take separate action in relation to the fraud allegations.
 - 7.11. The claimant contacted ACAS on 19 August 2022 and says this was the first time she knew about time limits.
 - 7.12. ACAS conciliation ended on 26 September 2022. The claimant did not present her claim until 12 October 2022. She says it took her 3-5 days to complete because she was fitting it in with her work and family commitments.
 - 7.13. The claimant accepts that with the benefit of hindsight she should have raised her complaints earlier. She cannot explain why she did not raise them in her grievance, when she had taken the time to raise other matters of concern with her employer.
 - 7.14. She accepts she should have submitted her claim earlier. She had the offer of paid legal advice in July 2022 which she did not take up. Instead, she waited to 19 August 2022, to find free advice, adding to the delay.
 - 7.15. The claimant does not accept her delay of nearly 7 months prejudices the respondent. She does not believe her recollection of the events is impaired by the passage of time and there is no reason why it would affect the respondent. She accepts if her grievance had included the alleged discrimination her former employer would have had the opportunity to investigate it earlier.
 - 7.16. Even if that had happened, she accepts her allegations of discrimination have only become clear at this hearing much later than when the events she relies upon had occurred.
 - 7.17. The allegation of direct discrimination does not make clear how the unfavourable treatment of not providing a key is on the grounds of religion or belief. The claimant was at the time of this complaint being treated more favourably than others by the respondent agreeing to her request to provide her with an interest free loan.
8. Ms Firth closing submissions remind me that the claimant must persuade me that there were just and equitable grounds for an extension of time. The primary '3' month limit is not the exception it is the norm to ensure complaints are brought in the time limits set down by statute.
 9. Ms Firth submits the reasons for the (lengthy) delay are unsatisfactory. After leaving her employment she chose not to pursue a claim. That is a matter of choice and not a just and equitable reason to delay in bringing a claim of discrimination. The claimant's grievance was about the alleged misuse of her email and did not raise any allegations of discrimination. The grievance presented the perfect opportunity for the claimant to say whatever she wanted without any worry of it affecting her job. By the end of May 2022, she had secured a better paid job and still chose not to bring a claim. Her change of mind

causes greater prejudice to the respondent left to defend a late complaint through no fault of its own on “he said/she said” evidence. There was a complete absence of documentary evidence of any alleged discrimination because the claimant had chosen not to raise it earlier. The claimant might feel her evidence would not be affected by the passage of time but that does not mean it will not affect the respondent’s ability to defend a claim that could have been brought earlier. If the claim continues it will be for the claimant based on her self-serving evidence. The lack of complaint and lack of investigation and the passage of time are factors that prejudice the respondent to a greater extent. The delay of 10 months since the allegations occurred is substantial and has not satisfactorily been explained at this hearing. Ms Firth invited me not to exercise my discretion and to dismiss the claim.

10. Ms Raj invites me to exercise my discretion to extend time from 23 March 2021 (expiry of 3 months) to 12 October 2022. She accepts it was her choice not to bring a claim earlier. It was the lack of response to her grievance that had changed her mind. She feels that if woman were silenced in this way the respondent would be allowed to continue to mistreat women. With hindsight she should have mentioned discrimination in her grievance, and she should have sought advice about the discrimination when she had sought advice about other matters from an employment law adviser. She did not find out about time limits until she contacted ACAS. She did not then immediately lodge a claim to reduce the delay because she had hoped to resolve matters. She feels she did not delay too long from 26 September 2022 to submit her claim. If I did not exercise my discretion her claim cannot continue, she will be prejudiced.

Applicable Law

11. The factors listed in section 33 of the Limitation Act 1980 are referred to in **British Coal Corporation -v- Keeble 1997 IRLR 336 EAT** and used to provide guidance in the exercise of discretion to allow late claims. The guidance considers the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.
12. When the claim is as late as it is in this case, I am required to consider the impact of that delay on the parties in deciding whether it was just and equitable to extend the time limit. In **Southwark London Borough Council -v- Afolabi 2003 ICR 800** the Court of Appeal confirmed that, while the checklist in the Limitation Act provides a useful guide for tribunals, it need not be adhered to “slavishly” and it is for the employment judge to decide each case on the facts as found.

Conclusions

13. Looking at the delay and reasons for it. The alleged discriminatory acts took place long before the claimant ended her employment, and she could have complained of them as soon as they occurred or immediately following her resignation. The claimant says she felt she could not complain during her

employment because of fear of losing her job. It was not clear to me how that fear was either genuine or reasonable given the position of authority held by the claimant and the good working relationship she had with the respondent exemplified by the interest free loan agreed at the beginning of her employment.

14. The explanation for delay after her employment ended is not satisfactorily explained. The grievance letter was the perfect opportunity to raise all the matters that had concerned the claimant during her employment. If she had been subjected to sex and religion discrimination those matters would have been prominent in her grievance. They do not appear. Only the matters the claimant had discovered after she had left employment about misuse of her work email account appear in her grievance. There is no explanation as to why there is no mention in July 2022 of any of alleged discrimination. It did not make any sense if the claimant had always viewed the respondent's treatment as discriminatory.
15. The claimant made an honest admission when she says she had decided to put it behind her. It was her choice not to pursue a claim after her employment ended because she had secured a new better paid role. If she had genuinely been deterred from bringing a claim during her employment for fear of losing her job, she could have made a claim by the end of May 2022.
16. I consider that I should not exercise my discretion on just and equitable grounds to allow a late claim just because an individual who chooses not to bring a claim in time changes their mind. It would have taken 3-5 days for the claim to be prepared if it was important to the claimant then she could have done it had she chosen to.
17. On 18 July 2022 the claimant chose to omit any reference to discrimination in her grievance even though she says it was clear to her she had been discriminated against. In her grievance letter she refers to having taken 'legal advice' before sending the grievance letter. She refers to breaches of the law in relation to data protection. She identifies the remedial action she required the respondent to take. She emphasises her knowledge and experience in HR. She was able to articulate the unlawful conduct, the applicable law and the remedial action she required her employer to take either as a result of taking advice or based on her own knowledge.
18. She is capable and assertive when she wants to be leaving no room for doubt that her complaint and concern in July 2022 was the alleged inappropriate use of her email account after she has left the job.
19. The timing of her contact with an employment solicitor and ACAS coincides with her frustration with her former employers' lack of response to her grievance. On 19 August 2022 she chased a response. She then contacted a solicitor for free initial advice because she was frustrated by the lack of response to her grievance. She is then directed to and does immediately contact ACAS. She is advised about time limits. Despite that knowledge she does not put her claim in until October 2022. Each of the steps the claimant took could have been taken earlier.
20. I agreed with Ms Firth the reasons and explanation for the delay were unsatisfactory and do not persuade me to exercise my discretion to allow a late claim.

21. As to the relative prejudice of allowing or refusing a late claim I agreed with Ms Firth that if the claim proceeds it will be decided solely on the evidence of the claimant and the respondent.
22. There is no documentary evidence about any of the alleged discriminatory treatment. The claimant has in her own account to me about the key incident accepted it was something the respondent indicated he would do but did not get round to. It is difficult to see how that alleged failure to get round to sorting out a key which was not of concern then is now a deliberate act motivated by the claimant's religion. In any event it was not something the claimant raised until her claim was brought in October 2022, almost a year after the failure had occurred.
23. I agreed with Ms Firth that the lack of documentary evidence was disadvantageous meaning the parties recollections of the events would be critical in deciding liability. The passage of time is likely to affect the quality of evidence provided. It will in my view disadvantage the respondent more than it would the claimant. The claimant has chosen when she complains about discrimination. That choice is not the fault of the respondent. It would be unjust for the respondent to now be disadvantaged by the claimant's change of mind. The primary time limit envisages claims are brought closer in time to the event for better evidence to be provided to decide the claim on its merits.
24. I considered the prejudice to the claimant if the late claim is not allowed her claim will be dismissed without it being decided on its merits. While I agree it will prejudice the claimant the reason is the choices made by her resulting in a late claim. It is the claimant who has the burden of persuading me I should extend time. Balancing all the factors in the round I am not persuaded that there are just and equitable grounds for me to extend time to the date of presentation of the claim. The claim is therefore dismissed for a lack of jurisdiction under section 123 Equality Rights Act 2010.

Employment Judge Rogerson

24 July 2023

Date: