



EMPLOYMENT TRIBUNALS

Claimant: Ms J Margetts

Respondent: Secretary of State for Justice

JUDGMENT OF THE EMPLOYMENT TRIBUNAL FOLLOWING A PRELIMINARY HEARING

HEARD AT LONDON SOUTH (BY CVP)

On: 5 SEPTEMBER 2023

Employment Judge: Employment Judge Henderson (sitting alone)

Appearances

For the claimant: In person

For the respondent: Mr J Chegwiddden (Counsel)

JUDGMENT

The following complaints made by the claimant were presented outside the time limit in section 123 (1) (a) & (b) of the Equality Act 2010 (EqA). The Tribunal has not exercised its discretion to extend time on just and equitable grounds. The claims are therefore dismissed on the ground that the Tribunal has no jurisdiction to hear them:

- The claim for indirect sex discrimination;
- The claim for harassment relating to disability.

REASONS

Background

1. The Preliminary Hearing (PH) was listed to consider whether the claimant's complaints (other than the claim for victimisation, which the respondent accepted was made in time) were out of time under section 123 EqA. The Case Management Order of 7 June 2023 (EJ Taylor) gave directions

for today's PH but did not mention any allegation by the claimant that the respondent's acts/omissions were continuing acts under section 123 (3).

2. The claimant accepted that she had raised this matter at a late stage in what she called her witness statement, but which was in fact a summary of her arguments that the claims were made in time. The claimant said it would be just and equitable to extend time if the claims were found to be out of time but there was no information given as to why this should be done.
3. However, the claimant did respond to questions from the EJ about why she had not brought her claims earlier and Mr Chegwidden was allowed to cross examine her on her answers.
4. Given the combination of the lack of clarity and the factual complexity of the claimant's allegations about continuing acts, I declined to consider as part of this PH the out of time points on the claims for Indirect Disability Discrimination; Discrimination arising from Disability (section 15 claims) and Failure to make Reasonable Adjustments. Accordingly, I considered the time argument only for the Indirect Sex Discrimination and Harassment claims.
5. I decided that the arguments on continuing acts should be considered at the Final Hearing (listed in April 2024) with the benefit of seeing the full evidence presented by the parties. Directions for this are given separately.
6. It was agreed by both parties that as the claimant first contacted ACAS for Early Conciliation on 12 October 2022, any alleged acts of discrimination prior to 12 August 2022 would be out of time under section 123 EqA. I noted that the correct date was 13 August 2022, but nothing turns on this.
7. The EC certificate was issued on 23 November 2022 and the claimant submitted her ET1 claim form to the tribunal on 24 December 2022. There have since been two earlier Preliminary Hearings on 27 March and again on 7 June 2023. There is a Final Hearing listed for 6 days commencing on 15 April 2024.

Indirect Sex Discrimination

8. Mr Chegwidden noted that the last date pleaded by the claimant (at paragraph 17 of her Further and Better Particulars (undated) (FBPs) was 22 Feb 2022. The claimant said that the last date was in fact in July 2022 but accepted that she had not stated this her FBPs and also accepted that this date was before 12 August 2022 in any event.
9. It is clear that the claim for Indirect Sex Discrimination is out of time.

Harassment

10. Mr Chegwidden said that the last date of any complaint under this head of claim was 12 May 2022 (para 50 FBPs). The claimant said that the complaint was about the respondent's failure to properly investigate the grievance by not

interviewing named witnesses and other matters). However, she accepted that she only become aware of the failures in January 2023 when she saw the grievance appeal outcome. This was after the ET1 had been lodged on 24 December 2022.

11. On this basis the Harassment claim is out of time.

Just and Equitable Extension

12. The claimant said that she had assistance and access to advice from her Union (NAPO). She also had sporadic advice from solicitors. She had not chosen to seek Free Legal Advice although she acknowledged that the Tribunal had provided a list of Sources of such free advice.
13. In summary, the claimant said that she knew that she could bring a tribunal claim and was aware of the 3-month time limit but had always (with the support of her Union) wished to resolve the matter as part of an internal process. She had not carried out any detailed research on bring a claim. Tribunal proceedings were never intended and were, for her, the last resort.
14. The claimant also said that she had been under huge time pressure leading up the final submission of her assessments in March and June 2022 and so tribunal claims were not “in her mind” at the time.
15. Following her results in July 2022 (when she failed the last module) she had lodged an internal grievance on 15 August 2022 with help from her Union representative. The claimant said that on 13 September 2022 the Head of NAPO (R Singh) told her to wait until the final outcome of the grievance and any appeal before taking any action.
16. However, before the outcome of the grievance (in November 2022) the claimant went to ACAS (on 12 October 2022). She said this was because she had read articles about employers deliberately delaying internal processes to ensure that claims would be out of time.
17. In essence the claimant accepted that she was aware that she could bring tribunal claims but chose not to do so because she wanted the matter resolved internally. She accepted that she could had recognised as early as May 2021-February 2022 that she was being placed at a disadvantage because she was a female single parent. She knew that she could have brought a tribunal claim in August 2022 when she lodged the grievance.
18. I asked the claimant if her delay in bring the claim was a result of her disability. She replied very honestly that it may have been a factor but was not the main reason. I also noted that the claimant had not raised the issue of her disability as a reason to extend time in her “witness statement” document. The claimant accepted that she had chosen not to bring a tribunal claim but had chosen (with Union advice) to pursue an internal grievance first.

Conclusion

19. The Tribunal has full discretion as to whether an extension on the just and equitable ground should be granted. This is the “*exception and not the rule*” (**Robertson v Bexley Community Centre [2003] EWCA Civ 336**). It is for the claimant to show such an exceptional case exists.
20. On the basis of the claimant’s evidence to the Tribunal at the PH she did not provide any such exceptional reason as to why the extension should be granted. The claimant had assistance from her Union throughout; she knew she could bring a tribunal claim and had a general awareness of the time limits. She chose to pursue the internal grievance process (with Union advice) and not to lodge a tribunal claim alongside that grievance. That is, of course, entirely her choice but is not a sufficient reason to grant an extension.

D Henderson
Employment Judge Henderson

JUDGMENT SIGNED ON: 5 September 2023