



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

MZ

v

Google UK Limited

Heard at: London Central

On: 27-29 September 2023

Before: Employment Judge Glennie

Representation:

Claimant: In person

Respondent: Ms S Belgrove (Counsel)

REASONS

1. These reasons relate to the part of the judgment sent to the parties on 5 October 2023 in which I decided that the complaints in case number 2200303/2023 which I had not struck out had been presented within time, by virtue of the “just and equitable” extension available under section 123(1)(b) of the Equality Act 2010. The relevant provision is as follows:

(1) Proceedings on a complaint within section 120 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 Tribunal thinks just and equitable.

2. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23** the Court of Appeal (through Underhill LJ) observed that:

“The best approach for a tribunal in considering the exercise of the discretion under section 123(i)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular... the length of and the reasons for the delay...”

3. It is relevant for the purposes of these reasons to explain that, in the part of the present hearing held in private, I decided that the complaint in case number 2200303/2023 concerning events in November 2022 should be struck out and that an application to amend the claim to make a complaint about events in July 2023 should be refused. In both cases, the essential reason for this decision was that evidence about these matters would be inadmissible by virtue of the “without prejudice” rule.
4. Claim number 2200303/2023 was presented on 16 January 2023. The Claimant contacted ACAS in connection with the claim on 9 December 2023 and received an early conciliation certificate dated 16 January 2023.
5. The grounds of claim contained 6 allegations of discrimination because of something arising in consequence of disability and/or victimisation. Of these, the most recent in time was the one I have struck out, relating to events in November 2022. Allegations 1-4 quote dates and particular events, of which number 4 is the most recent, being an allegation that the Respondent asked a recruiter not to proceed with the Claimant’s application on 8 June 2022.
6. Allegation 5, a complaint that the Respondent ignored or rejected applications from January 2022 onwards is potentially open-ended, but I have heard no argument based on dates after that, nor are any pleaded. Instead, the Claimant has sought to rely on a continuing discriminatory state of affairs, as shown by correspondence in September 2022 about the subject matter of these complaints, and has argued that the 3 month limitation period should be counted from then, plus the extension arising from the early conciliation period. There is a difficulty about this argument, in that it is not pleaded that there was any act of discrimination or victimisation in September 2022, but it is not necessary to take this any further given the decision I have reached in any event on the just and equitable aspect.
7. The Claimant gave evidence on this by reference to a witness statement and in answer to questions from Ms Belgrove and from me. Ms Belgrove took the Claimant to an email chain from August and September 2022. The Claimant agreed that on 15 August 2022 it had been said on the Respondent’s behalf that they would not progress any job applications from her. The Claimant said that she had understood what was being said and that she strongly felt that it was not right, but that for her it was not a final position, but rather part of a negotiation.
8. I do not find that, in itself, particularly compelling. Even if the Claimant believed that the Respondent might change its stance, this nevertheless was its stated position at the time.
9. On 21 September 2022 the Claimant received an electronic file of documents from the Respondent in answer to a Subject Access Request. The Claimant has relied on documents in this file in support of the complaints in claim number 2200303/2023. Her evidence was that,

although she received the file on 21 September 2022, she did not open it until 28 November 2022. Her explanation for this was that she was concentrating on putting together documents in order to obtain legal advice on case number 2207444/2021; that this advice related to and included representation at a preliminary hearing on 25 October 2022 and a judicial mediation on 23 November 2023; and that she experienced some communication or personal difficulties between herself and the solicitor she had instructed.

10. The Claimant further stated that all of this occurred in the context of her conditions of autism and schizo-affective disorder, with a differential diagnosis of bipolar affective disorder. She described the former as meaning that she works in a hyper-focused and obsessive way on one thing at a time and finds multi-tasking very difficult. The Claimant said that the latter condition caused her to experience depression and extreme unhappiness at the relevant time, meaning that her capacity to process further documents was diminished.
11. I accept the Claimant's evidence about the effects of her condition. I have no reason to disbelieve what she has said, particularly given the more general medical evidence in the case, which tends to support her account.
12. Having said this, I nonetheless find it surprising that the Claimant did not look at the file of documents at all for 2 months after receiving them. I find that this is a point which goes into the balance against the Claimant when considering whether it would be just and equitable to extend time.
13. The Claimant's further evidence, which I also accept, is that she began looking at the file of documents on 28 November 2022 and sent them to her solicitor on 30 November. She received some general and final advice from the solicitor on 6 December 2022 and started the ACAS conciliation process on 9 December. So far as the period from 28 November 2022 onwards is concerned, I find that the Claimant acted reasonably promptly once she had read the file of documents. Her case is that, on reading the documents, she found material which supported her belief that the refusal to consider applications from her had been discriminatory and/or a case of victimisation. I will come to that material later in these reasons.
14. In considering the length of, and the reasons for the delay in bringing the proceedings, I have identified factors which go into the balance either for or against an extension of time. I find that the general prejudice to the parties is also fairly finely balanced. If I do not extend time, the Claimant suffers the obvious prejudice of not being able to pursue the claim. Conversely, if I do extend time, the Respondent has to meet a further claim based on factual allegations beyond those in the first claim. The full hearing would be longer and more witnesses would be required.
15. This brings me to the question of the effect of the delay on the cogency of the evidence. The Claimant has provided a bundle of the documents produced in response to her Subject Access Request. I will not set out the

contents of these in detail, not least because I am aware that there may be future issues about privilege.

16. However, page 24 of the Claimant's bundle contains an email exchange of 3 February 2022 (within the Respondent's organisation, as were the others to be referred to in this paragraph) in which reference is made to her being a candidate for a position in the organisation and which refers to her being hospitalised (as she was, by reason of her mental health condition) and to her "lawsuit" (i.e. the first claim). On page 27 there is reference to not responding (to an application made by the Claimant) unless instructed otherwise. On page 100 there is reference to an application made by the Claimant and the observation that it would be inappropriate to discuss this on the Respondent's internal messaging system.
17. I do not make any finding about what, if any, significance all of this may have, other than to say that I can understand, from the Claimant's point of view, why she says that when she read these exchanges, she considered that she had material which might suggest a connection between her disability and/or the first claim and the Respondent's refusal to consider any applications from her. (I should add that the Claimant would put it more strongly than this: these are my words, not hers). I make no comment on the potential merits of the complaints in issue, other than to observe that there has been no submission to the effect that they have no reasonable prospect of success when taken at face value, and nor do I have reason at present to find that to be the case.
18. Furthermore, Ms Belgrove did not submit that the Respondent would be subjected to any evidential prejudice if time were to be extended, in other words that the Respondent would have difficulty because of the delay (whatever may be the precise period in question) providing evidence in answer to the claim. I would add that it would be surprising if that were to be the case. I would expect that, knowing that the first claim was under way, and knowing the basis of it, in adopting the course of refusing all applications from the Claimant, and telling her that they were doing that, the Respondent would ensure that they preserved evidence, in whatever form, of what they were doing and why they were doing it.
19. I find this to be a significant point in favour of extending time. The Claimant has a claim which is not in the category of those with no reasonable prospect of success, and which can (I find) be fairly heard on the merits.
20. That point is not definitive in the Claimant's favour. I have to look at all the relevant circumstances. Having done so as discussed above, I find that it is just and equitable that claim number 2200303/23 (minus the complaint I have struck out) should be heard.

Employment Judge Glennie

Employment Judge Glennie

Dated:28 November 2023.....

Judgment sent to the parties on:

28/11/2023

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For the Tribunal Office