



EMPLOYMENT TRIBUNALS

Claimant: AB

Respondent: A Professional Football Club Limited

Heard at: By hybrid CVP hearing at Midlands West Employment Tribunal

On: 24 November 2023 at 10am

Before: Employment Judge Platt

Representation

Claimant: Mr G Baker, Counsel

Respondent: Mr E Beever, Counsel

RESERVED JUDGMENT

The Claim was not presented within the applicable time limit, but it is just and equitable to extend the time limit in respect of the Claimant's complaints of discrimination arising from disability, failure to make reasonable adjustments and victimisation.

REASONS

Issues

1. The issue for the Tribunal to determine was whether it should exercise its discretion to extend time for the presentation of complaints of disability discrimination under sections 15, 20/21 and 27 of the Equality Act 2010 because it was just and equitable to do so. The last act of alleged discrimination is the Claimant's dismissal which occurred on 8 December 2022.

Procedure

2. The Tribunal was provided with an agreed bundle comprising 233 pages. The parties confirmed the key documents that the Tribunal needed to consider. The Claimant provided a witness statement and was cross-examined by the Respondent's representative. No other witnesses gave evidence to the Tribunal. Both parties provided written and oral submissions.

Findings of fact

3. The Claimant's employment terminated on 8 December 2022. Her properly instituted claim was presented to the Tribunal on 5 April 2023.
4. The Claimant was in a relationship with XY who was employed by the Respondent. This relationship ended on 14 March 2023.
5. The Claimant contacted a firm of solicitors for advice on 16 March 2023. Her original claim was filed with the Employment Tribunal on 27 March 2023. Unfortunately, the Claimant's solicitor omitted to go through early conciliation via ACAS and did not have an Early Conciliation Certificate at the time the original claim was filed. ACAS were contacted and an Early Conciliation Certificate was issued on 5 April 2023: the date on which a properly instituted claim was filed.
6. The Claimant's evidence was that she was suffering from mental ill-health and that this along with her relationship with XY prevented her from filing her claim within the prescribed time limit. Her evidence was that she was in a relationship of coercive control which was emotionally abusive and prevented her from taking legal advice. The Respondent did not challenge the Claimant's evidence that she was in a coercive and abusive relationship and the impact that this had on her. Within the context of this relationship the Claimant feared that XY would seek to jeopardize her new employment if she took legal advice.
7. The Claimant's evidence is that she has experienced mental ill-health in the form of anxiety for a significant period of her life. One of the ways she has managed this is through her commitment to her career. She was referred by the Respondent to the charity MIND in November 2022, accessed counselling in December 2022 privately and was also referred to an NHS CBT service around the same time.
8. The Claimant's evidence is that at the end of 2022 and during early 2023 she found it difficult to function day to day, disengaged from friends, experienced stress-related stomach problems, was unable to participate in a planned holiday and experienced significant anxiety exacerbated by losing her job and having a mortgage to pay. The Tribunal accepts the Claimant's evidence that she did experience significant mental-ill health during this period. Despite this the Claimant did successfully participate in an interview process in January 2023 with her current employer and was offered the role at the end of January 2023. It is accepted that she did find the process of securing new employment and commencing that employment all-consuming in light of her mental health at the time.
9. The Claimant has a law degree and is a skilled professional who undertakes research in her professional life. As a result, it is reasonable to expect that she would have some awareness that there are limitation periods in legal proceedings and would ordinarily have been capable of finding out what they were. Her evidence was that she was aware of the existence of ACAS and she had taken legal advice in the context of employment some years ago, around 2009. Her evidence was that such advice did not specifically relate to matters pertaining to time limits in the Employment Tribunal. The Tribunal accepts this evidence and notes that it was a significant period of years' prior to this claim.
10. The Claimant's evidence was that it first occurred to her that she might be wise to seek legal advice around 27 February 2023 after receiving a text from an employee of the Respondent following her attendance at a football match where she had bumped into former colleagues. Her relationship with XY ended on 14 March 2023 and she sought legal advice on 16 March 2023.

Law

11. Section 123(1) of the Equality Act provides:

(1) Subject to section 140B 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 employment tribunal thinks just and equitable.*

12. The issue was explained by Underhill LJ in *Adedeji v University Hospitals Birmingham NHS Trust* [2021] EWCA Civ 23, at paragraph 24:

“24.....there is a public interest in the enforcement of time limits and that they are applied strictly in employment tribunals. The former point is unexceptionable. The latter reflects a statement made by Auld LJ at para. 25 of his judgment in Robertson.”

13. In turn, *Robertson v Bexley Community Centre* [2003] EWCA Civ 576, at **paragraph 25**, states:

“25. It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.

14. The onus is therefore on a Claimant to convince the tribunal that it is just and equitable to extend the time limit. This does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law requires that an extension of time should be just and equitable.

15. In *Abertawe Bro Morgannwg v University Local Health Board* [2018] EWCA Civ 640, at paragraphs 18-19 set out that *“the factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).”*

16. The Tribunal also considered the cases of *Wells Cathedral School v Souter* EA-2020-000801-JOJ and *Vaughan v Modality Partnership* UKEAT/0147/20.

Conclusions

17. The alleged disability discrimination concluded with the Claimant’s dismissal on 8 December 2022. The claim was filed on 5 April 2023. The Tribunal only has jurisdiction to hear this complaint if it considers that time should be extended on a just and equitable basis.

18. The Tribunal has a broad discretion and can take into account any relevant factor. The Tribunal has to consider if it is brought within such other period as is just and equitable. The Tribunal considers that the relevant factors are as follows:

- a. The events referenced in the Claimant’s claim occurred over a relatively short period of time given that her employment was for a period of around six months. This will impact the evidence that the Respondent will need to

- present to defend the claim.
- b. Any period of early conciliation could have extended the limitation period by a period of longer duration than the actual delay in presenting the claim.
 - c. In total the claim was presented less than one month out of time.
 - d. The Claimant sought advice on 16 March 2023 and her solicitors presented the original ET1 Form on 27 March 2023. On 16 March 2023 the claim was nine days out of time and at the time the original ET1 form was presented it was 20 days out of time.
 - e. The Claimant is not responsible for the delay which was caused by her representatives (who are specialist employment law solicitors). The Claimant should not be prejudiced by that delay following *Chohan v Derby Law Centre 2004 IRLR 685*.
 - f. The Respondent did not advance any arguments about forensic prejudice although it was asserted that the evidence it would rely on would be largely witness testimony due to a lack of documentary evidence about the Claimant's dismissal. If the Respondent chose not to document the Claimant's dismissal that is a matter for them.
 - g. The Claimant has put forward a number of reasons for the delay in her seeking legal advice which are accepted by the Tribunal: that she was focussed on obtaining new employment and once she obtained it she was consumed by it; that she was experiencing mental ill-health; and that she had been in a coercive relationship with XY, an individual still employed by the Respondent, until 14 March 2023.
 - h. The Tribunal notes that once the relationship with XY had ended the Claimant quickly sought legal advice. It is accepted by the Tribunal that the Claimant was threatened by XY with the loss of the new job she had obtained. The Tribunal concludes that the Claimant's health and her relationship with XY did significantly impact her ability to pursue the claim at the relevant time.
 - i. The Respondent had at least some knowledge of the Claimant's mental health issues given that it arranged for her to receive support from MIND. This was a factor in the delay of which the Respondent had some knowledge.
19. There do not need to be exceptional circumstances for the Tribunal to exercise its discretion to extend time. The Tribunal needs to be persuaded by the Claimant that it is just and equitable to extend time, the onus being on the Claimant to demonstrate this. The Tribunal is satisfied the Claimant has done so taking into account all the circumstances and that the balance of prejudice is in the Claimant's favour to extend time.
20. There will always be prejudice to a Respondent if they are required to defend a claim they would otherwise not have needed to defend but there was no clear evidence of forensic prejudice to the Respondent. The Claimant's claim was presented in such other period that was just and equitable in the circumstances.
21. The parties helpfully indicated at the Preliminary Hearing that they did not believe a further Preliminary Hearing for Case Management was needed if the Claim was allowed to proceed. The Tribunal will therefore make relevant Case Management Orders which will be set out separately.

Employment Judge Platt

Date 18 December 2023

Case No: 1303252/2023

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