



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Watson
Respondent: London Underground Limited

Heard at: Watford by video
On: 15 November 2023
Before: Employment Judge R Lewis

Appearances:
For the Claimant: In person
For the Respondent: Ms R Thomas, counsel

JUDGMENT having been sent to the parties on 9 January 2024 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This was the preliminary hearing directed by Employment Judge Graham at a preliminary hearing by telephone on 12 July 2023.
2. At this hearing I had a bundle of 79 pages, and a brief skeleton submitted the day before the hearing by Ms Thomas. I repeat and record, as I have done on many occasions, my concern that the technique of presenting an opponent with a skeleton argument at the last minute before a hearing is a working practice of the Bar which carries the potential for unfairness for a litigant in person.
3. The most helpful elements in the bundle were the claimant's dismissal letter of 9 September 2022; the letter rejecting her appeal of 4 January 2023; and the claimant's own witness statement prepared for today. I was referred to a text message exchange which she had had on 14 September 2022.
4. There was little primary dispute of fact. I found the following:-
 - 4.1 The claimant was employed by the respondent from 2013 onwards.
 - 4.2 She had a history of sickness going back to July 2019, related to the

disability of ankylosing spondylitis.

- 4.3 At a dismissal meeting on 8 September 2022, when the claimant was supported by an ASLEF official, she was dismissed.
- 4.4 The claimant's dismissal and the reasoning were confirmed by letter from Ms Henderson dated 9 September, which stated the termination date as 10 September.
- 5 The claimant had contacted Acas, on advice from Mr Matthews of ASLEF, and Day A was 7 September.
- 6 Mr Matthews became seriously unwell, and the claimant's representation was taken over by Ms Hanley, described online as Chair of the Trains Council for District 8 in ASLEF, who in turn reported to Mr Brennan, District Organiser.
- 7 Ms Hanley submitted the claimant's appeal against dismissal on 20 September, and there was a hearing before Mr Tollington on 29 September.
- 8 Following the appeal hearing there was correspondence concerning up to date medical information. Assuming that the trail of correspondence described in Mr Tollington's letter of 4 January 2023 is accurate, the correspondence was not conducted with any great sense of urgency or speed on either side.
- 9 On 4 January 2023 the claimant received a letter telling her that her appeal against dismissal had failed.
- 10 Meanwhile, the claimant described her interactions with ASLEF representatives as follows:
 - (a) Her first point of support had been Mr Matthews, until he became unwell.
 - (b) By late September 2022 Ms Hanley had taken over representing her.
 - (c) After her dismissal, the claimant was advised by Ms Hanley that she could and should pursue her internal appeal as a priority, and that pursuing a tribunal claim could await the outcome of the internal appeal. That advice was badly wrong.
 - (d) The claimant was still in touch with Mr Matthews, who texted on 14 September to say that she had the right to put in her tribunal claim at that point, whilst still pursuing the appeal. However, the following day, Ms Hanley texted, "That's not for this stage. We need to go through the appeal process." The claimant accepted that advice.
 - (e) Following the appeal outcome, the claimant made contact with Ms Hanley again, who then advised that it was by then too late to pursue the tribunal avenue. The claimant accepted that advice.

- (f) Following this, the claimant made contact with Mr Matthews, who on 9 February advised her that it might not be too late, and that she should present an ET1 in any event.
 - (g) The claimant, acting in person, presented her claim on 16 February 2023. As clarified by Judge Graham, the claim proceeds as a claim of disability discrimination only.
11. In late November 2022, the claimant had suffered two bereavements, and in January 2023 she was involved in a road accident, and had distressing health symptoms. When asked how these affected her ability to present her claim, she gave a common sense answer: "I was not in a good place."
 12. Time for presenting this claim expired on 24 December 2022. It was presented 54 days late, unless the tribunal were to find that it is just and equitable to extend time for presentation. That question in turn requires the tribunal to consider not just the reasons for delay, but the balance of prejudice between the parties.
 13. Ms Thomas submitted that the question of prejudice was evenly balanced, but the only prejudice which she relied on on behalf of the respondent was pure litigation prejudice, ie the burden of defending a claim which it might otherwise have avoided. She wisely did not submit that the cogency of evidence was affected by this delay, or that the claim had become incapable of fair trial. Neither of those submissions could have had any prospect.
 14. The prejudice against the claimant, of losing the opportunity to test the termination of employment of nearly 10 years, seemed to me considerable, and I find that the balance of prejudice is strongly in favour of the claimant.
 15. I find that the reasons for delay were a combination of the events described by the claimant. The most important was poor advice from Ms Hanley, on which I comment that it was surprisingly bad advice to come from an official of a major union with a history and reputation for the robust defence of its members' interests. The effect of Ms Hanley's advice was compounded by the time taken to conclude the appeal process, a matter which I find to have been primarily within the hands of the respondent. If the appeal process had been completed by say 17 December, as it well could have been, the claimant would have received the outcome within the limitation period and this satellite dispute could have been avoided.
 16. I accept that the claimant's case on delay from 4 January to 16 February is less clear cut, but I also accept that she was affected by the other life events referred to above, by the further poor advice of Ms Hanley (that it was too late and that nothing could be done) and that she was spurred into action by Mr Matthews, whose wise counsel was that it might still not be too late.
 17. I express no view on the merits of the claim, save to say that it appears from the appeal outcome letter that a costs consideration arose in the

balancing exercise, and that that is a matter to be tested on evidence. I remind the claimant that the test of discrimination will be to consider whether discrimination occurred at the time in question, and avoid the wisdom of hindsight. The claimant should not take the outcome of this hearing as an indication that I think that hers is a strong (or a weak) case.

18. Accordingly the case proceeds to the hearing directed by Employment Judge Graham and his case management orders remain in force.

Employment Judge R Lewis

Date: 4 April 2024.....

Judgment sent to the parties on
15 April 2024

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For the Tribunal office

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