



EMPLOYMENT TRIBUNALS

Claimant

L Booth

v

Respondent

Royal Surrey NHS Foundation Trust

Heard at: Reading by CVP (but by audio only)

On: 1 May 2024

Before: Employment Judge Anderson

Appearances

For the claimant: In Person

For the respondent: Ms Crawshay-Williams (counsel)

JUDGMENT

1. The claimant's claim for unfair dismissal was not presented in time. The claimant did not show that it was not reasonably practicable for the claim to have been presented in time, in accordance with s111 Employment Rights Act 1996. The tribunal has no jurisdiction to hear the claim and it is struck out.
2. The claimant's claim of disability and sex discrimination was not presented in time and the tribunal found that it was not just and equitable to extend time for the filing of the claim in accordance with s123 Equality Act 2010. The tribunal has no jurisdiction to hear the claim and it is struck out.
3. The directions set at the hearing on 1 May 2024 need no longer be complied with and the hearing listed for 30 September 2024 to 3 October 2024 has been vacated.

REASONS

Background

1. The claimant brings a claim of unfair dismissal and direct discrimination on the grounds of disability and sex. The respondent seeks strike out of the claims on the grounds that they are out of time and/or without merit. If the tribunal is not minded to strike out the claim the respondent seeks a deposit

order in respect of allegations 1, 2, 3 and 6 (as set out in the list of issues below).

2. At a case management hearing on 1 March 2024 EJ Din listed a one day preliminary hearing for 1 May 2024 to consider strike out and applications from the parties. No applications outside of the strike out and deposit order applications were made.

The Hearing

3. The parties filed a joint bundle of documents. The respondent filed a witness statement from Grace Angeles and submissions from counsel. Time was provided on the morning of the hearing for the claimant to read the submissions which had only been filed that morning. Ms Angeles gave evidence on oath and was cross examined by the claimant. Both parties made oral submissions on time and merit. The claimant's submissions were largely given by way of me asking questions arising from the respondent's submissions. The claimant also gave evidence on oath about means in connection with respondent's application for deposit orders.
4. At the claimant's request the hearing was by audio only and regular breaks were taken.
5. As judgment on the strike out application was reserved, I gave directions at the hearing for continuing preparation for the final merits hearing which had already been listed and the list of issues was amended from the list set out by EJ Din on 1 March 2024. As I have now struck out the claim, compliance with those directions is no longer necessary.

The Issues – as amended at the hearing on 1 May 2024

6. Direct disability discrimination (section 13 of the Equality Act 2010)
 1. Did the Respondent do the following things:
 - i. On or around August 2020 the nurse in charge of the Claimant's first shift placed the Claimant with COVID patients following her return to work after shielding (**Allegation 1**);
 - ii. The Claimant's line manager Grace Angeles did not contact the Claimant during the time that the Claimant was shielding. Shielding ended on 2 August 2020 (**Allegation 2**);
 - iii. The Claimant feeling excluded by staff speaking in languages other than English from 3 August 2020 to 4 April 2023 (**Allegation 3**);
 - iv. On a team building day at the start of 2023, the Claimant's line manager Grace Angeles made comments about the Claimant not working as many hours as other staff (**Allegation 4**);
 - v. The Claimant's line manager Grace Angeles (on or around August 2020) comparing without compassion her sister's situation to the Claimant's child's situation including that

Grace Angeles' sister would need to go into shielding (**Allegation 5**);

- vi. Liya George did not treat the Claimant appropriately following a fall by the Claimant in her garden on 24 January 2023 by initially not answering her telephone call and ignoring her messages and when the Claimant was able to get through the Sister in Charge (Liya George) was very rude to the Claimant and questioned why she was in the garden (**Allegation 6**);
- vii. Not inform the Claimant of the seriousness of her meetings with the Matron and HR at a series of meetings up to and including 4 April 2023. Yogiata Gurung and Bjorn Ramirez were present at those meetings (**Allegation 7**).

7. Direct sex discrimination (section 13 of the Equality Act 2010)

1. Did the Respondent do the following things:

- i. The Claimant's line manager Grace Angeles criticising the Claimant for not calling before 3pm when the Claimant had to deal with childcare issues during 2020 to 2021 (**Allegation 8**).

Relevant Findings of Fact

5. The claimant attended a capability meeting on 4 April 2023.
6. The claimant was dismissed with effect from 5 April 2023.
7. The claimant visited her doctor on 12 May 2023 because of depression.
8. On 5 July 2023 the claimant contacted ACAS to begin early conciliation.
9. On 10 July 2023 the ACAS certificate was issued.
10. The claimant issued her claim in the tribunal on 9 August 2023.

Submissions on time

11. On behalf of the respondent, Ms Crawshay-Williams submitted that the entire claim was out of time. The last act relied upon (dismissal) took place on 5 April 2023 and therefore the last date for referring the claim to ACAS was 4 July 2023. It was referred on 5 July 2024 and therefore the claimant cannot benefit from any extension to the filing deadline which would usually apply where early conciliation has taken place.

12. The tribunal should not extend time for the following reasons:

Unfair dismissal

- 12.1 The test for extending time in an unfair dismissal claim is stricter than where a just and equitable consideration applies, and ignorance of a time limit is not an acceptable reason to extend. The claimant is expected to have enquired about the time limit. She applied it incorrectly. She has shown she had the ability to contact ACAS. She is resourceful. She looked up time limits on Google. Her inability to apply correctly what she found online is not evidence that it was not

reasonably practicable to file the claim on time. *Reed in Partnership Ltd v Fraine EAT 0520/10* involves a claim for unfair dismissal which was presented one day late because the claimant wrongly believed that the three-month time limit ran from the day after the effective date of termination but the tribunal found that it would have been reasonably practicable for the claimant to file his claim in time.

- 12.2 Where the claimant relied on medical information, medical records show an entry for 12 May 2023 more than a month after dismissal which is very brief and simply says 'depression'. This does not mean the claimant was unable to file the claim and it does not give the details the claimant went in to in her submissions. The tribunal might expect to see medical evidence if a medical reason is relied upon. Depression is an active problem, but the claimant was able to file a claim. She was able to Google a time limit point and she was able to contact ACAS. The inference from this could be that she could have brought a claim at an earlier date before or after the diagnosis. The claimant has not provided an explanation as to what she was doing from 10 July until the claim was filed on 9 August 2023. In submissions she talked about the email from ACAS which gave the filing date as one month after the end of conciliation but she accepted that she knew that the claim might not be in time. As she had Googled time limits at the outset, she could have done so again to inform her understanding. For these reasons the claim was not filed in time, it would have been reasonably practicable for it to have been so and if it was not, the claim was not brought within a further reasonable period. The claimant said that she contacted ACAS from the safety of her own home which she felt unable to leave because of her mental health, but she also filed the claim from home.

Discrimination

- 12.3 Ms Crawshay-Williams re-iterated that all of the claims of discrimination were out of time. On the matter of whether the acts complained of formed part of a continuing course of conduct she said that the acts of disability discrimination were not connected. Allegation one was about Alan Radaza, the nurse in charge, who was not named in any other allegations. The act complained of took place in August 2020. Allegation two involved Grace Angeles, again it was historic (August 2020) and the act (not contacting the claimant during shielding) was not linked to any of the other acts. Allegation three (staff members not speaking English) spanned a long period of time but the claimant had not named any of the alleged perpetrators. Furthermore, the allegation was entirely different in nature to other allegations. The fourth allegation, involving Grace Angeles in 2023, is out of time and not connected to other allegations. The fifth allegation, again involving Grace Angeles, again in August 2020, was not connected to other allegations. The sixth allegation, involving Liya George, is out of time and not connected to other incidents, the alleged perpetrator being mentioned in this allegation only. The seventh was again out of time

and involved different alleged perpetrators (Bjorn Ramirez and Yogita Gurung of HR).

- 12.4 Counsel relied on her written submissions and added that there had been no explanation of why there had been a delay in raising the allegations relating to the incident in 2020. The claimant was working at that time and after it. Her mental health did not worsen until later and it was not clear why there was a delay. The claimant said that it was just and equitable to be granted an extension as it would be beneficial for her in moving forward from what happened and would help improve her confidence. That is not enough to justify an extension. No good reason has been given. Ms Crawshay-Williams noted that some of the allegations were very historic and in allegation three no perpetrators were named. This made the allegation very difficult to defend. The merit of these allegations was relevant. The claimant has put forward no reason why, or even suggested that she believes, these acts were carried out because of her disability. The claimant appears to understand direct discrimination as something that affects her negatively, rather than acts done because she is disabled. For all of these reasons it is not appropriate to extend the time limit.
13. The claimant said that she had not thought that her claim was filed late as she believed it had to be filed by three months from the dismissal and she had contacted ACAS on 5 July 2023. The claimant said that she had submitted the claim to ACAS. I said to the claimant that conciliation had ended on 10 July and she had submitted her claim to the Employment Tribunal on 9 August 2023. She said she thought she had submitted it on 5 July 2023. The claimant said that she knew there was a three month deadline as she had Googled it and that she knew to contact ACAS also from a Google search. She said that she thought it was one day out of time and did not realise she had filed the claim on 9 August. The claimant acknowledged that ACAS had advised that the claim may be out of time and told her to put it forward to see if it was accepted and that it would be in the hands of the judge. She said that she was not sure what had happened between 10 July and 9 August, she thought she had submitted everything on the 5 July. She had a message from the Tribunal to say that she had started a claim on 9 August 2023. The claimant said that the email she received from ACAS said that she had one month to file her claim and she thought it was covered from that.
14. The claimant said that after her dismissal her mental health was poor, and she became suicidal. She did not leave the house. She had difficulty in deciding whether or not to file a claim. Her GP thought it would be a good idea and the claimant decided to do it to see if she could get some confidence back.
15. The claimant said that it was just and equitable that time for filing the claim should be extended as at the time she was not in the right place and not strong enough, her mind was not able to concentrate clearly. The claimant

said that she thought it would be beneficial for her going forward to try and see if she could get some confidence back so she could move on.

16. On whether the allegations of discrimination constituted a course of conduct the claimant said that all of the incidents complained of assisted in the deterioration of her mental health and put her in the position she is in today. She said that her mental health got worse towards being dismissed and after being dismissed it got a lot worse.

Law

17. Employment Rights Act 1996 [ERA 96]

111.— Complaints to employment tribunal

(1) *A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*

(2) *Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—*

(a) *before the end of the period of three months beginning with the effective date of termination, or*

(b) *within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

(2A) [Section 207B](#) (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).

...

207B Extension of time limits to facilitate conciliation before institution of proceedings

(1) *This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”)*

(2) *In this section—*

(a) *Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*

(b) *Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

(3) *In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

(4) *If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

(5) *Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.*

18. Equality Act 2010 [EA 10]

123 Time limits

(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.

(2)...

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;
- (b) failure to do something is to be treated as occurring when the person in question decided on it.

...

140B Extension of time limits to facilitate conciliation before institution of proceedings

(1) This section applies where a time limit is set by [section 123\(1\)\(a\)](#) or [129\(3\)](#) or (4).

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of [section 18A](#) of the *Employment Tribunals Act 1996* (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under [subsection \(11\)](#) of that section) the certificate issued under [subsection \(4\)](#) of that section.

(3) In working out when the time limit set by [section 123\(1\)\(a\)](#) or [129\(3\)](#) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by [section 123\(1\)\(a\)](#) or [129\(3\)](#) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by [subsection \(1\)\(b\)](#) of [section 123](#) to extend the time limit set by [subsection \(1\)\(a\)](#) of that section is exercisable in relation to that time limit as extended by this section.

Decision and Reasons

Unfair Dismissal

19. The claim was filed on 9 August 2023. The effective date of termination of employment was 5 April 2023. Early conciliation commenced on 5 July 2023 and ended on 10 July 2023. In order to comply with [s111\(2\)\(a\)](#) the claim should have been filed by 4 July 2023. Under [s111\(2A\)](#) ERA 96 the time for filing a claim can be extended as set out in [s207B](#). Under [S207B\(4\)](#) if the time limit for filing a claim would expire during the early conciliation period or up to one month after it ends, then the time limit is deemed to expire one month after conciliation ends. In this case the time limit for filing the claim had already expired when early conciliation commenced on 5 July 2023. There was therefore no extension of time for conciliation purposes and the claim was filed five weeks out of time.

20. Having decided that the unfair dismissal claim is out of time I must go on to decide whether time for filing that claim should be extended. I must decide if it was reasonably practicable for the claim to be filed in time and if not, if it was then filed within such further period as the tribunal considers reasonably practicable. It is for the claimant to show that it was not reasonably practicable (*Porter v Bandridge Ltd 1978 ICR 943, CA*). Where a claimant is aware of their rights to file a claim, it is unlikely that ignorance of or a mistake over when the time limit expires will render the filing of the claim in time as having been not reasonably practicable (see for example *Sodexo Health Care Services Ltd v Harmer EATS 0079/08*, *Reed in Partnership Ltd v Fraine EAT 0520/10* and *Koudriachova v University College London EAT 0132/14*).
21. The claimant said that she had poor mental health after she was dismissed which continued up to and beyond the date the claim was filed on 9 August 2023. She explained that because of her mental health she was not sure whether she wanted to file a claim which accounts for the claim not being filed in the early part of the three month time period for filing. She then decided to file a claim, carried out an internet search on time limits and on ACAS, made contact with ACAS and was advised that her claim was potentially out of time. I understood her to be saying that she was advised of this by ACAS on contacting it. The claimant did not give any clear reason as to why the claim was not filed for a further month after conciliation ended, but referred to ACAS saying that the claim must be filed within one month after conciliation ended in its email forwarding the EC certificate.
22. The tribunal had before it medical evidence in the form of the claimant's medical records which showed that she had visited her doctor for depression on 12 May 2023. She was aware that the respondent was of the view that her claim was out of time from the time the grounds of response was filed and this was discussed at the preliminary hearing on 1 March 2024 before EJ Din. There was no evidence before me other than the medical record referred to and the claimant's oral evidence on how this may have affected her ability to file a claim in time.
23. I find that as the claimant was able to determine that there was a time limit, that ACAS early conciliation was required, and able to file a claim with the tribunal, then it was reasonably practicable to have filed the claim in time. I accept that she had mental health difficulties which led her to spend some time deliberating over whether she wanted to file the claim, but the evidence of the actions the claimant actually took lead me to conclude that filing in time was practicable.
24. As the claimant's claim of unfair dismissal was filed out of time and I have found that it was reasonably practicable for it to have been filed in time then the tribunal does not have jurisdiction to hear the claim and it is struck out.

Discrimination on the grounds of disability and sex

25. The claim was filed on 9 August 2023. The last act complained of appears to be that the claimant was not aware of the seriousness of the capability meeting that took place on 4 April 2023. She was dismissed following that meeting with effect from 5 April 2023. In order to comply with s123(1)(a)

EA10 the claim should have been filed by 3 July 2023. On an application of s140B EA10, which has the same effect for discrimination claims as s207B has in relation to unfair dismissal claims, the claimant does not benefit from an extension of the filing date for the purposes of early conciliation and her claim was filed out of time.

26. In considering whether it is just and equitable to extend time for the filing of the claim relevant factors to consider include the length of the delay and the reasons for it, how the delay might have prejudiced the respondent's ability to defend the claim, the prejudice to the claimant in being time barred from bringing her claim and any other relevant matter. This list is not exhaustive and no one factor is necessarily more important than another (*British Coal Corporation v Keeble and ors* 1997 IRLR 336, EAT, *Southwark London Borough Council v Afolabi* 2003 ICR 800). In this case a consideration of the merits of the claim is a relevant factor. Merit may be a relevant factor (*Lupetti v Wrens Old House Ltd* 1984 ICR 348, EAT) but in such a case the parties must have the opportunity to make submissions on merit.
27. The reasons for the delay in filing the claim are set out at paragraph 21 above. Unlike in an extension of time under s111 ERA 96, whether or not there is a good explanation or an explanation at all for the delay in filing a claim is not determinative and is just one of the factors to be taken into account *Abertawe Bro Morgannwg University Local Health Board v Morgan* 2018 ICR 1194, CA.
28. The dates of the allegations of discrimination (of which there are eight in total) range from August 2020 to April 2023. I do not accept that the allegations form part of a continuing course of discriminatory conduct. Ms Crawshay-Williams set out in her submissions why the respondent said they do not form a course of conduct which I have recorded at paragraph 12.3 above. The claimant's only comment was that each incident had led to a worsening of her mental health. The allegations are against a range of different people, some of whom the claimant was unable to name, covering a number of incidents that are not linked and many of which are years apart. I have made this finding on whether there was a continuing course of conduct as that matter was relevant to the balancing exercise on prejudice that I carried out in reaching a decision on whether to extend time.
29. As noted under the heading of unfair dismissal, I accept that the claimant had mental health problems after her dismissal and that for this reason she spent some time deciding whether or not to file a claim. I have found also that there was no evidence from which I could conclude that the claimant's mental health was so impaired that it was not practicable for her to file a claim. She could and did investigate time limits and early conciliation. She did file a claim. The claimant has not provided any clear explanation as to why she did not file the claim on 10 July 2023. She referred to the ACAS email with the EC certificate but also said that she was aware from the outset of the conciliation process that her claim may be out of time. The claimant did not give any explanation as to why a claim was not filed sooner in relation to the stand alone allegations raised about incidents in 2020 and 2021 (allegations 1, 2, 5 and 8) or why she had not raised her concerns about staff not

speaking in English in meetings which began in August 2020 (Allegation 3). Ms Crawshay-Williams noted that there was no evidence of the claimant being too ill to do so at the time and she had been at work then.

30. When asked why time should be extended the claimant said that she believed that it would improve her confidence and help her to move on. She did not set out what prejudice she felt she would suffer in not having her claim heard. I have taken into account that the claimant is a litigant in person, and I have including in my consideration of the balance of prejudice that it is usually the case that a claimant will suffer prejudice where she is time barred from bringing a potentially meritorious claim of discrimination, particularly where the claimant has been dismissed for reasons that are related to the alleged discrimination. Ms Crawshay-Williams said the respondent would be prejudiced in answering the historic allegations where a substantial amount of time had passed and would be prejudiced in trying to respond to Allegation 3 which spanned three years and in which no alleged perpetrators had been named. That allegation was impossible to respond to.
31. With the exception of Allegations 3 and 8, the most historical allegations are about single incidents involving one person per incident and the bundle provided today shows that the respondent does have at least some evidence available in order to respond to these claims. The historic nature of some of the claims, although prejudicial to respondent, would not entirely hamper it from responding, though of course some of the alleged perpetrators may have changed employment by now and some documents may have been lost. I accept that Allegation 3 in its current form is impossible to answer and the historical nature of Allegation 8 may cause some difficulties in that Ms Angeles is effectively being asked to remember ten requests for leave which were granted during that time period and specifically, what she said to the claimant when leave was requested.
32. I have also considered the merit of the discrimination claim. The respondent made a separate application that the claim should be struck out as having no reasonable prospects of success or deposit orders made. Ms Crawshay-Williams made detailed submissions on merit and the respondent provided a witness to address some of the merit issues. The claimant had the opportunity to questions the witness and respond on that. Ms Crawshay-Williams, at my request, made submissions on time separately to submissions on merit but said quite properly that merit was also a factor in a time consideration and the issues could not be entirely divided. I did have that in mind when making my decision on time but decided that I did not need to consider the more detailed submissions on merit as it was clear from the claimant's comments throughout the hearing, including when we discussed clarification of the list of issues, that she could provide no reason why there should be an inference of discrimination in relation to any part of her discrimination claim. Despite drawing to her attention more than once that this was a direct discrimination claim and she was therefore claiming that she had been discriminated against because she was disabled or a woman (Allegation 8) it was clear from her answers that the claimant's case is that she suffered poor treatment and because of this her mental health declined. She did not know if the alleged perpetrators all knew she had a disability.

With regards to Allegation 3 she said of staff members not speaking English *'A lot of the time people did not realise they were doing it because it was very natural.'*

33. Many of the allegations (1, 2, 5 and 8), which I have found do not constitute a continuing course of conduct, are extremely historic in that they took place up to three years before the claim was filed, now four years for three of those allegations. No reason was given by the claimant for the delay until 9 August 2023 in beginning a claim, or 5 July 2023 before contacting ACAS, in respect of those historical allegations. While I have concluded that the respondent is likely still to be able to access information on those allegations, the delay in filing will cause some prejudice to the respondent. For the claimant I have taken into account her desire to pursue the claim in order to move on from these events and simply having the opportunity to bring a claim, which would be lost to the claimant if time was not extended. I note that while the delay in bringing the remaining allegations is much less (ranging from five months to six weeks), and the claimant has said in oral submissions that her mental health was deteriorating during that time, the more recent and indeed the historic allegations, are clearly lacking in merit, i.e. they would be unlikely to be upheld at a final merits hearing, as it was apparent from the claimant's submissions that her claim is not a claim that she was directly discriminated against by being treated less favourably because she was disabled or a woman, but is a claim that because of the way she was treated her mental health deteriorated. Having taken all of the factors into account I have concluded that it is not just and equitable to extend time.
34. As I have decided that it is not just and equitable to extend time, the claim of discrimination is out of time and is struck out.

Employment Judge Anderson

Date: 9 May 2024

Sent to the parties on: 14 June 2024

For the Tribunal Office