



EMPLOYMENT TRIBUNALS

Claimant: Mrs Shafaq Aziz

Respondents: Asda Stores Limited

RECORD OF AN PUBLIC PRELIMINARY HEARING

Heard at: Birmingham Employment Tribunal **On:** 24 September 2024

Before: Employment Judge Hena

Appearances

For the claimant: In Person

For the respondent: Mr Gittens, Counsel

JUDGMENT

The Tribunal makes the following decision in relation to the preliminary issues heard at the Public Preliminary Hearing:

1. The claimant's s.13 claim of religious/belief discrimination was presented within the applicable time limit, as per Employment Judge Connolly's case management order the conduct extended over a period of time. Given that the last act of claimed discrimination was discovered on 24 August 2023, I find the conduct extended to that date and the claim was presented in time.
2. The last act being at 2.1.2 of Employment Judge Connolly Order: after the submission of the claimant's grievance on 4 May 2022 did Mr P McLaughlin fail to conclude an investigation into the claimant's grievance

in a timely manner or at all? With the amendment that this was discovered on 24 August 2023 at a second grievance outcome meeting which is in the evidence presented to the preliminary hearing.

- 3. The claim of religious/belief discrimination (s.13 of the Equality Act 2010) will therefore proceed along with the claimant's s.26 claim.**

ISSUES AND BACKGROUND

Issues for the Preliminary Hearing

1. The issues in this matter are as follows:
 - 1.1. Given the date the claim form was presented (11 October 2023) and the dates of early conciliation (A: 20 September 2023, B: 05 October 2023), any complaint about something that happened before 21 June 2023 may not have been brought in time.
 - 1.2. Assuming, for the purpose of the preliminary hearing only, that the conduct was conduct extending over a period, were the complaints of direct discrimination because of religion or belief and/or harassment related to religion or belief set out in the List of Issues below made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.2.2. If not, was there conduct extending over a period?
 - 1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.2.4.1. Why were the complaints not made to the Tribunal in time?
 - 1.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

Background

2. The claimant was and remains employed by the respondent as a Service Colleague. She has been so employed since 22 July 2004. Early conciliation started on 20 September 2023 and ended on 5 October 2023. The claim form was presented on 11 October 2023.
3. At the case management hearing on 11 July 2024 before Employment Judge Connolly the claimant clarified that she was not bringing a claim for race

discrimination or harassment. She identifies her race as British. She uses the term 'race' to refer to the fact she is a British Muslim. She agreed her claim for race discrimination was withdrawn and understood it would be dismissed in the circumstances.

4. The claimant identifies her religion as Muslim and/or Islam.
5. The claim is about a comment made by a colleague and how the respondent dealt with the claimant's first grievance about the comment. The claimant clarified that, although she was dissatisfied with the way a second grievance about the comment was conducted (prior to the appeal), she did not complain that unsatisfactory conduct was itself discriminatory or harassing because of or for reasons related to her religion.
6. The comment of which the claimant complains was made on 3 May 2022. It was made in the context of who would be working on an upcoming shift and was to the effect that 'you lot can't decide when to celebrate Eid'. She raised a grievance on 4 May 2022, had a grievance meeting but, she says, was not informed about the outcome. The respondent says that the grievance investigation process broke down, for various reasons by August 2022 and was never completed.
7. The claimant submitted a second grievance on 19 May 2023 which repeated her grievance about the comment and included a grievance about the conduct of the first grievance, amongst other matters. As indicated in the response, on 24 August 2023, she was informed that her grievance in relation to the comment was not upheld. The grievance found that no offence had been intended by the comment made albeit it was perceived as offensive by the claimant. On that basis, the respondent did not uphold the grievance that the comment was discriminatory. It was accepted that the delay in the first grievance process was unsatisfactory and that communication with the claimant was poor. The respondent does not accept that the failure in the grievance process was because of or related to religion.
8. The claimant appealed against the second grievance outcome in respect of the comment which had been made to her on 4 May 2022. On 10 September 2023 the respondent upheld the claimant's appeal and accepted that a comment had been made which caused the claimant offence and was 'discriminatory'. The respondent states that the outcome of the decision was that the investigator Mr M Cobb could not confidently state that 4 May 2022 comment was racially motivated and/or whether it was intended that way or not. The respondent denies unlawful discrimination despite the grievance being upheld.
9. The respondent does not accept that the acts complained of constituted conduct extending over a period. Even if they did, the respondent asserts that the claim is out of time.

Employment Judge A. Hena

24 September 2024