



EMPLOYMENT TRIBUNALS

Heard at: London South (by CVP)
On: 8 April 2024
Claimant: Joshua Harper
Respondent: Gatwick Airport Limited
Before: Employment Judge O'Neill
Representation:

Claimant	In person
Respondent	Ms Ellison, Irwin Mitchell

JUDGMENT AT A PRELIMINARY HEARING

1. The claim of sexual harassment contrary to s26 of the Equality Act 2010 was presented out of time. The Tribunal was not persuaded to exercise its discretion to extend the time-limit.
2. The claim for unlawful discrimination on the basis race was withdrawn by the Claimant prior to the hearing.
3. The claims for notice pay and unlawful discrimination on the basis of disability were withdrawn by the Claimant during the hearing.
4. The claim of unfair dismissal, was presented within the primary time-limit and that claim proceeds.

REASONS

5. Judgment having been given to the parties on 8 April 2025 and written reasons having been requested by the claimant on 11 April 2025, in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided.

Background

6. The claimant was employed by the respondent, as a security team manager, from February 2019 until his dismissal on 2 May 2024.
7. An incident took place on 24 October 2023 and a few days later a complaint was made against the Claimant about his conduct.
8. Relevant timeline:
- | | |
|----------------|---|
| - 1 June 2023 | Allegations made against the Claimant of sexual harassment.
Investigation, complaint upheld, final warning issued |
| - 24 Oct 2023 | The incident - sexual harassment (the "incident") |
| - 2 Nov 2023 | Complaint of sexual harassment against the Claimant |
| - 23 Nov 2023 | Disciplinary against Claimant |
| - ~ Nov 2023 | Claimant's counter-grievance about the incident
Claimant is signed off work
Claimant's home life deteriorates and is precarious |
| - 15 Dec 2023 | Claimant notified Acas |
| - 11 Jan 2024 | Acas concluded |
| - ~ Jan 2024 | Claimant's home life stabilises |
| - 19 Feb 2024 | <i>Time limit for sexual harassment claim expires</i> |
| - ~ March 2024 | Claimant's health improves |
| - 5 Mar 2024 | Meeting with respondent and union rep |
| - 15 Mar 2024 | Further investigation meeting held |

- 2 May 2024 Claimant dismissed
 Claimant notified Acas
 Acas concluded
 ET1 submitted

9. The Claimant explained that the period when he should have submitted his claim was a difficult period for him (i.e. between October 2023 when the incident took place and 19 February 2024 when the time limit expired). His home life was precarious and his mental health was poor.
10. Although his mental health improved in the period after the time limit expired (19 February 2024) he says that he was unaware that he had needed to submit his claim by 19 February 2024 and that he thought it would be more appropriate to let matters take its course with the employer first.
11. The Respondent submitted that prior to the time limit expiry, when his mental health was poor, the Claimant did have the ability to engage with the Acas process. Further, he should have been aware of the time limits because he had participated in the Acas process and had union support throughout (and attended the March meetings with his representative).

Procedure & Evidence

12. I had the benefit of the Claimant's ET1, the Respondent's ET3 and Grounds of Resistance, the Claimant's completed agenda and schedule of loss.
13. The Claimant read out a detailed statement that he had prepared, explaining why there had been a delay in submitting the claim of sexual harassment.

Relevant law

14. 30. S.123(1)(a) Equality Act 2010 (EqA) provides that:

 (1) *[Subject to [sections 140A and 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.*
- [...]*

(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.*

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

- (a) when P does an act inconsistent with doing it, or*
- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

15. By s.140B EqA, the primary time limit is extended by Early Conciliation but only if it commences before the primary time limit has expired.
16. Where a complaint is not brought in the primary limitation period, the tribunal nonetheless has jurisdiction to hear it if it is brought within such further period as the tribunal considers just and equitable. That is a very broad discretion. In exercising it, the Tribunal should have regard to all the relevant circumstances, which may include factors such as: the reason for the delay; whether the Claimant was aware of his right to claim and/or of the time limits; whether he acted promptly when he became aware of his rights; the conduct of the employer; the length of the extension sought; the extent to which the cogency of the evidence has been affected by the delay; and the balance of prejudice (**Abertawe Bro Morannwg University Local Health Board v Morgan** [2018] ICR 1194). Leggatt LJ said this:

"There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that

whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard."

17. In ***Apelogun-Gabriels v London Borough of Lambeth*** [2002] IRLR 116, the CA held that, the correct law for whether it is just and equitable to extend the time limit for presenting a discrimination complaint which is out of time because the applicant was pursuing internal proceedings was laid down by *Robinson v Post Office*. The fact that the employee had deferred proceedings in the tribunal while awaiting the outcome of domestic proceedings is only one factor to be taken into account.
18. The overriding objective of the Employment's Rules of Procedure, set out at rule 3, is to enable Employment Tribunals to deal with cases fairly and justly.

This includes, so far as practicable:

- (a) ensuring that the parties are on an equal footing;*
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) saving expense.*

My decision

19. In making my decision I balanced the interests of and potential prejudice to the parties and also weighed them with the Tribunal's overring objective.
20. In doing so I took into account all the relevant factors, in particular:
 - a) The Claimant's mental health and home life was difficult during a key period of the time limit.
 - b) The clam was nearly three months out of time, so the Claimant hadn't missed it by a narrow margin.

- c) The Claimant should have been aware that that there was a time limit (he had the benefit of ACAS and a union representative).
 - d) From March 2024 the Claimant was well enough to able to engage with the disciplinary process.
 - e) The claimant explained that he wanted to run through the internal process first.
21. I was particularly concerned about the prejudice to the Claimant. If I refused to extend time, he would be prevented from pursuing the claim of sexual harassment. I was conscious that the Claimant's mental health may have prevented him from submitting his claim in time, but weighing against that (i) that that he had been well enough during that same period to engage with Acas, and (ii) that had also said that he wanted the internal process to run its course.
22. I adjourned the hearing to review the papers and create a timeline and was, on balance, having considered all the facts and of the view that the principle reason for the submission of a sexual harassment claim was his dismissal on 2 May 2024 rather than the October incident itself.
23. I considered the prejudice to the Respondent, which was limited the fact that it would have to defend the claim if I extended the time.
24. I considered the delay incurred by listing for a longer hearing and how that would impact both parties and whether it would be more fair or just to do so.
25. Considering everything in the round, I decided that it was not just and equitable to allow a three month extension of time.
26. I explained to the Claimant that although the judge at the next hearing would not be making a decision about whether he had suffered sexual harassment, the judge would be considering whether he was dismissed unfairly and the Claimant may explain what happened at October incident if he thought it was relevant to his claim for unfair dismissal.

Employment Judge O'Neill

Date 17 April 2025

JUDGMENT SENT TO THE PARTIES ON

28 April 2025

For the Tribunal Office

P Wing

Notes

1. Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case