



EMPLOYMENT TRIBUNALS

Claimant: Ms C Punshon

Respondent: STEM Learning Limited

Heard at: Hull (by video) **On:** 13 December 2024

Before: Employment Judge Miller

Representation

Claimant: In person

Respondent: Mr A Reid – solicitor

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The respondent's application is successful and the claimant's claim is dismissed on the grounds that
 - a. It is out of time and it is not just and equitable to extend time to bring the claim: and
 - b. The claims had no reasonable prospect of success.
2. I will address the respondent's applications by reference to the five headings set out in the conclusions section of the respondent's application letter.
3. The first one relates to the timing of the claimant's claim that it was out of time.
4. The claimant makes a complaint about acts that are alleged to have happened on 18 January 2024. She started early conciliation on 6 April 2024

which was within time. Early conciliation finished on 14 May 2024 so that the primary time limit for the claimant bringing a claim was 14 June 2024.

5. The claimant attempted to present a claim by sending a blank claim form to the Watford Employment Tribunal on 14 June 2024, which was not the prescribed way to present a claim, and she then presented the claim properly on 21 June 2024 which was one week out of time.
6. The time limit for presenting a claim for discrimination to the Employment Tribunal under Section 123 of the Equality Act 2010 is three months from the date of the alleged discrimination, but the Tribunal has discretion to extend that time limit if it is just and equitable to do so.
7. I refer to the well-known case of *British Coal Corp v Keeble* [1997] IRLR 336 which refers to a number of factors that the Tribunal is advised to take into account when determining an application for an extension of time on a just and equitable basis, although that is not a checklist. Those factors are
 - a. the length of and reasons for the delay;
 - b. the extent to which the cogency of the evidence is likely to be affected by the delay;
 - c. the extent to which the party sued had cooperated with any requests for information;
 - d. the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and
 - e. the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.
8. It is also relevant to consider the merits of the claim when deciding whether it is just and equitable to extend time, and it has been held that the primary considerations are the length of and reasons for the delay and the prejudice to the parties.
9. The burden is on the claimant to show a good reason why the claim was late and why time should be extended.
10. The claimant has provided no evidence to support her application for and extension of time, particularly no witness evidence despite being ordered to do so, and she has not set out her reason basis why time should be extended in her claim form. The claimant has some experience of bringing tribunal claims. I agree with the claimant that that does not mean that she has the same level of knowledge as a lawyer, but it does mean that she is, or at least should be, aware of the importance of time limits.
11. The claimant said today that really the reason she her claim was delayed was that she was trying to persuade the respondent to address her complaints to its internal processes. That of itself is not a good reason for extending time, but in any event the claimant left it until the very last possible minute to present her claim which is why when she did make a mistake in sending her form which she was then required to correct, her claim was out of time.
12. As I have said the main reason is the length of and the reasons for the delay. I agree with the claimant again that the length is not substantial and it is unlikely to have any very substantial impact on the cogency of any evidence. The claimant has not, however, given a good reason for the delay and such

reason as the claimant did advance only came to light today in any event. For these reasons it is not just and equitable to extend time.

13. I will go on to explain my view on the prospects of success of the claimant's claim shortly, but the poor prospects of success of the claim is a further reason for my refusal to extend time.
14. The next heading on the respondent's application is that the respondent contends that the claimant is a vexatious litigant in that she has a habitual pattern of making unreasonable claims. The respondent refers to Section 33 of the Employment Tribunals Act 1996.
15. The respondent has made reference to two other claims in which the claimant is or has been involved. In my judgment those are not matters that it is relevant for me to take into account in considering this application. I have seen no evidence that the claimant has acted vexatiously in the way that she has pursued this claim. She has failed to comply with Orders which I will come to, but that certainly does not amount to vexatious or scandalous conduct, and for the avoidance of doubt I do not have the jurisdiction to consider an application under Section 33 of the Employment Tribunals Act 1996. I would not have the power to deem the claimant to be a vexatious litigant even if there were evidence to support that.
16. Turning now to the prospects of success.
17. At the beginning of this hearing I identified the claims and issues with the claimant and the claims are claims of direct race and sex discrimination as set out in her claim form, and we also discussed a potential claim for victimisation. I have considered the claimant's case on the basis of all those complaints, subject to there being a potential requirement for an amendment to the claimant's claim were the victimisation and the earlier detriment claims to be included. I have taken the claimant's claim at its very highest.
18. The three detriments on which the claimant potentially relies are removing her PDL status on 18 January 2024, removing the claimant from the respondent's PDL forum on the same date and that an offer of employment was made in September 2022 which was deliberately obscure in terms of the remuneration to be offered. Those are all put as claims of direct race and/or sex discrimination on the basis that she was treated less favourably than a man or a white person and potentially as claims of victimisation because of protected acts. She refers to JL as her comparator.
19. In respect of the potential victimisation claim, the claimant says that she did a protected act in or around October 2022 when she complained to Mandy Honeyman about the Wolfram alpha course containing historical inaccuracies about colonisation by the British being connected with their superior competence at maths.
20. Just disregarding the requirement for amendment for the moment, in my view those claims have no reasonable prospects of success.
21. Turning to the victimisation claim first, Section 27 (2) of the Equality Act 2010 sets out the requirement for a protected act and that says –
Each of the following is a protected act—
(a) bringing proceedings under this Act;

- (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
22. The way the claimant described her conversation with Miss Honeyman in October 2022 (which she relies on as a protected act) does not in my judgment come anywhere close to meeting a requirement of a protected act. The claimant's concerns were really about the poor quality, in her view, of the course rather than making a specific complaint under the Equality Act 2010, albeit that some of her concerns were related to what she perceived to be a racist approach to one aspect of the course. For those reasons the victimisation claims have no reasonable prospects of success.
23. In terms of the race and sex discrimination claims, the claimant's explanation today of the basis for her discrimination claims effectively amounted to an assertion that she treated less favourably than a person with whom she did not share the relevant protected characteristics namely a white man.
24. I heard Mr Reid's representations about the inappropriateness of JL as a comparator but even putting that aside it is established in the case of *Madarassy v Nomura International plc* [2007] EWCA Civ 33 that a claimant must show something more than just a difference in treatment and a difference in protected characteristic in order to establish discrimination.
25. The claimant has not set out any basis at all for her assertion that she was treated less favourably than anyone else because of either her race or sex. In fact, the only reference to allegations of race or sex discrimination in the claim form that the claimant has made is to tick the relevant boxes. In fact, even today having been given an opportunity to expand on her assertions, the claimant has not been able to explain anything that might suggest a connection between her protected characteristics and the adverse treatment which she says she received.
26. In any event, even if the claimant was able to show that there was evidence from which the Tribunal could conclude in the absence of an explanation to the contrary that the claimant had been discriminated against (and I reiterate the claimant has not said anything that could amount to that) the respondent is extremely likely to be able to show that the treatment was in no sense connected with the claimant's race or sex. The respondent has provided emails today which show very clearly that the claimant used the STEM forum for matters unconnected with the PDL process. She used the forum for making representations to JL about his conduct in respect of the other tribunal proceedings in which the claimant was involved.
27. I do not say anything about whether that did or did not amount to harassment as the respondent asserts. In my view that is not relevant. The only question is why the respondent acted as it did, and in my view it is extremely likely that the respondent will be able to show that it acted as it did because it believed that the claimant was not acting in accordance with its terms.
28. For those reasons the claimant's claims have no reasonable prospects of success.

29. Turning next to the next heading in the respondent's application, which is that the claimant is not what the respondent refers to as a protected individual under Part 5 of the Equality Act 2010 so that the Tribunal does not have jurisdiction to consider the complaints of discrimination.
30. The claimant has put her claim on the basis that she was a worker for the respondent. In my view the claimant has no reasonable prospects of showing that she was a worker engaged by the respondent. She never did, nor did she expect to do, any work for the respondent.
31. However, in my view there is a possibility that the claimant would be able to show (if she had put her claim in this way) that the respondent was an employment service provider under Section 55 and 56 of the Equality Act 2010. The parties appear to agree that the respondent, at the very least, makes arrangements for the provision of vocational training or vocational guidance, which falls under Section 56(2)(c) of the Equality Act 2010. That seems to be, as far I can see, one of its main purposes and that would potentially bring the claimant within the jurisdiction of the Employment Tribunal.
32. The claimant has not put her claim that way but this is a question of jurisdiction that the Tribunal would have to decide. Were the claimant's claim to proceed, there is a possibility that that matter would be addressed in clarifying the issues or potentially as a further amendment and I would not strike the claimant's claim out on that basis.
33. Turning finally to the respondent's claim that the claimant has failed to comply with Tribunal directions. The respondent relies on the claimant's failure to comply with the directions set out in the correspondence from the Tribunal on 14 August 2024 in preparation for this hearing.
34. In so far as it applied to the claimant, the orders said
1. By **6 November 2024** the claimant must send to the respondent representative a witness statement dealing with the issue of time limits; including, why the claim was submitted late, what the claimant knew about time limits before submitting the claim, what effort she made to ensure the claim was submitted in time.
 2. Also, by **6 November 2024**, the claimant must enter the respondent representative any relevant documents relating to the question of time limits.
35. The claimant has manifestly failed to comply with those Orders. She did not provide a witness statement or any documents to the respondent by 6 November as she was ordered to. The claimant's explanation for that was that she did not read the letter. She did not realise, I think, the importance of it and it was attached to a long email dealing with something else.
36. In my view that is not a good reason not to read the attached letter, particularly in light of the respondent's subsequent email which referred to Orders. However, in my view that failure would not of itself have been sufficient to strike out the claimant's claim.
37. The test the Tribunal applies in those circumstances is whether it is still possible to have a fair hearing because of the failure to comply with the

Orders and that manifestly is not the case. We are a long way from the final hearing.

38. However, the consequences of the claimant failing to comply with those Orders have been that she has not been able to give any witness evidence today in support of her assertion that the time for presenting the claim should be extended and she has borne the consequences of that.
39. In conclusion, the claimant's claim was out of time. It is not just and equitable to extend time and the claims in any event had no reasonable prospects of success. For those reasons the claimant claim is dismissed.

Employment Judge Miller

Date: 10 January 2025

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