



## EMPLOYMENT TRIBUNALS

**Between**

**Claimant:** Mrs B Verey

**Respondent:** Epsom & St Helier University Hospitals NHS Trust

**Heard at London South Employment Tribunal on 8 March 2018**

**Before Employment Judge Baron**

**Representation:**

**Claimant:** Nicky Harrison – Lay representative

**Respondent:** Hollie Patterson - Counsel

### JUDGMENT AT A PRELIMINARY HEARING

It is the judgment of the Tribunal that the claim be dismissed.

### REASONS

- 1 The Claimant made contact with ACAS under the early conciliation procedure on 31 July 2017 and the certificate was issued on 31 August 2017. On 22 September 2017 she presented a claim form ET1 to the Tribunal. In section 8.1 of the form she had ticked the boxes to indicate that she was making a claim that she had been unfairly dismissed, that she had been discriminated against because of her race, and that she was owed arrears of pay and 'other payments'. On 30 November 2017 the Respondent presented a response on form ET3. In the Grounds of Resistance there was reference to the previous proceedings mentioned below. The Respondent made reference to the *res judicata* principle, and said that the claim was an abuse of process within the *Henderson v. Henderson* principle. It was also said that the claims had been presented outside of the statutory time limit, and that the claim form did not disclose any claim of race discrimination.
- 2 The claim form and response were referred to an Employment Judge in accordance with the normal procedure. On 8 January 2018 the Respondent's solicitors made an application for this hearing setting out the reasons why the claims should be dismissed. A judge then ordered that there be this hearing for the purpose of considering the issues raised

by the Respondent in the response and the application. A notice of hearing was issued on 26 January 2018 accordingly.

- 3 The Claimant had previously issued two claims in the Tribunal against the Respondent. The case files have been destroyed, but the Respondent was able to provide copies of some documents. The first claim was case number 2361612/2013 which was presented on 12 August 2013. The claims were of race discrimination, harassment and victimisation, and also for having suffered a detriment for having made a public interest disclosure. By a judgment dated 3 December 2013 EJ Spencer decided that the claims be dismissed as having been presented out of time. Judge Spencer set out at some length the law relating to time limits in respect. An application was made for reconsideration of the judgment. It appears that there was some confusion over the fee then payable and resulting delay, but in any event Judge Spencer considered the application, and dismissed it on 28 July 2014.
- 4 The second claim was case number 2300118/2014 which was presented on 22 January 2014. The claim was that the Claimant should have been paid her full contractual pay while off work because the reason for her absence was said to be stress caused by the Respondent. That claim was dismissed by EJ Sage on 9 April 2014.
- 5 We mention other documents to complete the picture. On 25 September 2017 the Tribunal received a document of two pages apparently setting out further details of the claims being made. The Claimant also supplied two further documents, one headed 'Cast List' and the other headed 'Draft discrimination'. On 21 February 2018 the Claimant supplied a seven page witness statement.
- 6 I say at the outset that despite my best endeavours I was unable to persuade Ms Harrison and the Claimant to concentrate on the issues which I had to decide. I record three instances before turning to the issues before me.
- 7 Ms Harrison and the Claimant made criticisms or comments concerning the previous claims, and I refused to become involved in considering the points made. Judgments had been issued and any remedy of the Claimant arising out of those proceedings was to appeal those judgments if appropriate, and not to seek to discuss them in this claim.
- 8 The Claimant was also insistent that the 2014 case was still current because she had asked for a reconsideration of the judgment, had paid the fee and no reconsideration had taken place. She produced a bank statement showing a payment on 4 July 2014 or thereabouts. There was no evidence of any such application, and the Claimant was obviously confused between the two previous cases. There had been a reconsideration of the judgment in the 2013 claim. The Claimant mentioned in her claim form ET1 in these proceedings that she was seeking to amend her cases to include a claim of unfair dismissal. That was clearly misconceived as there were no extant claims to amend.
- 9 On 12 December 2017 the Claimant wrote to the Tribunal saying that she was seeking to amend the claim, stating that it could be amended at any

time. She also appeared to state that the response form ET3 had been presented out of time. That is factually incorrect. The response was due by 2 December 2017. It was received on 30 November 2017.

- 10 The Respondent was then invited to provide comments by 8 January 2018. The Respondent wrote to the Tribunal on 8 January 2018 commenting on the Claimant's letter of 12 December 2017. The letter was sent by email at 22:32 hrs. Ms Harrison and the Claimant were insistent that the response had not been presented on time as it was received after 16:00 hrs. As I explained, the Respondent was only being asked to comment on the Claimant's letter, and no more than that. Secondly, the Tribunal does not treat documents received after 16:00 hrs as being received the next day.
- 11 I now turn to the issues. The Claimant left the employment of the Respondent in May or June 2015. In the ET1 the Claimant refers to a letter of 11 April 2017 from a Mr Croft. I was referred to a letter in a large bundle which the Claimant had prepared for the Tribunal. That was a letter to the Claimant from Mr Croft which stated that the Respondent's Pensions Department had confirmed that she did not have 'special status as [she] started after 6/3/1995.'
- 12 Miss Patterson addressed each of the three heads of claim mentioned in the claim form, and I will follow that order. There was no discussion concerning 'other payments' as no other payments were mentioned in the claim form or any other document. The first head was a claim for unlawful deductions from wages. That same claim had already been made in the 2014 claim and had been dismissed as mentioned above. The Claimant cannot raise the same matter again.
- 13 The second claim was for constructive unfair dismissal. The Claimant's employment ended after she had presented her earlier claims. The contact with ACAS under the early conciliation procedure was not made until over two years after the end of the employment. As was set out by Judge Spencer in her judgment there is a time limit of three months, which effectively now means that contact must be made with ACAS within that time. That limit is to be extended where the claimant is able to show that it was not reasonably practicable to have complied with it. The burden is on the Claimant to show that it had not been reasonably practicable to do so. There was absolutely no explanation from the Claimant for the delay. The Tribunal does not have the jurisdiction to consider that claim.
- 14 The third head of claim was that of race discrimination. Miss Patterson submitted that there were no details in the various documents supplied to the Tribunal by the Claimant which could be construed as allegations of race discrimination other than in the one headed 'Draft discrimination'. However, there were no details of why it was being alleged that the actions were discriminatory.
- 15 In that document the Claimant refers to having been given a final written warning on 15 January 2015, by providing her with a uniform below her grade, being subjected to a disciplinary hearing in December 2014, and suspension in April 2014. There is also reference to sick pay with which I

have dealt above. I agree with Miss Patterson that there is nothing to indicate that the claim of race discrimination could have any substance.

- 16 In the case of a claim of discrimination the time limit of three months can be extended where the Tribunal considers that it is just and equitable so to do. Again the responsibility is on a claimant to show why time should be extended. A principal consideration is the reason for the delay. No explanation was given. Another major factor is the prejudice caused to the parties by extending, or not extending the time limit. For example, it may be appropriate to extend the limit where it appears that a claimant may have a strong claim, so that it would be unjust to prevent her from pursuing that claim. That is not the case here. There is absolutely nothing in the details provided which give any indication that the matters of which the Claimant now complains were caused by her race.
- 17 I therefore decline to extend the time limit, and decide that the Tribunal does not have the jurisdiction to consider the claim of race discrimination.
- 18 Miss Harrison addressed me at some length in reply to Miss Patterson, but with respect to her she failed to address the issues which I had to decide. She made allegations of bias, fraud, lying and fabrication. Whatever the merits of such allegations, as to which I make absolutely no comment, the matters to which she referred happened years ago and are caught by the statutory time limit, even if they had not been the subject of either of the earlier claims.

**Employment Judge Baron**

**12 March 2018**