EMPLOYMENT TRIBUNALS

Claimant: Miss K Hill

Respondents: (1) Nottinghamshire County Council
(2) Mr R Shaw

PRELIMINARY HEARING

Heard at: Nottingham (in public) **On:** 19 July 2018

Before: Employment Judge Camp (sitting alone)

Appearances
For the claimant: in person
For the respondent: Mr J Meichen, counsel

REASONS

1. This is the written version of the reasons given orally on 19 July 2018 for the tribunal's judgment that the claimant's sexual harassment claim was presented outside the time limits set out in sections 123(1)(a) and (b) of the Equality Act 2010.

2. I was intending to give my decision in this case at 2.30. It is now about 3.30. This will be cold comfort to the claimant, but one of the reasons why I am delivering this an hour later than I intended to is because I found this an extremely difficult decision to come to. It is very finely balanced, but I have to come down on one side or the other and I am afraid I have come down in the respondents' favour.

3. This is a preliminary hearing about time limits. It is, specifically, about whether it would be "*just and equitable*" in accordance with section 123 of the Equality Act 2010 to extend time to allow a complaint of sex discrimination in the form of sexual harassment to proceed.

4. The claimant was employed from July 2016 to 3 November 2017 as a Day Service Support Assistant in the North Day Service Centre of the respondent Council's Adult Social Care Department.

5. The claim I am concerned with was issued on 1 December 2017. The claimant had gone to ACAS to go through early conciliation on 24 November 2017[1]. The claim I am concerned with is one of alleged sexual harassment by the

[1] Early conciliation began and ended on that date.

second respondent. At the start of the hearing, the claimant confirmed to me that the last incident her claim was about was on 24 March 2017.

6. For the purposes of today's hearing, we are assuming (without deciding the point one way or the other) that if the claimant's allegations are made out, there would be "*conduct extending over a period"* for the purposes of section 123 of the Equality Act 2010 ("EQA") and that therefore time would run from the date of the last incident, i.e. from 24 March 2017.

7. Given the date when the claim form was presented and the date of early conciliation, anything that happened before 25 August 2017 is outside of the primary time limit. If the last incident was on 24 March 2017, in order to be within the primary time limit, the claimant would have to have gone to early conciliation by 23 June 2017. So what we are looking at today is, effectively, extending time from 23 June to 24 November 2017, a period of 5 months or thereabouts.

8. I should like to emphasise from the outset that nothing I have to say is meant as a comment on the merits of the claimant's underlying claim. Apart from anything else, I am in no position to make any judgment about this. This hearing is not about whether I believe the claimant or the second respondent, who did not give evidence but who, according to the response, vehemently denies the claimant's allegations. This hearing is purely about time limits.

9. In considering whether or not to exercise my discretion under EQA section 123, I remind myself that: all the circumstances must be taken into account, usually including (suitably adapted so they make sense in an employment law context) the factors (a) to (f) set out in section 33(3) of the Limitation Act 1980; an important, but not necessarily determinative, factor is likely to be the balance of prejudice; time limits are there to be obeyed; it is for the claimant to persuade the tribunal that it is just and equitable to extend time; if the claimant is ignorant of time limits this does not in and of itself justify extending time. I have sought to apply the law in relation to this as summarised in paragraphs 9 to 16 of the EAT's decision in Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] ICR 283.

10. I note that our time limits in the employment tribunals are very short – just 3 months for most things, compared to 3 years for personal injury claims and 6 years for contractual claims. Many people involved in employment rights think they are too short. But whatever my views on that are, I am obliged to apply the law as enacted by Parliament. Extending time should be the exception, not the rule. I do not mean by this mean that there has to be some exceptional feature in order for me to extend time, I merely mean that if a tribunal usually extends time, even where there is no particularly good reason for any delay and just on the basis that there is no prejudice to the respondent, that would be, to my mind, ignoring the decision of Parliament that 3 months is the appropriate basic time limit for discrimination claims. The legislation always has to be my starting point.

11. The first thing – indeed, it is in this case by far the most important consideration – is for me to think about: why did the claimant delay in bringing her claim?

12. The claimant has referred to many things to try to explain this. First and foremost, she has referred to her health. She had some kind of breakdown in February 2017, although she did not take any time off work at that point. Things got on top of her to such an extent that she went off sick, from around the end of April 2017 until her employment terminated in November [2017], with, I think, work-related stress or something along those lines.

13. A substantial part of that stress seems to have been caused by disciplinary charges the claimant was facing and the disciplinary process which ultimately led to her dismissal. Her medical notes show that she was on antidepressant medication from February 2017 and she also had problems with vertigo, for which she was prescribed further medication. She also had a cancer scare in August 2017. Although this was short-lived, it was understandably very stressful and frightening for her. The claimant also had problems with her housing and was worried about having a roof over her head, at least until June 2017, when she secured council housing. She is also responsible for one of her grandchildren, who is troubled and clearly takes up a lot of her time and her emotional energy.

14. I accept everything the claimant has told me factually in relation to this but, unfortunately for her, what none of it does is explain why she delayed in bringing her claim. It may well be the case that but for all of these things, she would have brought a claim. But they were not, I think (or at least I am not satisfied that they were), the reason she did not bring one earlier.

15. The claimant had and took advice from various sources from March/April 2017 onwards, including, at least, the Equality Advisory Service, ACAS and, at some stage, the CAB.

16. At around the same time as going off sick in late April 2017, following receipt of advice from the Equality Advisory Service, the claimant raised a formal grievance by letter of 2 May. On the face of that grievance, it is clear she had had some advice. There is, amongst other things, reference to the Equality Act in it.

17. It was a short grievance process. On 22 May 2017, the claimant was written to and told that the respondent was unable to substantiate her allegations. The letter invited her to move on to the next stage of the grievance process if she was not satisfied. She did not do so.

18. I am not satisfied on the evidence that the claimant did anything of substance to advance her complaint about sexual harassment between receiving the grievance outcome letter and her dismissal on 3 November 2017.

19. Then, suddenly immediately following her dismissal, she *was* able to advance that complaint. She went through early conciliation on 24 November, just 3 weeks after being dismissed. None of the things she relies on as reasons why she did not go to early conciliation between the end of May and 23 November suddenly changed in September/October or early November so as to explain why she was able to proceed with her claims in November/December but not earlier. All of those things were there causing problems for her from around March and they were still doing so in November/December; and I understand many of them still continue to do so to this day.

20. It is obvious that the trigger for this claim was dismissal, or at least events around dismissal. It seems to me likely that if the claimant had not been dismissed, this claim would not have materialised. The claimant evidently made a conscious (or, more likely, unconscious) decision to prioritise other things over and above pursuing the sexual harassment complaint in May 2017 when she decided that she was not going to go to the next stage of the grievance process.

21. The trigger for the claim seems not to have been so much the dismissal itself but the fact: that one of the people who gave evidence against her at the disciplinary hearing on 3 November was the second respondent; and that he was believed by the decision-makers and the claimant was not; and that she was labelled, in her mind, a liar.

22. No doubt the claimant would have brought an unfair dismissal claim had she had 2 years' qualifying service, but she did not. I am not suggesting that the claimant actually thought about it in these terms, but it is apparent she wanted vindication and she believed her only avenue was the sexual harassment allegations which she had previously decided not to pursue.

23. The claimant has referred in her evidence to talking to all kinds of people – she referred to the police, to the Equality Advisory Service, to ACAS, to the CAB and people at the first respondent – about her sexual harassment complaints between May and November 2017 and has suggested that she did not abandon those complaints at all. I am not saying that she did abandon them as such, but she did decide that she was not going to pursue them, and only changed her mind when something completely separate to them changed.

24. In any event, there are two points about this. The first is that if she is right about her dates and she was talking to all these various advisors at this time, it is inconceivable to me that nobody mentioned employment tribunals and time limits to her. She may not have taken it in and she may well not remember it now, but someone would have talked to her about it.

25. The second point is that I think the claimant has probably got confused about the chronology in relation to this. It is easy to get dates mixed up in one's mind and she definitely did mix up some dates when giving her evidence to me. (For example, she referred to a bladder cancer scare as being something that happened between March and November 2017 when it was actually in mid 2016). She was adamant that she had <u>not</u> gone straight to the police with her harassment allegations immediately after the disciplinary hearing and because of the disciplinary hearing. She told me it was just a coincidence that she gave her statement to the police on 4 November 2017. However, the notes of the disciplinary hearing clearly record her saying that she intended to contact the police the following day to raise her allegations and that appears to be exactly what she did.

26. We are left with this. At the end of May 2017, when the claimant would have been within time to do early conciliation and bring a claim, she took a decision not to pursue her grievance of sexual harassment and she effectively decided at the same time that she was not going to pursue the sexual harassment allegations further. I do not think, as I have already said, they would have been

pursued further had it not been for the fact that five-and-a-bit months later she was dismissed partly because of evidence given by the alleged harasser.

27. The claimant is not to be criticised to any extent for making that decision – that choice – in May 2017, but it was a choice. A change of mind 5 or 6 months later, bearing in mind the primary limitation period for bringing employment tribunal claims of discrimination is just 3 months, does not make it just and equitable to extend time, in my view.

28. The claimant has, in short, failed to persuade me that it would be just and equitable to extend time and I am afraid that means her harassment claim in this jurisdiction fails and is dismissed.

29. I would add this. I have a great deal of sympathy for the claimant. I know that by the time she decided to pursue an employment tribunal claim she had come to want her day in court and for someone impartial to listen to her and to say publicly that she is truthful and not dishonest. It is perhaps unfortunate in this respect that she did not bring a wrongful dismissal claim, and I suppose it remains a remote possibility that she might have some kind of civil claim. But be that as it may, I cannot allow my sympathy for the claimant to override the law. If my decision creates an injustice for the claimant it is an injustice that is built into the statutory time limit. Everyone whose claim falls foul of time limits is denied their day in court. I am afraid that is how the law relating to time limits works. I do not make the law or seek to justify it. My only job is to enforce it.

EMPLOYMENT JUDGE CAMP

13 November 2018

SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE