



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms N Eweida

v

British Airways Plc

Heard at: Watford

On: 26 October 2018

Before: Employment Judge Manley

Appearances

For the Claimant: In Person with McKenzie friend, Ms Farah.

For the Respondent: Ms K Newton - Counsel

RESERVED PRELIMINARY HEARING JUDGMENT

1. The tribunal has no jurisdiction to hear some of the alleged detriments which are claimed as victimisation and/or harassment as they were presented out of time and it is not just and equitable to extend time. These are the allegations between 2012 and the end of 2016 (numbered 1-11 in the allegations list).
2. The allegations raised about acts between 14 March 2017 and 18 February 2018 (numbered 12-18 in the allegations list) proceed to be determined at the merits hearing which will include the question of whether they were presented in time and, if not, if it is just and equitable to extend time.
3. The remaining seven allegations proceed to the hearing which has been listed by agreement for **five days** between **7 and 11 October 2019** at Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford WD17 1HP to start at 10am or so soon thereafter as possible. A closed preliminary hearing will now be listed to agree a list of issues and make any necessary case management orders.

REASONS

Introduction and issues

- 1 By a claim form presented on 9 May 2018 the claimant presented complaints of harassment relating to religion or belief, victimisation under Equality Act 2010 and public interest disclosure detriment. This preliminary hearing was listed on receipt of the ET3 to

determine whether to strike out or order a deposit if there were no or little reasonable prospects of success and whether any of the claims were presented out of time.

- 2 At the commencement of the hearing, the claimant, who is still employed by the respondent as a customer services agent, confirmed that she was not pursuing a public interest disclosure complaint. She also clarified that, for the victimisation complaint, she was relying on the protected acts of an ET claim in 2006, a grievance in October 2014 and another grievance in April 2017. The respondent accepts that the ET claim in 2006 would amount to a protected act but has reserved its position with respect to the other alleged protected acts.
- 3 The respondent's representative had prepared a table of allegations which was agreed by the claimant at this hearing. There are 18 allegations which are, for the most part, argued as either acts of harassment related to the claimant's religion of Christianity or victimisation connected to her having carried out protected acts.
- 4 On the day of the hearing, I first conducted a case management hearing in private to understand the issues and timetable the rest of the hearing. Both parties had sent written legal arguments as directed, the claimant's having been drafted by a pro bono legal adviser. The claimant's witness statement had been drafted by that same adviser and she had prepared another statement which she asked to read aloud when the hearing became public. There was also a short statement on behalf of the respondent about people mentioned by the claimant who had left the business.

The facts

- 5 The claimant commenced working for the respondent in 1994. In 2006 she brought a tribunal claim concerning the respondent's then policy on the wearing of religious symbols by staff. This case became well known with the claimant being unsuccessful in her claims for harassment and discrimination through to the Court of Appeal in 2010. A claim against the UK government at ECHR was successful in 2013.
- 6 The claimant complains that several events occurred which were to her detriment and about which she has complained to the respondent. Her case is that these events are linked to either the fact that she took the tribunal proceedings or to her religion.
- 7 The listed allegations include 4 matters in 2012, 6 matters in 2013, 2 matters in 2014 (the last one being 26 November 2014), 1 matter in June 2016, 4 matters in 2017 and 4 matters in 2018. The matters are said to involve 12 different individuals, and some identify no named individual who is alleged to be responsible. In one matter in

2014, the person whose first name is given is not known to the respondent. The allegations concern very different facts. These included, for example, the claimant's annual increment not being paid until she asked; being asked to a lateness meeting when she had been on a rest day; comments made in meetings; the failure to pay backdated salary and so on. None seem to relate directly to the issues raised in the previous tribunal claim save for the introduction of a new uniform policy in July 2017.

- 8 I paid particular attention to period of time between late 2014 and July 2017. The allegation of 26 November 2014 (allegation 10) is that "Jean" berated the claimant for being 9 minutes late for a flight and then asked the claimant to wait at the gate until she was allocated another task. The incident in June 2016 (allegation 11) is that the claimant had 16 missed calls on her mobile when she believed others had had no more than 7 missed calls. The claimant explained at this hearing that this was about task allocation and accepted that the calls were automated so that an agent could accept or call back. She said she was busy and couldn't answer and believed that a team leader might be able to get involved with the process.
- 9 The claimant says that it is all part of the same course of conduct. She argues that not allowing the allegations to proceed would be unjust and the respondent is able to give answers to the allegations.
- 10 The respondent initially asked that I consider whether to strike out or order a deposit for three of the allegations. It then reduced its request that I only consider that for two allegations, being the allegation about the invitation to a lateness meeting that didn't take place (allegation 5) and the missed calls allegation (allegation 11) as above. Its case is that only the 2018 allegations 15-18 were brought in time.

The law and submissions

- 11 The claims are brought under Equality Act 2010 (EQA). The relevant provision for time limits is s123 which reads:-

123 Time limits

(1) 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.

(2) -

- (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) -

- 12 Rule 37 (1) a) Employment Tribunal Rules of Procedure 2013 provides that a tribunal may strike out all or part of a claim or response on the grounds that it is scandalous, vexatious or has no reasonable prospect of success. Rule 39 provides that a tribunal may make an order for a deposit where it finds any allegation or argument has little reasonable prospect of success.
- 13 The central question here is whether the claimant can show “conduct extending over a period” for all of some of the allegations she seeks to argue amounted to victimisation and/or harassment. Both parties asked me to look at the very helpful case of Aziz v FDA [2010] EWCA 304. I need to consider, in line with Aziz, whether there are allegations of discriminatory incidents linked to one another or whether they are unconnected or isolated acts. A relevant factor will be whether the same individuals have been involved in the incidents. The legal argument presented on behalf of the claimant said that she only needed to show an arguable case at the point of a preliminary hearing. The respondent’s representative also asked me to look at Greco v General Physics Limited UKEAT/0114/16 which upheld a tribunal’s finding that seven incidents could be treated as individual incidents even where they involved the claimant’s manager.
- 14 If I find that not all of the allegations amount to conduct extending over a period, I may still consider whether it is just and equitable to extend time to allow some or all of the allegations to be pursued. Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 reminds me that time limits are exercised strictly, and the exercise of discretion is “*the exception rather than the rule*”. The burden is on the claimant to convince me that it is just and equitable to extend time.

Conclusions

- 15 Having considered the claimant’s allegations and the evidence before me, I find that the claimant has no reasonably arguable case that there has been conduct extending over a period so as to bring all the allegations in time. The claimant has mentioned several individuals and, in some cases, no individual at all. There is a significant gap between November 2014 and July 2016 with the

sole allegation in June 2016 being one which identifies no one individual and has no reasonable prospect of success. The allegations between 2012 to the end of 2016 were presented out of time. The claimant has not provided good reasons for the delays in bringing these allegations. She is well aware of tribunal processes and time limits. The tribunal has no jurisdiction to determine those allegations.

- 16 I next consider the allegations dating from March 2017 to February 2018. Although I cannot say, at this stage, that these allegations amount to conduct extending over a period, I appreciate that they are somewhat closer in time. They involve matters which could, if proved, be facts which could support a harassment and/or victimisation complaint. It will be a matter for the tribunal hearing this claim to determine whether they do amount to conduct extending over a period or, if not, whether it is just and equitable to extend time to allow them to proceed.
- 17 I do not therefore need to consider the question of prospects of success as neither of the allegations the respondent argued have little or no reasonable prospect of success are proceeding.

Employment Judge Manley

Date: 15/11/18.....

Sent to the parties on:

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For the Tribunal Office