



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Ms Alice Olnér

Ocado Central Service Limited

PRELIMINARY HEARING

HELD AT Birmingham **ON** 9 January 2022

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: Mr S Grant (Lay Representative)

For the respondent: Mr C Meiring (Counsel)

PRELIMINARY JUDGMENT

The hearing of the open preliminary hearing was adjourned to **Tuesday 11 April 2023** with a time allocation of one day before any Judge sitting alone. The hearing is to take place via CVP.

REASONS

Background

1. By a claim form presented to the Tribunal on 11 October 2021, the claimant brought a claim for sexual harassment and unfair dismissal following her dismissal with effect from 26 August 2021 on the grounds

of gross misconduct. The claim for unfair dismissal was dismissed on 28 February 2022 on the grounds that the claimant did not have 2 years' service to bring the complaint.

2. At a preliminary hearing on 19 July 2022 Employment Judge Beck listed the matter for an open preliminary hearing for today to consider whether the claimant's complaints of sexual harassment were made within the time limits set out in section 123 of the Equality Act 2010.
3. In advance of the hearing I was presented with a bundle of some 97 pages a completed agenda and an email of 13 December 2022 from the claimant to the respondent consisting effectively of bullet points which was labelled witness statement.
4. On the morning of the hearing Mr Grant, on behalf of the claimant indicated that he was the CEO of an organisation called Inspiring Addiction Recovery and had been approached by the claimant on 4 January 2023 for support as the claimant had poor mental health and needed addiction support. Mr Grant said that the claimant was confused and overwhelmed by the process and that he sought an adjournment of the hearing before me today and they needed more time to prepare. He asked for time to present medical evidence in relation to the claimant's mental health. Mr Grant said that he had not requested an adjournment of the hearing earlier as his primary focus had been to settle and support the claimant and that he had only found out about the hearing on Friday morning but had not considered the bundle until later in the day. Indeed, his organisation had been supporting the claimant over the weekend too.
5. The respondent opposed to application, inter alia, on the basis that the claimant had had ample time to prepare for the hearing today, that she had delayed with the case management orders and the respondent had agreed to give her extra time on more than one occasion and there would be substantial prejudice to the respondent as a result of the delays caused.
6. I asked Mr Grant if he had any medical evidence to share with me in relation to the claimant's mental health and addiction. The only medical evidence he could share with me was an occupational health report from AXA from 29 July 2021 ("the AXA report") (around the time the limitation period for the last acts of discrimination was about to expire). However, Mr Grant indicated that if an adjournment was granted he would be able to obtain contemporaneous medical evidence from the claimant's GP and the assessments relating to her mental health.
7. Mr Meiring kindly forwarded a copy of the AXA report to me as it was not in the bundle. The AXA report states:

"Ms Olnier has been suffering from anxiety and depression following a significant traumatic event which occurred approximately seven years

ago. To manage her conditions, she takes a combination of prescribed medications (which cause her to experience fatigue as a side-effect) and is also receiving the support of a specialist case worker. Ms Olnier is also due to start an anxiety directed therapy course which is expected to start in August 2021. Ms Olnier did previously enjoy a prolonged period of stable and improving mental health, however the current and significant exacerbation in her symptoms started in July 2021. Ms Olnier's current symptoms include significantly low mood, feelings of fear and anxiety, low enjoyment, reduced appetite, several maladaptive coping mechanisms, low concentration, agitation and significant difficulty sleeping".

8. The medical report then goes on to state:

"Functionality: Ms Olnier currently has a substantial impairment of her ability to undertake her daily activities. She is mainly staying in her bed and will not leave her home. She is reliant on her friend to deliver her groceries as will not even open the door to delivery drivers. She has been unable to walk her dogs since approximately May 2021 and is experiencing regular panic attacks. Currently she is also neglecting personal care and household chores.

Anticipated recovery time: Ms Olnier suffers from long-standing anxiety and depression and will likely require ongoing management for these conditions for the foreseeable future. She does however attribute the current exacerbation in her symptoms to work factors and the situation surrounding her suspension and so it is likely that once these issues are resolved satisfactorily for both parties that this may facilitate an improvement in her condition. Please be aware however that even after a resolution a recovery in her symptoms is likely to be in excess of 12 weeks".

9. In light of this medical evidence, in particular the timescales for recovery and her-self referral, and the overriding objective I was satisfied that the claimant would suffer greater prejudice if the hearing was not adjourned than any prejudice caused to the respondent. As such, in line with the overriding duty to ensure that cases are dealt with fairly and justly I decided to grant the application for adjournment.

Signed by Employment Judge Choudry
on 9 January 2023