



EMPLOYMENT TRIBUNALS

Claimant: Dr R Nyatando

Respondent: Rolls Royce Plc

Heard at: Nottingham **On:** Wednesday 2 December 2020

Before: Employment Judge Blackwell (sitting alone)

Representatives

Claimant: In person

Respondent: Mr J French-Williams, Solicitor

JUDGMENT

The Employment Tribunal Judge gave judgment as follows:-

1. The Preliminary Hearing is adjourned to 4, 5, 6 and 7 May 2021.

REASONS

Background to this hearing

1. The purpose of today's hearing was to determine issues as set out in my case management order sent to the parties on 6 August 2020:-

"2. The issues to be determined at that Preliminary Hearing are:-

2.1 Whether Dr Nyatando is disabled within the meaning of Section 6 and Schedule 1 of the Equality Act 2010.

2.2 Whether the Tribunal has jurisdiction to hear any or all of Dr Nyatando's claims of discrimination having regard to Section 123 of the Equality Act 2010.

2.3 Whether having regard to the provisions of Rule 37 of the first schedule of the Employment Tribunals (Constitution and Rules

of Procedure) Regulations 2013 any or all of Dr Nyatando's claims should be struck out as having no reasonable prospect of success.

2.4 Whether having regard to the provisions of Rule 39 of the said first schedule, Dr Nyatando should be ordered to pay a deposit not exceeding £1,000 as a condition of continuing to advance any or all of her allegations."

2. On 25 November the Respondents made an application to adjourn this hearing on a number of bases including the fact that a bundle had yet to be agreed notwithstanding orders requiring it to be so and the Respondents blamed the Claimant for that position.

3. Dr Nyatando opposed the application and I note in particular that in her e-mail she stated:

"Any delay is likely to deteriorate the Claimant's health further."

4. I determined to adjourn the claim, the primary reason being that I had underestimated the task that, in particular, the jurisdictional point entails. Which meant that there was no prospect whatsoever of dealing with the issues to be determined in the time available.

5. We then went on to consider how best to progress the matter to an adjourned hearing. I drew to Dr Nyatando's attention the fact that in addition to the resumed Preliminary Hearing the full hearing was likely to last some weeks and that Dr Nyatando would be cross examined over a period of many days. I have listed that final hearing for January of 2022 for a period of 8 weeks.

6. In the light of that I reminded Dr Nyatando of the availability of Judicial Mediation and asked her to reflect on whether she wishes to engage in Judicial Mediation.

7. We reflected on the enormous size of the bundle submitted for today's hearing. I made it clear that for the resumed hearing only relevant documents should form a part of a new bundle. Those documents will plainly include the pleadings and schedules at present pages 1 to 926 of the Respondent's bundle for today. Further documents relevant to Dr Nyatando's health insofar as they concern her ability to bring claims in time would also be relevant. I set out again Section 123 of the Equality Act 2010 for Dr Nyatando to reflect on in considering what is relevant to the out of time issues.

"123 Time limits

(1) *Subject to sections 140A and 140B 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) *Proceedings may not be brought in reliance on section 121(1) after the end of—*
 - (a) *the period of 6 months starting with the date of the act to which the proceedings relate, or*
 - (b) *such other period as the employment tribunal thinks just and equitable.*
- (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) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
 - (a) *when P does an act inconsistent with doing it, or*
 - (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”*

8. We also discussed the schedule containing the Respondent's case on the out of time issues and Dr Nyatando's response. It was agreed that the schedule should be stripped of those matters that do not have out of time issues and thus reformatted and agreed. Dr Nyatando pointed out that a column in the schedule had been removed referring to relevant Protected Acts. Mr French-Williams agreed to reinstate the reference to Protected Acts in column one of the schedule.

9. We also discussed claims 43 and 44 set out on pages 922 and 923 of the existing bundle and I made it clear to Dr Nyatando that if her intention is to bring forward a claim in relation to a discriminatory act that occurred after the date on which her second claim form was served ie 15 March 2020 then she would need formally to apply to the Tribunal to amend her claim.

10. We also covered a point relating to the three named individual Respondents. It was agreed that those named individuals would only be required to answer to such claims where they are specifically named.

11. Mr French-Williams also applied for the issue of disability to be removed from the list of issues to be determined. He did so because the Respondents have conceded in an e-mail to the Tribunal of 19 August that they confirmed that they accepted that the Claimant is disabled within the meaning of Section 6 of

Schedule 1 of the Equality Act 2010 solely in relation to the following conditions:-

- Migraines
- Depression
- Stress

but did not accept that the condition was caused by work related issues. They went on to say that the Respondents do not admit that the Claimant is disabled in relation to the stated condition of post-traumatic stress disorder. Dr Nyatando still wishes that issue to be determined ie whether she is disabled in relation to PTSD. I have read the medical documents to which she drew my attention and in my view the condition of PTSD is not relevant to the issues of liability. It may be relevant to remedy if Dr Nyatando is able to prove that the condition of PTSD was either caused by or contributed to by the discriminatory acts of the Respondent. That may well require the instruction of a jointly appointed expert.

Employment Judge Blackwell

Date; 14 December 2020

JUDGMENT SENT TO THE PARTIES ON

15 December 2020

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FOR THE TRIBUNAL OFFICE

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