



EMPLOYMENT TRIBUNALS

Claimant: Ms M M Grant

Respondent: The Salvation Army Trustee Company

Heard at: London Central Employment Tribunal **On:** 12 June 2019

Before: Employment Judge K Welch (sitting alone)

Representation

Claimant: In person

Respondent: Mr S Parmar, Solicitor

RESERVED JUDGMENT

On hearing the Claimant in person and Mr Parmar, solicitor, on behalf of the Respondent, it is adjudged that:

1. The Claimant's complaints of direct race discrimination relating to incidents occurring from December 2015 until 2 August 2017 were presented out of time and the Tribunal has no jurisdiction to consider them.
2. The complaints of race discrimination as identified in 1 above are accordingly dismissed.
3. The Claimant's remaining claim of direct race discrimination is allowed to continue.

RESERVED REASONS

1. The Claimant brought claims of race discrimination against her employer, The Salvation Army Trustee Company on 23 October 2018. The Claimant remains employed by the Respondent as a cook, although she previously resigned from her additional role as a cleaner, which is not the subject of this claim.
2. The Respondent had submitted its response on 27 March 2019 after the claim form had been re-served on it at its correct address.
3. The Respondent had made an application within its response requesting a preliminary hearing to consider the following:-
 - 3.1 whether the claim form should be rejected on the grounds that the Claimant has not met the Early Conciliation requirements; and
 - 3.2 to determine if the claim has been brought within the prescribed time limit.
4. The Claimant's representative had made a late application for a postponement of the open preliminary hearing, due to the Claimant having an appointment at the hospital pain clinic for the same day. This application was refused, and the Claimant appeared in person without representation by the solicitors on record.
5. I was provided with a bundle of documents by the Respondent, and page numbers within this judgment relate to page numbers within that bundle.

BACKGROUND FACTS RELEVANT TO THE PRELIMINARY HEARING

6. I heard evidence from the Claimant who was cross examined by the Respondent's representative during the course of the hearing.
7. The Claimant was employed by The Salvation Army Trustee Company on 3 June 2015 and remains an employee. She was employed in two separate roles as a cook and a cleaner working 10 hours a week as a cook and 6 hours a week as a cleaner. In February 2019, the Claimant resigned from her role as a cleaner although this resignation does not form part of her claim.
8. The Claimant is a black Jamaican woman and alleged during the course of the hearing that she had been subjected to the following race discrimination

complaints:

Direct race discrimination - section 13 Equality Act 2010 ('EqA')

8.1 In November 2015 Kathy Woodhouse refused to give the Claimant a set of keys;

8.2 On 15 June 2017, Kathy Woodhouse shouted at the Claimant about putting food in the freezer;

8.3 Events leading up to 10 May 2018 - a grievance investigation and grievance outcome letter/report carried out by Sarah Evans; and

8.4 Between 6 September to 1 October 2018 the investigation of the Claimant's appeal together with the appeal outcome by Mark Herbert.

Harassment on grounds of race - section 26 EqA

8.5 In December 2015, Kathy Woodhouse is alleged to have stated, "going to work the dirt off your hands";

8.6 On 12 May 2016 Kathy Woodhouse shouted "get back to the kitchen and do not get involved";

8.7 On 25 January 2017, Kathy Woodhouse pushed the Claimant when the Claimant attempted to hug her; and

8.8 On 2 August 2017, Kathy Woodhouse shouted at the Claimant and hung up the phone abruptly on being told that the Claimant had been signed off for stress.

9. The Claimant has undertaken Early Conciliation through ACAS on two separate occasions.

10. On the first occasion, she approached ACAS for Early Conciliation on 22 November 2017. The Claimant confirmed in evidence that at the time of going through ACAS she had received advice from an advice centre, Advice for London. This Early Conciliation [page 13] related to an underpayment of pay which was subsequently resolved. The first Early Conciliation certificate was given against the Salvation Army and not the correct Respondent as identified above. However, the address provided by the Claimant was correct.

11. The Claimant gave evidence that she was not specifically aware of time limits, although confirmed that she did have access to the internet as she had Wi-Fi at home and also had access to this on her telephone.
12. The Claimant brought a personal injury claim on 6 February 2018 relating to a burn that she had suffered whilst at work on 21 September 2017. She was represented for this claim by a firm of solicitors, although she gave evidence that she did not speak to them concerning her employment dispute.
13. The Claimant made a further reference to ACAS Early Conciliation on 9 August 2018, being Day A [page 14]. The prospective respondent was named as 'The Salvation Army Trustee' with its correct address.
14. At this time, the Claimant received advice concerning her complaints from a friend who was training to be a solicitor. At the point that ACAS provided the Claimant with the Early Conciliation certificate on 23 September 2018 (Day B), the Claimant approached a solicitor to act on her behalf.
15. The Claimant presented her claim form on 23 October 2018.
16. The Claimant gave evidence to say she had little knowledge of time elapsing but had relied upon statements made during the grievance meeting [page 80]. She had been told, "you are entitled to go to the Employment Tribunal and we are fine for you to do this but you must give us a chance to resolve this and for you to say if you still don't understand".
17. It was clear, however, that the Respondent had not misled the Claimant in any way concerning the expiry of time limits.
18. The Claimant's solicitors prepared a claim form for her. This claim stated that the Respondent was "The Salvation Army" and the address was stated as being West Malling Service Centre, 1 East Court, Enterprise Road, Maidstone, Kent, ME15 6JF. The Respondent's representative confirmed that the Salvation Army had not been at this address for over two years at the time that the claim form was issued.
19. In any event, this address differed from the address on the Early Conciliation certificate, as did the name of the Respondent.

20. Due to the address on the claim form for the Respondent, the claim was sent to London South Employment Tribunal and they attempted to serve it on the address given. No response was received and the Tribunal ultimately re-served this on the correct address (as contained within the Early Conciliation certificate). A response was received and the case was then transferred to London Central Employment Tribunal and listed for this preliminary hearing.
21. The Claimant at no time suggested that the reason for the delay in presenting her claim was due to illness. When asked for the reason for the delay, she confirmed that she was waiting for the Respondent to deal with her grievance in 'a proper way'.

LAW

22. I had regard to rule 12 of the Employment Tribunals Rules of Procedure which states: **"Rejection: substantive defects**
- (1) The staff of the Tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be -
- (f) one, which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the Early Conciliation certificate to which the Early Conciliation number relates
- (2A) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interest of justice to reject the claim".
23. Rule 13 states
- "Reconsideration of rejection**
- (1) A claimant whose claim has been rejected (in whole or in part) under Rule 10 or 12 may apply for a reconsideration on the basis that either -
- (a) the decision to reject was wrong; or

(b) the notified defect can be rectified.

(2) The application shall be in writing and presented to the Tribunal within 14 days of the date that the notice of rejection was sent. It shall explain why the decision is said to have been wrong or rectify the defect. If the claimant wishes to request a hearing this shall be requested in the application.....

(4) If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.”

24. As regards the time limits in which to bring discrimination complaints, I firstly considered section 207B of the Employment Rights Act 1996 ('ERA') which provides:

“Extension of time limits to facilitate conciliation before institution of proceedings

.....

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.”

25. Section 123 of the EqA provides:

“(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.....

(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”.
26. As regards conduct extending over a period, I considered the case of Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96, a Court of Appeal decision. This held at paragraph 52 that,
- “The focus should be on the substance of the complaint that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the service were treated less favourably. The question is whether that is “an act extending over a period” as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed”.*
27. It is necessary to consider whether the Respondent has been responsible for “an ongoing situation or a continuing state of affairs” in which the acts of discrimination occurred as opposed to a series of unconnected and/or isolated incidents. Whether the allegations are, for example, linked by a common personality. Since if they are, they can form part of a continuing act even if they occur more than 3 months apart.
28. In relation to extending time for bringing discrimination claims on a just and equitable basis, I noted that this was a lower hurdle than the reasonably practicable test used for other statutory claims. It is necessary to consider the prejudice caused to either party should an extension be granted or refused. The factors under Section 33 of the Limitation Act 1980 can be relevant to the consideration of an extension on the just and equitable basis. These include: (1) the length and reasons for the delay; (2) the extent to which the cogency of the evidence is likely to be affected by the delay; (3) the extent to which the parties sued had co-operated with any request for information; (4) the promptness with which the claimant acted once they knew and the possibility of taking action; and (5) the steps taken by the claimant to obtain appropriate professional advice once they knew of

the possibility of taking action. The importance being on whether the delay has affected the ability of the Tribunal to conduct a fair hearing.

29. However, the checklist in Section 33 of the Limitation Act 1980 should not be adhered to slavishly. The main factors which are relevant in any consideration of exercise of a discretion in Section 123 EqA as outlined by Southwark London Borough Council v Afolabi [2003] ICR 800 where the Court of Appeal stated that the two factors which were almost always relevant were the length of, and reasons for the delay and whether the delay had prejudiced the respondent.
30. Ignorance of rights can assist a claimant who has submitted a discrimination complaint out of time, however only where the ignorance of rights was reasonable in the circumstances. It is possible to take into account the fact that a claimant has waited for the outcome of an internal grievance procedure before making a complaint when considering the late submission of a discrimination complaint. Apelogun-Gabriels v Lambeth London Borough Council and Another [2002] ICR 713, which approved the EAT decision in Robinson v Post Office [2000] IRLR 804 confirms that the general principle is that a delay caused by a claimant awaiting completion of an internal procedure may justify the extension of the time limit, but it is only one factor to be considered in any particular case.
31. The parties addressed me orally in relation to the application by the Respondent. The Respondent also relied upon the case of Giny v SNA Transport Limited UK EAT/0317/16/RN which was authority that it was inappropriate to put any gloss on the simple and straightforward language of Rule 12(2A) of the Employment Tribunal Rules of Procedure.

CONCLUSION

32. The difference of name in the Respondent between the Early Claim Conciliation certificate dated 23 September 2018 [page 14] wherein the Respondent was called "Salvation Army Trustee" and the claim form which stated that the Respondent was "The Salvation Army" when the correct name of the Respondent is The Salvation Army Trustee Company should not, in my view, lead to rejection of the claim under

Rule 12 of the Employment Tribunals Rules of Procedure. I consider this to have been a minor error and that it was in the interests of justice to allow the claim to proceed.

33. The difference between the address on the Early Claim Conciliation certificate (being the Respondent's correct address) and that on the claim form (being an old address for the Respondent, which had not been used for 2 years prior to the claim being submitted) I viewed as a more substantial error of the Claimant's representative. However as the Tribunal was able to correctly serve the proceedings on the Respondent at its correct address, without significant delay, I again do not consider that the proceedings should be rejected under Rule 12A. I am satisfied that this was an additional minor error and that it was in the interests of justice not to reject the Claimant's complaints on this basis. I took into account that this did mean that the claim was originally brought in the London South Employment Tribunal which then had to be transferred to London Central, which caused some delay. However, I am not satisfied that this in itself prevents the claim from continuing. The errors have been rectified. Therefore, I do not reject the claims under rule 12.
34. Turning to whether the claims or any of them should be rejected on the basis that they were presented out time. Any acts occurring prior to 10 May 2018 will potentially be out of time, unless they are found to be included within discriminatory conduct extending over a period, or for which I exercise my discretion to extend time on a just and equitable basis.
35. Having considered the grievance outcome meeting and letter, both occurring on 10 May 2018, I am satisfied that a claim complaining that the grievance decision was an act of direct discrimination was brought within time.
36. It therefore means that the claims relating to the appeal investigation and outcome, being acts of discrimination, are also brought within time.
37. The earlier alleged acts of discrimination namely those from November 2015 through to 2 August 2017, were all allegations concerning discrimination which the

Claimant alleged Kathy Woodhouse had committed against her. Whilst these acts themselves are capable of being considered as conduct extending over a period, the last allegation of discrimination by Kathy Woodhouse was on 2 August 2017. This means that unless I were to find that there was conduct extending over a period between these acts by Kathy Woodhouse and the investigation/outcome of the grievance by Major Sarah Evans, these allegations were made significantly out of time.

38. I am not satisfied that the allegations of discrimination by Kathy Woodhouse, ending on 2 August 2017 should be linked to the allegations of direct race discrimination by Sarah Evans, relating to her investigation of the grievance and its outcome. I find that the allegations concerning Kathy Woodhouse were all so linked, but that these were distinct and separate from the grievance investigation and outcome by Sarah Evans, which the Claimant alleges were acts of direct race discrimination. Therefore, I am satisfied that the earlier allegations of discrimination from November 2015 until 2 August 2017 were presented out of time, the time for presentation of these complaints, being 1 November 2017.
39. Therefore, I have to consider whether to extend time for the complaints of discrimination relating to incidents between November 2015 and 2 August 2017 on a just and equitable basis. The most recent allegation of discrimination by Kathy Woodhouse was almost a year out of time by the time that the claims were presented.
40. Whilst the Claimant did go through a lengthy grievance procedure with the Claimant, she provided no other reasons for the delay in presenting her complaint, other than being ignorant of the time limits for presenting such complaints. She considered the actions of Kathy Woodhouse to be discriminatory at the time that they occurred and yet did not present her complaint until a significant period afterwards.
41. The Claimant did receive advice after the alleged acts of discrimination by Kathy Woodhouse, having confirmed that she received advice from Advice for London

around the time of her earlier ACAS early conciliation made on 22 November 2017.

She also received advice from a solicitor concerning her personal injury claim, which was presented on 6 February 2018. Whilst, I accept that she may not have taken advice from the solicitor on her other employment issues, she was fully able to do so had she chosen to.

42. I therefore do not consider that the Claimant's ignorance of the time limits was reasonable in this case.
43. Further, I am not satisfied that I should extend time on the basis of the ongoing grievance procedure, since whilst a factor to consider, and accepting that the Claimant had been told to try and resolve this before taking the matter to an Employment Tribunal, I consider that the Claimant was fully able to bring proceedings for her personal injury claim and take advice about this.
44. Whilst I consider that the Claimant will clearly be prejudiced by being unable to bring these earlier allegations of race discrimination to a hearing, I consider that this does not outweigh the significant prejudice to the Respondent in trying to have witnesses remember incidents which occurred up to four years earlier. I do not consider that it will be possible to conduct a fair hearing in these circumstances relating to the earlier incidents of alleged discriminatory conduct by Kathy Woodhouse.
45. The Claimant did receive advice, at least at the time that she submitted her earlier Early Conciliation application (22 November 2017) by which time all of the allegations of discrimination by Kathy Woodhouse had already taken place. Had she brought proceedings at the time of receiving this advice, and following the first early conciliation period, then I consider that all of the allegations against the Respondent in respect of Kathy Woodhouse's alleged behaviours would have been potentially within time as a course of conduct extending over a period.
46. I, therefore, do not consider that it is just and equitable to extend time in this case in order to allow the earlier allegations of discrimination from November 2015 until 2 August 2017 to continue.

47. In weighing the prejudice and hardship caused to either party, I note that the Claimant will be particularly prejudiced in not having her earlier allegations of discrimination heard. However I consider that there was no good reason for the delay in bringing a claim for discrimination for the alleged acts of discrimination by Kathy Woodhouse.
48. The Claimant did not seek to rely on any medical condition and whilst I note that she was off sick at some parts of the time during which the limitation period ran out, she had been able to submit a claim for personal injury during the same period. I consider that the Respondent would be severely prejudiced by having to try and deal with providing evidence between some years after the alleged acts of discrimination.
49. It was clear that the Claimant did receive advice, both at the time of the first Early Conciliation certificate from Advice for London but also from her friend, a trainee solicitor, together with having legal representation by the time that she submitted her claim. Therefore whilst I accept her evidence that she may not have known that time limits were applicable, I am satisfied that she was in a position to have found this out should she have wished to do so.
50. Whilst I note that the Claimant relies upon what was stated to her in the grievance outcome hearing [page 80 of the bundle], I am not satisfied that saying to an individual 'you must give us the chance to resolve this and for you to say if you still don't understand' prevented the Claimant from considering what she needed to do to bring a claim and indeed to bring a claim to the Tribunal.
51. I therefore consider that the claims relating to alleged acts of discrimination by Kathy Woodhouse from November 2015 to 2 August 2017 are out of time and that the Tribunal therefore does not have jurisdiction to consider these complaints. I do not exercise my discretion to extend time on a just and equitable basis in this case.
52. The remaining complaints of direct race discrimination relating to the grievance together with the appeal investigation and appeal outcome were presented within

time. In relation to the investigation for the grievance carried out by Sarah Evans and the fact that the Claimant asserts that this in itself was an act of direct discrimination, I consider that this forms part of conduct extending over a period such that the grievance outcome letter and report dated 10 May 2018 brings the earlier investigation of the grievance by Sarah Evans within time. Therefore, the remaining complaints of direct race discrimination continue to a full merits hearing.

53. The parties have already been told that the matter is listed for a further preliminary hearing for case management issues on 6 September 2019 at 10 am. The full merits hearing for the remaining race discrimination complaints will be listed for a final hearing at this time.

Employment Judge Welch

Date 12th June 2019

JUDGMENT SENT TO THE PARTIES ON

01/07/2019.

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