



EMPLOYMENT TRIBUNALS  
London Central Region

Heard by CVP on 28/4/21

Claimant: Gemma Blake

Respondents: Evolving Systems Lumata Ltd

Before: Tribunal Judge Mr J S Burns

Representation

Claimant: in person

Respondent: Mr S Wyeth (Counsel)

JUDGMENT

- 1 By consent the Claimant is given leave to the extent necessary to amend her claims so they are as reflected in the Amended "claim details" document set out on pages 280 to 287 of the OPH bundle for today, but only in relation to the matters which do not postdate the presentation of her ET1 on 10/7/2020.
- 2 The Claimant's informal application to amend her claim to add claims and allegations continuing after 10/7/2020 is refused.
- 3 All claims are struck out to the extent that they relate to claimed acts or omissions prior to 16/2/2020.
- 4 For the avoidance of doubt the only claims which (subject to the Claimant paying the deposit - which is separately ordered) are to proceed to the final hearing relate to the non-payment of 12 weeks discretionary contractual pay from 23/1/2020 onwards claimed as (i) unlawful deduction from wages (ii) direct sex-discrimination and (iii) following 27/1/2020, as victimization following the grievance raised that day by the Claimant as a protected act.
- 5 The hearing listed on 6<sup>th</sup>-9<sup>th</sup> September 2021 is curtailed to two days namely 6<sup>th</sup> and 7<sup>th</sup> September 2021 and will be heard by CVP. If the Claimant does not pay the deposit the hearing will be cancelled altogether. Subject to that, the directions issued on 26/8/2020 in relation to the bundle and witness statements continue to apply.

REASONS

- 1 This was an OPH heard by CVP. We managed to overcome the technical problems of CVP and after a late start there were no further problems. The parties were told not to make recordings. We had an early lunch (12 to 12.45 to accommodate the Claimant's child caring). I offered further breaks at any time but no further breaks were required.
- 2 On 17/11/2020 Employment Judge Glennie ordered this OPH to consider the time issues relating to the claims and whether or not to make a deposit order. The Claimant was ordered to produce further information about her complaints under various headings, and had complied, and then amended her particulars. The final version appeared between pages 280 to 287 of the OPH bundle.

- 3 The Respondent's solicitor had produced the OPH bundle and the Claimant had sent a link to many pages of documents of her own. However, the Claimant confirmed at the outset of the hearing that she wished to refer to her witness statement and amended further particulars only.
- 4 Mr Wyeth when cross-examining the Claimant on her witness statement was professional and courteous to her but after about 15 minutes she became tearful and said she had not expected to be cross-examined. I asked her if she wished me to stop the cross-examination and she said she did. I ended the cross-examination immediately at her request and then took the early lunch referred to above before resuming for final submissions, during which the Claimant was composed and able to make lengthy submissions to me.
- 5 I reserved my decision

For Judgment paragraph 2 above

- 6 The matters which the Claimant wishes to complain about which postdate the presentation of her ET1 on 10/7/2020 all relate to the process and determination of her grievances raised from 27/1/2020 onwards which she had not received an outcome to when she issued her claim and which even today are still subject to an outstanding appeal against the internal dismissal of those grievances. This is an ongoing process which in itself makes it inappropriate for it to be at the same time the subject of litigation, particularly with a trial listed for hearing in September 2021.
- 7 Furthermore, the Claimant has not made a proper application on notice for such an amendment, and the Respondent objects and has not waived the requirement for such notice in regard to that aspect of the amendment.
- 8 Furthermore, I am not satisfied that the proposed claims which postdate the presentation of her ET1 on 10/7/2020 would have any merit in any event.

For Judgment paragraph 3 above

- 9 The Claimant entered Acas early conciliation on 15/5/2020 and the Acas certificate was issued in 16/6/2020. The Claimant presented her ET1 on 10/7/2020. The primary limitation period started on 16/2/2020.
- 10 The Respondent not paying 12 weeks discretionary contractual sick pay from 23/1/2020 onwards was a continuing act which continued into the primary limitation period and the claim about this is in time.
- 11 The other main matters which the Claimant alleges/complains of prior to the issuing of her ET1 are as a matter of substance and in summary as follows:
  - Email containing negative comments about Claimant's performance dated 21/12/2017
  - not being supported by HR when returned to work on 8/1/2018 after a miscarriage
  - comment by line manager in February 2018
  - Changes to the Claimant's role as a result of an organizational change in October 2017 – February 2018
  - Not providing the Claimant with a full suite of policy documents (she confirmed that they should have been provided to her in 2017)
  - The Respondent not acknowledging the Claimant's MatB1 certificate when she sent it in on 4/7/2018
  - Discussions starting on 17/9/2019 and ultimate refusal by Respondent on 22/12/2019 of the Claimant's request that she be permitted to do all her work from home following her proposed return from maternity leave in 2019.
- 12 These matters are miscellaneous with no common theme; different claimed perpetrators have been involved and there are significant gaps between them, and particularly before the refusal of the Claimant's request that she be allowed to work from home in late 2019, which refusal has triggered the dispute. I do not find that they are a continuing act and they are all out of

time.

- 13 I have noted all that the Claimant has stated in her witness statement, giving it such weight as is appropriate in the light of her request that she not be cross-examined on most of it.
- 14 In so far as her claimed health problems are concerned, I note that she was signed off sick with a chest infection for one week on 3/1/2020. There was no reference to stress or depression at that stage. It was after she received the Respondent's letter relating to statutory sick pay on 23/1/2020, that on 28/1/2020 she obtained a sick note signing herself off work for three months for "depression and anxiety triggered by work related stress", although she in fact had not been at work since October 2018.
- 15 The Claimant was well enough to make her flexible working request in late 2019 and to raise a formal grievance on 27/1/2020. That being the case she should also have been well enough at that stage to submit an ET claim relating to matters in 2019 and earlier.
- 16 While I accept that the Claimant has unfortunately suffered stress and depression particularly after she was disappointed by the Respondent's unwillingness in December 2019 to accede in full to her work-from-home request, I do not find that she has suffered from a completely debilitating illness during the relevant time.
- 17 She also had access to a paid independent employment advisory service from January 2020 and support from her trade union throughout.
- 18 The fact that the Employment Tribunal has strict time limits and what they are, are matters which anyone with access to the internet can easily ascertain. In any event the Claimant with the resources available to her should have found out about these matters.
- 19 The balance of prejudice does not favor extending time, which would require the Respondent to find a variety of witnesses to deal with matters going back years in some cases. The problems caused by this would be compounded by the fact that the claims are still not clearly formulated.
- 20 The Claimant has not shown that it is just and equitable to extend time.
- 21 Hence the claims referred to in paragraph 3 of the judgment are outside the jurisdiction of the tribunal and must be struck out.

J S Burns Employment Judge  
London Central  
28/4/2021  
For Secretary of the Tribunals-  
Date sent to parties: 29/04/2021

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