



EMPLOYMENT TRIBUNAL

Claimant: Ms. J. Fawcett
Respondent: Charles Lyndon Ltd.
Hearing: Public Preliminary Hearing
Heard at: London Central ET (via video/CVP)
On: 3 October 2024
Before: Employment Judge Tinnion
Appearances: For Claimant: In person
For Respondent: Ms. J. Linford, Counsel

JUDGMENT

1. The Claimant's unfair constructive dismissal claim is dismissed on withdrawal under Rule 52.
2. The Claimant's constructive dismissal claim is struck out under Rule 37 (no prospect of success) because it was not presented in time in circumstances where the Tribunal is not satisfied that it was not reasonably practicable for the Claimant to have presented it in time, hence the Tribunal lacks jurisdiction to consider it.
3. The following claims in the ET1 are struck out under Rule 37 (no prospect of success) because they were not presented in time in circumstances where the Tribunal is not satisfied that it is just and equitable to extend time, hence the Tribunal lacks jurisdiction to consider those claims:
 - a. direct sex discrimination under ss.13 and 39(2)(c)-(d) of EQA 2010;
 - b. harassment related to sex/sexual harassment under ss.13 and 40(1)(a) of EQA 2010;

- c. disability discrimination under ss.13, 15, 19, 20-21 and 26 of EQA 2010 and ss.39-40 of EQA 2010.

REASONS

Public Preliminary Hearing

4. On 1 August 2024 [50-55], the Tribunal (EJ Bunting) listed a Public Preliminary Hearing (**PPH**) on 3 October 2024 to determine the following matters:
 - a. Respondent's application to strike out the Claimant's claim on time grounds;
 - b. Respondent's application to strike out the Claimant's unfair dismissal claim (it is not in dispute that the Claimant was employed by the Respondent for less than 2 years at the time her employment terminated);
 - c. question of disability (if felt appropriate by Employment Judge);
 - d. if applicable, to finalise a list of issue and make case management directions for a final hearing.
5. The PPH was held on 3 October 2024. The Claimant represented himself. The Respondent was represented by counsel, accompanied by director Ms. D. Antzoulatos. The parties relied upon an agreed bundle of 186 pages (references to which are made in square brackets), plus two further documents forwarded to the Tribunal. Neither party served witness evidence addressing the strike out application. The Respondent served a skeleton argument [171-181], which the Claimant submitted a response to [182-184]. Both parties set out their case in submissions to the Tribunal, with the Tribunal asking questions of the Claimant and Ms. Antzoulatos as the hearing proceeded. Approximately 35 minutes of the hearing was spent in judicial reading time. The hearing got off to a late start due to the Claimant initially having IT difficulties, which she was thankfully able to resolve.

Findings

6. The Tribunal makes the following findings of fact, including any findings contained in the other sections of this document, on the balance of probabilities.
7. The Respondent is a London solicitors firm specialising in litigation. It is not in dispute that the Respondent hired the Claimant on a 6 month contract as an intern, and employed her from 13 March 2023 until at least 17 August 2023.
8. At the time she was hired, the Claimant was a legally qualified professional – she had undertaken a Law conversion course, and taken and passed the Legal Practice Course (a mandatory qualification for aspiring solicitors) in which she had taken an

Employment Law elective course. At the time of her employment, the Claimant was familiar with UK employment law, including her rights under the Equality Act 2010 (**EQA 2010**). She accepted she had been aware of the time limits for bringing Tribunal claims.

9. It is now not in dispute that in the course of a meeting on 17 August 2023 Ms. Antzoulatos dismissed the Claimant, nor is it in dispute that 17 August was the Claimant's last working day. What is in dispute is whether the Claimant was summarily dismissed at that meeting or whether she was dismissed with notice expiring on the last day of her 6 month contract. Ms. Antzoulatos was inconsistent on the issue (she first told the Tribunal the Claimant had been dismissed with notice, then said she had told the Claimant her employment was ending that day). The Tribunal accepts the Claimant's case that Ms. Antzoulatos told the Claimant that she was on gardening leave until her contract expired on 12 September 2023. The Respondent paid the Claimant's August wages at the end of August and her September wages at the end of September. It is highly unlikely a payment in lieu of notice, which is what Ms. Antzoulatos suggested happened, would have been paid in two instalments. The Tribunal finds the Claimant's employment contract terminated on 12 September 2023.
10. By the time her employment ended, the Claimant was involved in a dispute with the owners of the restaurant underneath her flat. She kept logs of antisocial behaviour [142-146], and made a complaint to the police. She asked her landlord to be released from her tenancy agreement, which her landlord agreed to do, and the Claimant's lease of her flat ended early on 31 January 2024. The Claimant moved to a different property in a different area.
11. On 9 March 2024, the Claimant contacted ACAS. On 13 March 2024, ACAS issued an Early Conciliation certificate. On 26 March 2024, the Claimant presented her ET1.

Medical evidence

12. The only medical evidence before the Tribunal was a letter from the Claimant's GP practice dated 14 November 2023 which stated (in full): "*Thank you for getting in touch regarding Ms. Fawcett, she has only been registered with us for a short while. The last time she attended the surgery was back in July and there is no comment regarding her mental health. I myself saw the patient back in June where she requested a referral for an autism assessment but I had no further concerns at that time.*" [147].

Pleadings

13. At the Case Management Hearing on 1 August 2024 , the Tribunal was able to clarify that the Claimant's ET1 [4-18] presented the following complaints:
14. First, a complaint of unfair (constructive) dismissal under the Employment Rights Act 1996, noting the Claimant lacked the 2 year qualifying period to bring that claim.
15. Second, a complaint of direct sex discrimination under s.13 of EQA 2010 regarding the unfair allocation of work in a stereotypical manner and the way in which the Claimant's performance review had been assessed.
16. Third, a complaint of harassment related to sex and/or sexual harassment under s.26 of EQA 2010 regarding sexualised comments allegedly made by the Claimant's work colleagues orally and on social media.
17. Fourth, a complaint of disability discrimination (statutory causes of action not specified) regarding mishandling of the Claimant's performance review and failing to provide work opportunities to her that would have been made available to someone without an Autism Spectrum Disorder (**ASD**) impairment. It is relevant to note here that there was no medical evidence at the PPH that the Claimant has ASD – that diagnosis is based on her own view following research that she has that impairment.
18. Fifth, a complaint of failure to make reasonable adjustments under ss.20-21 of EQA 2010 regarding a requirement to work in the office on Fridays when the Claimant had requested to work at home that day due to her ASD.
19. The ET1 did not make any complaints about the conduct of the Respondent or any of its officer, employees or agents following the termination of employment. There is a complaint about post-termination conduct, but that concerns the Claimant being sexually bullied and harassed by men working at the restaurant below her flat after 16 August 2023 [14, para. 34]. Paragraph 35 of her ET1 refers to "domestic violence", at the hearing she confirmed this was a reference to this conduct.
20. By its ET3 [33-38] and Grounds of Resistance [39-49], the Respondent denied the claims. It denied the Tribunal had jurisdiction to consider the Claimant's claims given the timing of the termination of her employment, the 3 month time limit for bringing Tribunal claims, the fact the Claimant did not contact ACAS until 9 March 2024, and did not present her ET1 until 26 March 2024.

Relevant law

21. The general rule under s.123(1)(a) of EQA 2010 is that a claim concerning work-related discrimination (other than equal pay) must be presented within a 3 month

period beginning with the date of the act complained of. For this purpose, conduct extending over a period is to be treated as done at the end of that period (s.123(3)(a)); failure to do something is treated as done when the person in question decided on it (s.123(3)(b)); in the absence of evidence to the contrary, a person is taken to decide not to do something either when the person does an act inconsistent with deciding to do something or, if they do no inconsistent act, on the expiry of the period in which they might reasonably have been expected to do it (s.123(4)).

22. The primary time limit is subject to the extensions of time permitted by the ACAS Early Conciliation provisions by virtue of s.140B of EQA 2010. The early conciliation period does not extend time where the time limit has already expired.

23. If a claim is not brought within the time limit, the Tribunal has a discretion under s.123(1)(b) of EQA 2010 to extend time if it considers it just and equitable to do so. The burden is on the claimant to convince the Tribunal it is just and equitable to extend time. Robertson v Bexley Community Centre [2003] EWCA Civ 576 at para.

24. The discretion to extend time is a broad one, to be exercised taking account of all relevant circumstances, in particular the length of and reasons for the delay, and balancing the hardship, justice or injustice to each of the parties. Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ. 23. In that case, Underhill LJ deprecated the practice that developed following the EAT's judgment in British Coal Corporation v Keeble [1997] IRLR 336 of referring to the checklist in s.33 of the Limitation Act 1980, holding that while it would not be an error of law for a Tribunal to consider those factors, "*I would not recommend taking it as the framework for its thinking*" when considering the exercise of its discretion under s.123(1)(b).

24. Although the length and reasons for the delay will be relevant, there is no rule of law that time cannot be extended where there is no explanation for the delay. Concentrix CVG Intelligent Contact Ltd v Obi [2022] EAT 149 at para. 50.

25. In an appropriate case, the merits of the claim may be relevant, provided the Tribunal is properly in a position to make an assessment of them. Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132 at para. 63.

26. When considering whether time should be extended to hear a complaint about a acts constituting a course of conduct, the Tribunal should consider the prejudice suffered by the respondent if it has to deal with the early allegations as well as the most recent ones, and may reach different conclusions in respect of different parts of the same case as to whether time should be extended. Concentrix paras.. 68-72.

Time limits: Discussion / Conclusions

Issue #1: Were Claimant's complaints in ET1 prima facie presented in time.

27. At the PPH the Claimant conceded the complaints in her ET1 were not presented in time. On her case, her employment ended on 12 September 2023. The last act of unlawful conduct by the Respondent alleged in the ET1 occurred during the course of that employment, ie, by 12 September 2023 at the latest. On 9 March 2024, the Claimant contacted ACAS. On 13 March 2024, ACAS issued its Early Conciliation Certificate. On 26 March 2023, the Claimant presented the ET1. The Claimant's concession that her claims had not been presented in time was appropriate and realistic.

Issue #2: Continuing act

28. The Tribunal is satisfied the Respondent's conduct about which the Claimant complains in her ET1 did not form part of conduct extending over a period of time in respect of which the Claimant presented a timely complaint in her ET1. As noted above, the Claimant's employment ended on 12 September 2023. There is no allegation in the ET1 of unlawful conduct by the Respondent after that date. Therefore any continuing act by the Respondent (if there was one) must have come to an end by 12 September 2023. It is not in dispute that in the next 3 months the Claimant did not present an ET1 or contact ACAS (the effect of which – had she done so – would have been to extend time to present an ET1).

Issue #3: Just and equitable to extend time

29. Having reserved judgment to consider the parties' submissions and the evidence put before it, the Tribunal is not satisfied it is just and equitable to extend time in this case in respect of the Claimant's complaints under the EQA 2010, and declines to exercise its discretion under s.123(2)(b) of EQA 2010 to do so. The Tribunal's reasons for those decisions are as follows:

30. First, the Claimant accepted she was aware of (a) the applicable time limits for bringing claims in the Employment Tribunal (b) the types of claim she could bring in the Employment Tribunal, before, during and after her employment by the Respondent. This is because before she started working for the Respondent in March 2023, the Claimant had taken the LPC during the course of which she had studied and passed an Employment Law module which covered those matters.

31. Second, the Claimant was an eye-witness to most if not all the allegations of misconduct by the Respondent's employee contained in her ET1. She therefore

knew those alleged events had taken place at the time. Given her legal knowledge, the Claimant knew both during her employment and after it had ended that she could present a claim to an Employment Tribunal about those matters. The Claimant told the Tribunal she had been unable to obtain legal advice from a Citizens Advice Bureau after her employment ended. Even if that is right (no particulars of her efforts to obtain CAB advice were provided), it was unclear to the Tribunal what practical benefit the Claimant would have obtained from a CAB: she knew what had happened, she knew her legal rights under EQA 2010, she knew she could present a claim to an Employment Tribunal about those matters, and she knew the 3 month time limit for presenting an ET1 claim.

32. Third, the Claimant adduced no medical evidence which stated or impliedly suggested that during the period 13 September 2023 – 26 March 2024 she had been physically or mentally unwell or unfit. Such medical evidence as there was – the letter from her GP practice dated 14 November 2023 [148] – did not record any medical or health issues. If the Claimant had been mentally struggling at this time, the Tribunal might have expected her to have visited a GP or other health professional to raise those concerns and seek advice. She did not, from which the Tribunal infers that if the Claimant was experiencing mental health issues at the time (which many people sadly do from time to time), those issues were likely manageable.

33. Fourth, various documents were put before the Tribunal which the Claimant herself prepared after her employment terminated: (a) the two nuisance logs, one covering the period 23-29 October 2023 [142-143], the second the period 16-26 November 2023 [144-146] (b) the letter the Claimant sent the owners of 'Taste of Gyros' (the restaurant below her flat) dated 2 January 2024 [148] which made complaints about noise and overnight occupation of the restaurant on Mondays, and which referred to advice she had received that s.82 of the Environmental Protection enabled her to apply to the courts for a noise abatement order. Those documents are well-written, rational and entirely coherent. The Tribunal was satisfied that if she could compose these documents, she likely also would have been able to compose and submit an ET1 in time and certainly by 2 January 2024.

34. Fifth, while the Claimant complained of harassment and bullying from her partner (a motorcyclist) and other motorcyclists, which she told the Tribunal had started in 2022 and was "*still ongoing*", the Claimant had been able to write the documents referred

to above, from which the Tribunal infers that if she was able to do that notwithstanding what she was undergoing with these individuals, she was likely also able at the time to complete and submit an ET1. The Tribunal also noted this alleged harassment and bullying was said to be ongoing. If the Claimant was able to present an ET1 on 26 March 2024 notwithstanding this ongoing bullying and harassment, the Claimant gave no satisfactory reason or explanation why she could not have presented an ET1 or contacted ACAS in the period 12 September – 11 December 2023 when that bullying and harassment was (according to her) also ongoing.

35. Sixth, although the Claimant complained about the conduct of her neighbours, it is not in dispute that the Claimant's landlord agreed to release her from her tenancy on 31 January 2024. From no later than 1 February 2024, the Claimant cannot have been subject to any ongoing problems with her neighbours at her former flat as she was no longer living there. Even then, she waited for more than a month before contacting ACAS. Although the Tribunal makes no finding either way on the issue of precisely what happened with her neighbours during the period 12 September 2023 – 31 January 2014, it notes the police considered the Claimant's complaints about what had been happening in the vicinity of her flat and considered no criminal offences had been committed [150-152].
36. Seventh, the Claimant claimed she was in "*survival mode*" in 2023 after her employment ended (although she later clarified that comment to confirm that she was not saying she had mental health problems). The Tribunal was not satisfied the documentary evidence before it to which it was referred corroborated that allegation.
37. Eighth, the Claimant stated it would be just and equitable to extend time because she has a right to a fair trial and a right to address the harm caused (and still caused) to her. The Tribunal accepts this submission in part – if there is to be a trial, the Claimant has a right to a fair trial. What the Claimant does not have is an absolute right to a trial of the complaints presented in her ET1 even if she presented that ET1 substantially out of time, as happened here. In those circumstances, what the Claimant has a right to do, which she exercised, is to present evidence and make submissions to the Tribunal in support of her case that the Tribunal should exercise its discretion to extend time on just and equitable grounds. The Tribunal has considered the Claimant's submissions carefully, but has ultimately concluded that it would not be just or equitable to extend time in her case. The Tribunal is satisfied that the Claimant was fit and well enough to present a timely ET1 within 3 months of

the date on which her employment terminated, and provided no reasonable explanation for why she did not do so.

38. Ninth, there was no evidence before the Tribunal that the Claimant actually has ASD, a condition difficult to diagnose even for experienced clinicians. The Tribunal was content to assume at the PPH, for the purpose of the Respondent's strike out application, that the Claimant would be able to establish that she had ASD at the relevant time. What the Claimant did not do was link her failure to present her ET1 in time or earlier than she did so to that impairment.

39. It is unclear whether the Claimant is bringing a complaint of constructive dismissal separate and distinct from the unfair constructive dismissal claim she withdrew. If she is, for the reasons already given the Tribunal is satisfied that complaint was not presented within 3 months of the date on which her employment terminated on 12 September 2023 in circumstances where it was reasonably practicable for her to have presented that complaint in time.

40. Given the outcome of the Respondent's strike out application, there is no need for the Tribunal to consider the matters noted at para. 4(c)-(d) above, nor address the Respondent's Rule 50 application.

Employment Judge Tinnion

Date: 4 October 2024

Date sent to parties: 17 October 2024

For the Tribunal Office: