



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss E James

v

**West London Mental Health NHS
Trust**

Heard at: Watford

On: 15 October 2019

Before: Employment Judge Manley

Appearances:

For the Claimant: In person

For the Respondent: Mr S Sudra, Counsel

JUDGMENT having been sent to the parties on 5 November 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The request to amend the claim to include a claim of disability discrimination is rejected. It is not just and equitable to allow this amendment.

Introduction

2. The claimant presented a claim form on 26 April 2018. This was a relatively detailed and sophisticated claim form which brought claims of constructive unfair dismissal and sex discrimination. The claimant also put in a supporting statement with a timeline. Although the claimant referred to mental health and psychological issues, these were in the context of what had occurred since she had left the respondent. The matter came before me at a preliminary hearing on 26 June and 9 August 2018. There were two hearings because it was slightly complex to agree the list of issues. At no point during those hearings did the claimant mention a claim for disability discrimination. The issues were finally agreed on 22 August 2018 and a hearing agreed for March 2019. As we got close to the hearing there was a request to postpone that hearing for several reasons and it was postponed by consent.
3. The tribunal file contains an email dated 14 March 2019 which made an application to amend to include a claim of disability discrimination. It appears that there was also a document dated 8 March 2019, but I am not

clear whether that was sent to the tribunal. I have now read that document which is more detailed. In essence, the claimant claims that there was a failure to make reasonable adjustments at a meeting concerning a grievance that she raised with the respondent on 11 August 2017. What she raises is its refusal to allow the grievance to be dealt with by correspondence or with her cousin attending the meeting. The alleged disability is anxiety and depression.

4. I heard from the claimant and asked her a few relevant questions and Mr Sudra then made his submissions. The respondent objects to the amendments and reminded me that it was only in exceptional circumstances that a just and equitable extension would be agreed to. This is a completely new claim raising new facts not included in the claim form.
5. The claimant also made submissions. In summary, she said that she had been concentrating on other aspects of her claim; the sex discrimination and then the constructive dismissal. She was prioritising those matters and did not get legal advice until February 2019. She submitted that it was in the interests of justice to extend time to allow this matter to proceed bearing in mind that the respondent deal with people with mental health issues.

The law

6. An application to amend a claim can be made at any time but consideration must then be given to whether it is an application to add a new cause of action or whether it is a re-labelling for facts already raised. The case of Selkent Bus Co Ltd v Moore [1996] ICR 836 provides guidance on the approach to be taken when considering applications to amend. In summary, the judge should consider the nature of the amendment; the applicability of any relevant time limits and the timing and manner of the application. Section 123 Equality Act 2010 provides that discrimination claims should be brought within three months unless it is just and equitable to extend time.
7. An application for reconsideration can be made at the hearing under rule 71 Employment Tribunal Rules of Procedure 2013. Rule 72 provides for the judge to consider the application but may reject it if it has no reasonable prospect of success. Upon reconsideration a decision may be confirmed, varied or revoked.

Conclusions

8. I gave my conclusions orally to the parties. I went through the timeline as set out above and then gave judgment. I considered the length of the delay which is now very long. The date of the alleged incident of disability discrimination was 11 August 2017 and the application to amend was not made until 14 March 2019. It is now October 2019 and the hearing date is not until May 2020. This is a completely new claim, relying on newly pleaded facts and is, of course, mentioned many months after the three-month time limit contained in Equality Act 2010. I considered the reasons for the delay and accept that the claimant is a litigant in person and may not have all legal knowledge available to her. However, I balance that with the fact that she provided a detailed and relatively sophisticated claim form and she has had two previous preliminary hearings where this matter was not

mentioned at all.

9. Importantly I considered the question of prejudice to the parties. I accept that allowing the amendment would cause substantial prejudice to the respondent and, although the claimant may not see it in this light, it might also cause some prejudice to her. This is because it may well lead to a delay in the matter being heard. It is not conceded that the claimant was disabled at the material time, and these kinds health conditions frequently lead to the tribunal needing detailed medical evidence. There is a strong likelihood that the matter would be further delayed. The fact that this is a relatively complex area of law that relates solely to the claimant's concerns about a meeting which was held well over two years ago, means that, balancing the prejudice to both parties, it is not just and equitable to extend time. This is not an exceptional case.
10. Having given that judgment to the parties I then went on to seek to agree some case management directions for the hearing in May. I then asked the claimant whether she had anything else to raise and she indicated that she was not sure that I had looked at other documents which she had sent to the tribunal. This caused me to look at the file as I was not clear what the claimant was referring to. I asked the claimant whether she wanted me to reconsider the oral judgment I had given earlier, and she said she did. I then asked which documents she was referring to and I did find another letter from the claimant on the file. I was not aware that these were documents which she believed were relevant to this amendment application.
11. In any event, these were a copy of the claimant's grievance to the respondent of 5 August 2017 which makes reference to an alleged failure to make reasonable adjustments and a number of medical documents which refer to stress at work and anxiety. I asked the claimant how she believed these documents would influence my decision on the amendment and she accepted that what she was arguing was that this would mean that there was less prejudice to the respondent as it showed that she had raised the questions while she was employed in August 2017. She still argues that she was at a disadvantage because of her impairment and not being able to have the meeting by correspondence or with the assistance of her cousin.
12. The respondent responded that these documents take us no further except to indicate that there was stress at work which is not sufficient to amount to a disability. It was submitted by the respondent that the document which she presented on 5 August 2017 clearly showed that she should have brought this matter to the tribunal earlier as it makes clear references to the Equality Act and to the alleged disability. Indeed, that document refers to a "proportionate means of achieving a legitimate aim"; to a number of leading cases on disability and so on.
13. I then returned to the claimant for any final comments. She then referred to yet another document which was not on the tribunal file. I looked at this document and Mr Sudra was shown it. This was a letter from the respondent's service director dated 9 August 2017 which was a response to the claimant's email about the meeting on 11 August 2017 and the right to accompaniment to that meeting. I decided to read that document to see if it

assisted.

Reconsideration

- 14. I decided that it was in the interests of justice for me to reconsider the judgment that I had made a little earlier in the hearing in the light of the claimant taking me to these documents which she wished to rely upon. I appreciate that what the claimant was demonstrating was that the respondent had some knowledge about this matter in April 2017, but that is not the same as bringing a claim to this tribunal. Although I have reconsidered the judgment, I confirm the earlier judgment that it is still not just and equitable to extend time. This is for the same reasons as given above, but also because showing that you raised something in 2017 but did not put it on a detailed claim form or raise in a year of litigation does not alter my judgment. It is simply not just and equitable to extend time in these circumstances to allow the claim to proceed. It is not an exceptional case.

Employment Judge Manley

Date: ...13 November 2019.....

Judgment sent to the parties on

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For the Tribunal office