

THE INDUSTRIAL TRIBUNALS

CASE REF: 7297/17IT

CLAIMANT: Kyra McDowell

RESPONDENT: Firstsource Solutions Ltd

DECISION

1. The tribunal unanimously concludes that the claimant's claims were lodged outside the time-limit of three months.
2. The tribunal further unanimously concludes that it is not just and equitable in all the circumstances of this case to permit the time limit to be extended as regards the claimant's sex discrimination claim.
3. The tribunal unanimously concludes that the claimant has failed to establish on the balance of probabilities that it was not reasonably practicable to lodge her remaining claims within the statutory period of three months.
4. The tribunal therefore does not have jurisdiction to deal with any of them, and they are dismissed in their entirety.

Constitution of Tribunal:

Employment Judge: Employment Judge Browne

Members: Ms D Adams
Mr I Foster

Appearances:

The claimant attended and represented herself.

The respondent was represented by Mr T Warnock, Barrister-at-Law, instructed by Worthingtons, Solicitors.

ISSUES AND EVIDENCE

1. The claimant's case, in broad terms, was that the respondent discriminated against her on the grounds of her pregnancy and or her statutory right to maternity leave by failing to provide her with the opportunity or means of applying for vacancies during her absence on maternity leave. The claimant's ET1 complaint was received by the tribunal on 24 October 2017.
2. She also claimed that she suffered unlawful detriment as a result of those alleged failures; and that the respondent failed in its obligations regarding her application for flexible working.
3. The respondent's case was that the claimant's claims were out of time; and that, even if the tribunal found that it had jurisdiction to hear the claims, the respondent had behaved lawfully.
4. The claimant was an experienced Senior Human Resources employee of the respondent, for which she had worked from 21 January 2008 until her resignation on 27 October 2017.
5. The claimant went on maternity leave in July 2016 for the birth of her second child, and was due to return to work on 9 April 2017. At her return to work interview held on 7 February 2017 with her line manager Emma Cooke, the claimant asked for reduced hours, and made a written request for flexible working.
6. On 23 February 2017, Emma Cooke notified the claimant that her flexible working request had been refused on the grounds of business needs; the claimant on 3 March appealed against that decision.
7. The appeal meeting was conducted on 24 April 2017, after the respondent agreed to adjourn it to facilitate the claimant due to her being unwell, and after an initial meeting on 29 March 2017.
8. On 28 April, the claimant was sent a letter by Mr Brian Kelly, Deputy General Manager of the respondent's HR department, who took part in the appeal, setting out the reasons, that her appeal had been dismissed. It was clearly stated in the letter that there was no further appeal available to the claimant.
9. The claimant did not return to work as scheduled on 9 April, and submitted a series of sick lines, citing anxiety and post-natal depression. The respondent does not dispute that the claimant was suffering from those conditions. It was accepted by the tribunal that the respondent was genuinely sympathetic to the claimant as regards her own, and her husband's, health issues at around this time.
10. The claimant was still off on sick leave when on 21 June 2017, she met Mr Brian Kelly at a function at the school where their respective children were pupils. During their conversation, the claimant told Mr Kelly that she was not happy with the way in which the appeal had been conducted, and that she was considering launching tribunal proceedings. The claimant told the tribunal that she had sought and received professional legal advice prior to her conversation with Mr Kelly.
11. Mr Kelly was so concerned about what the claimant had said that he immediately 'phoned Ms Laura Hourican, Senior Vice President of the respondent's UK HR

department. Ms Hourican then contacted the respondent, and arranged to meet her on 23 June 2017, with Mr Kelly also attending.

12. During the conversation, it seemed clear that the claimant's focus was on the way she felt that her grievance appeal hearing had been conducted by Ms O'Kane. Ms Hourican on a number of occasions offered to review the appeal, but the claimant declined, stating that she felt the outcome would still be the same.
13. It was also apparent during the meeting on 23 June 2017 that the claimant was upset, with a number of domestic issues causing her great stress. When Ms Hourican told her to take as much time off as she needed, the claimant said that she could not see herself returning to work. The claimant then told Ms Hourican that she was "not prepared to walk away with nothing", and that she had spoken to a solicitor, who told her that she had a claim, and who seemed to "have it in for" the respondent (the claimant told the tribunal that she found the solicitor too "gung-ho" for her liking). She also told Ms Hourican that she thought that her house insurance would pay the cost of bringing proceedings.
14. Ms Hourican repeated to the claimant that she would look again in to her grievance appeal, as she would prefer to get her back to work than to go through legal proceedings. She was shocked when the claimant refused, saying that she wanted a year's salary. There was discussion around possible redundancy, but nothing could be guaranteed, with only a possible payment of six months' salary, if redundancy was found to be a viable option.
15. There was further contact around this issue over the coming months, the potential outcome of which the claimant told the tribunal was partly her reason for not launching tribunal proceedings.
16. The claimant finally resigned on 16 October 2017, having requested and been refused a payment of £15,000.

LAW AND CONCLUSIONS

17. The time-limit for lodging complaints of the type made in this case to the tribunal is three months from the date on which they occurred. As regards the sex discrimination claim on the grounds of her pregnancy or maternity leave, there is a discretion on the tribunal to permit such a claim outside the three months where, in all the circumstances of the case, the tribunal considers that it would be just and equitable to do so.
18. The claimant admitted in her evidence when asked about her knowledge of the statutory time limits that she was well aware that the issue she later used as the springboard for her tribunal case, namely, the refusal of flexible working, had in effect terminated as of 24 April 2017, as it was specifically stated to her in the letter she received.
19. The tribunal found that it was of particular note that, by 21 June 2017 at the latest, she had sought and received specific legal advice as to a tribunal case, and was threatening to launch legal proceedings. Whilst it was not beyond doubt, the tribunal is satisfied from the claimant's answers in evidence that she was well aware of the three-month time limits. It also seems highly unlikely that she would not have been

well aware from her legal advisers as to the time limits, and, indeed, she at no stage said that they had not told her.

20. The claimant instead stated that she had “multiple stress factors” at that time, and “was not in the frame of mind”, which lends weight to the argument that she was well aware of the time-limits. There was ample evidence from the respondent’s witnesses that she had been very upset at their meeting of 23 June 2017, but there was no medical evidence to support any view that she was so mentally incapacitated as to be unable to fill in the ET1 form.
21. It was of particular note that the claimant, while off on sick leave, had been able to overcome any debilitation sufficiently to seek out and instruct a solicitor, with a clear intention to bring legal proceedings, to be funded by her house insurance.
22. It also was of note that she was sufficiently focused in this to alarm Mr Kelly to the point where he reported their conversation of 9 June 2017, and that she was sufficiently clear-headed to make it clear to Ms Hourican and Mr Kelly that the only thing which would deter her from launching legal proceedings was a substantial financial payment.
23. The tribunal concludes from this that the claimant’s assertion as to reasonable impracticability does not withstand close scrutiny. Whilst she also claimed that she was awaiting the outcome of what might otherwise reasonably be seen as applying undue pressure to the respondent, there was no practical reason to prevent her from lodging the ET1.
24. That situation might in other circumstances be sufficient to enable the tribunal to exercise its discretion regarding the sex discrimination aspects of her claim. The tribunal however perceives that the claimant was prepared to use the conciliatory approach adopted by the respondent in expressing a repeated willingness to re-examine her grievance appeal in order to try to compel it to meet her demands to avoid the threatened legal proceedings.
25. Whilst the claimant had every right in law to bring such proceedings, and to negotiate a settlement suitable to her to avoid a hearing, the tribunal considers that, if the claimant was sufficiently capable to conduct such negotiations, she was also capable of lodging a complaint within three months. There was no evidence, of mental capacity, incorrect legal advice, or otherwise, which the tribunal considered was capable of making it just and equitable in all the circumstances of this case to extend the time to permit the discrimination aspects to be dealt with by the tribunal.
26. The tribunal therefore does not have jurisdiction to hear any of the claimant’s claims, and they are dismissed in their entirety.

Employment Judge:

Date and place of hearing: 9 May 2018, Belfast.

Date decision recorded in register and issued to parties: