



EMPLOYMENT TRIBUNALS

Claimant Ms K Higgins

Respondent: Harrogate Borough Council

HELD AT: Leeds **ON:** 15 January 2020

BEFORE: Employment Judge Cox

REPRESENTATION:

Claimant: In person

Respondent: Mrs A Datta, counsel

JUDGMENT AT PRELIMINARY HEARING

1. The claim has been presented outside the statutory time limit and has not been presented within a further just and equitable period.
2. The Tribunal has no jurisdiction to consider the claim and it is dismissed.

REASONS

1. A claim of discrimination may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable (Section 123(1) of the Equality Act 2010).
2. The Claimant claims that she was directly discriminated against by the Respondent because of her disability in October 2016 when it failed to offer her work. The claim was brought on 6 September 2019, over 31 months outside the three-month time limit provided for in Section 123. The Tribunal therefore had to decide whether the claim had been brought within a further just and equitable period.
3. The Court of Appeal confirmed in Robertson and Bexley Community Centre t/a Leisure Link [2003] IRLR 434 that it is the exception rather than the rule that a

late claim should be allowed to proceed and it is for the Claimant to convince the Tribunal that the circumstances are such that it would be just and equitable to do so.

4. At the Preliminary Hearing, the Tribunal heard oral evidence from the Claimant and considered documents to which it was referred by the Claimant and Respondent. On the basis of that evidence, the Tribunal made the following findings relevant to the issue it had to decide.
5. As already mentioned, the length of the delay in presenting the claim was substantial. It was brought over 31 months out of time.
6. In giving evidence on the reasons for the delay, the Claimant said that because of her ill-health (the nature of which she did not specify) and the effect on her of her medication, she had not realised until sometime in 2017 that the reason the Respondent had not offered her work was because she had disclosed on her application form that she was a disabled person. Further, she said, because of her ill-health and the time and effort involved in looking after her daughter, she did not have enough energy to bring her claim to the Tribunal until her daughter had left home, which was in September 2018.
7. The Tribunal did not accept that Ms Higgins did not have enough energy to bring her claim in 2017. In that year she had enough energy to start her own business, albeit a small-scale one involving sale of hand-knitted items, and to apply for jobs with other organisations. Even if the Tribunal had accepted the Claimant's evidence that she did not have the energy to bring her claim until her daughter left home in September 2018, that did not explain why she delayed a further year before bringing the claim.
8. In her evidence, the Claimant said that she eventually decided to bring the claim because she had not been able to get another job and she felt she should try to get the work the Respondent had wrongfully denied her, in order to supplement her income and protect her mental health from deteriorating further. The Tribunal understood why the Claimant wanted a job, but it did not accept that that gave her a good reason to delay in bringing her claim until she realised she could not secure employment elsewhere.
9. The Tribunal was satisfied that the availability and cogency of the evidence was likely to be adversely affected by the substantial delay in the claim being brought. The person that the Claimant said had discriminated against her, Ms Hirst (now Mrs Sansom) no longer works for the Respondent. It was not clear whether she would be prepared to give evidence on the Respondent's behalf, even if she was the subject of a witness order. Further, Ms Hirst's memory of what interactions she had with the Claimant in the autumn of 2016 would be substantially affected by the passage of time: the claim, if it were to proceed, would be unlikely to be heard until the middle of 2020, almost four years after the events in question. Ms Hirst's recollection of any conversation she had with the Claimant about the availability of work or how she should apply for it would be very likely to be hazy at best. The reliability of the Claimant's own recollection of what happened at that time would also be likely to be adversely affected, although perhaps not to the same extent as Ms Hirst's, who would have had dealings with many people about work. Given that the Claimant's case relied to a significant degree on the content of conversations between herself and Ms Hirst, the Tribunal viewed the effect of the delay on the

availability and reliability of the evidence as a significant factor to be taken into account in deciding whether the claim should be allowed to proceed.

10. Taking all these matters overall, the Tribunal was satisfied that the prejudice to the Respondent in allowing the claim to proceed substantially out of time outweighed the prejudice to the Claimant of dismissing the claim as out of time. The Tribunal had not been able to identify any good reason for the length of the Claimant's delay in bringing her claim. If the claim were allowed to proceed, the Respondent would be faced with defending a claim four years after the event, on the basis of oral evidence that might not be available and, even if available, might not be cogent or reliable because of the passage of time.
11. The Tribunal concluded that the claim had not been presented within a just and equitable period. As a result, the Tribunal did not have jurisdiction to deal with the claim and so the claim was dismissed.

Employment Judge Cox
Date: 16 January 2020

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