



## EMPLOYMENT TRIBUNALS

**Claimant**  
Miss K Smith

v

**Respondent**  
Loscoe Chilled Foods Limited

### RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

**Heard at:** Nottingham

**On:** Wednesday 22 January 2020

**Before:** Employment Judge P Britton (sitting alone)

#### Appearances

**For the Claimant:** Ms K Boot, Solicitor

**For the Respondent:** Ms V Latham, Solicitor

## JUDGMENT

1. The claims of age discrimination and direct sex discrimination are dismissed upon withdrawal.
2. For the avoidance of doubt the remaining claim is one of sexual harassment engaging the provisions at both section 26(1) and 26(2) of the Equality Act 2010.
3. Directions in respect of those claims are hereinafter set out.

## CASE MANAGEMENT SUMMARY

### Introduction

1. The state of play in this case at present is as follows. A claim (ET1) was presented to the Tribunal by the Claimant's solicitors, Cleaver Thompson, on 4 November 2019. It appeared to claim for age discrimination. Although it could be detected from the date of birth the Claimant was 23 when she left this employment on 7 August 2019, there was otherwise nothing pleaded whatsoever on that front. Otherwise the claims appeared to focus on what would clearly be, if correct, sexual harassment of her by the Managing Director off and on throughout the employment commencing circa August 2017. Pledges were also events in relation to bullying and threats, but this part of the claim was vague in the sense that although the time span of those events, which would run up to at least to February 2019 was clear, as to who was doing the threatening was not spelt at all and in that sense how it linked to sexual harassment. The final point to observe is that this claim was presented on 4 November 2019. The employment was stated to have ended on 7 August 2019 but in terms of material events the last act pleaded was 22 May 2019.

2. Thus the last date for filing this claim on the face of it would have been 21 August 2019 and the ACAS early conciliation certificate only extends over the one day 28 August 2019. Therefore it would only add one day, which would mean that the last date for filing this claim would have been 23 August 2019 and thus it can be readily seen that if that analysis is correct it is about 2½ months out of time. As to that it was out of time was pleaded in the response (ET3) along with a request for further and better particulars.

3. In the run up to today those further and better particulars have been replied to on behalf of the Claimant. It is now clear that all acts of harassment and for that matter bullying are in fact attributable to the Managing Director. More details in that respect are given and that there was an attempt to complain about it to HR and which was ignored. But nevertheless the last instance still remained 22 May 2019. Made plain in the agenda before me today was that the Claimant was abandoning the claims based upon age discrimination and direct sex discrimination thus leaving a claim for harassment pursuant to both section 26(1) and section 26(2). Therefore today I dismiss those first two claims upon withdrawal making plain that the harassment claims pursuant to both parts of section 26 of the EQA continue.

4. In passing the Respondent was suggesting that there should be a Scott Schedule. I fail to see why that is needed in this case. The allegations are very clear now and are denied in their entirety. It follows that this is a case centering almost entirely on the finding of facts and who is to be believed. That is because if the Claimant was treated by the MD as alleged, then self-evidently that which is pleaded cannot but be harassment on the grounds of her sex.

5. But of course there is the time point; and even in the agenda for today it is still not addressed by the Claimant and it was not addressed in the further and better particulars.

6. So it is a jurisdictional point. This claim is on the face of it out of time and nothing has been pleaded to the contrary by the Claimant. Thus this will require an attended Preliminary Hearing to determine whether it is just and equitable to extend time with the burden of proof upon the Claimant. If not, then the claim would have to be struck out in its entirety for want of jurisdiction. Thus it follows that I am going order a Preliminary Hearing. I therefore make the following orders.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

1. By **Friday 7 February 2020** the Claimant will serve upon the Respondent her statement and any other statements relied upon addressing the issue of out of time. Of course those statements will have to focus on the explanation and as to why it is just and equitable to extend time. In the alternative, if there are events which have yet to be pleaded that engage between 22 May and the effective date of termination, namely 7 August 2019 and thus bring the claim within time, then those will need to be pleaded. If so, there would also have to be an application to amend the current claims.

2. Having received those statements the Respondent has the right of reply thereto by **Friday 21 February 2020**.
3. Assuming the out of time issue remains, the Claimant will by **Friday 6 March 2020** send the Respondent a list of the documents that she intends should be in the bundle which should be of course confined to the out of time issues. The Respondent has a right to reply thereto by **20 March**, and if it wants any further documents in the bundle, then it should send copies of the same to the Claimant for inclusion in the bundle.
4. The Claimant will then prepare and serve a bundle limited solely to the out of time and just and equitable issues upon the Respondent by **Friday 3 April 2020**. As the solicitors on both sides are experienced in employment litigation, I do not need to give any further details as to how that bundle should be prepared.
5. **There is hereby listed an attended Preliminary Hearing to take place on Friday 7 May 2020 at the Nottingham Employment Tribunal Hearing Centre, 50 Carrington Street, Nottingham NG1 7FG commencing at 10:00 am** to determine the out of time issue and thence give further directions depending upon the outcome. The hearing has been given three hours.
6. For the time being all current directions are stayed and superseded by these directions that I have made.

## **NOTES**

- (i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.
- (ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
- (iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
- (iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:  
<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>

- (v) The parties are reminded of rule 92: “Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.” If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

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**Employment Judge Britton**

Date: 28 January 2020

Sent to the parties on:

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For the Tribunal:

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