



EMPLOYMENT TRIBUNALS

Claimant: Ms C Wright

Respondent: The Royal British Legion Poppy Factory Ltd

Heard at: Remotely via video link **On:** 16 September 2020

Before: Employment Judge Buzzard

REPRESENTATION:

Claimant: In person

Respondent: Mr Jaypal (consultant)

JUDGMENT ON PRELIMINARY HEARING

The claimant's is not granted permission to amend her claim to include a claim that it was an act of unlawful harassment for the respondent to refuse her access to their "Getting You Back To Work" service.

Accordingly, within her further and better particulars of claim submitted by email on 11 September 2020, the allegations set out in paragraph 18(d) cannot be relied on as amounting to harassment contrary to s26 of the Equality Act 2010.

REASONS

1. These reasons were partially explained to the parties at the hearing. The claimant's connection to the hearing was terminated part way through the oral reasons being given. The hearing was paused to seek to re-establish the claimant's connection, without success.

Agreed Background Facts

2. The claimant presented her claim to the Tribunal on 19 February 2019. This followed ACAS conciliation between late December 2018 and January 2019. The exact dates are not clear, because the claimant commenced conciliation

against three permutations of the respondent's title. Regardless, there is no suggestion that the claim form when presented was not presented in time.

3. The claimant makes various claims of discrimination and harassment based on the characteristic of disability.
4. The claimant in her claim form refers to the fact that the respondent withdrew from her access to their '*Getting You Back to Work Service*', referred to as GYBTW. The claimant states in her claim form that withdrawing her from GYBTW put her at a "*disadvantage*", that she was "*treated differently to other veterans*" and "*this did not seem right*". The claimant states she was told that she would be granted to GYBTW on or around 12 October 2018.
5. It is not disputed that the GYBTW service is a service that the respondent offers to all veterans, not just to employees or persons who work for them. The claimant accepted that under Schedule 9 of the Equality Act 2010, titled '*Other Exceptions*', a complaint of workplace discrimination (other than victimisation and harassment) based on the provision of a service offered to the public (on the same basis it is offered to employees) cannot be pursued in the Employment Tribunals. For this reason, the claimant's complaints regarding GYBTW could only be pursued in the tribunal if they were claims of victimisation or harassment.
6. The claimant has not raised any claim of victimisation.
7. The claimant attended a case management hearing before EJ Dunlop on 8 January 2020. There is no suggestion within EJ Dunlop's note summarising the discussion at that hearing, that the claimant made any suggestion that refusing her access to GYBTW was an act of harassment. To the contrary, the claimant's complaints relating to GYBTW appear to be identified as direct discrimination and/or discrimination arising from disability.
8. The claimant stated she had not obtained legal advice prior to 8 January 2020. The claimant stated that she did seek advice prior to the start of the Covid-19 lockdown (around March 2020) but could not be specific about the date. It was specifically clarified with the claimant if she had managed, prior to the lockdown, to explain the details of her complaints to the legal adviser consulted. The claimant confirmed she had, although the adviser had not been able to action that consultation until more recently. During the delivery of these reasons orally at the hearing, the claimant sought to interrupt, trying to explain that no case review had occurred prior to lockdown. It was at this point that the claimant's connection to the hearing terminated.
9. The claimant did not suggest that the refusal of access to GYBTW was an act of harassment until 11 September 2020. The claimant in written further particulars produced on 11 September 2020 argued that the eligibility rules for the GYBTW service had been "*surreptitiously*" changed so that she no longer qualified for acceptance on the service. This allegation of a '*surreptitious*' act had never been set out or in any way implied by the claimant as part of these proceedings, before 11 September 2020.

10. The claimant has included within her claim form several allegations of harassment and bullying, describing them as such. Her comments in her claim form regarding respondents' refusal to grant her access to the GYBTW service are noted not to be described in terms that are in any way similar to her description of the bullying and harassment.

Submissions

11. The claimant submitted that she suffered from a disability. The claimant stated that one impact of her disability is avoidance of issues and difficult situations.
12. This was not accepted or disputed by the respondent in submissions, who merely noted that no medical evidence to support this submission was provided to the Tribunal. The respondent does not dispute the claimant has a disability.
13. The respondent referred to the Tribunal to the extensive delay of almost two years between the date the claimant was told she was not eligible for the GYBTW service and her allegation that in telling her that the respondent had unlawfully harassed her. The respondent asserted that with such a long delay the respondent would be prejudiced in its ability to obtain reliable witness evidence in relation to this different and new allegation. The respondent further submitted that the claimant had not given any real explanation of why, either in her claim form or at the hearing before EJ Dunlop, she had not provided a description of the respondent's decision that she was not eligible to access the GYBTW service that could reasonably support a claim of harassment.

Findings

14. Within the normal time limit for presenting a claim the claimant did not make the allegation that not permitting her access to the GYBTW scheme was harassment. The claimant did not allege that there had been a "*surreptitious*" change to the scheme eligibility criteria, or anything even possibly similar, until at least 8 January 2020. The claimant clearly had not presented a claim of harassment relating to the GYBTW scheme prior to 11 September 2020.
15. The claimant has described in her claim form the events surrounding the respondents' refusal to grant her access to the GYBTW service. She has also described the events she viewed as harassment. Whilst it is accepted the claimant struggled with her disability leading her to avoidance, she did not avoid describing the harassment she alleged she was subjected to, at least in her claim form. The descriptions of other alleged incidents of harassment were included in her claim form in clear and unambiguous terms.
16. The claimant chose, for whatever reason, not to describe the respondents' refusal to grant her access to the GYBTW service as harassment. Nothing in her claim form can be read as suggesting that she viewed respondents' refusal to grant her access to the GYBTW service as harassing her. Whilst it is accepted that the claimant did not have the benefit of legal advice, she was in a position to describe, in non-legal terms, the things she was complaining about, and indeed did so describe them.

17. The claimant waited almost two years from the respondents' refusal to grant her access to the GYBTW service before changing her description of events. This change is noted to have come after she obtained legal advice. It is also noted to have been after the respondent applied for her claims of discrimination arising from their refusal to grant her access to the GYBTW service to be struck out as being matters outside the jurisdiction of the Tribunal to consider.

Conclusions

18. The claimant is not granted permission at this stage to amend her claim to include an allegation that changing the eligibility criteria for the GYBTW service, which resulted in her not being eligible, was an act of harassment.
19. Her treatment in relation to the scheme was not suggested to be harassment until nearly two years after the event. At this point it was characterised in a very different way to how she had described it previously. The changes in that description of the treatment are significant and material, moving from no more than putting her at a "*disadvantage*" (claim form) to "*surreptitious*" such that it amounted to harassment (11 September 2020).
20. The claimant is clearly seeking to make a new and different allegation to that included in her claim form. Given the length of the delay in doing this, and the impacts that will have on the respondent being able to produce witnesses with a reliable recollection of events, permission to make that amendment is not granted.

Employment Judge Buzzard

17 September 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

27 October 2020

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