



EMPLOYMENT TRIBUNALS

Claimant: Ms S Sillah

Respondent: Clothing 4 Ltd (R1)
Apparel Group Ltd (R2)
The Pub Clothing Company Ltd (R3)

Heard at: Nottingham (by CVP) **On:** 6 August 2020

Before: Employment Judge Brewer

Representation

Claimant: Ms B Holt, Solicitor
Respondents: Mr P Roberts, Solicitor

JUDGMENT

Time is extended under s.123(1)(b) of the Equality Act 2010 and the claimant's claims of racial harassment may proceed to a final hearing

REASONS

Introduction

1. This case was listed for a preliminary hearing in order to deal with the matters set out below. The claimant was represented by Ms Holt and the respondents by Mr Roberts. The claimant attended the hearing and she provided a witness statement which was taken as read. In reaching my decision I have taken into account the claimant's witness statement, her answers to cross examination questions put by Mr Roberts and her responses to my questions. I have also taken into account the helpful submissions made by both representatives. At the end of hearing I reserved my decision and I set out that decision and my reasons below.

Issues

2. The purpose of today's hearing initially was to consider the following questions:
 - a. Who is the correct respondent for the purpose of the claimant's racial harassment claim;
 - b. Whether the claim of racial harassment was brought in time; and
 - c. If not, whether time should be extended on a just and equitable basis.
3. I note that prior to today's hearing the claimant accepted that the correct respondent in relation to her claim for harassment is the 2nd respondent, Apparel Group Limited. I also note that the claimant accepts that her claim was presented out of time. In the circumstances the evidence and submissions touched only upon the third question above as that was the only matter left to me to decide.

Law

4. The law is uncontroversial and is set out in section 123(1)(a) and (b) of the Equality Act 2010. Essentially a claim for harassment under the Equality Act 2010 must be brought within three months of the act complained of or, if there is a series of allegations, within three months of the last act. If the claim is brought outside of the normal time limit time may be extended so as to allow the claim to be heard if it is just and equitable to do so. I shall refer to relevant case law below.

Findings of fact

5. I make the following brief findings of fact.
6. During her employment to June 2019 the claimant's employer was Apparel Group Limited. Subsequently her employment transferred, with her consent, to the first respondent. All of the claims of racial harassment relate to the period up to June 2019.
7. The claimant complained to her employer on 10 June 2019 that she had been the subject of racial harassment. Her employer agreed to investigate the matter and also agreed that her employment would transfer to the from the 2nd to the 1st respondent, an associated company.
8. The claimant, having heard nothing from her employer for two or three months, said that by October 2019 she considered that she would not get a response which was going to address her concerns.
9. She confirmed that she made no contact with her employer after June 2019 to seek redress, to chase him or to complain that nothing had been done. She said that she could have emailed but she did not. She said that she was unwell with stress.
10. In September 2019 the claimant contacted ACAS. She commenced early conciliation on 17 December 2019 and the early conciliation certificate was

issued on 17 January 2020. The claimant had sought and obtained legal advice on 1 December 2019. She had essentially handed the matter over to her legal advisers from that time.

11. The claimant said that she felt strongly that she had to do something about her treatment. She had handed over documents to her legal advisor on the matter was "In their hands".
12. The claim was presented on 4 March 2020 some nine months out of time.

Conclusion

13. Given the above factual matrix I find as follows.
14. The Court of Appeal in **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA**, noted that the law allows the Tribunal a wide breadth of the discretion to extend time. While Tribunals have such a wide discretion to allow an extension of time under the 'just and equitable' test it does not necessarily follow that exercise of the discretion is a foregone conclusion. The Court of Appeal made it clear in **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA**, that when employment tribunals consider exercising the discretion under (what is now) S.123(1)(b) there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.' The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable.
15. In **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA**, the Court of Appeal pointed to the fact that it was plain from the language used in S.123 ('such other period as the employment tribunal thinks just and equitable') that Parliament chose to give Tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a particular list of factors to take into account.
16. I found the claimant to be a credible witness and accept her evidence. She felt strongly enough about her treatment to raise the matter with her employer, the owner of a number of businesses who would appear to live in France. She did not feel she could chase him directly for a response to her complaint even though he said he would be dealing with it and appeared not to (I make no finding about what he did or did not do). When there was no response, she sought advice and contacted ACAS. By early December she felt she had done all she needed to, and the matter was with her advisers. By this stage the claim was already out of time.
17. For his part My Roberts asserted in submissions that his client would be prejudiced in defending the claim because of the delay. However, he led no

evidence on the point and did not suggest that any individuals implicated in the claimant's claims were not available to the 2nd respondent to give evidence or otherwise assist with the case. The claimant's position of course is that if I do not exercise my discretion, she cannot seek redress through the Tribunal and the balance of prejudice in this case lies with her.

18. Given the wide discretion I have, given the steps taken by the claimant in seeking redress, seeking advice and her mental state at the time, and given the balance of prejudice, I am satisfied that in all the circumstances it is just and equitable to extend time in this case.

Employment Judge Brewer

Date 6 August 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Note

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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