



EMPLOYMENT TRIBUNALS

Claimant: Ms M Kamara

Respondent: Dorset County Hospital NHS Foundation Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Southampton (by video)

On: 4 November 2022

Before: Employment Judge Gray

Appearances

For the Claimant: Did not attend and was not represented

For the Respondent: Mr Loftus, solicitor

JUDGMENT

UPON the Claimant failing to attend or be represented at this hearing,

AND UPON first considering the information available, the tribunal proceeded to hear the claim in the absence of the Claimant under Rule 47 of the Employment Tribunal Rules of Procedure 2013.

The judgment of the tribunal is that it is not just and equitable to extend time in this matter and the Claimant's claim is struck out.

REASONS

1. In view of the Claimant's non-attendance the following reasons are provided:
2. The hearing was conducted by the parties being expected to attend by video. It was listed as such at the case management preliminary hearing on the 3 August 2022 that took place before Employment Judge Livesey.
3. The following matters were to be addressed and/or determined at this hearing:
 - 3.1 Assuming that the Judge considers it practicable to do so, to determine whether the claim was brought in time and, if not, whether it is just and equitable to extend time under s. 123 of the Equality Act;

- 3.2 Whether any of the claims have no reasonable prospect of success and ought to be struck out under rule 37;
 - 3.3 Whether any of the claims have little reasonable prospect of success and whether the Claimant ought to be required to pay a deposit as a condition of pursuing them to a final hearing under rule 39;
 - 3.4 What further case management directions are required and when that hearing should take place.
4. As part of the case management orders for the parties' preparations for this hearing, Employment Judge Livesey ordered that the parties must send each other copies of all their witness statements by 21 October 2022.
5. No statement has been submitted by the Claimant. What the Tribunal has been presented for this hearing was a PDF bundle of 507 pages with separate index and the Respondent's submissions with copy case authorities. Within those submissions it is noted by the Respondent (at paragraph 25 a.) ... "The Claimant has failed to provide any evidence – including a witness statement - specifying why she did not bring her claim in time and/or why it would be just and equitable for the Tribunal to extend time. The burden on the Claimant in relation to the just and equitable test is therefore not discharged in the absence of such evidence from the Claimant – particularly given that the Court of Appeal in *Bexley Community Centre v Robertson* [2003] EWCA Civ 576 ruled that the exercise of discretion should be the exception, not the rule."
6. The Claimant did not attend this hearing and was not represented.
7. By email dated 18 October 2022 from the Claimant's then representative it was confirmed that they ... "are no longer instructed to represent Ms Kamara in these proceedings. Ms Kamara will be representing herself as a Litigant in Person.". They then provided the Claimant's personal email address for subsequent contact.
8. The Court Clerk at this hearing emailed that email address at 10am to enquire if the Claimant was having difficulties joining. No reply or other communication was received from the Claimant. The hearing commenced at just after 10:15 with the Claimant not in attendance or represented.
9. The Employment Judge summarised his understanding of the claim which in short was that based on a last act of complained discrimination being towards the end of October 2020 (consider the list of issues as set out by Employment Judge Livesey in his case management summary), whichever ACAS certificate was relied upon, it meant the complaints were all out of time. The primary issue for this hearing was therefore whether it was just and equitable to extend time.
10. With the non-attendance of the Claimant and without submission of a statement or evidence from her, no explanation for the delay has been presented at this hearing. As a result, with the exercise of discretion being the exception, not the rule, it is not just and equitable to extend time in this matter and the Claim is therefore struck out.

Employment Judge Gray
Date: 4 November 2022

Sent to the parties on
14 November 2022 by Miss J Hopes

For the Tribunal Office