



EMPLOYMENT TRIBUNALS

Claimant: Kerry-Ann Knight

Respondent: Ministry of Defence

HELD AT: Leeds Employment Tribunal (By **ON:** 6 February 2024
CVP)

BEFORE: Employment Judge Buckley

REPRESENTATION:

Claimant: Mr. Roberts (Counsel)

Respondent: Mr. Fetto KC (Counsel)

JUDGMENT ON A PRELIMINARY ISSUE

1. The question of whether the tribunal has jurisdiction in relation to the allegation in paragraph 106o in the grounds of complaint will be determined at the final hearing.
2. The tribunal has jurisdiction to consider the allegations in the following paragraphs of the grounds of complaint:

106h

106i

106y

106aa

106bb

106ii

106eee

106fff

106ggg

106jjj

3. The tribunal does not have jurisdiction to consider the allegation in 106hh.
4. The allegation in paragraph 106hh is STRUCK OUT.

REASONS

1. Section 120 of the Equality Act 2010 (EqA) gives the Tribunal jurisdiction to determine a complaint relating to a contravention of Part 5 (work), subject to section 121.
2. Section 121 EqA provides:
 - Armed Forces Cases
 - (1) Section 120(1) does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—
 - (a) the complainant has made a service complaint about the matter, and
 - (b) the complaint has not been withdrawn.
3. A service complaint is a complaint made under the Armed Forces Act 2006 and the Armed Forces (Service Complaints) Regulations 2015 (the Regulations).
4. The Regulations provide that a service complaint is made by a complainant making a statement of complaint in writing to the specified officer. The statement of complaint has to state a number of things.
5. Section 340A and B of the Armed Forces Act provide relevantly:

340A Who can make a service complaint?

- (1) If a person subject to service law thinks himself or herself wronged in any matter relating to his or her service, the person may make a complaint about the matter.
- (2) If a person who has ceased to be subject to service law thinks himself or herself wronged in any matter relating to his or her service which occurred while he or she was so subject, the person may make a complaint about the matter.
- (3) In this Part, “service complaint” means a complaint made under subsection (1) or (2).

...

340B Procedure for making a complaint and determining admissibility

- (1) The Defence Council may make regulations (referred to in this Part as “service complaints regulations”) about the procedure for making and dealing with a service complaint.

- (2) Service complaints regulations must make provision—
- (a) for a service complaint to be made to an officer of a specified description;
 - (b) about the way in which a service complaint is to be made (including about the information to be provided by the complainant);
 - (c) that a service complaint may not be made, except in specified circumstances, after the end of the specified period.
- “Specified” means specified in the regulations.
- (3) The period referred to in subsection (2)(c) must be at least three months beginning with the day on which the matter complained of occurred.

...

6. The Regulations provide:

4 – Procedure for making a service complaint.

- (1) A service complaint is made by a complainant making a statement of complaint in writing to the specified officer.
- (2) The statement of complaint must state—
- (a) how the complainant thinks himself or herself wronged;
 - (b) the name, where known, of any person who is alleged by the complainant to be the subject of the complaint or implicated in any way in the matter, or matters, complained about;
 - (c) whether any matter stated in accordance with sub-paragraph (a) involved discrimination, harassment, bullying, dishonest or biased behaviour, a failure by the Ministry of Defence to provide medical, dental or nursing care for which the Ministry of Defence was responsible or the improper exercise by a service policeman of statutory powers as a service policeman;
 - (d) if the complaint is not made within the period which applies under regulation 6(1), (4) or (5), the reason why the complaint was not made within that period;
 - (e) the redress sought; and
 - (f) the date on which the statement of complaint is made.
- (3) The statement of complaint must also state one of the following—
- (a) the date on which, to the best of the complainant's recollection, the matter complained about occurred or probably occurred;
 - (b) that the matter complained about occurred over a period, and the date on which, to the best of his or her recollection, that period ended or probably ended;
 - (c) that the matter complained about is continuing to occur;

(d) that the complainant is unable to recollect the date referred to in subparagraph (a) or (b).

5.— Action on receipt of a service complaint and admissibility

(1) After receipt of a statement of complaint, the specified officer must decide whether the complaint is admissible in accordance with section 340B(5).

(2) For the purposes of section 340B(5)(c), a service complaint is not admissible if

(a) the complaint does not meet the requirements of whichever of section 340A(1) and (2) applies to the complainant; or

(b) the complaint is substantially the same as a complaint brought by the same person which has either been decided previously under the service complaints process or is currently being considered under the service complaints process.

(3) If the specified officer decides that any part or all of the service complaint is admissible, he must notify the complainant in writing of the decision and refer that part or all of the service complaint to the Defence Council.

(4) If the specified officer decides that any part or all of the service complaint is not admissible, he must notify the complainant in writing of the decision, giving the reasons for the decision and informing the complainant of his or her right to apply for a review of the decision by the Ombudsman.

6.— Period for making a service complaint and power to stay

(1) Subject to paragraphs (4) and (5), a person may not make a service complaint after three months beginning with the relevant day.

(2) Except in a case within paragraph (3), the “relevant day” means the day on which the matter the person wishes to complain about occurred or (if it occurred over a period of time) the last day on which it occurred.

...

(4) If a matter is or has been capable of being pursued as a claim under Chapter 3 of Part 9 of the Equality Act 2010, a service complaint may not be made about the matter after six months beginning with the day on which the matter complained about occurred or, where the matter occurred over a period of time, the final day of that period.

(5) If a matter is or has been capable of being pursued as a claim under Chapter 4 of Part 9 of the Equality Act 2010, a service complaint may not be made about the matter after the end of the qualifying period for a claim as determined in accordance with section 129 of that Act.

(6) A person may make a service complaint after the end of the period in whichever of paragraphs (1) and (4) applies to the complaint if, in all the circumstances, the specified officer considers it is just and equitable to allow this.

8. Application of these regulations where further matters raised by way of complaint

If the complainant raises an additional matter by way of complaint at any time after the specified officer has made a decision on the admissibility of a service complaint, that matter must be made the subject of, and dealt with as, a fresh service complaint.

7. The claimant has made a number of service complaints and the respondent accepts that the Tribunal has jurisdiction to deal with most of the matters contained in her grounds of complaint to the Tribunal.
8. The respondent conceded during the hearing that the Tribunal had jurisdiction to deal with the following allegations of detriment that it had previously disputed (paragraph references are to the grounds of complaint in 1800456/2023):

106ccc

106ddd

106hhh

113a

113b

9. The question of jurisdiction in relation to paragraph 106o will be determined at the final hearing. It was raised in a document labelled service complaint, but there was a dispute between the parties as to whether or not this was a service complaint. That issue needs to be resolved on the basis of the evidence.
10. The allegation made in 106xx is not pursued as a separate act of discrimination. It is reframed as relevant to remedy, because the appellant alleges that was how she felt as a result of the respondent's conduct.
11. The issue for me to determine is whether the Tribunal has jurisdiction to deal with the following allegations of detrimental treatment:

106h

106i

106y

106aa

106bb

106hh

106ii

106eee

106fff

106ggg

106jjj

12. The parties disagreed as to the approach I should take to the application of section 121.
13. There is no binding authority on the approach to be taken to section 121. **Molaudi v Ministry of Defence** (2011) UKEAT/0463/JOJ dealt with a different issued. In that appeal the EAT decided, under the previous iteration of the Armed Forces Act 2006 and the related regulations, that where a complaint had been rejected by the specified officer because it was out of time the tribunal had no jurisdiction to consider it. I am bound by that conclusion and it must in any event be right, because it is clear from the Regulations that a service complaint 'may not be made' about a matter after the end of the qualifying period unless in all the circumstances, the specified officer considers it is just and equitable to allow this. If no service complaint can be 'made' then under section 121 the tribunal will not have jurisdiction.
14. In interpreting section 121 I have to take account of the context and purpose of the provision. This requirement is not analogous to the requirement to carry out early conciliation. Further the service complaints process is not simply an internal grievance process. It is clear from the statutory framework that Parliament's intention is that service personnel should use the service complaints process substantively – it is not just a requirement to notify (see section 121(1)(b)). I accept that the tribunal process is intended to be secondary and contingent. The fact that Parliament recognises the special category in which service personnel fall, is underlined by the fact that in some cases, such as age and disability discrimination, the tribunal has no jurisdiction at all. That is the context in which I must interpret section 21.
15. If a claimant makes a complaint in the employment tribunal which relates to an act done when they were serving as a member of the armed forces, then they must have made a service complaint about that matter. There is in my view significance in the fact that section 121(1)(a) does not say that they must have made a service complaint about that act. The word matter has been used instead. I agree with the Judge in **Zulu & Ghu v Ministry of Defence** (2205687/2018 and 2205688/2018) that 'matter' means something broader than the act done. A number of acts might form part of the same matter.
16. In my view the Judge in **Zulu** was right to consider the meaning of section 121 in the light of the service complaint process, as set out in the Armed Forces Act and the Regulations.
17. A service complaint, according to section 340A(3) of the Armed Forces Act, means a complaint made under section 340A(1). Under section 340A(1), if a person subject to service law thinks himself or herself wronged in any matter relating to his or her service, the person may make a complaint about the matter. That is what the 'matter' means in relation to the service complaints process. It is how the person considers that they have been wronged.
18. Regulation 4 provides for some specific particulars to be given, including how the complainant thinks himself or herself wronged, but I agree with Judge McNeill QC in **Zulu** that the statement of complaint is not intended to be a formal pleading and

there is no requirement in the regulations for each and every detail of the wrong complained of to be particularised in the service complaint form.

19. Further, I note that the 'matter' can be a one-off act or it can occur over a period of time (see regulation 3(b)). Where 'the matter' occurred over a period time, the time limit starts to run from the last day on which it occurred (see regulation 6). Thus a 'matter' could be, for example, a connected series of acts which occurred on different occasions.
20. In this case, the claimant has made complaints in her service complaints about a series of connected acts in relation to each person complained about. In relation to each individual this series of incidents is the 'matter' which she has made a service complaint about.
21. So, for example, in relation to Major Heckles, the complaint is about 'unprofessional behaviour and a failure to address the obvious culture of bullying discrimination racism and sexism'. The claimant states, at p 22 of the SC bundle, 'As exemplified by the details provided in this Service Complaint I believe the OC consistently failed to adequately address the issues within Company which in turn didn't do anything to address the extremely difficult working environment I faced in Peninsula Company.'
22. In relation to Captain Savage, for example, the complaint is about his 'unprofessional behaviour and a failure to address the obvious culture of bullying, discrimination, racism, and sexism that exists in Peninsula Company' and of him 'witnessing bullying against me on numerous occasions without recorrecting the behaviour as well as discretely encouraging and participating in it'. The claimant states that 'I have been wronged by Capt Savage from the day he replaced Capt Drury as 15 Platoon's Commander. Unlike Capt Drury, Capt Savage did not correct my peers whenever he witnessed them being bullies by making or acting in a sexist, homophobic or racist way towards me or the JS, but instead would join in or encourage them to do so.'
23. She states at the end of the section where she has provided details: 'There are so many more incidents where I feel as though Capt Savage had failed me as my Platoon Commander by allowing and participating in acts that are sexist, racist, and bullying towards me, leaving me feeling victimised and isolated in my own working environment.'
24. The matter complained about is the course of conduct. I find that it is not necessary for the claimant to have detailed every single incident in a course of conduct in the service complaint in order to have complained about that matter, and for the tribunal to have jurisdiction in relation to any act that formed part of that matter.
25. I do not accept that this approach amounts to a lax approach to the correlation of 'matter' and claim. The interpretation I have adopted is in accordance with and does not undermine the statutory scheme. It is supported by the legislative text in the Equality Act 2010, the Regulations and the Armed Forces Act which is the primary indication of legislative intention. It is supported by the context and purpose of the provision. It was the clear intention of Parliament that a matter has to be complained about in a service complaints process before it can form the basis of tribunal proceedings. If Parliament had intended that each individual factual allegation within that matter had to be particularised in detail in the statement of complaint it could have said so.

26. On this basis, I agree with Mr. Roberts that the statute does not require the tribunal to go through the grounds of complaint and the statement of complaint with a fine toothcomb, ensuring that every individual factual allegation in the grounds of complaint appears in the statement of complaint, as long as those factual allegations form part of the matter complained about in the statement of complaint, interpreted in the manner set out above.
27. Turning to the particular items that are in dispute, the parties' arguments are summarised in the table attached to the skeleton argument of the claimant and I do not repeat them here.
28. In relation to the complaints about Corporal Coles (106h and 106i) I find that these form part of a matter complained about in the service complaint, namely that on multiple occasions Corporal Coles undermined her in front of the JS. In any event, even adopting a narrower definition of matter, in relation to 106h the difference in nuance in the allegation in the service complaint and in the grounds of complaint (a difference between the claimant's 'orders' and what she 'told them [*the soldiers*] to do') would not have been sufficient to persuade me that the matter had not been complained about.
29. In relation to the complaint about Corporal Taylor (106y), the allegation on 16 November 2021 forms part of a matter complained about in the service complaint. At page 47 of the SC bundle the claimant complains about the following matters: that Corporal Taylor would 'frequently make racially charged comments' and that 'there were many other comments made by Cpl Taylor with racist undertones'.
30. Further, she complains that: 'Cpl Taylor's continuous racially charged remarks and total disregard for the way his words and actions towards me have negatively impacted on me. His words and actions made me feel as though he believed I was inferior to him as a result of my race.' She gives examples of other very similar comments in the service complaint. In my view the particulars of the incident on 16 November 2021 clearly form part of the matter that was complained about in the service complaint.
31. In relation to the complaints about Major Heckles in 106aa, 106bb and 106ii these form part of the matter raised in the service complaint, i.e. the wrong that Major Heckles failed to address the issues within the company (namely 'the obvious culture of bullying discrimination racism and sexism') which was said to be exemplified by the details provided in the service complaint (see p 22 of the SC bundle) and, in relation to 106aa and 106bb, form part of the more specific issue complained about at p 21 and p 22 of the SC bundle, namely the complaint made about Major Heckle's conduct and manner at that specific meeting on 18 November 2021.
32. In relation to the complaint about Corporal Woodcock in 106hh, I do not accept that this forms part of a matter in relation to which the claimant made a service complaint. Corporal Woodcock is not one of the service persons who the claimant specifies that she believes she has been wronged by in the service complaint (p 15 SC bundle). Corporal Woodcock is not named on p 17 where the claimant is asked to identify the persons she believes have behaved towards her in the alleged way. There is no complaint about a course of conduct by Corporal Woodcock which could be a matter complained about of which this might be a further example. This incident only appears in the service complaint in the section particularising the claimant's complaints about Major Heckles' conduct in failing to address the culture

of bullying discrimination racism and sexism and is an example of conduct that was brought to his attention ('I highlighted to the OC that I felt harassed by Cpl Woodcock') rather than a complaint about that conduct itself.

33. In relation to the complaint in 106eee, I accept that this forms part of the matter complained about at p 104-106 in the SC bundle. The safeguarding 'investigation', the placing of the claimant on the VRM register and the removal order are intrinsically bound together. The complaint about a lack for information about the safeguarding investigation and being placed on the VRM register is, in essence, a complaint about a lack of information *in connection with* the removal order. The complaint in the grounds of complaint forms part of the matter about which the claimant made the service complaint.
34. In relation to 106fff, 106ggg and 106jjj the claimant has complained about the removal order in the service complaint. These complaints form part of that matter. This is illustrated by the fact that the claimant specifically mentions 106ff in the interview about the service complaint. She is providing further details of the matter raised in the service complaint. As far as I am aware this was not treated by the respondent as the complainant raising an 'additional matter' which required the submission of a new service complaint under regulation 8.
35. For those reasons:
- 35.1. I conclude that the tribunal has jurisdiction in relation to the following allegations of detrimental treatment, because they are complaints relating to an act done when the claimant was serving as a member of the armed forces and the claimant has made a service complaint about the matter:
- 106h
 - 106i
 - 106y
 - 106aa
 - 106bb
 - 106ii
 - 106eee
 - 106fff
 - 106ggg
 - 106jjj
- 35.2. I conclude that the tribunal does not have jurisdiction to consider the claim of detrimental treatment in 106hh because the claimant has not made a service complaint about the matter and that part of the claim is struck out.
36. I have made a separate case management order requiring the claimant to clarify two parts of the claim. Although the claimant's representative saw no need for this clarification he did not strongly resist the order, and in my view it is likely to assist the respondent in drafting its grounds of resistance.

Employment Judge Buckley

Date 7 February 2024

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