



EMPLOYMENT TRIBUNALS

Claimant: Ms A Banks

Respondent: Police and Crime Commissioner for Essex

Heard at: East London Hearing Centre (by Cloud Video Platform (CVP))

On: 20 November 2024

Before: Employment Judge M Martin

Representation

For the claimant: Mr G Banks (father, with the claimant in attendance)

For the respondent: Ms J Callan (Counsel)

RESEERVED JUDGMENT

The judgment of the tribunal is that:

- (1) This tribunal does not have jurisdiction to hear the claimant's complaints of disability discrimination.
- (2) The claim of disability discrimination is hereby dismissed.

REASONS

1. This case came before me for a public preliminary hearing to consider whether the claimant's claims of discrimination were out of time and whether it was just and equitable to extend time. The tribunal also had to consider a number of applications made by the claimant for leave to amend her claim to additional claims and allegations.

2. The issues which the tribunal had to consider were as follows:

- 2.1 in relation to the claims relating to jurisdiction, the tribunal had to firstly consider whether any of the claims were presented in time.
- 2.2 whether the last act alleged was within three months of the date of the presentation of the claim.
3. The tribunal then had to go on to consider whether it was just and equitable to extend time and noted a number of factors which may be taken into account including:
 - 3.1 the length of and reasons for any delay.
 - 3.2 the impact on any evidence.
 - 3.3 any conduct by the respondent which might have contributed to any delay.
 - 3.4 the impact of anything on the claimant including any medical condition or legal or other advice she had received.
 - 3.5 the extent to which the claimant acted reasonably in pursuing the claims doing so once she knew she could present the claims
 - 3.6 any prejudice or hardship to either party.
4. In relation to the applications for leave to amend, the tribunal had to consider whether there would be any claim left to amend. The tribunal noted that if the tribunal did not have jurisdiction to hear any of the claims and none of the claims survived, then her application for leave to amend would inevitably fail.
5. In relation to any application for leave to amend the tribunal had to consider the nature and proposed amendments, namely whether they were new claims and new causes of action; the applicability of any time limits to any claims; the timing and manner of any application for leave to amend and again, whether there was any prejudice or hardship to either the claimant or the respondent.
6. The tribunal was provided with a large bundle of documents. However, most of the documents in the bundle dealt with the other preliminary matter which the tribunal did not go on to deal with, namely as to whether or not the claimant was disabled pursuant to section 6 of the Equality Act 2010. Further orders were made regarding disability if the tribunal had jurisdiction to hear any of the complaints relating to discrimination. As the tribunal has found that it does not have jurisdiction to hear any of those claims, those orders are obsolete.
7. The claimant gave evidence on her own behalf.
8. The law which the tribunal considered is as follows:
9. Section 123 Equality Act 2010 states that proceedings may not be brought after the end of three months starting with the date of the act to which the complaint relates or such other period as the tribunal thinks just and equitable.

10. Section 33 of the Limitation Act 1980 which sets out guidelines to consider in cases as to whether it is just and equitable to extend time.
11. The case of *Robertson v Bexley Community Centre* [2003] IRLR 434 where the Court of Appeal made it clear that time limits should be strictly adhered to. It indicated that the tribunal had a jurisdiction to extend time but that the claimant would have to persuade the tribunal as to why time should be extended in such circumstances.
12. The case of *London Borough of Southwark v Afolabi* [2003] IRLR 220 where it was held that the tribunal does not have to go through all the factors set out in section 33 of the Limitation Act 1980.
13. The case of *Apelogun-Gabriels v London Borough of Lambert* [2002] IRLR 116 where the Court of Appeal held that considering whether it is just and equitable to extend time where a claimant is pursuing internal proceedings is only one factor to consider.
14. The well-known case of *Selkent Bus Company Limited v Moore* [1996] IRC 836 which sets out various factors to consider as indicated above on any application for leave to amend.
15. The tribunal was also referred to a number of additional cases by the respondent's representative as follows:
16. The case of *Robins v National Trust Co Ltd* [2017] and *Concentrix v Obi* [2022] EAT which are recent authorities dealing with the issues outlined in the case, *Bexley v Community Centre*
17. The tribunal was also referred to the case of *Vaughan v Modality Partnership* UKEAT 2020/0147 which held that the core test is looking at the balance of injustice or hardship to either party with prejudice being a core aspect of that to consider.

Facts

18. The claimant was appointed a police constable in January 2021. In her evidence she said that she had always wanted to join the police force since she was aged 5. The respondent is a police authority in Essex.
19. The claimant suffers from moebius syndrome, which is a neurological condition. She also suffers from depressive disorder, a mental health condition. At this stage, the respondent has not conceded disability in relation to either condition.
20. The claimant said that she had problems with bullying and harassment from shortly after she moved to Colchester police station. It is not clear exactly when that occurred, but it appears to have been sometime during 2022.

21. At the end of January 2023, the claimant was referred to the Special Measures Council about concerns regarding her conduct.
22. During June 2023, the Professional Standards Department from the Special Measures Council produced a report of the outcome from the hearing, which determined that the claimant was unsuitable for the role of Police constable
23. In September 2023, the claimant was offered a position external to the police force at the Resolution Centre Investigation.
24. The claimant was advised she would have to resign as a police constable, which she then subsequently did on 27 September 2023. She was put on a period of gardening leave during that period.
25. On the same day, 27 September 2023, the claimant was referred to the Special Measures Council again with regard to concerns about her accessing information on police systems.
26. On 6 November 2023, the claimant contacted ACAS. Her ACAS Certificate was issued on 18 December 2023.
27. The claimant filed her ET1 on 14 January 2024. The particulars of her claim are set out at paragraph 8.2 of the ET1, (page 15 of the bundle). At paragraph 8.1 she ticked stating she was claiming for disability discrimination. It should be noted that one of the claims she cites at paragraph 8.2 could amount to a claim of sex discrimination and/or harassment relating to sex. EJ Martin indicated that the fact the claimant had not ticked the relevant box would not in itself have prevented her from pursuing that claim in these proceedings.
28. The claim at paragraph 8.2 sets out four paragraphs. In the first paragraph she refers to discrimination in general terms and then refers to a failure to make reasonable adjustments or allowances whilst on shift at Colchester. She also says she has a disability for two conditions and claims disability discrimination for both. The second paragraph talks about an issue with a particular sergeant, which as indicated above, could amount to a claim of sex discrimination. That incident is stated to have occurred in February 2023. The third incident referred to is with regard to a different officer. It relates to an incident in March 2023 or prior to that time. The last paragraph refers to an incident concerning a further police officer which is stated to have occurred in April 2023. No further information is provided.
29. On 19 March 2024, the Special Measures Council determined that the claimant should be dismissed for gross misconduct, but at that stage she had already resigned.
30. In April 2023, the claimant said she was put on a performance plan which it appears she did not complete.

31. On 2 August 2023, the claimant raised a grievance. This document is approximately 32 pages long. It is at paragraphs 372-400 of the bundle. The allegations contained in that grievance are numerous and date back to incidents in 2021. The grievance also refers to the same incidents which are set out in at paragraph 8.2 of the ET1 namely those incidents in February – April 2023. However the grievance refers to numerous other incidents concerning numerous police officers.
32. In evidence, the claimant indicated that she understood that, under the respondent's grievance policies, her grievance should have been dealt with within two months.
33. During September and October 2023, it appears that the claimant was waiting to hear from the respondent regarding her grievance and was waiting for a date for the Special Measures Hearing. In the meantime, she was working at the Resolution Centre. By late September 2023, the claimant had resigned as a police officer. She gave one month's notice which notice was due to expire on 25 October 2024. It appears that the issues around accessing of police information occurred during that period of garden leave. In her evidence the claimant said the respondent had left a laptop with her. She was subsequently referred to a further Special Measures Hearing for accessing information during that period.
34. In evidence the claimant said that she believed that her claims were in time and that she had contacted ACAS in time. In evidence she also said that she had researched the matter and that she was aware of the three months' time limit and realised she had to contact ACAS.
35. In her evidence the claimant said the respondent did not engage with the ACAS process. She indicated that it was her father who had been identified as her representative during the ACAS process.
36. During her evidence the claimant was asked on several occasions why she had delayed in bringing these proceedings. She indicated that she believed the claims were brought in time and offered no explanation as to what triggered her to file the complaints or contact ACAS when she did. She suggested that part of the reason for contacting ACAS was because by that stage she was concerned that she had not had any response to the grievance, having filed it in early August 2023. That seemed to be the only reason given by her as to the reason for contacting ACAS at that time. However, her ETI makes no reference whatsoever to her grievance or anything referred to in that grievance apart from those matters set out at paragraph 8.2 of the ET1, as referred to above. Further it should be noted that the grievance, which was not actually concluded until May 2024 by which time she had already contacted ACAS and issued her ETI.
37. The Tribunal notes from the documents that the claimant was, it would appear, being represented by her Federation representative at some stage during the Special Measures hearing and by implication appears to have had some form of representation from the Federation representative at the same time when she

was in contact with ACAS albeit there is no suggestion her Federation representative was advising her in this case. No evidence was led as to whether she sought any advice from him/her in respect of Employment Tribunal proceedings.

38. In her evidence, the claimant also said that she was being assisted by her father who, as indicated, acted as her representative in any contact with ACAS when she had applied for early conciliation and has been acting for her in these proceedings.
39. The claims in the ET1 at paragraph 8.2 are very limited and refer to four incidents. Her grievance in contrast refers to about 20 colleagues over a period of in excess of two years. The claimant was unable to explain why her ET1 made no reference to the grievance or to anything that had happened either before the grievance or indeed since April 2023. Her explanation in evidence was that she was not legally qualified and had no legal qualifications. She also said she believed she could provide further information to support her claim as the matter progressed. She stated in evidence that her ET1 was just her initial claim and that she would be adding to the claim as it progressed. She suggested that is what she had been told by ACAS, which seems highly unlikely.
40. On 4 April 2024, the claimant sought leave to amend her claim to bring in additional claims which included claims of sex discrimination, constructive unfair dismissal, harassment relating to sex, failure to make reasonable adjustments and harassment relating to disability. The application for leave to amend is set out at pages 39 to 41. It refers to the claims already set out in her ET1 and a number of additional claims, which are somewhat difficult to understand as it is in a narrative form. The application clearly raises new claims and new allegations some dating prior to the current proceedings, which are restricted to the period February -April 2023, and some after claims relating to period after April 2023.
41. On 26 April 2024, the claimant then makes a further application for leave to amend her claim to add an additional claim of indirect discrimination identifying the provision, criterion or practice as a failure to apply police practice standards without any details of what those specific standards were or what was the substantial disadvantage to the claimant. That application appears to have been made in response to a draft list of issues being prepared and sent by the respondent's representative to her and her father who is cited as representing her.
42. A further application was then made for leave to amend by the claimant's father as her representative on 23 May 2024. This sought to elaborate upon the claim that had been submitted on 4 April 2024. Further claims were contained in that document which is at pages 63-69 of the bundle. It adds additional claims to that already set out in the ET1 and the earlier application for leave to amend in that there are claims within that document which date back to 2021.

43. The claimant also said in evidence, that she was finding the whole process extremely stressful and had really struggled completing the claim form. She said that her father had been supporting her. The claimant said in evidence that she had drafted the ET1 but that her father had also reviewed the same.
44. In his submissions, the claimant's father on her behalf, indicated that the application for leave to amend had been made after he had contacted a professional colleague/friend and received some legal advice which is why he provided more detail and sought leave to amend. No explanation was given as to why that advice was not sought earlier.

Conclusions

45. This tribunal finds that all of the claimant's claims in her ET1 are out of time. The last act of which she complains is in April 2023. Any claims prior to 7 August 2023 are outside the three-month time limit for presenting a claim. Therefore, all of her claims are out of time. She has not referred to any claim in her ET1 after 7 August 2023.
46. Therefore, the last act of which she complains is out of time. Accordingly, the tribunal could not consider whether there was any continuing course of action. Further, the Tribunal notes that the claims pleaded are separate allegations against different people and therefore less likely to indicate a continuing course of action.
47. This tribunal does not consider it is just and equitable to extend time. Time limits are intended to be strict. The Tribunal does however have a discretion whether to extend time. The onus is on the claimant to establish why the tribunal should exercise its discretion in her favour. The burden rests with her which she has failed to meet. The tribunal does not consider it has sufficient basis or reason for extending time; having considered all the evidence in particular the claimant's oral evidence and the factors set out in section 33 Limitation Act 1980.
48. The claimant, despite being asked on several occasions to outline why there was a delay or what triggered her to contact ACAS or indeed what stopped her from bringing the claim in time provided insufficient evidence to justify granting an extension. She suggested it related to the grievance. The tribunal acknowledges the claimant raised a grievance but note that she contacted ACAS three months after she had originally filed the grievance. Indeed, at that stage, she had had no response to the grievance so it was not clear how that could be a trigger for her to bring the claim. She also complained that she was not legally qualified. Tribunals are used to dealing with litigants in person and that would not be sufficient reason to extend time, particularly for a claimant who said she had researched these matters and was aware of the three-month time limit

49. Although the tribunal accepts that the claimant does have a medical condition which may impact on her ability to process information, it is not clear the extent to which that was the case bearing in mind the claimant had indicated that she was able to research this matter and did so. Further she was aware of the three-month time limit and the need to contact ACS. No evidence was led about the impact of her condition on her ability to bring these proceedings.
50. Furthermore, at some stage she did have advice from her police federation representative, but more importantly, she had advice and support from her father who was able to seek some form of professional legal advice in order to make an application for leave to amend.
51. The tribunal note that, even at this stage the claim is unclear and relates entirely to claims which occurred outside the three-month time limit for presentation of such claims. There is prejudice to the respondent in having to defend claims which occurred 9-12 months prior to the claim being issued and all relate to oral discussions with different officers.
52. The tribunal has taken account that time limits are strict and that all the claims were substantially out of time by the time the claimant issued the proceeding. As the burden rests with the claimant and she has failed to provide any proper explanation which the Tribunal considers could justify extending time, it is not therefore minded to do so.
53. Accordingly, the Tribunal has no jurisdiction to hear the claimant's claim of disability discrimination, which is hereby dismissed.
54. As a general principle any claim submitted to the employment tribunal should set out at the outset details of all the claims being pursued so that the respondent can understand from the beginning what claims it is required to meet. As a general principle, employment tribunals do not expect a claimant or indeed a respondent to continue to add to a claim or response throughout the proceedings as that would make proceedings completely unmanageable. That is the reason why leave to amend is required from the Tribunal to introduce any new claims or causes of action, which is consistent with the overriding objective to deal cases fairly which involves saving expense and ensuring proportionality and allowing all parties to be on an equal footing.
55. As there remains no existing claim, the application for leave to amend must inevitably fail.
56. The tribunal did, hear submissions on the application for leave to amend but there is no need for the Tribunal to consider that application now, which is in effect obsolete, because the Tribunal does not have jurisdiction to hear the original claim. However, that does not prevent the claimant from issuing new proceedings relating to any new allegations which have not been hereby dismissed. Nevertheless, she should appreciate that all of her claims are out of time; some of them very substantially out of time and relate to matters which occurred many years ago. The Tribunal by way of obiter comments notes that some of her claims relate to more recent matters relating to the termination of

her employment. In her application for leave to amend that claim was framed as a constructive unfair dismissal claim, which she cannot pursue on jurisdictional grounds as a police officer, but she may consider that the claims around her termination also amount to disability discrimination. The only other obiter comments which the Tribunal wish to make is that the application for leave to amend still did not properly clarify the claims the respondent had to meet even after three attempts and there would be clear prejudice to the respondent in having to defend claims which go back over several years and concern a large number of police officers. From the Tribunal's perspective there may be prejudice to the claimant in not being able to bring a claim relating to the termination of her role as a police officer bearing in mind her long held desire to work in that role, which is supported by the various testimonials, which do credit to her and which she submitted as part of the bundle before the Tribunal today.

**Employment Judge M Martin
17 December 2024**