



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Ali

Respondent: (1) Mr C Gregson
(2) Harlech Foodservice Ltd

Heard at: Cardiff (by video) **On:** 30 September 2020

Before: Employment Judge S Moore

Representation

Claimant: In person

Respondent: Ms Kennedy, Solicitor

JUDGMENT

1. The claimant's claim against the first respondent was presented outside the time limits in sections 123(1)(a) & (b) of the Equality Act 2010 and is dismissed on the basis that the Tribunal has no jurisdiction to hear it
2. The claimant's claim against the second respondent is dismissed as it is a duplicate of her claim presented on 10 April 2020 under claim number 1601039/2020.

REASONS

Background and Introduction

1. The ET1 was presented on 14 May 2020 ("the second claim"). The period of early conciliation commenced on 19 March 2020 and ended on 19 April 2020. The claimant brings claims of discrimination on the grounds of religion or belief and race. There are two respondents. The first is Mr C Gregson who was the claimant's line manager. The second was her employer.
2. The claimant had brought an earlier claim ("the first claim") on exactly the same basis (under 1601039/2020 which included the same pleading) presented on 10 April 2020 but only against the second respondent. The period of early conciliation in respect of claim number 1601039/2020 commenced on 27 January 2020 and ended on 12 March 2020. That claim

has been listed for hearing in April 2021.

3. The response set out the respondent's position that the second claim had been presented out of time. They also take issue with time points in respect of the first claim but agree these should be determined at the full merits hearing.
4. A notice of preliminary hearing was sent to the parties on 8 August 2020. On 10 September 2020 the respondent's representative sent an email and case management agenda containing an application to strike out the claimant's claim due to the time point and requested this be heard at the preliminary hearing. No objection was received to that email.

The application

5. Ms Kennedy confirmed the strike out application was pursued in respect of the claim against Mr Gregson only. This was on the basis that the last alleged act as set out in the claimant's claim against Mr Gregson was on 10 December 2019. The claimant did not contact ACAS until 19 March 2020. The claimant had not set out any reasons as to why it would be just and equitable to extend time.
6. I asked the claimant to explain to me with reference to her claim, what was the last act or incident of discrimination involving Mr Gregson. The claimant did not have her claim form with her during the hearing nor did she have the bundle the respondent had prepared and sent to her. The claimant told the Tribunal that she wanted to complain about the redundancy selection process which Mr Gregson had been involved in. however I established that these events had taken place after both her claims were lodged and were therefore not before me nor were they part of her pleaded claims. On this basis the claimant agreed that the last act of Mr Gregson was the alleged incident on 10 December 2019 where she was requested to collect some pork scratchings.
7. I explained to the claimant that if she wished to complain about the redundancy procedure she should seek advice about applying to amend her existing claim and / or submit a new claim. I also explained I needed to understand why the claimant had not submitted the claim earlier to enable me to consider whether it might be just and equitable to extend time for presenting her claim. On this basis the claimant was sworn in and I heard evidence from the claimant in the form of oral evidence in chief.

I made the following findings of fact.

8. The claimant agreed that the last act (as set out in her claim) she relied on was an alleged incident with Mr Gregson on 10 December 2019 when she alleges Mr Gregson bullied and harassed her into collecting some pork scratching which against her religious beliefs.
9. The claimant told the Tribunal the reason she had not included a complaint against Mr Gregson in her first claim presented on 10 April 2020 was that at the time she had not realised she could bring a claim against him. The claimant subsequently sought advice later in April 2020. She was advised

to make a claim against Mr Gregson personally in case of a “change in climate”. She had telephoned a number of solicitors before April 2020 but had been unable to get advice. She could not recall dates or explain why she had initiated early conciliation against Mr Gregson on 19 March 2020 yet not included him in her ET1 presented on 10 April 2020. The claimant was unable to explain why she had initiated the early conciliation procedure against Mr Gregson on 19 March 2020 if she did not know she could then make a claim against him on a personal level.

Conclusion

10. The claim was presented out of time. The last alleged act took place on 10 December 2019 and as such, the ordinary limitation date was 9 March 2020. The claimant did not contact ACAS until 19 March 2020.
11. I heard no evidence on why it would be just and equitable to extend time. The only evidence before me was that the claimant initiated early conciliation against Mr Gregson personally on 19 March 2020. There was no explanation as to why she did not include a claim against Mr Gregson in her ET1 presented on 10 April 2020. In my view it is implausible that the claimant had sufficient knowledge to have initiated the early conciliation process against Mr Gregson but not the knowledge to have included him in her first ET1.
12. In respect of the claim against the second respondent it is a duplicate of the claim presented under claim number 1601039/2020. For these reasons I also dismiss the claim against the second respondent in respect of claim number 1601215/2020.

Employment Judge S Moore

Date 2 October 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON 5 October 2020

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FOR THE TRIBUNAL OFFICE