



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms. C. Olarewaju

**Respondent:** Mr. D. Cooper (R1)  
Unify Brand Partnership Ltd (R2)

**HELD AT:** Wrexham by CVP **ON:** 23<sup>rd</sup> October 2020

**BEFORE:** Employment Judge T. Vincent Ryan

## REPRESENTATION:

**Claimant:** Ms Olarewaju represented herself (a litigant in person)

**Respondent:** Mr. A. George, Solicitor

## PRELIMINARY HEARING JUDGMENT

The judgment of the Tribunal is:

1. The claimant's claim of race discrimination was presented out of time but in circumstances where it would be just and equitable to extend time to the date of actual presentation, 4<sup>th</sup> February 2020.
2. Whilst the claimant's claim against R2 would have been rejected for failure to comply with early conciliation provisions, R2 is added as a party as there are issues between it and the other parties falling within the jurisdiction of the Tribunal which in the interests of justice have to be determined in the proceedings.

## REASONS

### 1. Background to the claim:

- 1.1. The claimant makes a claim of direct race discrimination. She is British; nationality is not an issue. She bases her claim on colour and ethnic origin, describing herself as being of "black ethnic race". She says that all her former colleagues employed by the respondent were white, or at least that she was the only person she would describe as of "black ethnic race".

- 1.2. The claimant says that she was treated less favourably than her former colleagues when required to undergo a DBS check on commencement of employment.
- 1.3. R1 is the Managing Director and Secretary of R2. Ms L. Cooper is his only co-director. Mr Cooper is, in my words, the controlling mind of the business. R2 has recruitment policies and procedures; it issues written statements of terms and conditions of employment to its employees. Mr Cooper says that he adhered to R2's practices, policies and procedures and within its standard contract in relation to his dealings with the claimant and her recruitment.
- 1.4. Having been recruited by the respondent and commencing employment on 11<sup>th</sup> February 2019, the claimant was asked to undertake a DBS (Disclosure & Barring Service) check; this is known to be an analysis and record of a person's past, looking specifically at any convictions, cautions, reprimands and warnings that they may have received.
- 1.5. The respondents say that it was explained to the claimant that this was allowed for in the terms and conditions of employment and was required only because some of her employment references had not been received (or maybe none was) and there were gaps in her CV.
- 1.6. The claimant denies that the above was explained to her but that at the time she understood that the check was a routine step in recruitment. She carried out her own check without protest on 11<sup>th</sup> February 2019.
- 1.7. The claimant says that she became aware on 29<sup>th</sup> January 2020 that none of her then colleagues had been required to undertake or be subject to a DBS check. She complained to the respondents and subsequently resigned with effect 29<sup>th</sup> February or 3<sup>rd</sup> March 2020.
- 1.8. Prior to termination, the claimant commenced early conciliation on 30<sup>th</sup> January 2020; a Certificate was issued by ACAS on 31<sup>st</sup> January 2020. She presented her claim of discrimination on 4<sup>th</sup> February 2020.

## **2. The Law:**

- 2.1. Claimants to the tribunal are to enter ACAS early conciliation with potential respondents and obtain a certificate of such prior to presenting a claim to the tribunal. Save in limited circumstances, not relevant here, a claim shall be rejected by the tribunal if not accompanied by an early conciliation certificate.
- 2.2. Discrimination claims ought to be presented within 3 months of the act complained of, or the last in a series of acts. If a discrimination claim is late an Employment Judge may extend time where the Judge considers that it would be just and equitable to do so and thus accept an otherwise late claim.

2.3. A party may be added if there are issues between that party and another party and the interests of justice are better served by the addition, or even substitution.

**3. Judgment:**

3.1. The claimant undertook her DBS Check on 11<sup>th</sup> February 2019. Early Conciliation and presentation of the claim was almost one year later. The claim was late. That said, the claimant's evidence, which the respondents contest, is that she only discovered in January 2020 that she had uniquely been required to undergo the check which she had believed to be routine and undergone by all her colleagues. She says that as soon as she realised she had been treated differently from her colleagues and less favourably, which she believes was based on colour and ethnicity, she entered conciliation and presented her claim. She acted quickly after 29<sup>th</sup> January 2020.

3.2. Without further evidence I was unable to conclude whose version of events, the claimant's or R1's, was true. Both have more oral and documentary evidence to adduce. I make no findings of fact that might impinge the fact-finding of a full panel at a final hearing. I conclude however that the balance of prejudice would weigh too heavily against the claimant if I did not extend time and allow the claim to proceed. She resigned from employment which she says was congenial and she did so promptly following what she says was her date of knowledge of potential discriminatory conduct, on her version; she would have no claim before the tribunal if I did not exercise my discretion to extend. By allowing the claim to proceed the respondents can still defend the claim, are not prejudiced by any delay, and will have the opportunity to protect their professional reputations. If the claimant proves her case it will follow that she could not have known of the discrimination until late January 2020; she ought not to be penalised for not acting sooner over something of which she was unaware. It is just and equitable in these circumstances to extend time.

3.3. The claimant indicated that her claim was primarily against R1; she did not enter early conciliation with R2 and therefore, subject to consideration of adding it as a party, any claim against it intimated in the ET1 should be rejected. However, I consider that as R1 is the controlling mind of R2, that he says he was following established practices, procedures, policies and contracts of R2, then there are issues between R2 and the other parties, especially the claimant, that can and ought to be resolved by a tribunal, in the interests of justice. As I explained, the claimant is at liberty to withdraw her claim against either of the respondents if she wishes and then they would be dismissed from the proceedings, which would be the end of the matter as far as that party was concerned in terms of potential liability for a judgment and award of compensation/damages.

Employment Judge T.V. Ryan

Date: 23.10.20

JUDGMENT SENT TO THE PARTIES ON 27 October 2020

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.