Case No: 2203634/2002

THE EMPLOYMENT TRIBUNALS

BETWEEN

APPLICANT	AND	RESPONDENT
Mr C Shoebridge		Metropolitan Police Service

DECISION OF EMPLOYMENT THE TRIBUNAL

HELD AT: London (Central)

ON: 13 November 2002

CHAIRMAN: Mr Carl Teper

MEMBERS: Mrs C Rayman
Mr W A Taylor

Appearances:

For the Applicant: In person
For the Respondent: Mr P Thornton of Counsel

DECISION

The Tribunal unanimously decided that:

1. It had jurisdiction to hear the Applicant's complaint of victimisation, which is alleged to have occurred after the termination of his employment.
2. It was just and equitable to extend the time limit, where it appeared that the act complained of occurred more than 3 months before the date of the Originating Application to the Tribunal.

EXTENDED REASONS

1. This is a preliminary hearing to determine the following issues:

   a) Whether the Tribunal has jurisdiction to hear the complaint by the Applicant, having regard to the fact that it appears that the act of discrimination of which complaint is made occurred after the termination of the employment of the Applicant by the Respondent.

   b) If so, whether the Employment tribunal has jurisdiction to hear the complaint by the Applicant having regard to the fact that it appears that the act of discrimination of which complaint is made occurred more than three months before the date of the application to the tribunal - section 76(1) Sex Discrimination Act 1975

2. At the commencement of the proceedings the Respondent requested that the preliminary hearing be confined to an assessment of whether the Applicant's claim was in time, as set out in paragraph (b) above, on the basis that if the Tribunal decided that it did not have jurisdiction to deal with the case in view of its late presentation, the case could be dismissed without consideration of the remaining issue, set out in paragraph (a) above. If the Tribunal accepted jurisdiction of the claim in spite of the time delay, adjournment of the remaining issue was suggested, pending the outcome in the House of Lords of the cases of **Rhys-Harper v Relaxion Group (2001) IRLR 460**, **Jones v 3M Healthcare (2002) EWCA Civ 304** and **D'Souza v London Borough of Lambeth**. This was opposed by the Applicant who argued that the law was settled on the question of post-employment victimisation in sex discrimination cases. The Tribunal decided that both the preliminary issues before it were capable of resolution today, on the taking of evidence and the hearing of submissions by the parties.

3. The Tribunal heard evidence from the Applicant. The Tribunal accepted the Applicant's evidence, finding him to be both credible and honest. The Tribunal noted the lengthy history to the relationship between the Applicant and the Respondent, and familiarised itself with the Applicant's originating application. The Applicant's account of his employment history with the Respondent was largely not in dispute, and the Tribunal therefore confined itself to consideration of those facts that were relevant to the issues in question. The Tribunal made the following findings of fact on the balance of probabilities. Following the termination of his employment with the Respondent, the Applicant commenced work for the BBC in March 2001 as a consultant on crime and security issues. This work expanded and in May 2001 the Applicant was employed in a similar capacity by the Sky News TV channel. The Applicant began to perform an increasing role for Sky, making approximately 40 separate television appearances. However, approximately halfway through October 2001, the Applicant's employment with Sky suddenly ceased. The Applicant alleges that Sky brought an end to his employment because the Respondent had asked it to do so, and that Sky felt obliged to accede the request due to its reliance on the Respondent for knowledge of breaking news. The Applicant stated in evidence, and the Tribunal accepted, that he had become aware of the intervention by the Respondent on 26 April 2002, following a discussion with a TV producer at Sky. The Applicant was told that they were reluctant to use him because of the intervention by the Respondent. On 25 July 2002 the Applicant submitted his

Originating Application, claiming victimisation post termination of his employment. The Applicant believed that time ran from the date that he became aware of the alleged victimisation.

4. The Tribunal heard submissions from both parties on the first preliminary issue in relation to its jurisdiction to hear the victimisation claim, which was post termination of the Applicant's contract of employment. The Applicant submitted that a Tribunal has jurisdiction to hear a post-employment victimisation claim. He relied on the judgement of Morrison J in **Coote v Granada Hospitality Ltd (No 2) [1999] IRLR 452** and argued that this principle has been reaffirmed in the cases of **Rhys-Harper v Relaxion Group (2001) IRLR 460** and **Jones v 3M Healthcare (2002) EWCA Civ 304**. The Respondent argued in reply that the law on post termination discrimination was far from clear and that this was the reason that three separate cases were pending in the House of Lords. The Respondent further argued that the cases relied upon by the Applicant were authority only that a post termination victimisation claim could be brought in respect of the provision of a malicious reference by a former employer. The Applicant replied that the appeals to be heard by the House of Lords had been referred there in order resolve the issue as to whether jurisdiction to hear post employment discrimination claims should be broadened. The Applicant further submitted that **Coote** had not been challenged before the House of Lords and stands firm in law.

5. The Tribunal preferred the argument submitted by the Applicant. The EAT in **Coote** had referred the question of post--employment acts of discrimination to the European Court of Human Justice who had stated, inter alia, that:

> **'The principle of effective judicial control laid down in Article 6 would be deprived of an essential part of its effectiveness if the protection which it provides did not cover measures which an employer might take as a reaction to legal proceedings brought by an employee to enforce compliance with the principles of equal treatment. Fear of such measures, where no legal remedy was available against them, might deter workers who considered themselves victims of discrimination from pursuing their claims by judicial process, which would be liable seriously to jeopardise implementation of the aim pursued by the Directive. Therefore retaliatory measures by the employer taken after the employment relationship has ended, such as those intended to obstruct the dismissed employee's attempts to find new employment, falls within the scope of the Directive.'**

Morrison J decided in **Coote** that it was right to give effect to the European Directive and ruled that the words "a woman employed by him" in section 6(2) of the Sex Discrimination Act 1995, were as a matter of grammar, capable of meaning "who has been employed" as well as "who is employed". Further, Morrison J decided that the words "access to any other benefits, facilities or services" are apt to include both present and former employees, and a present or former employee can be subjected to a detriment. The Tribunal respectfully agreed that the case of **Coote** is good authority for an employee to pursue a complaint of post-employment victimisation. Further the Tribunal considered that a person, who has lost his work, as the Applicant has done, is analogous to a person who does not get a job for reason of a bad reference (as in **Coote**). It followed that the Applicant should be allowed to pursue his post-employment victimisation claim before the Employment Tribunal.

E14

6. The Tribunal then went on to decide the issue of delay. In relation to sex discrimination, the rule is that a complaint must be presented to the Tribunal within a period of three months, beginning with the date of the act complained of. If the complaint is presented outside the three-month period, the Tribunal will have no jurisdiction to hear the claim unless they consider that it is just and equitable in the circumstances to do so. In presenting a complaint to a Tribunal it is essential to pin point the date when the act complained of took place. Sometimes this will be a very straightforward matter. If, for instance, an employee is dismissed on grounds of sex, then it is clear that the act of discrimination took place on the date of the dismissal and that the time limit begins to run from that date. Where the act complained of is a continuing one, time cannot begin to run out until it ceases. There is however a distinction between a continuing act and an act which has continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle in operation, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, then an act which affects an employee will not be treated as continuing even though that act has ramifications which extend over a period of time.

7. The Applicant accepted that his application was out of time, but invited the Tribunal to extend the time limit and accept jurisdiction of his claim on the ground that it was just and equitable to do so. The Applicant gave evidence that he thought the time limit for submitting his claim began to run from the date upon which he discovered the act that formed the basis of his complaint. The Respondent argued that the Applicant was an experienced Tribunal litigator and, as such, was fully aware of the time limits in place, and would have been aware that he was already out of time upon discovering the act he complained of. The Respondent therefore submitted that the Applicant had not acted with due expedition in waiting a further three months to submit his originating application.

8. The Tribunal accepted that it would have been difficult, if not impossible, for the Applicant to have submitted his complaint within three months of the act complained of. The Tribunal having accepted the Applicant's evidence to the effect that he did not become aware of the act until the three-month period had already expired. The question remained, however, as to whether it was just and equitable to extend the time limit. The Tribunal accepted the Applicant's submission that he believed time ran from when he became aware of the act complained of. The Tribunal agreed that the further time taken of three months to submit the claim was neither unjust nor inequitable and decided that it had jurisdiction to hear the complaint.

CHAIRMAN

DECISION SENT TO THE PARTIES ON

12 February 2003

AND ENTERED IN THE REGISTER

12 February 2003

FOR THE SECRETARY OF THE TRIBUNALS