



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr J Singh

v

**Respondent:**  
Alpha LSG Sky Chefs

**Heard at:** Reading

**On:** 23 February 2017

**Before:** Employment Judge Gumbiti-Zimuto

## Appearances

**For the Claimant:** Mr A Riza (QC) and  
Mr B Angamma (Counsel)

**For the Respondent:** Mr D Mitchell (Counsel)

**Preliminary Judgment** having been sent to the parties on 2 March 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. In a claim form presented on 29 November 2016, the claimant made complaints alleging unfair dismissal and sex discrimination. The body of his claim form also made reference to a complaint about victimisation on the grounds of trade union activities.
2. It is not clear whether the claimant is making a detriment claim or alternatively a claim of unfair dismissal contrary to section 152 Trade Union and Labour Relations (Consolidation) Act 1992. However, in my view that does not matter too much in relation to the matters that I must decide in this preliminary hearing because the time for making any complaints is calculated based on the date of the claimant's dismissal, whatever the nature of the complaint is. The complaints have been made in relation to matters which occurred before the date of dismissal up to the date of dismissal. The last date is obviously the date of dismissal.
3. In the legal issues, as set out by agreement between the parties, there is a reference to section 98 Employment Rights Act 1996 and section 13 Equality Act 2010. Those two statutory provisions require me to consider two different tests where the claim is out of time to extend time.
4. The first, in relation to unfair dismissal, arises from section 111 Employment Rights Act 1996 and the second is contained in section 123 Equality Act 2010. Whether it is a victimisation claim or unfair dismissal

claim makes no difference as I am required to consider the tests found in those two provisions whatever the precise formulation of the complaints being made by the claimant. It is not clear from looking at the claim form precisely the legal complaint that is being made by the claimant.

5. The background to this case is that the claimant's employment with the respondent commenced on 18 June 2003. His employment continued until 27 April 2016 he was dismissed following a finding of gross misconduct at a disciplinary hearing. That is the effective date of termination of the claimant's employment. The claimant appealed the decision to dismiss him and the claimant's appeal was decided by the respondent on 21 June 2016.
6. The primary limitation period in this case came to an end on 26 July 2016. The claimant did not approach ACAS in respect of early conciliation until 9 October 2016. The effect of doing that is that he was unable to avail himself of any extension of time for the presentation of claims that operates by virtue of engaging the early conciliation process. The claimant was provided with an early conciliation completion certificate on 9 November 2016 and the claimant presented his complaint to the Employment Tribunal 20 days later on 29 November 2016.
7. The respondent's ET3 response dealt with the claim as presented in the ET1 and one of the points taken by the respondent in the ET1 is that the claimant's complaints have been presented outside of the time limit for the presentation of complaints and the respondent asked that this issue be determined at a preliminary hearing.
8. Employment Judge Manley made an order which appears to have been sent to the parties on 12 January 2017 giving directions for the preparation of the preliminary hearing before me today. She made a provision in the order for the parties to make arrangements for the preparation of a bundle, for the production of any written witness evidence, the exchange of submissions, and for the parties to agree a draft list of legal and factual issues.
9. Pursuant to that order, the claimant produced a witness statement. That witness statement is signed and dated 30 January 2017 and runs to seven paragraphs on three pages. I have considered the contents of that witness statement. The respondent provided written submissions signed by their legal representatives dated and sent to the Tribunal on 16 February 2017. The parties exchanged written submissions on 22 February 2017. The claimant provided to the Tribunal written submissions signed by his legal representatives on 22 February. I have considered both of those documents. I have also today been assisted by further oral submissions from Mr A Riza QC for the claimant and Mr Mitchell, counsel for the respondent.
10. In coming to my decision in this case, I have also considered the guidance which is set out in the Palmer and Saunders v Southend on Sea Borough Council (1984) and Robertson v Bexley Community Centre (2003). Both parties have also referred to other cases in their written submissions and in their oral submissions. Whilst I make no specific reference to them, I

have taken on board the points that have been made by both sides.

11. Mr Riza QC also made specific reference to the provisions of the Human Rights Act 1998 and Article 6 of the European Convention. I accept that those are matters that I must have regard to in dealing with this case. My view is that considering the statutory provisions contained in the Employment Rights Act 1996, the Equality Act 2010 and in the Employment Tribunals Rules of Procedure 2013 and following the guidance contained in the jurisprudence of the Employment Appeal Tribunal and Court of Appeal in relation to those statutory provisions that a proper application of that guidance is fully compliant with the provisions of the European Convention.
12. Having said that, my conclusions in this case are as follows.
13. In respect of the complaint made under section 98 or in relation to any claim for unfair dismissal pursuant to section 152 of the Trade Union and Labour Relations (Consolidation) Act 1992, I have to be satisfied firstly that the claim was made within three months. In this case, the claim was clearly made outside the primary limitation period.
14. The next question I have to determine is whether or not it was reasonably practicable for the complaint to be made within the three month period.
15. This requires me to look at the circumstances in which the claim was presented and to conclude as to whether in those circumstances considering everything that transpired between the parties as is presented to me, it was in fact reasonably practicable for the claimant to present his complaint.
16. The starting point is the claimant's evidence.
17. The claimant accepts in his witness statement that the summary dismissal was upheld on appeal on 21 June 2016. That is a date when a reference to ACAS could have been made in time to allow him to present a claim within the primary limitation period or any extension by operation of the early conciliation provisions.
18. On 13 July 2016, the claimant sent a letter to Martin Krelle in that letter the claimant essentially was seeking his reinstatement. Although the appeal process had been completed, the claimant was nonetheless asking the respondent to reinstate him. In doing that, it was said on behalf of the claimant, he was seeking to pursue alternative dispute resolution procedures which avoided going to court or making a claim to the Employment Tribunal. It is said that such an act was in accordance with the overriding objective to the Employment Tribunals Rules of Procedure, and whilst there is no pre-action protocol that covers Employment Tribunal claims such as can be found in relation to employer liability claims made in the County Court, it is said that what the claimant did was in keeping with that spirit and so it was an appropriate course of action to take. Insofar as it goes, there can be no criticism to make of the claimant in doing that.
19. The difficulty is that notwithstanding the fact that there was no response to

his letter sent on 13 July 2016, some 20 days after the conclusion of the appeal, the claimant does not take any further action until he instructed lawyers acting on his behalf who on 22 August 2016 write a letter to the respondent. There was no response to the claimant's lawyer's letter and there was no follow up to that letter until 3 October 2016.

20. The claimant relies on the delay between 22 August and 3 October as a factor that ought to be considered in his favour when considering whether it was reasonably practicable for him to present his claim.
21. The difficult that I have with the claimant's argument is that 22 August 2016 is a date which is outside the primary limitation period. A further problem that arises is that by waiting from 22 August until 3 October, bearing in mind that the date of dismissal was 27 April, is in my view an excessive period to wait. I bear in mind that the primary limitation period in a case of unfair dismissal is three months and when considering an extension of time I need to bear in mind that primary limitation period and the extent of it.
22. The claimant says that it was not reasonably practicable for him to issue proceedings before he had a response to his letters. The claimant states that he could not be expected to act before the appeal was concluded and that he was not able to bring a claim until after he had gone through ACAS conciliation which did not take place until 9 November 2016.
23. Considering section 111 of the Employment Rights Act 1996 the case law, such as Palmer and Saunders v Southend Borough Council, makes it clear that what I must consider is whether it was feasible for the claimant to present a claim in time. The question I must decide is not whether it was possible but whether it was reasonably practicable. Reasonably practicable is described as equivalent to feasible rather than reasonable.
24. My conclusion is that it was reasonably practicable for the claimant to present his claim in time. When he wrote his letter to Mr Krelle on 13 July, it was still within the time limit for presenting a claim. That letter was not responded to and he did not do anything about it until 22 August.
25. There is no explanation provided by the claimant for why after having gone through a disciplinary hearing and appeal at which he was dismissed and his appeal was refused the claimant thought that the respondent would change their minds and reinstate him. When he wrote this letter the claimant must have known that he had exhausted the respondent's internal procedures.
26. Whilst I recognise the value of trying alternative dispute resolution, I cannot just ignore the fact that there is a limitation period when someone goes down this route and misses a short limitation period. Particularly where there is no indication from the respondent that they are willing to engage with the claimant. Had there been some indication from the respondent that they were pursuing some alternative process, engagement in alternative dispute resolution, which could be said to have lulled the claimant into missing the time limit and not making the claim earlier, it may have assisted in arriving at a conclusion that it was not

reasonably practicable for the claimant to present a claim before 26 July 2016.

27. In this case, there is nothing from the respondent. It cannot be said that it was any part of their conduct which could have led the claimant into actions which subsequently turned out to be against his own interests in delaying the commencement of the proceedings. The claimant wrote a letter which engaged the issues with the respondent to Mr Krelle on 13 July. He could have made a claim to the Employment Tribunal in similar terms.
28. I am not satisfied that it is possible on the information before me to conclude that it was not reasonably practicable to present a claim in time and therefore my conclusion in relation to the complaint of unfair dismissal is that the claimant's claim of unfair dismissal is outside the jurisdiction of the Employment Tribunal because the claimant presented his claim out of time in circumstances where it was reasonably practicable for him to present the claim.
29. I must go on to consider whether it is just and equitable to extend time for the presentation of the complaint relating to discrimination under the Equality Act.
30. Mr Riza QC states that there are instances when the question of whether the claim was in time or out of time is determined at the end of the case, assisted by making findings of fact in relation to all the circumstances of the case in the process.
31. However, Mr Mitchell says that the sorts of cases in which a decision in those terms is made is the sort of case where a question arises as to whether acts and events extending over a period which may amount to a continuing course of conduct or which should be treated as a single act extending over a period is being considered. This is not such a case because even if it were the case that there is some part of the respondent's conduct which amounted to a continuing act, that act was by any view concluded on the date of the claimant's dismissal and would not have extended beyond that date. If there was a continuing act it is a continuing act that would have come to an end by 27 April 2016 so this is not the paradigm case where one would consider hearing all the evidence before deciding the question whether to extend time.
32. I have then asked myself whether there is any other good reason why in this case I ought to effectively postpone the determination of the question whether the claim is in time or out of time and decide that at the end of the case.
33. I have been assisted by considering what the claimant has said in his witness statement, I have also considered what the claimant has set out in the claim form. The claim form in respect of the facts and matters about which a complaint is made is relatively laconic and I see nothing in that that suggests to me that this is the sort of case where there is a risk of injustice if I determine the question of whether the claim is in time at this stage as opposed to at the end of the case. There is nothing that is

presented in the witness statement for the purposes of this application that urges me towards a determination of that question at the end of the case rather than today so I am therefore not going to accede Mr Riza's request that I put off the determination of the question whether the claim was presented in time or not to the Tribunal hearing the full merits case and I am of the view that it is appropriate for me to make that determination on the material that is presented before me.

34. Applying the test of whether it is just and equitable to extend time, I am unable to come to a different conclusion to the one that I did in respect of whether it was reasonably practicable.
35. It appears to me that the gravamen of the claimant's delay in bringing his claims is the fact that he was not able to present the claim because he had been dismissed and was impecunious. Thus, he did not have the financial resources to instruct lawyers to present the claim which he wished to do.
36. The fact that he did not have the resources in my view is not on its own a factor that ought to permit the claimant to present his claim out of time. I consider the fact that Employment Tribunal proceedings are involving cases which can be incredibly complex and difficult. Even in those difficult and complex cases, it is not unusual for persons without any legal qualifications to present claims unrepresented. The Tribunals have experience of litigants in person bringing equal pay claims which can be very complex and difficult.
37. This case, on its own unique facts, may turn out to be incredibly complex and difficult and may require difficult questions to be determined, however, looking at the content of the claim form and response, it appears to be a relatively straightforward case. The claimant is asking the Tribunal to decide whether there was unfairness in the decision taken by the respondent to dismiss him. Alternatively, the defendant is asking whether there was discrimination in the approach taken by the respondent when it preferred the version of events given by a female colleague by whom allegations of sexual harassment had been made against the claimant. I am not satisfied that there is anything in the apparent factual context of this case to make it a case where I can say it was so difficult and complicated that the claimant could have been reasonably daunted by bringing the claim to the Tribunal and that it is just and equitable to allow him to wait a significant period outside the limitation period to put himself in a position where he could save the money to instruct lawyers.
38. I also consider the fact that by 13 July 2016, the claimant was engaging with the respondent in relation to the nature of the dispute that he had with them. It was emerging from his own correspondence with the respondent what his argument was: he was making it clear that he felt that he had been discriminated against.
39. I also take into account the fact that by 22 August 2016, the claimant had instructed lawyers and at that stage it could have been open to the claimant to begin the early conciliation process and had that occurred in August whilst he would have been in a position to bring the claim much sooner.

- 40. However, that is not what happened. The letter was written by the legal representatives on 22 August and it was not followed up until 3 October. That delay is in my view compounded by the fact that no early conciliation certificate was obtained until 9 November, it is not known whether ACAS were asked to provide the early conciliation certificate earlier. The claimant then delays again and there is a further period of delay of another 20 days once the certificate is provided, before the claim was finally issued. There is no explanation for why this all took so long from about August onwards.
- 41. The respondent's position was clear from July that they were not going to engage with the claimant.
- 42. I am not satisfied that the claimant has shown that it is just and equitable to extend time in respect of the discrimination complaints.
- 43. My conclusions therefore are that the complaint for unfair dismissal and the complaints relating to discrimination under the Equality Act 2010 have all been presented outside the limit for presentation of complaints and the Employment Tribunal does not have jurisdiction to consider the complaints.

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Employment Judge Gumbiti-Zimuto

Date: 20 March 2017

Reasons sent to the parties on

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For the Tribunal office