



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mr R Aryee

**Respondent**  
Langridge Organic Products  
Limited

and

## PRELIMINARY HEARING

Held at Croydon on 28 July 2017

Before: Employment Judge Harrington

**Representation**

**Claimant:** In Person

**Respondent:** Mr N. Cholerton, Counsel

## JUDGMENT

1. The Claimant was not dismissed by the Respondent. The Claimant's employment with the Respondent was determined by his resignation.
2. The Claimant's claims of age and disability discrimination were presented outside of the primary limitation period and it is not just and equitable to extend time.
3. The Claimant's claim of age discrimination has no reasonable prospects of success.
4. Accordingly the Claimant's claims of unfair dismissal and age and disability discrimination are not well founded and shall not proceed.

## REASONS

### Introduction

1. The Claimant's ET1 bringing claims of unfair dismissal, age discrimination, disability discrimination and money claims was received by the Tribunal on 12 August 2016. Following the provision of an ET3 by the Respondent, the Tribunal conducted a Preliminary Hearing (Case Management) on 1 November 2016 with a Case Management

Order being produced, dated 3 November 2016. Following discussions with the parties, the Order recorded the Claimant's claims as follows:

- 1.1 Age discrimination: a claim of harassment under section 26 of the Equality Act 2010. The Claimant complained of being regularly subjected to a verbal onslaught by his line manager, Mr MacPherson;
  - 1.2 Disability discrimination: a claim possibly under section 15 and and under section 20 of the Equality Act 2010. The Claimant complained of being required to carry heavy loads despite having a heart condition;
  - 1.3 Unfair Dismissal: a claim under Part X of the Employment Rights Act 1996. The Claimant complained of being unfairly dismissed by the Respondent;
  - 1.4 Money claims: unspecified.
2. A second case management hearing took place on 18 January 2017. This hearing was conducted on the telephone and further directions were made on that date. On 27 February 2017 a further telephone preliminary hearing took place. Following that hearing, EJ Pritchard made an Order that the issue of whether or not the Claimant was a disabled person at all relevant times, would be determined at a Preliminary Hearing on 9 May 2017.
  3. The Claimant did not attend the Preliminary Hearing on 9 May 2017 nor did he contact the Tribunal on the morning of the hearing to notify the Tribunal of his absence. The hearing continued in the Claimant's absence and EJ Hall-Smith gave judgment, at the conclusion of the hearing, that the Claimant was not a person with a disability within the meaning of section 6 of the Equality Act 2010 at all material times. That judgment was not sent to the parties until 22 May 2017 with the Claimant actually receiving it on 25 May 2017.
  4. By a letter dated 25 May 2017 the Claimant applied for written reasons in respect of the judgment and stated that he wished to apply for a reconsideration of the judgment.
  5. Following the Judgment dated 9 May 2017 a degree of confusion arose in the mind of the Respondent. In correspondence to the Tribunal, the Respondent queried whether the claims of age discrimination and disability discrimination had been struck out on the grounds of being out of time. At the next hearing, which took place on 5 June 2017, it was recorded that EJ Hall-Smith had not yet had an opportunity to prepare the written reasons in respect of his judgment on 9 May 2017. EJ Hall-Smith ordered that the case be listed for a Preliminary Hearing on 28 July 2017 to determine the following preliminary issues:

- 5.1 Whether the Claimant's employment with the Respondent was determined by his resignation or by his dismissal?
- 5.2 Whether an Employment Tribunal has jurisdiction to hear and determine the Claimant's complaints of unlawful discrimination on grounds of age and disability having regard to the statutory time limits?
- 5.3 Whether the Claimant's tribunal claims should be struck out as having no reasonable prospects of success / or whether the Claimant should be required to pay a deposit as a condition of being permitted to continue with any or all of his tribunal claims.
6. Subsequently EJ Hall-Smith prepared his written reasons in respect of the judgment dated 9 May 2017. The reasons were dated 18 July 2017 and sent to the parties by the Tribunal on 19 July 2017.
7. Taking account of this history, when this matter came before me on 28 July 2017, an important outstanding issue was whether the Claimant continued with his application for reconsideration and the interrelationship between the issues identified to be determined at this Preliminary Hearing and the judgment on 9 May 2017, determining that the Claimant is not disabled for the purposes of the Equality Act 2010.
8. Following a consideration of the case's history with the Parties at the start of the Preliminary Hearing, it was agreed by the Parties that I should proceed to consider the issues identified for this Preliminary Hearing and that, dependant upon my judgment on those matters, the Claimant's application for reconsideration of the judgment on 9 May 2017 should be case managed, as appropriate. It was further clarified by the Claimant that he had brought his claims out of time and therefore my consideration of the second issue was limited to whether I would exercise my discretion to allow the complaint to be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates because it has been brought within such other period as I consider is just and equitable (section 123 Equality Act 2010).
9. At the Preliminary Hearing, the Claimant appeared in person and the Respondent was represented by Mr Cholerton, Counsel. I was provided with a bundle paginated 1 – 112 (references to that bundle appear in square brackets within this judgment), a skeleton argument from the Respondent and heard evidence from three witnesses: the Claimant, Mr Alex Pearce (Respondent's Managing Director) and Mr Justin MacPherson (Respondent's General Manager). Each of the witnesses referred me to written witness statements; the Claimant provided four such statements, Mr Pearce three and Mr MacPherson one. At the conclusion of the evidence, both parties made closing submissions.

## The Facts

10. The Claimant was employed by the Respondent as a driver until 7 April 2016. His employment with the Respondent originally commenced in 2001. Throughout his employment the Claimant has taken extended breaks to Ghana where he has property and financial interests. For example, the Claimant left work on 29 October 2002 and returned on 2 December 2002. In 2003 he was absent from 27 September until 12 December. In 2004 the Claimant was off work, having travelled to Ghana, for approximately a year. The Claimant described that when these absences occurred, he would telephone the Respondent upon his return to see if there was work for him to return to. The Claimant accepted that the Respondent did not promise to keep his job open and that sometime after 2004, employees were informed that if they wished to take extended periods of absence from their work, they would have to resign their employment and reapply.
11. Mr MacPherson, the Claimant's line manager, told me that in or around early October 2015 the Claimant told him that he would be leaving the company at Christmas because he would be returning to Ghana. Mr MacPherson understood from what the Claimant told him, that this return was a permanent move. The Claimant said that he was *'going for good'*. Mr MacPherson relayed this conversation to Mr Pearce. Subsequently, there were further conversations between Mr MacPherson and the Claimant, during which Mr MacPherson recalls it was discussed that the Respondent would advertise for a new driver to replace the Claimant.
12. The Claimant tells me that there was a conversation between him and Mr MacPherson in October about going back to Ghana. However it is the Claimant's account that he never referred to leaving at the end of December. In evidence he told me that he did not say he was leaving the company but that he was just going back to Ghana, using his normal holiday days. He referred to going back to Ghana using his holiday allowance and that if he was able to get a cheap flight, he would go. The Claimant described to me his plan to work for the Respondent until his retirement, in three or four years time.
13. In the week of 28 December 2015 it is Mr MacPherson's account that the Claimant spoke to him about the fact that he had been to his GP and was receiving treatment for a skin condition, psoriasis. As a result of this ongoing treatment, the Claimant asked if he could continue in his job until the end of March 2016 as he now planned to go to Ghana at the start of April. Mr MacPherson agreed to this and recorded in the company diary that the Claimant's last day would be 31 March. When questioned about this matter, Mr MacPherson confirmed that he was aware of the Claimant's skin condition because the Claimant had actually shown him. Further, that the Claimant had shared with him that he was receiving treatment from a dermatologist and that he would

not be able to go to Ghana at Christmas, as he needed to finish his medical treatment.

14. The Claimant's evidence about this conversation was confused. The Claimant denies having this discussion about leaving at the end of March and answered to questions, *'I didn't have a conversation at the end of December with Mr Macpherson'*. However he later changed his answer saying in evidence, *'I did have a conversation with Mr Macpherson in December about changing when I would go away on holiday'* with the Claimant then describing to me how he had referred to looking now at going away in March.
15. I pause to comment at this point about the Claimant's general presentation during the Preliminary Hearing. It is right to note that on more than one occasion the Claimant changed his account when giving evidence on important topics. As noted above, this included the conversation in March 2016. Further, on important matters such as the nature and extent of his claims there was a lack of clarity. For example, during his evidence the Claimant told me that his claim for age discrimination was not as set out by EJ Baron in the Case Management Order dated 3 November 2016 [27-33]. Rather his claim went beyond harassment although he was unable to provide further particulars. It was put to the Claimant that the order of EJ Baron included comments about the need for the Claimant to be precise in respect of his factual allegations. In respect of harassment, the Claimant commented that the remarks made by Mr MacPherson had been 12 years ago and that the alleged conduct had continued for about 2 – 3 years, finishing around 2008. The Claimant then described how he had become friends with Mr MacPherson (*'over time we struck up a rapport and he became like my friend'* and *'over a period of time we became friends'*). When describing the alleged conduct the Claimant commented that it was not appropriate to complain earlier than 2016 as it would *'have been heavy handed to do so'*. Later in his evidence, the Claimant also said that his claim of disability discrimination was different to that recorded by EJ Baron on 1 November 2016 and that he might now want to suggest that his dismissal was related to his medical condition and age.
16. After careful consideration of the entirety of the witness evidence, I do prefer and accept the evidence from Mr MacPherson in respect of the conversations which occurred in October 2015 and March 2016. I found Mr MacPherson's evidence to be clear and straightforward and the Claimant's account to be muddled and ever changing when challenged during cross examination. When challenged about his account, Mr MacPherson told me that he was certain about what had been said by the Claimant during the relevant conversations. I accept that Mr MacPherson's recollection of the conversations is accurate. The Claimant and Mr MacPherson were friends and had a good working relationship at the relevant time. There was no reason for Mr MacPherson to invent a conversation during which the Claimant stated

that he wished to leave his job to return to Ghana. I was also particularly struck with the detail included in Mr MacPherson's evidence including, for example, that the Claimant showed him his psoriasis.

17. Mr Pearce tells me that he sent a letter to the Claimant dated 4 January 2016. This letter referred to the delayed resignation date from December 2015 to March 2016 [76]. The Claimant says that he never received this letter.
18. The Claimant had a scan on Sunday 10 January 2016. It is agreed by the parties that the Claimant did not tell the Respondent about the scan before he went. The Claimant was told at the medical appointment that he had a defective aortic valve and that he needed surgery to replace it the following day. The Claimant describes returning his van and keys to Danny, his immediate supervisor at the Respondent and telling Danny about the operation, asking him to pass the information on to Mr MacPherson. Mr MacPherson told me that he did not know what had happened to the Claimant when he failed to turn up for work and that he actually sent one of the drivers to put a note through the Claimant's door. Mr MacPherson said that he sent a driver to put a note,  
  
*'through Roland's door as we didn't know where you were until you phoned to say you were having open heart surgery...'*
19. Mr MacPherson attempted to contact the Claimant by telephone on 11 and 12 January 2016. On 12 January, the Claimant called Mr MacPherson back and they had a discussion. On 14 or 15 January the Claimant had a telephone conversation with Mr Pearce.
20. The Claimant was discharged from inpatient care on 17 February 2016 but remained signed off from work on medical grounds. The Claimant spoke with Mr MacPherson that day and it was agreed that the Claimant would keep him informed as to when he would be returning to work. It was during further conversations with Mr Pearce, whilst the Claimant remained off sick, when Mr Pearce told the Claimant that he would be put onto statutory sick pay up to April, when he would be leaving the company, and that he should make enquiries with the Benefits Agency for what he might be entitled to after his employment with the Respondent ended.
21. The Claimant recalls this conversation but says that he denied that he was leaving and reference was made to the original October conversation with Mr MacPherson. The Claimant and Mr Pearce had further conversations during which the Claimant repeated that he had not resigned. For the avoidance of doubt, Mr Pearce did not accept in his evidence that the Claimant said to him that he had not resigned in any of these telephone conversations. Mr Pearce's evidence included the following responses,

*'You didn't tell me that you hadn't resigned in any telephone conversation.'*

*'You never told me that I had got it wrong and that you were not resigning.'*

22. The Claimant stated that he wrote to Mr Pearce to query the situation and that this letter was written before his letter to Mr Gavin Lake which is dated 27 April 2016. It is noted that no such letters have been disclosed for this hearing or during the Tribunal process and it appears that the Claimant's first reference to there being such an earlier letter was during his evidence.

23. On 6 April 2016 the Claimant had a telephone conversation with Gavin Lake and the following day, the Claimant received a form terminating his contract of employment.

24. In a letter dated 27 April 2016 [97], the Claimant referred to the telephone conversation with Mr Lake and contended that he had not resigned his employment. He stated,

*'Although I informed both Alex and yourself that I have not resigned from my employment with the company, it appears you have still gone ahead and terminated my contract.'*

25. Mr Pearce wrote a letter to the Claimant in response dated 11 May 2016 [98]. That letter detailed the history of the conversations in October and December 2015 and continued,

*'Your subsequent illness and operation in early 2016 led to you being away from work on sick leave however this did not change the fact that your notice had been given and accepted.'*

26. The Claimant initially confirmed that he had received this letter before changing his response to being unsure whether he had received the letter. The Claimant then changed his mind again and told me that he hadn't received the letter – rather, the Respondent had ignored his letter dated 27 April 2016 and hadn't responded to him at all.

27. It was in or around April / May 2016 that the Claimant contacted ACAS. In his first witness statement the Claimant describes an intention to seek redress at the industrial Tribunal,

*'...as on my own part, trust had broken down because I do not trust the management.'*

28. It was after speaking to ACAS that the Claimant wrote a letter to Mr Pearce dated 21 June 2016 [99]. On 8 July 2016 the Respondent wrote to the Claimant offering to reinstate him and to pay the monies due for the period between April and the date of the letter, if it had not

in fact been the Claimant's intention to resign [100]. The Claimant told me that by the time he received this letter, he had changed his mind and did not want to return to work for the Respondent.

29. Insofar as the parties accounts differ, in respect of matters from 10 January 2016 onwards, I prefer and accept the account given by the Respondent's witnesses. In particular, I am satisfied that Mr MacPherson and Mr Pearce were unaware of the Claimant's whereabouts when he failed to turn up for work on 11 January 2016. I am also satisfied that during the early conversations with Mr Pearce, in February and March 2016 the Claimant did not suggest that he had not resigned his employment. I find that the Claimant's first letter to the Respondent querying the termination of his employment was 27 April 2016 after he had received a form confirming the cessation of his employment on 7 April 2016. I am satisfied that the Claimant did receive the relevant correspondence from the Respondent, to which I have been referred.

### **Closing Submissions**

30. In closing, Mr Cholerton submitted that the Claimant's case lacked specifics and certainty. He identified that it would be incredible for the Respondent to have invented the factual context relied upon by them, particularly when they were content to offer the Claimant his job back in July 2016. Mr Cholerton described the Claimant's evidence as difficult and vague. In respect of the issues before me, it was submitted that the Claimant clearly resigned. In respect of the age discrimination claim, the Claimant had referred to the relevant conduct being 12 years ago and accordingly it could not be just and equitable to extend such time for such an old claim. Further it was submitted that such a claim did not have reasonable prospects of success in any event. In respect of the claim for disability discrimination, again the Respondent submitted that it would not be just and equitable for the claims to be brought out of time and that they stood no reasonable prospects of success.
31. The Claimant submitted that his conversation with Mr MacPherson in October 2015 was a normal conversation about holidays and that Mr MacPherson had made his account of the conversations up. The Claimant contended that his claims should be allowed to continue. With regards to time limits the Claimant referred to his dismissal on 7 April 2016 as the last act of discrimination. They had reasonable prospects of success and, if allowed to continue, he would try to get professional representation for the next hearing.

### **Conclusions**

32. The first issue I am required to determine is whether the Claimant's employment with the Respondent was determined by his resignation or by his dismissal. Having considered the entirety of the evidence, and



as set out in my findings of fact, I accept Mr MacPherson's account of what occurred and, in particular, that the Claimant told him that he wished to leave his job to return to Ghana. I am therefore satisfied that the Claimant resigned his employment with the Respondent verbally during the conversation with Mr MacPherson in October 2015. The date when the Claimant would leave his position with the Respondent was varied, to the end of March 2016, following a further conversation with Mr MacPherson in December 2015. In the event, due to the Respondent's year end, the Claimant's last day of employment with the Respondent was 7 April 2016.

33. It follows, on the facts of this case, that having determined that the Claimant resigned his employment, the Claimant is unable to proceed with his claim of unfair dismissal. Such a claim can only proceed if there was a dismissal by the employer pursuant to section 95 of the Employment Rights Act 1996 and there was not.
34. The Claimant confirmed at the start of the hearing that his claims of discrimination had been brought out of time and that the issue before me, in this respect, was whether to exercise my discretion to allow the claims to continue outside the primary limitation period. It is however right to record that the Claimant made references during the hearing to other apparent complaints of discrimination including a comment about his dismissal being discriminatory. I explored with the Claimant repeatedly what the full extent of his discrimination claims were and, apart from confirming to me that they went beyond that recorded in the Case Management Order of November 2016, the Claimant was unable to provide me with clear particulars or a coherent narrative. He made no application to amend his claim.
35. Accordingly I proceeded to consider the claim of discrimination, as previously detailed by EJ Baron.
36. A tribunal may consider a complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so (s.123(1)(b) Equality Act 2010). I must bear in mind that employment tribunal time limits are generally enforced strictly and ask whether a sufficient case has been made out to exercise my discretion in favour of extension. I must consider the reasons why the claim was brought out of time, the reasons why the claim was not presented sooner that it was and consider all relevant factors including the balance of prejudice and the merits of the claim. I have carried out this analysis on the Claimant's claims.
37. In respect of the claim of age discrimination, the Claimant confirmed that the alleged conduct ceased around 2008 and that, at that time, he did not consider it would be appropriate to complain. The Claimant provided me with no further explanation as to why the claim was not presented in time or sooner than it was, beyond the fact that he thought

he would make a complaint of age discrimination when he had other matters he also wished to complain about.

38. In my judgment, it is not appropriate for this claim to continue. It was presented out of time and I do not consider it is just and equitable for it to be considered. The Claimant provided very little evidence and submissions on this issue and, to the extent that he described the historical nature of the alleged conduct, I was satisfied that I should not exercise my discretion to allow the claim to continue in respect of complaints which are around 9 years old.
39. In respect of the claim of disability discrimination, I again do not consider it is just and equitable for it to be considered. The Claimant provided no explanation as to why the claim was brought out of time nor did he make any submissions as to why he considered it would be just and equitable to allow the claim to continue.
40. The final issue for determination was whether the Claimant's claims should be struck out as having no reasonable prospects of success or whether the Claimant should be required to pay a deposit as a condition of being permitted to continue with any or all of the claims. As a result of my determinations of the previous issues, the Claimant's claims of discrimination and unfair dismissal shall not proceed further. Accordingly there is no requirement for me to consider this final issue. However, for the avoidance of doubt, I also considered that the Claimant's claim of age discrimination had no reasonable prospects of success in any event. I was not satisfied that the Claimant's explanation of his complaint was an accurate account. I did not find his description of the historical complaints coupled with his acknowledgement that he and Mr MacPherson were good friends, as credible. I also found Mr MacPherson to be a witness of truth and accepted his account during which he completely denied the allegations.

Employment Judge Harrington  
Date: 29 August 2017