

Appeal No. UKEAT/0592/12/DM

EMPLOYMENT APPEAL TRIBUNAL
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8JX

At the Tribunal
On 11 April 2013

Before

HIS HONOUR JUDGE PETER CLARK

(SITTING ALONE)

DR A T LAWAL

APPELLANT

BIRMINGHAM & SOLIHULL MENTAL HEALTH NHS
FOUNDATION TRUST

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

DR A T LAWAL
(The Appellant in Person)

For the Respondent

MR P STARCEVIC
(of Counsel)
Instructed by:
Birmingham & Solihull Mental
Health Trust
Legal Department
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50 Summe Hill Road
Ladywood
Birmingham
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SUMMARY

JURISDICTIONAL POINTS – Claim in time and effective date of termination

Contract of employment terminated on expiry of Claimant's notice of resignation. Subsequent purported dismissal by Respondent following a disciplinary process after employment ended a nullity. ET1 presented out of time. Employment Judge entitled to refuse application to extend time. Appeal dismissed. Claims were time-barred.

HIS HONOUR JUDGE PETER CLARK

1. This is a curious case; the parties are Dr Lawal, Claimant, and Birmingham and Solihull Mental Health NHS Foundation Trust, Respondent. The matter has been proceeding in the Birmingham Employment Tribunal. This is an appeal by Dr Lawal against the Judgment of Employment Judge van Gelder dated 18 June 2012 for which written reasons were given on 7 August 2012, ruling that his complaints of unfair dismissal, unauthorised deduction from wages and racial discrimination were time barred.

2. Dr Lawal commenced his employment with the Respondent in 2001. In 2011 there was a suggestion that he may be subject to disciplinary action as a result of his absence from work. Before any such action took place Dr Lawal tendered contractual notice of resignation by a letter dated 21 April to expire on 21 July 2011. Very shortly before that expiry date Dr Vassilas wrote to the Claimant on 18 July proposing that he should accept a first written warning and repayment of his salary for the period 18 October to 22 November 2010 in order to resolve the outstanding disciplinary investigation. That offer was not acceptable to Dr Lawal and his notice expired on 21 July.

3. It turns out that he did not receive his salary for the first 20 days of July; no doubt the Trust purported to offset that salary entitlement against the salary for the period 18 October to 22 November 2010 which was in dispute. At all events the Claimant never returned to work. However, the Respondent purported to pursue disciplinary proceedings against Dr Lawal even though he had left the Trust's employment. A hearing was held in his absence in November 2011 and on 6 December the Respondent wrote a letter purporting to summarily dismiss Dr Lawal. Understandably, for a professional man, he was alarmed by that turn of events and on 17 February 2012 presented his form ET1 to the Tribunal.

4. That brings me to the hearing before Judge van Gelder. The Judge found that the effective date of termination of the Claimant was the expiry of his notice of resignation in July 2011, consequently all claims were lodged outside the primary limitation period. In relation to the claims under the **Employment Rights Act** at paragraph 9, for the reasons given, he found first the Claimant had not shown that it was not reasonably practicable to present those ERA claims within time and went on at paragraph 9.2 to find that even if it had been not reasonably practicable, he had not presented the claims within a reasonable time thereafter.

5. In relation to the complaint of racial discrimination, which is not identified in the form ET1 but was treated as raised in relation to events in August to October 2010, again, that claim was out of time. The Judge considered whether or not to extend time but for the reasons given decided it was not just and equitable to do so. Dr Lawal in addressing me this morning made it clear that with his resignation he intended to move on. He was prevented from doing so and has a mark against his professional reputation as a result of the purported dismissal in December. For the avoidance of doubt I record the concession made by Mr Starcevic on behalf of the Respondent that the purported dismissal on 6 December 2011 is a nullity and of no effect and for the purpose of disposing of this appeal I so declare. However, in relation to the appeal itself I can see no basis in law for inferring with the Judge's finding that the effective date of termination here was at the expiry of the Claimant's notice in July 2011.

6. It follows that all claims were lodged out of time. Dr Lawal submits that it was not reasonably practicable to bring his claim for unauthorised deduction from wages in time because he had been told to await developments by the Respondent Trust. That does not seem to me to be an argument that was advanced below and in any event there is nothing to prevent him from bringing such a claim in the County Court where different time limits apply.

7. Given that the dismissal was of no effect, it seems to me that that deals with Dr Lawal's practical concern here but the matter before me is a purely technical one of law. The Judge was entitled to find the effective date of termination as he did and there is no basis in law for interfering with his exercise of discretion in relation to extensions of time, both under the ERA and in relation to race discrimination; whether under the **Race Relations Act 1976** or under the **Equality Act 2010**.

8. In these circumstances this appeal fails and is dismissed.