



THE EMPLOYMENT TRIBUNAL

Claimant: Mr I Abdulahi

Respondent: Abellio London Ltd

REASONS

(Requested by the Claimant on 8.2.17)

1. These are the reasons for the Tribunal's Judgment, sent to the parties on 8 February 2017, striking out the claims for want of jurisdiction.
2. By a claim form presented on 13 June 2016, the Claimant brought claims of unfair dismissal, race discrimination and wrongful dismissal. All claims were resisted by the Respondent.
3. At the start of the hearing, the Claimant's trade union representative, Mr John Neckles, announced that he had made a formal complaint against me and that as a result, he was concerned about apparent bias. I was (and still am) unaware of the nature of the complaint and Mr Neckles chose not to elaborate further, save that he confirmed that the matter did not relate to Claimant in these proceedings. Mr Neckles said that he was not making a recusal application but felt I might want to recuse myself of my own motion. I decided not to do so.
4. In reaching that decision, I reminded myself that I am under a duty not to recuse myself unless there are proper grounds to do so. The well established test for apparent bias is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. (**Porter v Magill [2002] 2 AC 357**). The difficulty here is that I was not provided with any material facts about the complaint and in my view, the existence of a complaint is not, without more, sufficient reason for recusal.
5. Turning to the preliminary issue, the Claimant was summarily dismissed on 14 May 2015 and this was the effective date of termination of employment for the purpose of the unfair dismissal claim.
6. Section 111(2) of the Employment Rights Act 1996 (ERA) provides that a complaint of unfair dismissal must be presented to the tribunal –
 - a) before the end of 3 months beginning with the effective date of termination,
 - or

- b) within such other period as the tribunal considers reasonable where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
7. The claim for unfair dismissal should have been presented by 13 August 2015. It was not presented until 13 June 2016, 10 months after the time limit had expired. The claimant does not have the benefit of an early Acas conciliation extension as he did not contact Acas until 21 April 2016, after expiry of the limitation period. The claim for unfair dismissal was therefore presented outside the primary time limit.
 8. Section 123 of the Equality Act 2010 provides that a discrimination complaint must be presented after the end of 3 months starting with the act complained of or such other period as the tribunal considers just and equitable.
 9. The Tribunal's jurisdiction to extend time on the basis that it would be just and equitable to do so has been held in ***British Coal Corporation v Keeble [1997] IRLR 336*** to be as wide as that given to the civil courts by section 33 of the Limitation Act 1980. The Court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension and to have regard to all the other circumstances, in particular the length of and reasons for the delay, the extent to which the cogency of evidence is likely to be affected by delay, the extent to which the party sued has cooperated with any requests for information, the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action. However, there is no legal requirement to go through such a list in every case provided of course that no significant factor has been left out of account by the Tribunal in exercising its discretion.
 10. The race discrimination complaint relies on 4 alleged detriments, all of which relate to the dismissal, including the unsuccessful appeal. The appeal commenced on 18 June 2015 and the outcome was sent to the Claimant on 24 June 2015. Assuming, for these purposes that the 24 June 2015 was the date of the last alleged act of discrimination in a series of acts extending over a period of time, the last date for presenting the discrimination complaint was 23 September 2015. This claim is also out of time.
 11. The Claimant contended that it was not reasonable practicable to present his claim on time as he only became aware that he had a claim on 6 April 2016. He claims that it on this date, he bumped into an ex colleague, Mohammed Mohammed, in Camberwell Green, London, who informed him that another employee, Mr Raj, had hit a low bridge while driving a bus and had not been dismissed. The Claimant took the view that this was comparable to his alleged misconduct and so contacted his union representative immediately with this information and a claim was lodged a few days later.
 12. The difficulty with that evidence is that the particulars of claim make no reference at all to this information. The main focus of the particulars is the Respondent's refusal to allow the Claimant to be accompanied at the various disciplinary meetings by his preferred union representative. Also, the Claimant confirmed in evidence that when he was dismissed he thought the dismissal was unfair. That is evident from his grounds of appeal, one of which is disparity of treatment. When asked in cross examination, who the allegation of disparate treatment was directed at, in terms of comparison, he said that he could not

remember. Further, when asked whether, after the appeal outcome, he still felt that he had been discriminated against and should not have been dismissed, he answered: "yes".

13. Taking all of these matters into account, I am not satisfied from the evidence that it was not reasonably practicable for the Claimant to have presented his unfair dismissal or wrongful dismissal claim on time. The matters relied on in the particulars of claim are matters that were within his knowledge prior to the expiry of the time limit.
14. Further, the Claimant has not discharged the burden of showing that there are just and equitable reasons to extend time on his discrimination claim and having considered the balance of prejudice between the parties, and weighed this in the Respondent's favour, I have decided not to exercise my discretion to extend time for presentation of the discrimination complaint.
15. All claims are struck out for want of jurisdiction as they are out of time.

Employment Judge Balogun
Date: 25 September 2017