EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr J Airey	v	**(1) Kingsgate Community Church**
		(2) Mr J Thody

(OPEN) PRELIMINARY HEARING

Heard at: Cambridge **On:** 17 May 2018

Before: Employment Judge G P Sigsworth

Appearances:
For the Claimant: In person.
For the Respondent: Mr T Thompson, Solicitor.

JUDGMENT

1. The judgment of the Tribunal is that the claim of disability discrimination is struck out, as the Tribunal has no jurisdiction to hear and determine it.

REASONS

1. The issues for the preliminary hearing today are those identified at the closed preliminary hearing held on 13 October 2017. First, whether the Tribunal has jurisdiction to hear the complaints, ie whether the Claimant falls within the definition in section 83 of Equality Act 2010 of “employment”. Second, whether any of the claims are out of time and, if so, whether it would be just and equitable to extend time under section 123(1)(b) of Equality Act 2010.

2. The Claimant’s disability discrimination claims, as set out in his claim form and further particularised, are based on three specific complaints. First, a refusal to employ him on casual basis within a pool of workers which was never closed, ongoing since 2010. Second, a refusal to accept the Claimant as a “committed member” of the church. Third, the refusal to have the Claimant on the first aid team. At the hearing today, the Claimant has withdrawn complaint number

three, as being on the first aid team was purely voluntary without pay, and therefore clearly not employment.

3. Complaint number two was put by the Claimant as simply a refusal to accept him as a committed member of the Church. Being such a committed member is not employment or even quasi employment. As identified by Mrs Sally Duffy in her capacity as executive pastor, in her evidence before the Tribunal, the criteria for commitment are being baptised, serving on a rota, being in a life group, and giving to the Church. There are no additional employment rights associated with being a committed member, and it is entirely related to worship at the church and is not a paid post. Clearly, the Tribunal has no jurisdiction to consider such a claim, as it does not fall within the definition of employment under the Act.

4. I turn now to the first allegation, the refusal to employ the Claimant on a casual basis within a pool of workers. There was a decision made in February 2011 that the Claimant would not be appointed to a casual post in conferencing set up and would not be included in the pool of casual workers. The Claimant may not have seen the letter of 2 February 2011 which sets that out until recently, even though it was correctly addressed and apparently sent to him, but he told the Tribunal that he knew what it said, and indeed refers to it in his further and better particulars of November 2017. Those further and better particulars refer to the withdrawal of a job offer on 2 February, the date of that letter. From then on, the Claimant was not put on the casual employment rota and did not make another application for casual employment. On 22 July 2011, the Claimant wrote to the Respondents saying that he would be issuing proceedings at the Leicester Employment Tribunal for (inter alia) not being allowed to serve in Kingsgate since 12 June 2010; specifically, not being allowed back to the same team he was on, and not being allowed to work at Kingsgate which was linked to that allegation. Then, on 6 September 2011, he issued the proceedings that he had threatened, for disability discrimination. Complaint number one in that claim form is that he was dismissed from the post of conference set up (casual) by email on 28 July 2011. Complaint number four was that he was not allowed to work for Kingsgate. In other words, he was making a complaint of not being allowed to work for the Church, and for dismissal from his existing post. The claim was withdrawn in or about February 2012, and a Judgment dismissing the claim on withdrawal was issued by the Tribunal on 26 March 2012.

5. I conclude that the claim in 2011 that was dismissed is essentially the same claim that the Claimant seeks to make now – in other words, that he was not allowed to work for the Church, on a casual basis or otherwise, it does not really matter. Both claim forms allege that this was disability discrimination. Thus, so called ‘cause of action estoppel’ arises (part of the res judicata principle). Essentially, cause of action estoppel prevents a party pursuing a cause of action that has been dealt with in earlier proceedings involving the same parties. Here, there was a Judgment dismissing the 2011 claim on withdrawal, which ‘dealt with’ that cause of action (the claim for disability discrimination based on the refusal of the Church to give employment to the Claimant). Thus, the Tribunal is barred from hearing the new claim by reason of the rule of res judicata or cause of action estoppel.

6. If I am wrong about that, I would have to consider whether or not the claim is brought out of time. Section 123(3)(b) of the Act provides that, for the purposes of time limits, namely the three month primary limitation period, the failure to do something is to be treated as occurring when the person in question decided on it. Here, the failure alleged is the failure (refusal) of the first Respondent to employ the Claimant. That was a decision taken by the Church in February 2011. Time thus began to run from that date. The decision was never varied thereafter, and the parties acted in accordance with that decision, the Church not putting the Claimant on any casual work rota and the Claimant not actually applying for any employment. Thus, the claim is out of time, as it was only brought on 4 July 2017. The Claimant has not led any evidence today as to why it would be just and equitable to extend time. It is often the case in such situations, that an employee will assert a lack of knowledge of employment rights and time limits in their defence, when seeking to bring claims out of time. However, that is not an issue here, as the Claimant clearly knew of his rights and how to enforce them when he issued his Tribunal proceedings in 2011. Thus, had I not struck out the claim on the basis of it being res judicata, I would have struck it out as being out of time.

7. The second Respondent, Mr Thody, was not a party to the proceedings in 2011. However, the claim against him is also out of time. I would also say that, in any event, an application for employment and its refusal as the basis for a cause of action can surely only be properly brought against the employer, here the first Respondent.

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Employment Judge G P Sigsworth

21 / 5 / 2018

Sent to the parties on:

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For the Tribunal:

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