



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C A Nkala

**Respondent:** Department for Work and Pensions

**HELD AT:** Manchester **ON:** 17 January 2018

**BEFORE:** Employment Judge Sherratt

## REPRESENTATION:

**Claimant:** Litigant in person

**Respondent:** Mr C Taft, Counsel

**JUDGMENT** having been sent to the parties on 6 February 2018 and written reasons having been requested on 17 January 2018 in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant, Mr Christopher Nkala, was an employee of the DWP from January 2006 until his employment ended by resignation in June 2012. Claims to the Employment Tribunal arising from this employment would normally have been commenced by October 2012 but in this case the ET1 claim form was not received until 12 November 2017, some five years after the normal time limit had expired. This hearing has been listed to consider whether or not the claim should be allowed to continue out of time, and it engages with section 111 of the Employment Rights Act 1996 and section 123 of the Equality Act 2010.

2. Under section 111 of the Employment Rights Act 1996, a complaint shall not be considered unless presented to the Tribunal before the end of the period of three months beginning with the effective date of termination, or within such further period as the Tribunal considers reasonable in a case 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.

3. Under section 123 of the Equality Act proceedings may not be brought after the end of the period of three months starting with the date of the act to which the

complaint relates or such other period as the Employment Tribunal thinks just and equitable.

4. The claimant has submitted documents to the Tribunal and has produced further documents today which I and counsel for the respondent have read. Mr Nkala has explained the circumstances to the Tribunal and he has been questioned by Mr Taft in respect of his answers and the documents.

5. In factual terms it is apparent from the documents and what I have heard that the claimant's employment ended in resignation in June 2012. A medical letter dated 14 September 2012 notes that a Vitamin B12 deficiency can cause memory problems, but all of the other medical letters produced relate to physical rather than mental issues.

6. In March 2013 the claimant sent a letter enquiring about possible receipt of an ill health pension, and in April 2013 following a telephone call he received a communication in writing with reference to not being able to pursue an appeal via the Employment Tribunal as the timescale was three months from leaving, so the concept of Employment Tribunal was made known to the claimant, albeit in a fairly negative manner, in April 2013.

7. A medical letter in September 2014 referred to abdominal pain but that the claimant felt better in himself. There was reference to abdominal pain and a general malaise, both of which were said to be improved. By January 2016 a medical letter said that the claimant was back to full activity and in May 2016 it noted he was generally well in himself.

8. By October 2017 Mr Nkala had contacted his Member of Parliament who wrote a letter on his behalf to ACAS, and it was after this that the ET claim was made.

9. From the information provided by the claimant I find that there is no medical evidence as to issues of mental health which might have prevented him from dealing with his own affairs. There are however the physical health matters.

10. Mr Taft submits that the claim is five years out of time and that the claimant has not satisfied the Tribunal that the claim should be allowed to proceed. He has referred to the case law on the situation, including the case of **Bexley Community Centre v Robertson [2003] EWCA Civ 576** to the effect that it is for the claimant to satisfy the Tribunal that the claim should be allowed rather than for the Tribunal to readily accede to a claim that is on the face of it out of time.

11. Looking at the unfair dismissal test of reasonable practicability, there is no medical evidence before me that the claimant was not capable of bringing a claim in the primary three month time limit, and there is no evidence as to physical matters which suggest that although he might have been uncomfortable and unwell he was prevented from bringing a claim within the primary three month time limit. It does not therefore seem to me that there is any basis on which I can find that it was anything other than reasonably practicable for a claim under the Employment Rights Act to have been brought within the primary time limit. There was a reference to an Employment Tribunal made to the claimant in April 2013; this of itself did not prompt

the claimant to make a late application back in 2013 which, had it been made, would have had much more chance of succeeding than an application made in 2017. So I am not with the claimant on the unfair dismissal claim which is dismissed.

12. As to the Equality Act claim which is based on disability, the various medical documents produced that I have not referred to in detail suggest that the claimant might be a person with a disability for the purposes of the Equality Act 2010, but that is not an issue before the Tribunal today. The claim was not presented within three months. Is it just and equitable to proceed? I have to look at the interests of both parties when considering this question. The claimant has put his claim in out of time. The respondent, in its ET3, refers to prejudice caused to the respondent department on the basis of time passing, people leaving, memories fading, documents not being available, etc.

13. It seems to me that given the length of the delay, which is five years, it is not just and equitable, looking at the balance of the interests of and prejudice between the parties, to allow the claim to proceed, so the Equality Act 2010 claim is also dismissed.

Employment Judge Sherratt

14 February 2018