



EMPLOYMENT TRIBUNALS

Claimant

Mr O Popoola

v

Respondent

Maddox Events Limited

PRELIMINARY HEARING

Heard at: Watford

On: 8 February 2019

Before: Employment Judge A Clarke QC

Appearances:

For the Claimant: Mr I Hurst, Solicitor

For the Respondents: Ms C Bell, Counsel

JUDGMENT

1. The claims in respect of race and disability discrimination were presented outside the primary limitation period under s.123 of the Equality Act 2010.
2. It is just and equitable to extend time for the presentation of those claims to 5 June 2018, when they were presented.
3. It having been clarified that the claimant no longer intends to bring any claim for an unlawful deduction from wages, any such claim as stated on the claim form is dismissed.

REASONS

1. The claimant was employed by the respondent as a business development manager from July 2017 to 22 January 2018. By a claim form submitted on 22 May he made claims of race and disability discrimination together with a claim for unlawful deduction from wages in respect of certain commissions.

2. The claim then submitted was rejected as it gave no ACAS early conciliation number. The omission of that number was an error on the part of the claimant's solicitors as ACAS had been notified of the claims on 27 March 2018 and a certificate had been issued on 27 April. Hence, having regard to s.207B of the Employment Rights Act and the similarly worded provisions in s.140B of the Equality Act 2010, the claim form had to be submitted on or before 27 May 2018 for the claims in it to have been presented within the primary limitation period. That is on the assumption that the claims arose on (or are to be treated as arising on) the day of dismissal. That is the claimant's case, but there remain claim in time issues to be determined at the final hearing of this matter as regards claims which the respondent asserts must have arisen prior to the day of dismissal.
3. Hence, had the claim presented on 22 May been accepted it would have been presented in time.
4. In fact, the claim was not validly presented until 5 June 2018. On receiving notice of rejection, the claimant's solicitors immediately (by email) explained the position and resubmitted the claim.
5. So far as the discrimination claims are concerned, the secondary limitation period can only be invoked if I am satisfied that it is just and equitable to extend time (see s.123 of the 2010 Act). The test is a broad one. Nevertheless, I start from the proposition that parliament has fixed a primary limitation period and claims should be brought within that time period.
6. In this case I have considered:
 - 6.1 The reason for delay (an error on the part of the claimant's solicitors).
 - 6.2 The length of the delay (very short) and the fact that the claimant's solicitors acted promptly on being alerted to it.
 - 6.3 The impact of the delay on the ability of a tribunal to conduct a fair trial (minimal if any).
 - 6.4 The prejudice to the parties (the claimant would lose the ability to proceed with his claim without a determination on the merits if time is not extended, on the other hand if time is extended the respondent would have to face a claim that it would not otherwise need to meet).
 - 6.5 Taking all of those factors together, I consider it to be just and equitable to allow the claim to continue and so the period for presenting a valid claim is extended to 5 June.
7. I now turn to the claim for an unlawful deduction from wages. Although expressed in those terms towards the end of the claim form, the allegations of unlawful discrimination set out earlier in the claim form appeared to me inconsistent with there having been any unlawful deduction from wages. It appeared to me that the claim being made was not that a sum which ought to have been paid had not been paid, rather that no bonus or commission structure

had been put in place for the claimant, such that he was unable to earn commission. I indicated to the claimant's solicitor that I did not consider that a claim based on those facts could properly be formulated either as a claim for an unlawful deduction from wages or as a claim for a sum due and owing at the time of termination of employment (which might be maintained before the tribunal under the extended jurisdiction regulations). Having considered the matter, I was informed that the claimant did not advance a claim either for an unlawful deduction from wages or for such a breach of contract. In those circumstances, and for the avoidance of doubt, I dismiss the claim in respect of an alleged unlawful deduction from wages which appears in the claim form.

Employment Judge Andrew Clarke QC

14 March 2019

Sent to the parties on:

20 March 2019

For the Tribunal:

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