



THE EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING

Claimant: Mr A Herron

Respondent: Echo-U Limited

Heard at: North Shields Hearing Centre

On: 23rd April 2019

Before: Employment Judge Martin

Representation:

Claimant: In Person

Respondent: Mr F Jaffiel (Employment Law Consultant)

JUDGMENT

1. This Tribunal does have jurisdiction to hear the claimant's complaints of age discrimination or discrimination on the grounds of religion/belief.

REASONS

1. The claimant's complaint of age discrimination relates to a comment made in March/April 2018. The usual time-limit for presenting that complaint would have been at the latest 29th July 2018. The claimant's complaint for discrimination on the grounds of religion and/or belief relates to a comment made sometime during the week commencing 18th June 2018. The usual time-limit for presenting that claim would have been 21st September 2018 at the latest.
2. The claimant did not contact ACAS about either of those claims until 2nd October 2018. The ACAS conciliation lasted for three days. He presented his complaints of age discrimination and discrimination on the grounds of religion/belief to the Tribunal on 12th October 2018.

3. However, the claimant did raise an internal grievance about his claims of age discrimination and discrimination on the grounds of religion and/or belief. He raised a grievance on 3rd July 2018. The grievance hearing took place on 11th July 2018. The outcome for the grievance was not delivered until almost one month later on 10th August 2018. The claimant appealed against the decision and a grievance appeal hearing took place on 22nd August 2018. The outcome of the grievance appeal hearing was given to him on 4th September 2018. The claimant said that he believed (wrongly as it turned out) that, as he had raised an internal grievance he then had to go through that process, before he could issue the proceedings in this tribunal.
4. During last year the claimant suffered some mental health issues. These centred on the illness and subsequent death of his mother in late May 2018. He was absent with depression/anxiety/low mood at various times during 2018 namely in March, April 2018 and then in July 2018. The claimant had sought treatment by way of counselling for these problems and received some counselling during the summer of 2018. He then had some further treatment by way of mindfulness towards Autumn/end of last year.
5. The respondent's representative submitted at the end of their submissions that the two people accused of the alleged acts of discrimination had left the company. The respondent's representative did not cross-examine the claimant on this issue. He said that he did not do so, because he did not think it was relevant. He was also unable to indicate when those persons had left the respondent's employment.
6. The claimant said that the respondent did not dispute that the comments had been made, which was not challenged by the respondent.
7. The Tribunal considered section 123 of the Equality Act 2010 and note that claims of discrimination should be brought within three months of the date of the complaint or such further time period as the tribunal thinks just and equitable. The Tribunal also considered section 33 of the Limitation Act 1980 and the leading case of *British Coal Corporation v Keeble* 1997 IRLR336. It noted a number of factors to be taken into account as referred to therein:- namely the reason for the delay; the length of the delay; any prejudice to the parties; the time taken by the claimant to seek professional advice; and the promptness with which he acted when he knew the facts giving rise to the complaints; as well as considering all the circumstances of the case.
8. The Tribunal finds that the claim of age discrimination and discrimination on the grounds of religion / belief are both out of time.
9. However the Tribunal considers that it is just and equitable to extend time for those claims to be heard. The Tribunal accepts that the reason for the delay was that the claimant raised a grievance about those two allegations which was in itself a proper and correct course of action to follow. There was some delay in the grievance process on the part of the respondent, namely it took almost a month for the grievance outcome to be delivered.

10. Once the grievance process, including the appeal process, had been concluded the claimant considered the steps to be taken to bring a claim. There was a delay of almost a month in the claimant contacting ACAS, which is a similar delay to the delay to the respondent delivering the outcome of the grievance hearing. It was not an inordinate delay as the claimant had not obtained any professional advice. Once the ACAS process had been completed, the claimant did act promptly thereafter to issue the proceedings.
11. The Tribunal went on to consider whether there was any prejudice to either party if it allowed the case to proceed. The respondent's representative suggested that the two people involved in the allegations of discrimination had left their employment, but in submissions he did not suggest that there was any particular prejudice to the respondent. Further, he was unable to give any details as to when those people had left the respondent's employment. The Tribunal itself does not consider that there is any prejudice to the respondent with those people having left the respondent's employment, as these matters formed part of the grievance process. There was a full grievance hearing and an appeal hearing. Accordingly, the respondent must have undertaken an investigation with those two individuals as part of the grievance process.
4. The Tribunal does think that there is a potential prejudice to the claimant in not being able to bring his claims. His delay was to enable the respondent to undertake an investigation as part of the grievance process into these matters. Further, it appears that the respondent does not dispute that these comments were made. Therefore these are legitimate matters which should be considered by a Tribunal. Accordingly for those reasons neither claim is struck out and the Tribunal will hear both claims for discrimination.

EMPLOYMENT JUDGE MARTIN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 13 May 2019**

**JUDGMENT SENT TO THE PARTIES ON
15 May 2019**

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