



EMPLOYMENT TRIBUNALS

Claimant: Mr O Sanodze

Respondent: Chris Hayter Transport Ltd

PRELIMINARY HEARING

Heard at: Reading (in private) **On:** 2 August 2019

Before: Employment Judge Gumbiti-Zimuto (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr Matt Lennon (Trainee Solicitor)

JUDGMENT

1. The Employment Tribunal does not have jurisdiction to consider the Claimant's complaints of unfair dismissal, the complaints having been presented outside the time limit for the presentation of complaints. The claim of unfair dismissal is struck out.
2. The Employment Tribunal has jurisdiction to consider the Claimant's complaints of direct discrimination on the grounds of race relating to the Claimant's dismissal. The complaints were presented outside the time limit for the presentation of complaints. It is just and equitable to consider the Claimant's complaints.
3. The Employment Tribunal does not have jurisdiction to consider the Claimant's complaint of direct discrimination on the grounds of race in relation to the Claimant's complaints other than complaints relating to the Claimant's dismissal. The complaints were presented outside the time limit for the presentation of complaints. It is not just and equitable to extend time for the presentation of those complaints.

REASONS

1. The Claimant's dismissal was on 9 June 2017. That is the effective date of termination of the Claimant's employment. On 3 July 2017, the Claimant commenced early conciliation with ACAS. On 3 August 2017, ACAS issued

him with an early conciliation certificate. The time limit for the presentation of the Claimant's complaints would have expired on 8 October 2017. The Claimant did not present his complaint until March 2018. The Claimant presented complaints of unfair dismissal, complaints of discrimination regarding the dismissal, and also in respect of other unspecified matters.

2. Mr Lennon on behalf of the Respondent has pointed out that I have to apply two separate tests: one requires me to consider whether it is just and equitable to extend time; the other requires me to consider whether or not it was reasonably practicable for the Claimant to bring the claim in the time allowed. The Employment Rights Act 1996 requires that a claimant present a complaint within three months. The Claimant has failed to do that.
3. Section 111(2) says that an Employment Tribunal shall not consider a complaint unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination. There is an escape route where, the claim is presented 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.
4. What I have to consider is whether in the Claimant's case it was not reasonably practicable for the Claimant to present his claim within three months. If not whether it was presented with a reasonable period.
5. In respect of the discrimination complaints, the time limit for presentation of those complaints is set out in the Equality Act 2010 which provides that proceedings under the Act 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. So, in respect of the discrimination complaint, I have to consider whether it is just and equitable to extend time.
6. The position in this case it seems to me is relatively straightforward. The Claimant approached ACAS in respect of early conciliation in July 2017. Although the Claimant when asked by me whether on approaching ACAS he was made aware of the time limits for the presentation of complaints said he was not able now to recall what his state of mind was at that time or whether in fact he became aware of the time limits. I am satisfied that even if the Claimant did not in fact register that information that it is more likely than not the Claimant would in the course of making the type of enquiries that he has done which involved discussing matters with ACAS and making enquiries online about his legal rights that about this case that the Claimant is likely to have become aware of the existence of time limits.
7. I note that the Claimant has been unfortunate to have suffered a bereavement at around this time. The Claimant's wife's father died and so for a short period of time, the Claimant and his wife travelled to Poland in order to deal with matters arising from that unfortunate event. The Claimant however has not put that forward as an explanation or reason for his claim being presented late on 13 March 2018.

8. The Claimant does not really provide an explanation for what happened around October and afterwards. He does not say that there was anything preventing him from actually presenting a complaint at that time.
9. This however is a slightly unusual case. Today the hearing in this specific case is the third case involving the Claimant that I have considered today. It is clear from what the Claimant has told me today that he blames his dismissal with the Respondent for the problems that he has endured in the employment that he subsequently was able to obtain through employment agencies.
10. Both those employments came to an end by in about November 2017 and in January 2018. This has caused the Claimant to pose the question in one of the cases "*What is going on between me and employers?*" and the Claimant has come to the answer that it is discrimination and victimisation against him which emanated from circumstances surrounding the dismissal from the Respondent.
11. It is important for me to emphasise that whilst that is the Claimant's thinking, there is no evidence at all on the material which is before me to suggest that there is any connection between the Claimant's dismissal by the Respondent and the problems that the Claimant suffered in his two employments which followed on from there.
12. The Claimant's explanation however is that by 13 March 2018, he was of the view that he had been discriminated by the Respondent and hence he produced his claim.
13. The Respondent says that this is a case where the Claimant has not given any explanation as to why the claim was presented late and it is a case where there was a significant delay in presenting the claim and therefore firstly, it is not possible to identify any matter which made it not reasonably practicable for the claim to be presented before the Employment Tribunal and alternatively, that in the absence of any reason being put forward by the Claimant for the late presentation of his claim, that it is not just and equitable to extend the time for presentation of the complaints in relation to discrimination, that the Respondent would be prejudiced in having to deal with the claims.
14. I do not understand it to be the case that any relevant witness is no longer employed by the Respondent or alternatively that there is any specific prejudice in relation to any particular piece of evidence that may or not be sought by the Respondent no longer being available for the respondent to answer the Claimant's allegations.
15. I agree with the Respondent that the Claimant has put forward no explanation that could lead me to conclude that it was not reasonably practicable for him to present his complaints. In respect of the unfair dismissal claims, I am satisfied that the Tribunal does not have jurisdiction to consider the complaints.
16. The Claimant has however associated, in his own mind, a link between his dismissal by the Respondent in this case and his problems in relation to the other two cases that I have dealt with this morning. I am satisfied that the reason that the Claimant brings his claim at the time that he does in March

2018 was because those suspicions had crystallised. He did what in his view was the logical thing which was to bring a claim in respect of this Respondent because they were the source or cause of the problems that he had suffered.

17. I note that what the Claimant seeks to do in relation to his complaints about discrimination, in the way that he has explained them to me today, is to go back to the beginning of his employment and complain about discrimination extending throughout his employment history. He talks about a campaign of discrimination against him, made reference to events and things being said to him over a period of time, and being treated in a way which was designed to “torture” him and to “crush” him. Those complaints are not clearly articulated in the claim form, but one can discern them. More importantly however the Claimant made clear that his complaint about his dismissal includes an allegation that the dismissal was discriminatory on the grounds of race.
18. On the other side of that coin, the Respondent contends that the reason for the Claimant’s dismissal was redundancy and that they went through a process which sought to determine who should be selected for dismissal on the grounds of redundancy and the Claimant’s performance when considered having regard to the criteria adopted by the Respondent was such that he was the person selected for redundancy and on the Respondent’s case, race played no part in it.
19. The Claimant specifically asked whether a Mr Cantwell, Diane from HR and Paul Street, were continuing in the employment of the Respondent. There was no suggestion that any of those three people had ceased to be the Respondent’s employees or that they were not available in order to give evidence in this case.
20. On balance, I am satisfied that it is just and equitable to extend the time for presentation of complaints in this case by limiting the Claimant’s case to a consideration of the reasons for the Claimant’s dismissal. I am satisfied that would meet the justice of the situation as the Claimant perceives it. I do not consider that there is any significant hardship or prejudice to the Respondent in them having to answer a claim relating to the Claimant’s dismissal even though the claim is being presented outside the time limit for the presentation of complaints. They are in a position to deal with all the Claimant’s allegations; the Claimant’s case as it is put forward is a straightforward question for the Tribunal to determine and is one of whether the reason for the Claimant’s dismissal was discriminatory or alternatively a fair reason relating to redundancy.
21. I do not consider that it would be just and equitable to expect the Respondent to respond to a series of unparticularised allegations going back to the beginning of the Claimant’s employment and in the circumstances, it seems to me that whilst it is just and equitable to extend time in relation to the complaint about the Claimant’s dismissal, it is not just and equitable to extend time in relation to the Claimant’s wider complaints about discrimination. I consider that there is little or no prejudice to the Respondent in granting an extension of time but, on the contrary, I consider that the Claimant would be left with a burning sense of injustice, even if it is eventually proved unjustified, arising from the fact that, as I have previously indicated, he sees the problems that he

has suffered in relation to his two later employments as stemming directly from the circumstances surrounding his dismissal from the Respondent.

22. So, for those reasons, I am satisfied that it is just and equitable to extend time in respect of the Claimant's complaint of direct race discrimination solely in respect of the question whether the Claimant's dismissal was discrimination.

Employment Judge Gumbiti-Zimuto

Date: 23 August 2019

Sent to the parties on: ...29.08.19.....

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