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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr H Modasia  
**Respondent:** Citibank N.A London Branch  
**Heard at:** East London Hearing Centre  
**On:** 2 March 2020  
**Before:** Employment Judge Burgher  
**Representation**  
**Claimant:** In person  
**Respondent:** Mr M Purchase (Counsel)

## JUDGMENT

The Claimant presented his complaints outside of the required time limits. The Tribunal therefore does not have jurisdiction to consider the Claimant's complaints which are dismissed.

## REASONS

1 The matter was listed before me as a preliminary hearing to consider whether the Claimant's claim for unfair dismissal was presented within the requisite time limit provided by section 111 Employment Rights Act (ERA) and/or section 123 of the Equality Act 2010.

2 Section 111 ERA states:

### **Complaints to employment tribunal.**

“(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

- (a) before the end of the period of three months beginning with the effective date of termination, or
- (b) 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.”

### **Relevant chronology and findings**

3 The Claimant commenced employment with the Respondent on 4 August 2014 as an Application Support Analyst and worked until he was dismissed 30 January 2019. The Claimant brought claims for unfair dismissal and unlawful discrimination on grounds of (i) sexual orientation, and (ii) disability by reason of anxiety and depression. The Respondent denies the Claimant's claims and stated that poor performance was the reason for dismissal. It is alleged that the Claimant was placed on performance improvement plan and was subsequently dismissed.

4 The Claimant Tribunal claims relate, amongst other things, to difficulties with his line manager Saba Chaudhry which he states commenced in 2015/2016.

5 On 4 February 2019, the Claimant presented an appeal against his dismissal. His appeal was heard on 5 March 2019. The Claimant informed me that he received the outcome of his appeal on 17 April 2019.

6 There were two potential dates for the consideration of whether the claims were presented in time, either 30 January 2019 (the date of dismissal) or 17 April 2019 (the receipt of the appeal outcome, although this was not alleged by the Claimant as being an act of unlawful discrimination).

7 The Claimant submitted a subject access request to the Respondent on 30 May 2019. He stated that he was able to contact the CAB and was able to speak to friends, some of whom had legal training during this time. He preferred to secure an internal resolution instead of pursuing Tribunal proceedings. At the same time the Claimant stated that he was suffering from anxiety and depression and this impacted on his motivation to act.

8 Mr Purchase, counsel for the Respondent submitted that the Claimant's claim was hopelessly unparticularised and assuming that the Claimant was able to establish that his last date for discrimination complaints was 17 April 2019, the Claimant would have had to contact ACAS by 16 July 2019 for his claim to be in time. However, the Claimant contacted ACAS for the first time on 22 July 2019. Incorrect details were provided on this occasion and the Claimant was required to embark upon another ACAS conciliation process which he did on 28 July 2019. He was issued EC certificate in respect of this on 28 August 2019. The EC certificate was emailed to the Claimant by ACAS on this date. The Claimant stated that he received this email but could not open the PDF attachment which was the EC certificate. This email and PDF attachment was able to be opened and displayed without difficulty before me.

9 On 5 September 2019 ACAS notified the Claimant that he would have up to a month to present his complaint.

10 The Claimant made further enquiries to ACAS regarding obtaining a copy of the EC certificate and another copy was sent to him on 20 September 2019. The EC certificate stated that it was issued on 28 August 2019. The Claimant would have known this from the content of the email he received on 28 August 2019. However, the Claimant maintained his belief that he had one month from the receipt of the certificate to bring a complaint. He therefore believed that he had one month from 20 September 2019 to bring a claim. His belief was wrong and in the circumstances unreasonable.

11 The Claimant stated that he took his time to get his claim right. He also stated that he needed legal assistance to complete the claim and submitted the claim to the Tribunal on 17 October 2019.

12 Mr Purchase stated the Ms Chaudhry, the Claimant's line manager at the time, Ms Kate Wilton, HR Manager, Ms Joanne Garnett, appeals officer had left the Respondent's employment prior to the submission of the Claimant's complaints and that it would be severely prejudiced having to locate them to seek their evidence at such a late stage.

### Law and conclusions

13 In respect of the time limits for unfair dismissal contact with ACAS was necessary by 29 April 2019 to benefit from any ACAS extension to the time limit.

14 In respect of the unlawful discrimination complaints, although no claim in respect of the notification of the outcome of his appeal was being relied on, if a generous interpretation of the Claimant's claims is made, contact with ACAS would have had to be made by 16 July 2019.

15 The Claimant did not contact ACAS until 22 July 2019. When he did this the wrong details were provided. Whilst I could consider this mistake in respect of whether it is just and equitable to extend time, for the purpose of his claims, the contact with ACAS was 28 July 2019. He then did not present his claims until 17 October 2019 which is more than any extension that would have been permitted by the ACAS certificate if it had applied.

16 The Claimant therefore presented his complaints out of time.

### Reasonably practicable

17 In relation to the ERA time provisions, the issue is whether it was reasonably practicable for the Claimant to have presented the claim in time.

18 I considered the guidance in the case of Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, CA per May LJ at paragraph 35 in respect of the test of reasonable practicability. This is also construed as assessing what is reasonably feasible or what is reasonably capable of being done. I am aware that there are numerous factors that a Tribunal can properly consider when determining whether it is reasonably feasible.

19 When considering whether it is reasonably feasible to have been done, modern methods of obtaining information and communication mean ignorance of the law is no excuse. The ignorance itself has to be reasonable. The Claimant made a subject access request, he contacted CAB and friends around him who had legal qualifications. The fact

that the Claimant did not make proper enquiries of all those around him about what his options were to bring the Employment Tribunal claim and pursue his entitlements was not reasonable.

20 I therefore conclude that the Claimant could have presented his complaint within three month period. The fact that he awaited the appeal outcome and documentation from the Respondent pursuant to his subject access request, was his choice but that does lead me to conclude that it was not reasonably practicable for him to present his claim within time. It was reasonably practicable for him to put his claim in on time but he did not.

21 Therefore the Tribunal does not have jurisdiction to consider the Claimant's unfair dismissal claim which is dismissed.

Just and equitable

22 In respect of the Claimant's disability discrimination claims, I had regard to the summary of the law regarding time limits and extension of time at paragraphs 30-41 provided by Jackson LJ in the case of Aziz v FDA which sets out a helpful summary. I also considered the guidance of Robertson v Bexley Community Centre (t/a Leisure Link) that the extension of time is the exception rather than the rule.

23 I also considered the balance of prejudice between the parties when considering whether it is just and equitable to extend time and the factors in the case of British Coal Corp v Keeble where Mrs Justice Smith held:

*"The EAT also advised that the Industrial Tribunal should adopt as a check list the factors mentioned in Section 33 of the Limitation Act 1980. That section provides a broad discretion for the Court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, inter alia, to (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action. The decision of the EAT was not appealed; nor has it been suggested to us that the guidance given in respect of the consideration of the factors mentioned in Section 33 was erroneous."*

24 I have a wider discretion under the unlawful discrimination legislation complaints and have regard to that. The Claimant did say that he was suffering from anxiety and depression and that this affected his approach to bringing a complaint. I also had regard to the important public policy reasons aimed at ensuring that matters of unlawful discrimination should be considered if the interests of justice allow. I balance that against the Claimant's significant delay in presenting his complaint following the outcome of the appeal which he was informed of on 17 April 2019. He contacted ACAS over 3 months after being notified of the appeal and six months after his dismissal. Further, a number of the Claimant's allegations extend back to 2015 relation and the Respondent no longer employs the relevant witnesses to be able to consider their potential evidence on matters.

Having balanced the matters, I conclude that the prejudice to the Respondent of having to defend the late claims outweighs the prejudice to the Claimant of not being able to pursue his claims.

25 Therefore, I do not conclude that it is just and equitable to extend time. The Tribunal therefore does not have jurisdiction to consider the Claimant's unlawful discrimination complaints.

26 The Claimant's claims for unfair dismissal and unlawful discrimination are therefore dismissed on the basis that they have been presented out of time and the Tribunal does not have jurisdiction to deal with them.

Employment Judge Burgher

5 March 2020