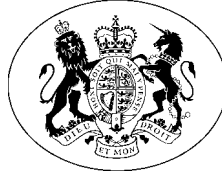


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EMPLOYMENT TRIBUNALS

Claimant

Respondents

Mr M Egbis

AND

Grosvenor Cleaning Services Limited

Heard at: London Central

On:

5 March 2020

Before: Employment Judge Russell

Representation

For the Claimant: In person

For the Respondent: Ms Paine, Solicitor

JUDGMENT

The Judgment of the Tribunal is as follows:

1. The Claimant be paid £1,986 (less tax and national insurance) such payment reflecting outstanding notice pay due to the Claimant by the Respondent following his redundancy effective 30 November 2018.
2. Subject to point 1 the Claimant's claims are all dismissed due to being out of time. The Tribunal has no jurisdiction to consider any of the claims presented and applying s.111 of the Employment Rights Act 1996 and s.123 of the Equality Act 2010 all claims are therefore struck out.

REASONS

1. This case was dealt with first at a Preliminary Hearing on 7 January 2020 in advance of a Full Merits Hearing listed for 16-22 April. The Claimant was a Mail Room Operator with the Respondent from 3 November 2018 to 30 January 2019 (this is the correct effective date of termination and not as previously assumed 22 February 2019). He was dismissed by way of redundancy. He claims this was unfair and also that he had been discriminated against due to his disability. He suffered from lower back pain and a knee injury. These claims were not

particularised then and are still not but were linked in with his redundancy e.g. in his contention his inability to lift heavy pallets containing drinks which became a factor in his unfair selection.

2. He was confused in his ET1 and his claims inadequately particularised but he had other claims, for instance for harassment and victimisation, although these are less clear than his claim to have been discriminated on the grounds of his disability (perhaps a failure to make reasonable adjustments as well as direct an unfair disability discrimination but again we have not got the specifics at this stage). He was asked at the Preliminary Hearing on 7 January to particularise his claims and amend the ET1 and it was only to the extent that he did not do so and/or the Respondent objected to the amendments and all the issues could not be agreed that it would then become necessary to have this further Preliminary Hearing listed for 5 March. Consensus was not however reached principally due to the fact the Claimant has been disengaged from the process since the first Preliminary Hearing because his solicitor Shakieki Bhatti from Elegant Solicitors has been unable through eye sight difficulties and surgery to assist the Claimant. The Claimant has felt unable or unwilling to take any action himself but his request for an adjournment through his solicitor has been refused leading to the hearing today. The solicitor did not attend and this has led to the Claimant being in some distress.

3. The position is more complicated by the late but successful application of the Respondent on 20 February to convert the Preliminary Hearing to an Open Preliminary Hearing on the grounds that the Employment Tribunal has no jurisdiction to hear the Claimant's complaints as they are all out of time. The Respondents accepted that there is still some outstanding notice to be paid but then made submissions as to the time line and it is clear from this that the claims are out of time. The effective date of termination is 30 November 2018 as stated above and his last pay date was 10 December 2018. ACAS was first approached on 25 June 2019 (and subsequently due to some uncertainty as to the name of the employer on the 2 July 2019) and the Employment Tribunal the claim was presented on 25 July 2019. The claim of unfair dismissal should have been lodged on or before 28 February and the same with the discrimination claims and the breach of contract claims on or before 10 March 2019 so the Claimant is well out of time.

4. Strangely this was not picked up at the initial stage of the ET1 presentation or at the first Preliminary Hearing on 5 January but jurisdiction remains a live issue as the Respondent's submits and having heard evidence from the Claimant I make these findings:

1. The Claimant was well out of time in presenting his claims and provides no written e.g. medical evidence to explain this delay. He was notified of the Respondent's intention to make the application to dismiss the claim on the basis of jurisdiction but provides no material evidence for the reasons for the delay albeit I recognise that his solicitor has not been present today to assist him

2. I accept that this was a stressful period for him but he did not appeal the dismissal and over a period of some time he seems to have made no adequate enquiries as to the steps that he should have taken to pursue his claim. I accept he was unable to afford and obtain legal advice until it seems Mr Bhatti took over his case on or after the ET1 had been filed through a friend who had helped him to do so in July 2019. But in the intervening period i.e. December to June 2019 he took no steps to assist himself and could have done so.
3. The Claimant made no online checks, no enquiry of CAB or ACAS even though he had talked to CAB during the redundancy process back in the late Autumn of 2018 and had access to websites of ACAS. He had also admitted that he looked at Government websites on redundancy and talked to at least one consultant as to his employment concerns, so it is difficult now for him to plead ignorance as to the steps he should have taken and given that there was some free advice available as well an ability to research his rights online. In any event the Respondent correctly identifies that ignorance is no excuse for failing to comply with the requisite time limits.
5. Applying the legal position s.111 of the Employment Rights Act 1996 provides that the complaint of unfair dismissal must be presented 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 satisfied it was not reasonably practicable for the complaint to be presented for the end of that period of three months. Section 123 of the Equality Act provides that a complaint under the Equality Act may not be brought after the end of the period of three months starting with the date of the act which the complaint relates or such as a period as the Employment Tribunal thinks is just and equitable. Clearly, there is a less stringent test in respect of the discrimination claim(s) but under both respective sections (and obviously the length of delay is a factor here) the Claimant has failed to discharge (and it is his to discharge) the burden of proving that an extension of time should be granted to him. He took no steps to comply with the Tribunal time limits.
6. I also remind myself that applying a discretion to extend time is an exception to the rule and in this case, I cannot allow the claims to proceed and they are rejected due to these reasons of jurisdiction subject to the one point with above which is that the Respondent had already accepted a contractual obligation to pay the Claimant his outstanding pay reflecting five weeks' notice due to him of a sum of £1,986 less tax and national insurance/statutory deductions.

Employment Judge Russell

Dated: 9th March 2020

Judgment and Reasons sent to the parties on:

10/03/2020

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For the Tribunal Office