



EMPLOYMENT TRIBUNALS

Claimant: Mr R Aaryan

Respondent: Reckitt Benkiser group Plc and others

Heard at: Reading **On: 18 March 2020**

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Not attending and not represented

For the Respondent: Ms K Hunt (Solicitor)

JUDGMENT ON PRELIMINARY HEARING

The claimant's complaints which relate to events before 15 December 2017 have been presented outside the time limit for the presentation of complaints contained in section 123 of the Equality Act 2010 and it is not just and equitable to extend time for the presentation of complaints.

REASONS

1. This preliminary hearing was listed, at a case management preliminary hearing on 29 April 2019, to consider whether the employment tribunal can consider the claimant's claims of discrimination on grounds of race and or religion.
2. The claimant's ET1 claim form was presented on the 12 April 2018, and taking into account the effect of Section 18A of the Employment Tribunals Act 1996 and Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2013 Regulations read together with section 123 Equality Act 2010, the time limit for bring a claim expired on the 15 December 2017.
3. The claimant complains about the rejection of 29 applications for different roles with the respondent spanning between 26 August 2015 and the 26 January 2018. The claimant's claim is in time in respect of only one of the

applications, the last made on the 25 January 2018 and rejected on 26 January 2018.

4. Employment Tribunal proceedings on a complaint of race and or religion discrimination may not be brought after the end of the period of 3 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. Conduct extending over a period is to be treated as done at the end of the period; failure to do something is to be treated as occurring when the person in question decided on it.
5. An employment tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. It is entitled to consider anything that it considers relevant. However, time limits are exercised strictly in employment cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds, there is no presumption that they should do so unless they can justify failure to exercise the discretion. On the contrary, a tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to extend time. The exercise of discretion is thus the exception rather than the rule.¹
6. Employment tribunals are not supposed to use the discretionary power to extent time sparingly. In exercising the discretion, employment tribunals must consider whether it is just and equitable to exercise it in the claimant's favour. The discretion afforded to an employment tribunal is a wide and unfettered one. A tribunal will err if it proceeds on the basis that an extension will be refused in all but exceptional circumstances.²
7. The factual basis for the consideration of this matter is set out in the respondent's skeleton argument at paragraphs 8-14 as follows:
 8. *The Respondent is a multi-national consumer goods company, headquartered in Slough. It is a producer of health, hygiene and home products. As a Global business, the Respondent has employees in 60 countries around the world and has a diverse and multi-national workforce and is committed to Equal Opportunities in the workplace.*
 9. *There is generally a high level of competition for roles with the Respondent. At the materiel time during the course of 2015 to 2018, the resources team of between 5 and 9 people dealing with resourcing at CHQ, received and considered some 35,607 applications. The first sift review of applications is made by a member of the resources team to assess whether the candidate's CV indicates that they have relevant experience for the role.*

¹ Robertson v Bexley Community Centre [2003] IRLR 434

² Malcolm v Dundee City Council (2013) UKETS/0050/13/SM

10. *The Claimant created registered four separate user ID accounts on the Respondent's online recruitment portal three in the name of Rashed Ahmed on 19 August 2015, 7 December 2016 and 9 August 2016 and a fourth in the name of Roni Aaryan on 31 March 2017. At the time the Respondent was unaware that the Claimant had registered with more than one account and was unaware that Rashed Ahmed and Roni Aaryan were the same person.*
 11. *The Claimant applied for 9 different roles through the three accounts in the name of Rashed Ahmed plus one role via an agency between August 2015 and March 2017.*
 12. *The Claimant applied for 19 roles in the name of Roni Aaryan between March 2017 and January 2018, across a wide range with a majority in finance, business/data analysis, but also in brands and marketing, HR, organisation and change management and at different grades and levels.*
 13. *Of the 29 roles applied for there were four different employers (companies within the group - RB Corporate Services, RB Brands Ltd, RB Health and RB UK Commercial Ltd), some of which businesses have since transferred following a global restructure (RB 2.0) in late 2017 into other companies within the Group; 20 different Hiring Managers; and six members of the specialist Resource and recruitment team who dealt with the Claimant's 29 applications over the period.*
 14. *Of the roles applied for, the Claimant's application for roles was variously rejected at the long list stage, at the short list stage or first stage telephone interview. On one occasion he was invited and scheduled for a telephone interview in August 2017. The relevant role was then withdrawn as a vacancy and the telephone interview was cancelled.*
8. I adopt that summary.
 9. I have concluded that the claimant's complaints about events before 15 December 2017 have been presented out of time and it is not just and equitable to extend time for the following reasons.
 10. The claimant has not attended the preliminary hearing today. The preliminary hearing was listed at a case management preliminary hearing at which the claimant was present. About 10 months after the case was listed, on the 3 March 2020, the claimant wrote to the employment tribunal applying to have the case postponed. The claimant wrote in the following terms:

"Dear Sirs, In reference to the Preliminary Hearing of claim 3305953/2018 Mr R Aaryan v Reckitt Benckiser Group Plc, on 19th March 2020, I will not be able to attend the hearing as I am currently travelling outside the country. Therefore, it would be highly appreciated if you could reschedule the date after June 2020 and let us know accordingly. Yours faithfully Roni Aaryan"

11. The application to postpone was considered by Employment Judge Hawksworth who rejected the application. She explained her reasons as follows: "The preliminary hearing is scheduled for 18 March 2020 (not 19 March 2020 as the claimant's email says). This date was set at a hearing on 29 April 2019 at which the claimant was present. The hearing will proceed on the 18 March 2020."
12. The claimant has not attended today, the claimant was not represented today, and the claimant did not provide any written representations for consideration today. I thus have not had the opportunity of hearing why the claimant says that the matters which are on their face out of time should be considered by the employment tribunal. The claimant has the burden to convince the tribunal that it is just and equitable to extend time.
13. All but one of the claimant's complaints about his application for employment were presented out of time. I agree with the respondent's contention that each application was a distinct act submitted in one of two different names by the claimant for distinct roles differing in scope and requirements for different employers and hiring managers and considered by different recruitment specialists who considered and rejected applications at different stages. Each rejection was a discrete single act. There is in my view no apparent continuing act alleged or a basis for linking the applications in such a way as to say that it is arguably a continuing state of affairs.
14. There has been a long delay, the separate acts complained of cover a period from 2015 to 2018, during which time the claimant changed his name used in applications in March 2017; complained when an interview was cancelled in August 2017; was provided with feedback in September 2017 by telephone as to why he had been unsuccessful in that and previous applications; did not bring any claim in respect of his applications and rejections and continued to apply for roles in November 2017; sought and obtained feedback in November 2017; and finally applied for a role in January 2018. The Claimant has not explained the reason for any delay in acting.
15. I also accept that the respondent is prejudiced in that potential witnesses are no longer employed by the respondent, and evidence in respect of each individual act is therefore likely to be affected by the delay.
16. The claimant can pursue those claims which are in time, relating to the final application on 25 January 2018 (rejected on 26 January 2018) and other complaints as set out in the Case management Summary.
17. The claimant's complaints which relate to events before 15 December 2017 have been presented outside the time limit for the presentation of complaints contained in section 123 of the Equality Act 2010 and it is not just and equitable to extend time for the presentation of complaints.
18. The final hearing of the claim will therefore be concerned with matters which are set out in paragraphs (8) (i) a. (x) and 8 (ii) (a), (b) and (c) in

respect of the allegation of direct discrimination. In respect of the allegation of harassment the events that are in time are those set out in paragraphs (8) (i) a. (x) and 8 (ii) (a), (b) and (c).

Employment Judge Gumbiti-Zimuto

Date: 18 March 2020

Sent to the parties on: 20 April 2020

.....
For the Tribunals Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions:

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.