



EMPLOYMENT TRIBUNALS

Claimant: Mr S Deanie

Respondent: Priority Design Services Limited (1)
Aston Martin Lagonda Limited (2)

Heard at: Birmingham (by CVP)

On: 2 September 2020 (and 14 September 2020 in chambers)

Before: Employment Judge Miller

Representation

Claimant: In person

Respondent: Ms S Holland (HR Manager)
Ms T Hand (Counsel)

RESERVED JUDGMENT

1. The claimant's claim of disability discrimination was presented outside the time limit provided for by section 123 of the Equality Act 2010.
2. It is just and equitable to extend time for the claimant to bring his claim in respect of the issue of being required to work "stand up" overtime culminating in his assignment ending on 8 July 2019 to 3 February 2020. It will be a matter for the final tribunal as to whether any alleged acts before that act form part of conduct extending over a period within the meaning of s 123 (3) Equality Act 2010.

REASONS

Introduction

1. The claimant worked at the second respondent's site as a leather trimmer. He was placed there via the first respondent from 21 January 2018 until his assignment came to an end on 8 July 2019. The claimant commenced early conciliation on 27 January 2020 and his early conciliation certificate was

issued on 28 January 2020. The claimant submitted his claim form, against the first respondent only, on 3 February 2020.

2. There was a case management hearing before EJ Butler on 14 April 2020 where the second respondent was added, case management orders were made, and the case was listed for a further preliminary hearing. That second hearing was heard by EJ Richardson on 20 July 2020 who ordered that there be a further hearing to determine the following issues:
 - a. Were all of the claimant's complaints presented within the time limit set out in S123(1)(a) Equality Act 2010 ("EQA")? If not, should time be extended on a 'Just and equitable' basis under S123(1)(b)? The claimant's employment terminated on 8th July 2019. Time for filing a notice of Early Conciliation expired on 7th October 2019; the claimant filed Notice of Early Conciliation on 27th January 2020.
 - b. If disability is not conceded (see directions below) is the claimant disabled within 86 Equality Act 2020 in respect of spinal arthritis and/or any other condition as stated in the ET1 claim?
3. The first respondent conceded on 14 August 2020 that the claimant was, from 24 March 2019, disabled and the second respondent conceded disability on 16 August 2020 so that the only issue left to determine today is that relating to the time limit as set out in paragraph 2(a) above.

Background and facts

4. The claimant resigned from his role at Aston Martin on 8 July 2019. Although there was some contact between the claimant and an employee of Aston Martin after that date, none of that subsequent contact forms part of the claimant's claim. Similarly, the claimant does not bring claims of discrimination against the first respondent in relation to anything said to be done after 8 July 2019. This is therefore the last possible date on which the claimant could have been the subject of any discrimination.
5. As recorded in the preliminary hearing on 20 July 2020, the primary time limit for bringing a claim was 7 October 2019. The claimant commenced early conciliation on 27 January 2020 and this finished on 28 January 2020. He submitted his ET1 on 3 February 2020.
6. The claimant said that he started experiencing back pain from around October 2018. After this, his claim is, in the broadest possible terms, that after a period of sickness he was not put onto light duties on his return, he was required to do a two-person job by himself and then, immediately after the death of his mother, was required to work mandatory overtime.
7. The claimant's mother was very ill and passed away on 4 July 2020. The claimant perceived the 2nd respondent as being inflexible in responding to the claimant's grief and he says he was not offered time off work – he said he was required to work overtime that week. More specifically, Andy Sutton, one of the second respondent's managers, called the claimant while he was in hospital and informed him that he would be required to work mandatory overtime the following week.

8. The claimant went back to work on the Monday, 8 July 2019 and says that he asked his manager if he could be excused from the mandatory overtime that week. He says he was told that that was not possible, and consequently left the assignment. I make no findings about this, save that it is accepted that this was the last date the claimant worked for the second respondent.
9. Approximately 5 weeks later, the claimant's uncle also passed away.
10. The claimant said that he had also been suffering with kidney stones and that he had an operation to remove kidney stones just before Christmas. Further, the claimant had been suffering with back pain for some months leading up to the end of his employment, which forms the basis of his disability discrimination claim. The claimant said that he continues to experience back pain.
11. I accept the claimant's evidence about these distressing life events. It is apparent that the claimant had experienced a number of traumatic or upsetting events in relatively quick succession.
12. The claimant said that he was in a haze in the period following the end of his employment with the second respondent brought about by depression. This had started, he said, during his employment but continued and worsened following his resignation. He said that he visited his GP during this time.
13. The notes of the GP do not record any references to mental ill health between 8 July 2019 and 11 February 2020. On 11 February 2020 the GP records matters which it is not necessary to set out verbatim, but which clearly indicate that the claimant was at that date experiencing a low mood. It is further clear from the context of those notes that the claimant has been experiencing mental health difficulties for some period.
14. I accept that claimant's evidence that he was experiencing mental health difficulties throughout the period following the end of his employment. His evidence is consistent with the GP notes of 11 February which record that he was feeling *more low* recently, suggesting that he had previously been feeling low, and that had had had negative feelings previously.
15. The claimant said that shortly after the funerals of his mother and uncle he was depressed and stressed about the whole situation. He said "Not many people who lose their mother, their uncle, their job and their health physically and mentally all in one go".
16. The claimant described himself as being in a "haze". I am not surprised. The claimant had clearly experienced a series of difficult and upsetting life events in quick succession.
17. The claimant said that his family had been trying to tell him that he could take action about his potential claims, but he had not been able to listen initially. He said he contacted a solicitor because he was trying to find a way to

address the situation that he then found himself in. he described himself as then starting to come out of a haze of depression and that he needed to address the problem, whether he won or lost. When asked why he did not take any steps in respect of his claim before October 2019, the claimant said he was not thinking straight.

18. The respondent asserted that, effectively, the claimant's mental health was not as bad as he was now asserting because there was nothing in his medical records about that until February 2020, after he had already made his claim.
19. For the reasons referred to above, I do not consider this to be determinative. The claimant was experiencing a number of issues – kidney stones, on going back pain and the consequences of two bereavements in quick succession. The fact that the claimant mentioned, or the doctor recorded, the most urgent problem at any given moment does not mean that the claimant was not then experiencing the other problems. In the context, for example, of an imminent operation for kidney it is unsurprising that the record of consultation refers to the claimant's kidney stones.
20. The claimant said that he contacted solicitors shortly before 21 January 2020 (which is when they replied) and he contacted ACAS on 27 January and did not submit his claim until 3 February – approximately two weeks from consulting a solicitor to submitting his claim. I did not hear any explanation from the claimant for this additional delay.

Law

21. The relevant legal provisions are those set out in section 123 Equality Act 2010. This provides as far as is relevant

123 Time limits

- (1) [Subject to [sections 140A and [section] 140B],] proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.

22. In *Robertson v Bexley community Centre T/a leisure link* (2003) Lord Justice Auld said “it is also important to note that the time limits are exercised strictly in employment and industrial 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. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.”

23. In *British Coal Corporation v Keeble and ors* 1997 IRLR 336, EAT it was held that the tribunal is required consider the following matters: the prejudice which each party would suffer as a result of the decision

reached, and to have regard to all the circumstances of the case, in particular:

- i. the length of, and reasons for, the delay;
- ii. the extent to which the cogency of the evidence is likely to be affected by the delay;
- iii. the extent to which the party sued has cooperated with any requests for information;
- iv. the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and
- v. the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

Conclusions

24. I consider the factors set out in *Keeble*:

- a. The length of and reasons for the delay. The last date for submitting the claim from the date that the claimant's employment terminated was 7 October 2019. The claimant submitted his claim on 3 February 2020. This is a delay of almost 4 months which is reasonably significant. The reasons for the delay are explored in detail above. The claimant had clearly experienced a number of difficult and distressing life events in short succession. He was experiencing mental ill health as a result of that which, he said, meant he was not in a position to cope with making a claim. This, in my view, is perfectly understandable from the claimant's perspective.
- b. The extent to which the cogency of the evidence is likely to be affected by the delay. Although the delay is significant, it is unlikely to impact substantially on the evidence. The issues appear to be relatively narrow and it is a regrettable fact that there is currently a long delay in every case between the issue of the claim and the hearing of the final case. In my view, the delay in bringing the claim in this case is unlikely to further impact on the cogency of the evidence. The respondent submitted that it is not possible to have a hearing because the claimant has failed to properly particularise his claim despite orders requiring him to. This might be the case, but this is a separate issue that might or might not be the subject of a separate application. Whether the claimant has complied with orders or not is not inherently linked to the reasons for the delay in bringing the claim.
- c. The extent to which the party sued has cooperated with any requests for information. This is not in issue in this case.
- d. The promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action. There was a delay in total, of just under 2 weeks between the claimant obtaining advice about his claim and submitting the claim. This included a period of two days during which mandatory early conciliation was proceeding. Having regard to the claimant's state of mind, a further period of two weeks for the claimant to gather the mental strength to make his claim was not unreasonable.

- e. The steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action. This is covered by and linked to (a) and (d). Once he had reached a place where he could cope with addressing his issues, he contacted a solicitor. Again, in the context of his ill health, the delays were reasonable and understandable.
25. I have considered the factor in *Keeble*, but the test I have to consider is that in s 123 (1) (b) and whether it is just and equitable to extend time for 4 months. In my judgment, having regard to the mental health of the claimant arising from his difficult circumstances, it is just and equitable to extend time for the claimant to bring his claim in respect of the issue of being required to work “stand up” overtime culminating in his assignment ending on 8 July 2019 to 3 February 2020. It will be a matter for the final tribunal as to whether any alleged acts before that act form part of conduct extending over a period within the meaning of s 123 (3) Equality Act 2010.

Employment Judge **Miller**

Date 14 September 2020