



EMPLOYMENT TRIBUNALS

Claimant: Mr S. N. Jamie

Respondent: British Broadcasting Corporation

Heard at: London Central
Before: Employment Judge Goodman

On: 21 September 2020

Representation

Claimant: in person

Respondent: Ms. S. Belgrove, counsel

PRELIMINARY HEARING

JUDGMENT

The claim was presented out of time and is dismissed for want of jurisdiction.

REASONS

1. This issue for this preliminary hearing is whether the equal pay claim made pursuant to sections 65 and 66 of the Equality Act 2010 was presented in time.
2. The claim was presented to the tribunal on 9 February 2020. The respondent states it is out of time and the tribunal does not therefore have jurisdiction to hear it.

Relevant Law

3. Section 129 of the Equality Act 2020, which is about enforcement of claims for equality of terms, provides:

“Time limits

(1) This section applies to—

(a) a complaint relating to a breach of an equality clause or rule;

(b) an application for a declaration referred to in section 127(3) or (4).

(2) Proceedings on the complaint or application may not be brought in an employment tribunal after the end of the qualifying period.

(3) If the complaint or application relates to terms of work other than terms of service in the armed forces, the qualifying period is, in a case mentioned in the first column of the table, the period mentioned in the second

Case

A standard case

A stable work case (but not if it is also a concealment or incapacity case (or both))

A concealment case (but not if it is also an incapacity case)

An incapacity case (but not if it is also a concealment case)

A case which is a concealment case and an incapacity case.

Qualifying period

The period of 6 months beginning with the last day of the employment or appointment.

The period of 6 months beginning with the day on which the stable working relationship ended.

The period of 6 months beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.

The period of 6 months beginning with the day on which the worker ceased to have the incapacity.

The period of 6 months beginning with the later of the days on which the period would begin if the case were merely a concealment or incapacity case.

4. What is a concealment case as defined in section 130(4) as:

.. a case where—

(a) the responsible person deliberately concealed a qualifying fact from the worker, and

(b) the worker did not discover (or could not with reasonable diligence have discovered) the qualifying fact until after the relevant day.

Factual Summary

5. The facts are not disputed. This summary is taken from the claim form, the claimant's witness statement, his bundle of documents, and an email the claimant sent to the tribunal on 28 April 2020 clarifying his position after the respondent had raised jurisdiction in its response.
6. The claimant worked for the BBC for many years in the Urdu service as radio and TV presenter. From March 2014 to June 2018 he was a Programme Development Manager. From then until made redundant on 1 March 2019 he was a Senior Presenter. He claims equal pay with another BBC employee, Ms. A. B., who worked from 2013.
7. The claimant says that in the autumn of 2018 he learned "by hearsay" that Ms AB was paid more than him. He lodged a grievance about this. There was a grievance hearing on 22 November 2018.
8. Before he learned the outcome, he was made redundant. His last working day was 15 March 2019.
9. On 19 May 2019 he received a written outcome to his grievance. The letter

is in the hearing bundle. He was told the BBC accepted that he and AB were comparators, and that she earned more than him, though the amount of her salary is not stated, but it was asserted that a “market factor” accounted for the differential. In summarising this letter in his witness statement, the claimant says the BBC: “also stated that in fact (AB) did earn more”. This conflicts with his letter to the tribunal of 28 April where he says “I only had it confirmed by the respondent in that decision on 31 October 2019 that (AB)..was indeed being paid more than me”.

10. The claimant was unhappy with the outcome and appealed on 8 June 2019. There was an appeal meeting on 10 July 2019 and he had a written decision on 31 October 2019 explaining it was not accepted there were not good reasons for the differential.
11. The tribunal has seen an email from a lay representative of the claimant’s trade union, BECTU, on 29 November 2019, seeking advice from another union officer on whether he had one month or three from receipt of the appeal outcome in which to apply to an employment tribunal. The claimant says he did not get a reply to this, but he did contact ACAS himself on 2 December 2019. He received an early conciliation certificate dated 14 January 2020, and presented his claim on 9 February.

Submissions

12. The respondent submits that the legislation is clear. The tribunal is given no discretion under section 129. In a standard case the 6 months runs from termination of employment, A standard case is one which is not concealment, stable work or incapacity. There is no suggestion of concealment, let alone deliberate concealment, of AB’s salary by the BBC. In any event the claimant knew in May 2019 that the BBC accepted the comparator was paid more, and he was out of time even by that date.
13. The claimant was told by EJ Elliott at the case management hearing on 5 June 2020 that it would be wise to get advice on the time point, and the first date listed for this hearing was postponed at his request so he could get advice. Nevertheless, he had not obtained legal advice, and explained he could not afford a barrister or solicitor and FRU had not been able to help. He explained today that he had read section 129, but it was hard for him to understand. He would not go so far as to say the BBC had *concealed* the fact that she was paid more than him. He had trusted the BBC HR department and his union and understood that he should use the BBC’s own grievance procedure. He had honestly believed his appeal would be successful, and only when the appeal failed did he consider an employment tribunal.

Discussion and Conclusion

14. The section is clear. In a standard case, proceedings must be started within 6 months of termination of employment. This claim was not started until much later.
15. The only exception that could apply here is if this is a concealment case. It is not seriously asserted by the claimant that the BBC concealed, let alone

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deliberately concealed, the information, and in any event, he was sufficiently clear as to his understanding of the facts to lodge a grievance in November 2018. (The grievance letter is not in the claimant's bundle, but it is clear from the respondent's reply that they understood his complaint was about AB being paid more). This is not a concealment case.

16. Even if there had been some deliberate concealment which he could not have discovered before his employment ended, he *did* know she was paid more when he got the 31 May letter. If he had 6 months from that date, to 30 November, he is still out of time, as he did not go to ACAS for early conciliation (which stops the clock) until 2 December 2019.
17. There was some suggestion that it was not fair that the claimant should be ruled out of time, and that the BBC or his union should have told him about time limits. In other Equality Act claims, where the time limit is only three months, the tribunal has a discretion to extend time if it is just and equitable to do so. In equal pay cases however, claimants get double the time, but the tribunal does not have a discretion.
18. The claim is dismissed because it is out of time and the employment tribunal does not have jurisdiction to hear it.

Employment Judge - Goodman

Date 21/09/2020

JUDGMENT SENT TO THE PARTIES ON

21/09/2020

FOR THE TRIBUNAL OFFICE - OLU