



EMPLOYMENT TRIBUNALS

Claimant: Mr H Ross
Respondent: Maxwells Restaurants Limited

Heard at: London Central (remotely by video CVP)
On: 18 November 2020

Before Judge: Mrs A Isaacson

Representation

Claimant: In person
Respondent: Mr P Holmes, Consultant

JUDGMENT

The Judgment of the Tribunal is as follows:

The claimant's complaints of discrimination because of his age are out of time and it is not just and equitable to extend time to allow the claims to be heard out of time. Therefore, all the claimant's remaining claims are struck out and the hearing listed for 17-19 May 2021 is vacated.

REASONS

Background

1. The claimant presented complaints of unfair dismissal and discrimination on the grounds of age on 29 March 2020.
2. At a case management preliminary hearing before EJ Wisby on 15 September 2020 the claimant clarified his claims and confirmed that his effective date of termination ("EDT") was on 16 November 2019. He also confirmed that matters listed in paragraph 12 of the order were not allegations of discrimination. These included the investigation into his complaints that took place after the EDT. Therefore, this was not a case where the Tribunal needed to consider whether there had been a continuing act of discrimination after termination. The last act of discrimination alleged was on the 16 November 2019. Consequently, the

claimant's three months primary limitation period expired on 15 February 2020.

3. The claimant did not enter into early conciliation (EC) with ACAS until 24 March 2020, as confirmed by the ACAS EC certificate. Since this was after the three months' primary time limit had expired any extension of time did not apply.
4. EJ Wisby ordered that there should be an open preliminary hearing to consider whether the claimant's complaints were presented within the time limits set out in section 123(1)(a) & (b) of the Equality Act 2010 (EqA) and if not, whether time should be extended on a just and equitable basis. These are the issues before me today.
5. The claimant withdrew his unfair dismissal claim on the basis he did not have two years continuous service.

The law

6. Section 123 of the Equality Act 2010 ("EqA") provides that a claim of discrimination may not be brought after the end 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.
7. The Tribunal has wide discretion in determining whether or not it is just and equitable to extend time and it is a wider discretion than for unfair dismissal. It should consider everything that it thinks is relevant. However, time limits should be strictly applied, and the exercise of the discretion is the exception rather than the rule. There is no presumption that the Tribunal should exercise its discretion.
8. The Tribunal should consider, when exercising its' discretion:
 - a) the length and reason for the delay, and
 - b) any prejudice to the respondent.
9. The Tribunal will consider whether a fair trial is still possible.
10. Mere ignorance of the time limit for bringing a claim for discrimination does not amount to a just and equitable reason to extend time. The question is, was the claimant's ignorance reasonable in the circumstances?

Evidence before the Tribunal

11. The respondent prepared a bundle for the hearing which included all the pleadings, the Tribunal order and a witness statement from the claimant and correspondence between the parties and other relevant documents. The claimant gave evidence and came across as an honest and reliable witness. Both parties gave oral submissions.

Findings of fact

12. As set out above the claimant's EDT and the last act of discrimination alleged occurred on 16 November 2019. The claimant told the Tribunal that on 25 November 2019 he contacted ACAS and explained the situation to one of the advisers and he was told to go back and try to see if he could work again or let it go. He was not told by ACAS about bringing a Tribunal claim or the three months' time limit. After that he contacted a couple of solicitors for their advice, but they said that the pay-out was not worth taking on the case. The claimant said that neither solicitor advised him of the time limits nor mentioned a Tribunal claim.
13. The claimant knew little about employment law at this time. He was aware from previous jobs that if he had a problem he could go to a union or go to ACAS but didn't know Tribunals existed. The claimant found out about ACAS by googling and found their number. He also found out about the solicitor firms by a google search and looking at a list of firms for advice on employment law.
14. In an email dated 3 December 2019 the claimant mentioned to the respondent "I wish for this to be dealt with promptly and I would like not to have to take further action." The claimant explained that he knew he could sue the company but didn't know how to go about it.
15. The claimant raised a grievance with the respondent and was in communication with them during the period from his dismissal to 5 February 2020 when he received the outcome to his grievance, which had not been upheld. The claimant confirmed to the Tribunal that during this period he was suffering from heart palpitations for which he was prescribed medication, and depression and spent most of his time in his room. However, he confirmed that during this time he was able to concentrate and google search on his phone or laptop and was able to communicate with the respondent and attended the respondent's premises on one occasion.
16. He then appealed against the outcome to his grievance and corresponded with Mr Solomon from the respondent. He attended a brief appeal meeting on 28 February 2020.
17. The claimant told the Tribunal that around mid - February to 7 March, due to a series of unfortunate events his mental health escalated. He was forced to leave his family home and he then attended the respondent's premises. He refused to leave and eventually, after threatening to self-harm, the police were called. The claimant was sectioned for 48 hours. He was then referred to a mental health awareness centre for two weeks, where he spoke to a member of the home treatment team, who suggested he go to the Citizens Advice Bureau (CAB). The claimant found the CAB on a website which then told him about making a Tribunal claim. When he was filling in the Tribunal claim form, he then became aware of the three months' time limit and the need for EC with ACAS. He then contacted ACAS and presented his claim on 29 March 2020. The respondent accepts that once the claimant was made aware of the three months' time limit he presented his claim promptly.

18. The claimant had not mentioned discrimination on the grounds of his age in his grievance or appeal. He became aware of discrimination when completing his claim form. He alleges that it was because he was young that the managers chose to treat him the way they did and that they would not have done so if he was older, and he had seen the way they treated older people compared to younger people.

Conclusion

19. I was reminded by Mr Holmes that although the Tribunal has a wide discretion to extend time on the basis that it is just and equitable to do so it should only be exercised on rare occasions and is the exception as strict time limits are there for a reason and should be complied with.
20. The two reasons put forward by the claimant for bringing his complaints late were that he was not capable to bring the claim in time and he was ignorant of the right to do so and of the time limits.
21. In relation to capacity the claimant confirmed that during the three months period after his dismissal, although he was low and suffering from palpitations, he was able to contact ACAS and two solicitor firms and carry out google searches and raise a grievance and correspond with the respondent.
22. The claimant does not have language issues and comes across as an articulate and able person. Although the claimant alleges that he was ignorant of his right to bring a Tribunal claim and of the Tribunal's time limits, I need to consider whether that ignorance was reasonable. Since the claimant was able to contact ACAS and two firms of solicitors through google searches, I find that he was also able, at that time, within the primary limitation period to enter into EC with ACAS and then to present his claim form in time. It was only after the primary limitation period that his mental health and circumstances deteriorated. I accept that during early March he was not capable of bringing a Tribunal claim. In reaching my decision I also take account of the fact that the respondent had notified the claimant of the outcome to his grievance by 5 February, before the expiry of the three months.
23. I conclude that it would not be just and equitable to extend time in these circumstances. The claimant's claim form was presented about six weeks out of time. The claimant was capable of presenting his claim within time and was able to contact ACAS and two solicitors within the primary limitation period. Therefore, the claimant's claims are struck out for being out of time and the hearing listed in May 2021 is to be vacated.

EJ A Isaacson

Employment Judge A Isaacson
Dated 18 November 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON
18/11/2020.

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FOR THE TRIBUNAL OFFICE