



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Leverington-Clarke**

**v**

**Islington LBC**

**Heard at:** Watford

**On:** 27 January 2021

**Before:** Employment Judge George

## **Appearances**

**For the Claimant:**

**For the Respondent:**

## **JUDGMENT**

1. The employment tribunal does not have jurisdiction to consider the claim of unfair dismissal because it was reasonably practicable for it to be presented within three months of the effective date of presentation and It was not presented within a reasonable period thereafter.
2. The claims of race discrimination , harassment and victimisation were not presented within three months of the act complained of and it is not just & equitable to extend time.
3. All claims are dismissed.

## **REASONS**

1. What was the date of act complained of?

1.1

2. What are the acts complained of?

- 2.1 Confirmed by CR that the claim presently complains about dismissal. That is presented as unfair and race discrimination claim. Para.4 p.26

alleges that C raised issue of racial discrimination that were ignored by R and this adversely affect a fair decision in relation to his appeal – para.6 “victimisation ad harassment”. Therefore potentially victimisation claim.

- 2.2 Para 9 “should not be taken as consisting the entirety of the facts upon which C relies” . relies upon events dating back to February 2018 (assault on C) – also paras 32 & 33 suggests complaint about lack of promotion for BAME staff – not particularised, not possible for R and ET presently to understand it. The incident itself said to be 12.10.2018. CR suggests that FPB and applications to amend might cure. – even if dismissal only will require consideration of events back at least to October 2018 potentially further.
3. Contended by R that the EDT was 22.5.2019. p.44 letter of dismissal. C contends for 22.06.2019. Today for first time explanation – dismissal letter refers “with the decision has been made that you should be dismissed from your post of XXX due to gross misconduct. The dismissal will take effect from the date of this letter and is with notice. C confirmed that by email. Find on 22.5.2019.
  - 3.1 C later told last day of service 22.6.2019.
4. Despite directions from IM, statement and RSA only in last days. Statement doesn’t explain this. Not seen the relevant documents/emails from HR to which C reference. Based upon the dismissal letter – once given dismissal cannot be unilaterally rescinded therefore probable that EDT was 22.5.2019 but accept for today’s purposes that C reasonable belief that 22.6.2019.
  - 4.1 Therefor should have contacted ACAS by 21.8.2019. In fact contacted on 5.12.19. accepted OOT

## 5. REASONS FOR DELAY.

- 5.1 C believed EDT 22.6.2019 – that in ET1.
- 5.2 That wouldn’t of itself mean not reasonably practicable to present. C relies upon Union Rep he says told him that time limit was 6 months.

## 6. FINDING

- 6.1 C knew the facts underlying the claim: believed suffered RRA and UDL.
- 6.2 C knew that he had the right to go to ET
- 6.3 C knew that there was a time limit.

- 6.4 C had access to union rep throughout but also advised by union solicitors. Contradiction between statement and ET1POC where says it was the union solicitors who told him wrong information about the time limit. Does not say in POC what he believed it to be. C does not have to disclose LLP matters unless chooses to do so. Chose to inform us that solicitors told him merits weak and could seek privately paying advice. Family member in December put in contact with CR and provided funds to do so. No explanation as to why that could not have happened before.
- 6.5 I do not accept that he reasonably relied upon the advice of TU rep. He had had access to solicitors – could have checked that advice – we're not told whether they advised him of the limitation date. Not given emails TU Rep to C confirming that 6 months. I reject the implication that he was not told of the time limits by union solicitors. He now believes that he was told 6 months, that's how he remembered it. But that was not a reasonable belief.
- 6.6 C describes period in life where suffered considerably because of the trauma of loss of career. Sleeping in his car May to October 2019. Lack of funds for access to internet/phonebills. Focussed upon managing on reduced income. Impacted by not being able to see his daughter.
- 6.7 There are ways to make own enquiries: internet cafes – not involve cost of monthly contract with phone
- 6.8 The impact on him of loss of career/anxiety seems to have covered the period from put on garden leave. Referred ot police investigation – i.e. prior to dismissal. Accept continued, but did not prevent conducting dismissal hearing putting in appeal and appeal hearing. Not seen his grounds of appeal but ET1 does not have to be formally pleaded. Many people simply set out their appeal grounds. He had previously made written complaint of RRA. Many people simply incorporate previous grievances. Insufficient evidence to conclude that mental health – not minimise the difficulties – meant not feasible to present claim.
- 6.9 When given correct advice did not act swiftly. 5.12.19 contacted ACAS to 19.1.2019 presented claim. Even ignoring 20.12.19 to 19.1.2020 – did not act swiftly and yet argued that acting in haste explains why the claim does not contain the necessary particulars.
- 6.10 ERA it was reasonably practicable for C to present in time. Even accepting that C believed there was a 6 month time limit that was not a reasonable belief for him to hold in circumstances where he had access to union solicitors advice; he could have made his own enquiries; he acted promptly to present his appeal and during June acted promptly to challenge the mistake about whether he should be paid notice pay of one month.

- 6.11 Even so, did not present in reasonable further period
- 6.12 EQA s.123. the real reason for delay was the belief (not based on reasonable grounds) that he had six months. He reasonably believed EDT 22.6.2019. Actually presented 19.1.2020 despite having been told by then that he was OOT. Even if were meaningful negotiations 5.12 to 20.12 – presuming that EC extension applies when did not contact ACAS within the three month period was not reasonable. S.140B(4) does not extend the time limit to one month after Day B unless the time limite would expire within that period. It had already expired on 24.8.2019. Therefore that further dealy is also material. Between Day A and Day B not to count.
- 6.13 Not reasonable explanation for the delay. Did not act promptly when knew.
- 6.14 Balance of prejudice. No denying the importance to C. deprived of career which he loved and of working in the sector because of the circumstances of this dismissal. could hardly be more important to him personally. RRA claims inherently public interest. Prejudice to R – told governors moved on which can believe. Also prejudice in meeting a claim as yet poorly understood potentially to go back further in time to October 2018 or beyond and meeting RRA claims unspecified.
- 6.15 Not persuaded by C to exercise discretion.
- 6.16
- 6.17

7.

Employment Judge George

Date: 01/02/2021

Sent to the parties on: 01/02/2021

.Jon Marlowe  
For the Tribunal Office