



EMPLOYMENT TRIBUNALS

Claimant: Mr Y Mohammed

Respondent: Impact Education Multi Academy Trust

HELD by: CVP

ON: 24 March 2021

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person **Respondent:** Ms R Blythe, Solicitor

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The correct title of the respondent is Impact Education Multi Academy Trust.
2. The claims of unfair dismissal, race discrimination and discrimination religion or belief are dismissed on the grounds that it is not just and equitable to extend time in relation to the discrimination cases and that it was reasonably practicable in the case of the unfair dismissal case for the claimant to issue proceedings within the three month period.

REASONS

1. Claims

- 1.1. Unfair dismissal
- 1.2. Race discrimination
- 1.3. Discrimination – religion or belief

2. Issues

- 2.1. Unfair dismissal - It being accepted that the claim was not lodged within three months of the effective date of termination, should a period greater than three months be extended if the Tribunal considers it reasonable, it being satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months?
- 2.2. Race discrimination and discrimination – religion or belief - It being accepted that the complaint was not made within three months of the date of the act to which the complaints relate. does the Tribunal think that it would be just and equitable to extend the three month period?

3. The law

- 3.1. The Tribunal has to have regard to section 111(2)(b) Employment Relations Act 1996 in relation to the complaint of unfair dismissal. The Tribunal has to have regard to section 123(1)(b) Equality Act 2010 in relation to the complaints of discrimination – race and religion or belief. The Tribunal in reaching its decision must in the usual manner exercise its discretion and have regard to general law on questions of time. The respondent referred the Tribunal to **Pearce v Bank of America Merrill Lynch and Others** UKEAT/0067/19/LA paragraph 23, which states that although time may be extended to allow for ACAS early conciliation this is only be possible where the reference to ACAS takes place during the primary limitation period. This of course turns out not to be the case in this case and therefore the claimant cannot take advantage of the five days of early conciliation which he would have been able to do had he referred the matter for early conciliation within the relevant time limit.

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed as a sports coach and physical training instructor. He commenced employment on 1 September 2005 and was dismissed on 11 March 2020.
- 4.2. The claimant presented his claim on 18 October 2020, over four months late in relation to the claim for unfair dismissal and the claim for race discrimination and over six months late in relation to the claim for discrimination – religion or belief.
- 4.3. The claimant entered early conciliation on 23 September 2020 and received his certificate on 28 September 2020.
- 4.4. The claimant claimed that he did not know he could make a claim to the Employment Tribunal. However in his appeal against dismissal he said on 24 March 2020 “having taken legal advice, I am happy to take this to an employment tribunal ...” Earlier than that in a telephone conversation between the claimant and a member of the human resources team of the respondent on 11 March 2020 the claimant said that he would take the case to a tribunal and there were other embellishments in the conversation. In evidence the claimant said he did not remember that

conversation. He also said he did not understand that there was a time limit. He further said that he had not obtained legal advice, which his appeal letter said he had.

- 4.5. That legal advice came from a Zaheer Hanif, a criminal lawyer, who had represented the claimant since 8 January 2020 (the date of the conduct for which the claimant was dismissed). The claimant discussed his employment rights with Mr Hanif over the period 8 January 2020 until some time in August 2020. This included advice on time limits, but Mr Hanif advised time being three months and one day after the claimant's appeal had been concluded, but of course Mr Hanif was wrong and when he found out he referred the claimant to Younis Lunat of Ison Harrison, an employment specialist.
- 4.6. In the meantime the claimant expressed a preference on 6 April 2020 for a face to face appeal, having been offered a remote one. The respondent agreed to a face to face hearing and the claimant heard no more until 25 June 2020 when he was invited to a face to face appeal on 3 July 2020. This was not convenient to the claimant and the appeal happened on 17 July 2020. On 6 August 2020 the claimant's appeal was lost.
- 4.7. The claimant was referred to Mr Lunat. The claimant had no difficulty in telling the Tribunal that he first spoke to Mr Lunat on 28 August 2020, remembering that that day was prayers. Mr Lunat told the claimant that he had three months less one day from the claimant's termination to present a complaint to an employment tribunal. Over the weekend the claimant spoke to Mr Lunat again who identified 11 March 2020 as the termination date. During the first week in September 2020 Mr Lunat, according to the claimant, took the claimant on as a client.
- 4.8. The claimant did not contact ACAS for early conciliation until 23 September 2020 but was unable to explain why to the Tribunal or indeed, after the issue of the early conciliation certificate on 28 September 2020, why he failed to present his claim until 18 October 2020. Indeed the Tribunal questioned the claimant on these points and the claimant attempted to question the evidence he had already given about the dates involving Mr Lunat, but despite the Tribunal's invitation he also failed to supply alternative dates. Suffice it to say there was no reasonable explanation as to why nothing happened between early September 2020 and 18 October 2020 save for the four or five days of early conciliation.
- 4.9. When the claimant first gave evidence about the matter he said that when he referred his claim to ACAS for early conciliation he knew he was out of time but when asked about the gap between the end of early conciliation and 18 October 2020 the claimant said he thought he was still in time. When pressed about the conflict in his evidence he described the fact that he was not out of time as being ludicrous. He based his assertion of being in time on early conciliation, but then accepted that the early conciliation certificate made no mention of time limits, so he set about stating that he had misunderstood Mr Lunat's advice, having previously explained it perfectly to the Tribunal. In the end the claimant conceded that he had been out of time at that time.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. The Tribunal found the claimant an unreliable witness and this has had an effect on how the Tribunal should exercise its discretion whether or not to extend time in respect of all claims.
- 5.2. So far as unfair dismissal is concerned it is clear from the evidence that the claimant knew of his right to go to a tribunal from the outset.
- 5.3. It is also clear that Mr Hanif gave the claimant incorrect advice from the start. It is well settled law that this of itself when it involves a solicitor may or may not make it not reasonably practicable for the claimant to meet the time limits.
- 5.4. So far as the time from appeal to the decision of appeal is concerned the effective date of termination was in March 2020 and that is the time from which time runs not the appeal decision in August 2020.
- 5.5. The deciding factor so far as unfair dismissal is concerned is what happened once Mr Lunat was instructed and the claimant's rampant failure to act decisively when clearly he knew what were the time limits. The lack of reasons for explanation for the failure to act from early conciliation in the first week of September and for the gap between the close of early conciliation and issuing the claim on 18 October 2021 are material. Further in dismissing the unfair dismissal claim as being out of time I take into account the claimant's attempts to deny the knowledge that Mr Lunat had imported to him.
- 5.6. So far as the two discrimination cases are concerned we need to take into account the longer period relating to the religion or belief claim before proceedings were issued.
- 5.7. The delay for both claims again becomes critical from the instruction of Mr Lunat until 18 October 2020.
- 5.8. The incorrect advice from Mr Hanif is not as critical in discrimination cases as it is in unfair dismissal ones but in my view it does not save the claimant because of what happened subsequently.
- 5.9. I have dealt with the question of the claimant's lack of ignorance of rights. Clearly he knew of his right to go to a tribunal and at the very least when he received the advice from Mr Lunat he knew the correct time limits.
- 5.10. I take the length of the appeal into account but at the end of the day its impact is not sufficient to override the latter stages of the matter and particularly the unreliable evidence of the claimant in that regard.
- 5.11. The words of the statute relating to discrimination include the words "just and equitable" and in exercising my discretion because of the attempts by the claimant to wriggle out of trouble when giving his evidence it cannot

be equitable taking into account all the other circumstances to extend time in either of the discrimination cases or indeed the unfair dismissal case.

5.12. All three claims are dismissed.

Employment Judge Shulman

31 March 2021

Date _____

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