EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Algis Anglickas	**v**	Amazon UK Services Limited

Heard at: Watford By CVP and Telephone **On**: 25 February 2021

Before: Employment Judge Alliott (sitting alone)

Appearances

For the Claimant: In person
For the Respondent: Mr Michael White (Counsel)

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

"**This has been a remote hearing not objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and no-one requested the same."**

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claims were presented out of time and it is not just and equitable to extend time. Consequently, the claimant's claims are struck out.

REASONS

1. This preliminary hearing was converted to an open preliminary hearing by Cloud Video Platform pursuant to a direction by Regional Employment Judge Foxwell to deal with the following matter:

> "To consider the respondent's application to strike out on the basis that the claimant has not complied with the case management orders, or the claim is not actively pursued."

2. The claimant was employed by the respondent on 29 June 2016. His employment terminated on 14 March 2018. It is the respondent's case that the claimant resigned and I have seen a completed resignation form signed by the claimant on 7 March 2018. The claimant confirmed to me that he was paid the £1,500 inducement to resign.

3. The claimant's claim form was submitted on 14 August 2018. In it he makes complaints of unfair dismissal and discrimination on the grounds of age, religion or belief, race, and disability.

4. As regards the unfair dismissal claim, it is quite clear that the claimant did not have the necessary two years qualifying service and accordingly that claim stands to be dismissed as there is no jurisdiction to hear it.

5. The last day that the claimant actually worked for the respondent was on 3 January 2018. On that date he went off sick.

6. As will become apparent, the claimant's allegations of age/race/religion and belief discrimination relate to other members of the workforce using their scanners to scan the claimant's eyes on numerous occasions in 2016 and 2017. The claimant as stated that most active scanning took place between July 2016 and September 2017, although he has referred to some individuals scanning him towards the end of 2017. At the very latest, such conduct cannot have taken place after 3 January 2018 and consequently the three-month time limit for bringing a claim based on that conduct would expire on 2 April 2018.

7. The claimant disputes that he resigned. It would appear that his case is that he filled in the resignation application form as a draft, left it in his locker and it somehow made its way to HR who then processed it. He makes complaints about his sickness statement not being accepted and asserts that he was dismissed under pressure of eye scanners/HR workers not recognising his statement of sickness/various allegations of discrimination. The claim form refers to him having a swollen knee which it is understood is the alleged disability.

8. Taking the date of the termination of the claimant's employment as the start date for calculating the disability discrimination claim, the three-month primary limitation period would have expired on 13 June 2018. The Acas certificate notification date was 14 June 2018 and consequently there is no extension of time to take that into account.

9. Accordingly, the age/race/religion and belief discrimination claims are four and a half months out of time. Further, the disability discrimination claims based on the date of termination of the claimant's employment, are two months out of time.

10. Because of the specific issues ordered to be dealt with at this preliminary hearing I go on to consider the history of the action.

11. It would appear that the claimant's claim was issued at London Central, although it has a Watford Employment Tribunal date stamp of both 8 and 14 August 2018. There is a note on file as follows:

    "This claim was transferred to Watford from London – got lost in transit. We only received it in December 2019."

12. The notice of claim was sent out to the respondent on 17 December 2019 and a response was filed by the due date of 14 January 2020. Clearly, the claimant cannot be blamed for the delay in the service of his claim on the respondent and I have apologised to him on behalf of the tribunal service.

13. Due to the lack of particularity as to how the claimant put his claim, Employment Judge Lewis made an order on 1 March 2020 as follows:

> "Employment Judge Lewis directs that no later than 23 March 2020, the claimant is to send to the tribunal and to the respondent a list of all the events which he asks the tribunal to decide were matters of age and/or disability and/or race and/or religious discrimination. The list must be typed, in numbered paragraphs, and the events listed in date order.
>
> In relation to each event in this list, the claimant must give all the following information:
>
> 1. A summary of what happened.
> 2. When and where it happened.
> 3. Who was responsible for the event.
> 4. Who else was present.
> 5. Unless obvious from the context, the basis upon which the claimant complains that the event was an act of discrimination
> 6. Who the claimant compares himself with in complaining that he has been treated less favourably on grounds of a protected characteristic.
> 7. State what is the disability, and when you informed the respondent about it."

14. That order was apparently sent to the claimant's email address but he told me that he did not receive it.

15. The order apparently came to his attention via the respondent and on 21 April 2020 the claimant emailed the tribunal indicating that he had not complied with the order because he had not received it (That email is not on case file and the information came from Mr White for the respondent).The claimant's email was clearly not on the case file, as, on 31 May 2020, Employment Judge Heal made a strike out warning on the basis that the claimant had not complied with the order of Employment Judge Lewis and

that the claims did not appear to be actively pursued. The claimant was directed by 28 June 2020 to obey the direction of Employment Judge Lewis and provide written explanations as to why he had not so far complied and why his claim should not be struck out.

16. Thereafter, the claimant sent various emails to the tribunal and the respondent. As it happens, the claimant had already indicated why he had not complied with the order of Employment Judge Lewis in his email of 21 April in which he said he had not received it.

17. On 26 June 2020, within the timescale stipulated by Employment Judge Heal, the claimant provided some information concerning his discrimination claims. It is typed but it is not in numbered paragraphs or in date order. The information provided refers to about 20 work colleagues (some named, some described) with an estimate of how many times each of them had scanned his eyes. There are a few specific dates but mostly the dates are given in wide brackets. All are in 2016 and 2017. The claimant gives two locations, namely in the Shipping and Picking Departments. The claimant refers to his disability as being a knee swelling. The allegations of discrimination are explained by pointing out that the work colleagues were of different ages/nationalities/race/religion and belief.

18. Later, on 15 July 2020, the claimant submitted a table of those allegedly involved in scanning his eyes. Further, on 5 August 2020, the claimant submitted a six-page document describing his discrimination claims by reference to certain individuals and a generic basis upon which he asserted that each of them had acted for reasons related to his age and nationality.

19. It is clear to me that the claimant was actively pursuing his claim during this period. Further, I find that the claimant substantially complied with the orders of Employment Judge Lewis and Employment Judge Heal in providing further information. In my judgment, the defects in the information provided would not be sufficient to justify striking out the claimant's claims on this ground alone.

20. As set out above, in my judgment the claimant's claims are out of time. As such it falls to be considered whether time should be extended on a just and equitable basis. I canvassed with the claimant as to whether or not this issue should be put over to enable him to prepare a witness statement to explain why he had not presented his claims in time and why he says it would be just and equitable to extent time. The claimant indicated to me that he felt he had already put in his reasons and that he would be able to explain them orally in giving evidence before me today. Consequently, and notwithstanding that the issue was not specifically highlighted for this open preliminary hearing, I decided to go ahead and deal with that issue. In doing so, I took into account the fact that the claimant has been aware of the respondent's application to strike out his claims, including on the basis that they are out of time, since March 2020. As such, the issue cannot have come as a surprise to him.

21. I have a wide discretion to extend time on a just and equitable basis. As per paragraph 5.103, IDS Employment Law Handbook (Employment Tribunal Practice and Procedure):-

> "While Employment Tribunals have a wide discretion to allow and extension of time under the "just and equitable" test in section 123, it does not necessarily follow that exercise of the discretion is a forgone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA, that when Employment Tribunals consider exercising the discretion under what is now section 123(1)(b) Equality Act, "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 the discretion is the exception rather than the rule."

22. In the exercise of my discretion I should take into account all the circumstances of the case.

23. First of all, the delay of over a year in serving the claim can in no way be attributed to the claimant's fault. Further, delays in 2020 were inevitably covid related and again cannot be blamed on the claimant.

24. The length of the delay: As recorded the discrimination claims are four and a half and two months out of time. In the context of employment law, these are substantial delays.

25. I now consider the reason for the delay. I have taken into account the fact that the claimant does not have English as his first language.

26. The claimant's case is to the effect that he was tricked or forced into resigning on 14 March 2018. Further, it is the claimant's case that he was subjected to scanning of the eyes for the second half of 2016 and the whole of 2017. All these matters of complaint would have been apparent to the claimant at the time.

27. The claimant sought to explain the delay in launching his claim on the fact that he had a swollen knee which affected his mobility. I do not accept that that is a good reason. When he did submit his claim in August 2018, he had clearly typed it and submitted it online from a computer. The claimant told me that he had gone to his local library to use a computer there. In answer to the question when did he discover that he could bring a claim, the claimant ventured May/April 2018. He said he had discovered from books in the library or browsing on the computer in the library.

28. Ignorance of one's rights is not a good reason for delay unless that ignorance was reasonable. I find that the claimant stating that he was unaware of time limits prior to about April 2018 was unreasonable. The claimant states that he had been subjected to discriminatory conduct for 18 months or so and had been made to resign against his will. I find that the claimant could and should have made the enquiries he did earlier. Even when aware of his potential claim in April/May, the claimant delayed until 14

June to contact Acas and until 14 August to issue his claim. I find that the claimant has not advanced good reasons for the delay.

29. Any delay will affect the cogency of the evidence. Whilst the delays relating to the mislaying of the file and covid are not the claimant's fault, equally they are not the fault of the respondent. Nevertheless, if this case were to proceed it would most likely be heard in 2022, six years after some of the events being alleged.

30. There will obviously be prejudice to the claimant if time is not extended as he will lose the opportunity to present his claims. Equally, the respondent would be prejudiced by extending time in being deprived of a defence.

31. Taking all matters into consideration, in my judgment it would not be just and equitable to extend time. Consequently, the claims will be struck out.

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Employment Judge Alliott

Date: 9 April 2021

Sent to the parties on: 26 April 2021

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For the Tribunal Office