



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Stuart Neill  
**Respondent:** Vinci Construction UK Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford (by CVP) **On:** 17 March 2021  
**Before:** Employment Judge Bloch QC (sitting alone)

### Appearances

For the claimant: In person  
For the respondent: Mr Matthew Sellwood, Counsel

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

**This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video (CVP) ]. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.**

## JUDGMENT

1. The claimant's claim of harassment relating to age is struck out on the basis that it is out of time (contrary to section 123 of the Equality Act 2010) and it is not appropriate in accordance with that section to extend time on the basis of it being just and equitable to do so.
2. The claimant's claim of direct age discrimination is dismissed upon withdrawal.

## REASONS

3. In December 2020 there was a preliminary hearing by telephone conducted by Employment Judge Bedeau. He decided to list this case for a preliminary hearing in order to determine the following issues:
  - 3.1 Whether the direct age discrimination and harassment related to age claims have either no reasonable prospect of success or little reasonable

prospect of success and should be either struck out or a deposit ordered;  
and

- 3.2 Whether the event relied on in the harassment related to age claim is out of time and, if so whether time should be extended on just and equitable grounds.
- 3.3 Employment Judge Bedeau recorded that he had spent some time with the claimant seeking to have him clarify the claims he had brought against the respondent.
- 3.4 Under the heading harassment related to age, the question was:
  - 3.4.1 Did the respondent engage in unwanted conduct in that on 4 March 2019 Mr Cliff Morgan, Senior Manager, said during the claimant's appeal against a final written warning and in response to the statement by the claimant that he had not had certain training, that "you've been in the company for over 40 years and should know better"?
- 3.5 If so, was the conduct related to age.
- 3.6 Is this claim out of time as the act relied on occurred on 4 March 2019 and the claim form was presented on 13 April 2020? If so, should time be extended on just and equitable grounds?
- 3.7 Under the heading of direct age discrimination, the issues were:
  - 3.7.1 Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act 2010, namely denying him training and development during his employment?
  - 3.7.2 Had the respondent treated the claimant as alleged, less favourably than it treated or would have treated the comparators, namely those of a younger age than him. The claimant was born on 28 March 1957 and had been employed by the respondent for over 46 years.
- 4 As set out above, the claimant's harassment claim related to one comment, which occurred on 4 March 2019 during an appeal against a final written warning. Given that the ET1 in this matter was not received until 13 April 2020, the claim in this regard was approximately nine months out of time. There was (except as referred to below) no suggestion that this was part of a continuing course of conduct - and that was understandable, given that it was a single comment from an appeal manager who was not then involved in the later disciplinary action which led to the dismissal. The claimant had not met Mr Morgan before the appeal hearing and never met him again.
- 5 In the witness statement for this preliminary hearing the claimant stated that as the comment was mentioned in his disciplinary appeal outcome of 20 February

2020, then it should be considered to be a continuing course of conduct. However, as submitted by Mr Sellwood, the mere mention of an historic allegation does not establish a continuing course of conduct with that allegation (especially in circumstances which the claimant was not alleging that the February 2020 disciplinary appeal or its outcome was discriminatory).

- 6 The claimant was accordingly driven to rely upon seeking a “just and equitable” extension of time. Employment Judge Bedeau at the Preliminary Hearing made it clear that the statements should be full and deal with the subjects covered by them in detail. However, the claimant provided no explanation in his written statement as to why he should be granted such an extension, despite the limitation issues being pointed out and explored in the Preliminary Hearing before Employment Judge Bedeau. That was in circumstances in which (a) the burden of proof rested upon the claimant and (b) an extension of time is the exception rather than the rule.
- 7 I invited the claimant to give evidence on the point if he wished but he did not take up the opportunity. He appeared to accept that if there was no “renewal” of the alleged discriminatory comment by its reference in the disciplinary appeal or its outcome, he would not be able to proceed with this part of the claim.
- 8 The claimant was not able to provide any further explanation as to the delay. He said that he was simply not aware of the time limit. When he later came to consider presenting a claim relating to his dismissal, at that stage he took advice from a CAB. There was no reason put forward as to why he did not seek that advice at an earlier stage in relation to what he said that he believed to be intimidatory and discriminatory remarks.
- 9 There are circumstances in which ignorance of the law can take be taken into account. It is generally where the ignorance arises is reasonable in the circumstances. In this case the claimant did not put forward any reasons as to why his lack of knowledge (as he alleged) was excusable. He had been in work for some 40 years and must have been aware of employment tribunal claims being made. Further, it is common knowledge that employment tribunal claims must be brought within a fairly limited period of time.
- 10 In any event, it was clear that the claimant did not regard himself as particularly prejudiced by not being able to bring this part of the claim. He was fairly relaxed about proceeding with it.
- 11 I am conscious that the delay in itself not overruling factor but as Mr Sellwood submitted, the starting position is that claims are to be brought within the appropriate time limit and that extensions of time are the exception rather than the rule.
- 12 I was struck by the fact that in the witness statement the claims complained of amounting to harassment appeared to go further than the statement explained to Employment Judge Bedeau. That indicates that the matter may not be that straightforward. It does seem unfair in the circumstances that the respondent should be required to call evidence from Mr Morgan to deal with this point which

was raised as a complaint at such a late stage. Further, the hearing may well be somewhat shorter if the age harassment claim (and discrimination – as to which see below) is not part of it.

- 13 Therefore, looking at all the factors, including considering the balance of prejudice to the parties, I concluded that I should not extend time for the presentation of this claim, especially being so substantially out of time.
- 14 In so far as concerns the direct age discrimination claim, this can be taken quite shortly. The respondents put forward a number of comparators of not dissimilar age to the claimant and produced their records. The bundle for the hearing showed the amount of training which they had undergone that could be compared with the training which the claimant had undergone especially in the last three years of his employment about which he made particular complaint (in this regard). The claimant told me that he had been trying to extract this information for some time from the respondent but that now that he had seen it, he was satisfied that he should withdraw his claim in this regard. He said the following (which I read back to him and he confirmed as accurate):

“Having seen the records of the training of the other named persons (named in the evidence of Mr Collyer) I now accept that we all had the same training. I am now content to drop the claim of age discrimination”.

- 15 For the avoidance of doubt, the claimant confirmed to me the named comparators whose documents appeared in the bundle, were appropriate comparators for the purpose of this claim.
- 16 Accordingly, I dismiss the age discrimination claim upon withdrawal by the claimant.
- 17 I then turn to consider case management direction for the hearing. Some discussion ensued between the parties as to whether or not the time estimate should be reduced from 3 days to 2 days but, given that estimate includes both liability and remedy and the claimant is a litigant in person, it was decided to keep the estimate at 3 days. Of course, if the claim can be finished within 2 days, so much the better but there is no prejudice to either of the parties in keeping that listing. However, the claim should now be listed before a single judge.
- 18 I made the following directions by consent.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules of Procedure**

#### **1. Complaints and issues**

- 1.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set

out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

**2. Documents**

- 2.1 On or before **28 April 2021**, the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of these documents together with a list of documents to be provided by photocopy.
- 2.2 For the avoidance of doubt, disclosure by the claimant should include all documents relevant to remedy.

**3. Final hearing bundle**

- 3.1 By **26 May 2021**, the claimant shall inform the respondent which documents he wishes to be included in the bundle, which documents he intends to be used at the final hearing.
- 3.2 By **9 June 2021**, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files ("bundle"), and provide the claimant with a 'hard' and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case and should only include the following documents:
  - the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
  - documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

**4. Witness statements**

- 4.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **7 July 2021**. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The

claimant's witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

5. **Final hearing preparation**

5.1 **On the working day immediately before the first day of the final hearing** (but not before that day), by **12 noon**, the following parties must lodge the following with the Tribunal:

5.1.1 Two copies of the bundle(s), by the respondent;

5.1.2 Three copies of the witness statements by whichever party is relying on the witness statement in question;

5.1.3 three hard copies of any written opening submissions / skeleton argument, by whichever party is relying on it;

6. **Other matters**

6.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.

6.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.

6.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.

6.4 **Public access to employment tribunal decisions**

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

6.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**

6.6 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

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**Employment Judge Bloch QC**

Date:26 April 2021

Sent to the parties on:

...04/05/2021.

For the Tribunal:

...THY.....