



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Agbemenyah

**Respondent:** (1)The Management Committee of Brent River College  
(2) London Borough of Brent

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford Employment Tribunal by CVP

**On:** 26 April 2021

**Before:** Employment Judge Tuck QC

### Appearances

For the claimant: In person.

For the respondent: Mr T Wilding, counsel.

## Judgment

1. The Claimant is awarded the sum of £1,766.88 as a redundancy payment.
2. The claimant's claim for unlawful deductions from wages is dismissed; it was presented outside the statutory time limit and it had been reasonably practicable for the claimant to have presented the claim in time.
3. The claimants claim for harassment related to his race is dismissed; it was presented outside the statutory time limit, and it is not just and equitable to extend that time limit.

### REASONS:

1. By an ET1 presented on 13 August 2020, following the issuing of an ACAS certificate on 14 July 2020, the same day on which early conciliation commenced, the claimant presented claims for redundancy, arrears of pay, breach of contract, and the Claimant says "bullying and harassment" – though he did not indicate in the ET1 any claim of discrimination. He gave his job title as "Data Manager / ICT

Centre Support”, and the dates of his employment as 20 June 2016 to 24 January 2020.

2. Today’s hearing has been listed to consider the Respondents’ applications that the claim be dismissed on the basis that it was presented out of time, or for a strike out order or alternatively a deposit order as they said it had no, or little prospect of success.

**Claims:**

3. The claimant clarified his claims in this matter as follows:
  - a. A claim for **redundancy pay**.

All parties accept that this was presented within in the extended time limit provided for in s 164[5] of the Employment Rights Act 1996 (“ERA”), ACAS EC having taken place before six months following the effective date of termination, and the claim form having been presented within a month thereafter. The Respondent’s position has consistently been that it is ready and willing to pay this sum, but wants the claimant to confirm the account details into which payment is to be made.

- b. A claim for **unlawful deductions from wages** for the period from 24 January 2020 (when his employment as a data manager / ICT centre support ended) until March 2020, during which period he was still a “caretaker”.

This complaint, under part II of the ERA will be considered, under s23(4) ERA if it was presented within three months of the deduction complained of (subject to extensions afforded by the ACAS EC process), unless it had not been “reasonably practicable” to have presented it within that period, if it was presented within such further period as was reasonable.

- c. Bullying and **harassment** – the claimant says he was harassed because of his visa conditions. I understood this – and he confirmed it - a claim of harassment related to his race, being Ghanaian, under section 26 of the Equality Act 2010 (“EqA).

Section 123 EqA also provides for a three month time limit from the date of the act complained of, (subject to extensions afforded by the ACAS EC process), though complaints may be considered if presented thereafter if it is “just and equitable” to extend the time limit.

**Facts**

4. The claimant gave evidence, having taken an affirmation.
5. The First Respondent is a maintained Community Pupil Referral Unit in the London Borough of Brent. The Claimant was employed from 1 November 2016 (the earlier period of employment being in a security role) - he says as a “data manager / ICT Centre Support”, and the Respondent says as a data analyst – manager/ ICT/ site support” role.

6. The claimant is a citizen of Ghana, and the Second Respondent applied for a visa on his behalf which was subsequently issued by the Border Agency.
7. It seems that by the end of 2016 the focus of the claimant's role altered to a site manager/ caretaker role, but he was not consulted about this or issued with an amended employment contract.
8. The claimant alleges that he frequently asked the Headteacher for formal contractual documents which were not provided; this is the basis of his claim of harassment related to his visa situation, and therefore his race.
9. On 1 November 2019 the First Respondent launched a consultation into the restructure of its support team. The proposal was to delete the role of Data /Site manager (held by the claimant) and to replace it with a new role of caretaker. By letter dated 4 December 2019 the claimant was given notice of redundancy with effect from 24 January 2020; he was told that he could apply for the caretaker role but this was likely to impact on his eligibility for a visa. The claimant did not apply for the caretaker role.
10. The respondent agrees (and always has) that the claimant is due a redundancy payment – the respondent says that the claimant has not confirmed his bank details despite numerous requests. It is apparent from the ET3 that the Claimant was asked to sign a document before receiving his redundancy pay, but he did not do so as he feared this might impact on complaints he wanted to preserve.
11. On 23 January 2020 the claimant wrote an email when supporting a colleague's appeal against redundancy; the first respondent considered that email raised issues which effectively amounted to a grievance. The claimant confirmed he did want to pursue a grievance, and Martin Coopey was appointed in February 2020 as an external investigator. By an email dated 14 February 2020, which the claimant acknowledged receipt of on 18 February 2020, the claimant was sent the First Respondent's grievance policy, and agreed to attend an investigation meeting.
12. It is not clear to me why the claimant contends that the 'caretaker' aspect of his role continued until March 2020, nor why he says it ceased at that date. He did not attend work after 24 January 2020, and accepts that his "data/ site manager" role ended on that date.
13. By letter dated 12 July 2020 Mr Terry Hoad, chair of the First Respondent upheld part of the claimant's grievance concerning the alteration of the content of his role and late /inaccurate particulars being given, but did not find substantiated harassment allegations. The claimant appealed against the outcome. Before that appeal was scheduled, the claimant:
  - a. Got an ACAS EC certificate on 14 July 2020
  - b. Submitted his ET1 on 13 August 2020
  - c. Wrote to Mr Hoad of the Respondent on 21 August 2020 saying that while the grievance appeal hearing had not yet taken place, he had put in his

claim form to the ET given the scope of that hearing did not permit for the £85,000 compensation he was seeking.

14. I asked the claimant why he did not present his complaint until 13 August 2020, to which he answered:

“I first approached ACAS in April, and thereafter waited for a response. Then I sought union advice –they told me I had six months to bring a complaint because of redundancy. There was also an internal grievance and appeal procedure going on”.

The claimant explained that he was a member of Unison until August 2019; thereafter he joined the GMB in January 2020 after receiving notice of redundancy in November 2019. He also received some advice and help from an NEU representative in 2020, and indeed was told by an NEU official that the time limit for redundancy claims was six months. This prompted the claimant to ensure that he received an ACAS certificate in July prior to the six month anniversary of the termination date of 24<sup>th</sup> Jan, and that he presented his ET1 within a month thereafter.

15. In cross examination the claimant accepted that the single post of data/site manager was redundant in January 2020, and he could have gone to ACAS and indeed put an ET1 form in, in February 2020. He said the reason he had not done so was because there was an investigation - but he knew from the time he read the grievance policy, that no internal process would afford him the compensation he sought. He could not recall receiving the email of 14 February 2020 sending him the grievance policy. The claimant stated that he paused bringing a claim awaiting the investigation report – he received this on 12 July 2020.

16. As to his complaints of harassment, the claimant said that he suffered adverse comments in 2016, 2017, 2018 and 2019. He said he had not received effective support from UNISON, and said he lacked the means to seek private legal assistance.

17. The claimant mentioned suffering a period of sickness absence due to stress; the ET3 said this ended on 6 January 2020; whereas the claimant told me he thought it was a little later, he confirmed he was not suffering from ill health at the date of termination or immediately thereafter.

#### **Submissions from Mr Wilding:**

18. Mr Wilding submitted that it was plain that the claimant could have presented his claim sooner than he did - presentation on 13 August 2020 was a significant period out of time. He said that any ‘arrears’ that he thought he was owed because he thought he was still the caretaker until February/ March – should have been presented in May, and the last act of discrimination alleged in the claim form appeared to be from August 2019. The claimant failed to provide any reason, let alone good one, for the time limit to be extended on the basis it was just and

equitable. Mr Wilding said there would be prejudice to the Respondents if they had to face allegations going back to 2016 as memories inevitably fade. In any event he submitted that the claims enjoyed no prospect of success in relation to any of these claims.

**Claimant's submissions:**

19. The claimant said he believed his claim was in time when I brought the complaint to ACAS; he said "I was advised I had 3 months to bring a complaint to ACAS – and I did by April – within 3 months from 24 January 2020. I was also told I had 6 months to bring a redundancy claim. So I got my ACAS certificate in July 2020." He concluded his submissions explaining that he had suffered a breach of contract, bullying and harassment so the time limits should be extended to allow the substantive claims to be heard.

**Law:**

20. The statutory time limits for the three claims are set out in paragraph 3 above.

21. The claim of unlawful deductions from wages involves consideration of whether it was "reasonably practicable" to have presented the claim in time.

22. In relation to the claim of harassment brought by the Claimant, the relevant time limit is set out in s.123 of the Equality Act 2010, and if the claim is presented outside the primary limitation period, the tribunal may still have jurisdiction if, in all the circumstances, it is just and equitable to extend time.

23. The claimant bears the burden of persuading the tribunal that it is just and equitable to extend time. There is no presumption that time will be extended. I have been referred to the case of **Chief Constable of Lincolnshire Police v Caston** [2010] IRLR 327, in which this principle was again set out by the Court of Appeal, at paragraph 26

"The burden of persuading the tribunal to exercise its discretion to extend time is on the complainant".

Lord Justice Sedley held:

"There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal in the EAT is a well known example) policy has led to a consistently sparing use of the power. This has not happened and ought not to happen in relation to the power to enlarge the time for bringing ET proceedings."

24. The tribunal takes into account anything which it judges to be relevant and may form and consider a fairly rough idea of whether the claim appears weak or strong. It is generally more onerous for a respondent to be put to defending a late weak claim and less prejudicial for a claimant to be deprived of such a claim.

25. Most recent guidance from the Court of Appeal as to the application of the 'just and equitable' test is found in **Adedeji v University Hospitals Birmingham NHS Trust** [2021] EWCA Civ 26. I have had regard to the guidance at paras 36-38, and in particular the direction that:

“[The] best approach for a tribunal in considering the exercise of the discretion under s123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular “the length of and reasons for the delay”.

### **Conclusions on the issues.**

26. The claim for redundancy pay was presented in time; it has at all times been accepted by the Respondent, which has been waiting for payment details from the claimant. I proposed this was best dealt with by giving judgment for the agreed sum today, a course consented to by Mr Wilding. The claimant is hereby awarded the sum of £1766.88.
27. It was reasonably practicable to have brought a complaint for unlawful deductions from wages for the period of 24 January 2020 until March 2020 within three months of the end of March, particularly as the claimant was receiving advice from a trade union, and in fact did approach ACAS in April 2020. I note that during that period of time he was able to express himself in writing and orally in the course of his grievance email and meetings.
28. The claimant's complaint of harassment related to his race is out of time. The last act of which he complains appears to have been in August 2020, although in cross examination he did contend that the matter continued until 24 January 2020. Even taking that date of termination as the last date on which harassment could have occurred, the claims is five months out of time.
29. It is not just and equitable to extend the statutory time limit. I have had regard to the circumstances as explained to me by the claimant.
- a. He knew of statutory time limits – which is why he went to ACAS first in April 2020, and then again in July 2020 to ensure his redundancy claim was in time.
  - b. He knew that he could not achieve a financial remedy through the grievance process as soon as he read that policy – which was sent to him on 14 February 2020 by email – which he confirmed having received on 18 February 2020.
  - c. The claimant had access to union advice at all relevant times, and knew that time limits applied to the ET, and that he needed to go to ACAS prior to presenting a complaint.
  - d. He knew that an internal processes continuing did not prevent a complaint to the ET – and indeed wrote expressly to Mr Hoad of the Respondent on 21 August 2020 saying that while the grievance appeal hearing had not yet taken place, he had put in his claim form to the ET

given the scope of that hearing did not permit for the £85,000 compensation he was seeking.

30. In the circumstances of finding the claims to be out of time, I have not had determined the deposit or strike out applications. I would have been entirely satisfied that the claim of unlawful deductions should have been struck out as showing no prospects of success. The position in relation to any allegations of harassment was less clear as full particularization may have been needed.

---

**Employment Judge Tuck QC**

26 April 2021

Sent to the parties on:

17 May 2021

.....

For the Tribunal:

THY

.....