



## EMPLOYMENT TRIBUNALS

*Claimant*

*Respondent*

Mr P Cinca

AND

CBRE GWS Limited

### OPEN PRELIMINARY HEARING

HELD AT: London Central

ON: 17 May 2021

BEFORE: Employment Judge Brown (Sitting alone)

***Representation:***

For Claimant: In person

For Respondents: Mr Holloway, Counsel

### JUDGMENT

1. The Claimant's age and race discrimination claims against the Respondent were brought out of time. It is not just and equitable to extend time for their presentation. They are therefore struck out because the Tribunal does not have jurisdiction to consider them.

### REASONS

Preliminary

1. By claim number 2203341/2020, presented on 8 June 2020 the Claimant brought a complaint of unfair dismissal against the Respondent, his former employer. By claim number 2206576/2020, presented on 7 October 2020, the Claimant brought complaints of unfair dismissal, age and race discrimination against the Respondent.

2. At a Preliminary Hearing on 7 April 2021, Employment Judge Pearl ordered that the two claims should be considered together. Two other complaints were dismissed as duplicates.

3. Employment Judge Pearl said that the race and age discrimination complaints in the Claimant's claim presented on 7 October 2020 were presented out of time, in that there was no act extending over a period ending within the 3 (or 4) months before the presentation of the claim. EJ Pearl therefore listed a Preliminary Hearing to determine whether time should be extended for the Claimant's race and age discrimination complaints, or whether they should be struck out because they were presented out of time.

4. That hearing took place before me on 17 May 2021. It was agreed, at the Preliminary Hearing that the issues for me to determine were:

(1) Whether it was just and equitable to extend time in relation to the race and age discrimination complaints.

5. The Claimant had prepared a brief witness statement for this Preliminary Hearing.

6. I heard evidence from the Claimant and submissions from both parties. There was a Bundle of documents.

#### Findings of Fact

7. The Claimant's discrimination claims against the Respondent, for the purposes of this Preliminary Hearing, were:

a. Direct age and race discrimination.

8. The Claimant first contacted ACAS for Early Conciliation on 27 April 2020. An ACAS EC certificate was first issued on 9 June 2020. The Claimant presented his first claim against the Respondent thereafter, but it did not include claims for race and age discrimination. A second period of Early Conciliation started on 14 September and ended on 25 September 2020. The age and race discrimination claims against the Respondent were presented on 7 October 2020.

9. At the hearing before EJ Pearl, EJ Pearl ordered the Claimant to provide further particulars of his age and race discrimination complaints. The Claimant did so on 26 April 2021.

10. The allegations of race and age discrimination are serious – they include allegations that the Claimant was repeatedly abused and sworn at because he was Romanian, including being called a “f...ing Romanian” on a number of occasions, as well as being repeatedly mocked for being “too old”. They include an allegation that the Claimant's manager, Gerard Kelly, made false allegations against the Claimant, which led to disciplinary action against him.

11. The Claimant does not, however, say that his subsequent dismissal, on 6 February 2020, was an act of discrimination.

12. The Claimant told me, and I accepted, that the alleged discrimination started in July 2016, when Mr Kelly started to work for the Respondent. The Claimant agreed that all the allegations predated the Claimant's suspension on 22 February 2019.

13. The Claimant told me that he knew that Mr Kelly's discriminatory behaviour towards him was unacceptable. He said that he did not complain to the Respondent about it because he had made complaints to other managers previously and nothing had been done about them.

14. The Claimant told me that he did not consider bringing an Employment Tribunal claim because he did not even know that a grievance process existed until he brought a grievance.

15. It was put to the Claimant in cross examination that he could have investigated ways of making a complaint. The Claimant said, "I didn't know and I didn't want to know – I just wanted to get on with my work."

16. The Claimant did bring a grievance on 4 November 2019, p108. He did not raise discrimination allegations in it. At the top of his grievance letter he said, "In accordance with the company Grievance procedure and the provisions of the ACAS Code of Practice on Grievance and Disciplinary Procedures issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992, I am writing to advise you that I would like to raise a formal grievance..", p108.

17. The Claimant told me that he had done some research on the internet into grievances and had found these legal terms. He said that his union had confirmed that he should bring a grievance.

18. The Claimant was a member of Unite the union from before 2016 and throughout his employment with the Respondent.

19. He agreed that he had not sought advice from Unite about his allegations of discrimination. However, he had been advised and assisted by Unite from the time he was suspended on 22 February 2019, until his unsuccessful appeal against dismissal.

20. The Claimant was given advice by Unite about bringing a claim to the Tribunal in February 2020.

21. He told me that he had been disappointed in the assistance given by Unite and that he felt that they had let him down.

22. The Claimant sought legal advice from solicitors in about September 2020, which led to him bringing the discrimination claims.

23. The Claimant pointed out, in submissions, that the disciplinary processes had gone on for a very long time before he was eventually dismissed. The Claimant said that he had raised the facts of the discrimination in his first claim. On looking at the first claim, I did not consider that he had.

### **Relevant Law**

24. By s123 *Equality Act 2010*, complaints of discrimination in relation to employment may not be brought after the end of

- a. the period of three months starting with the date of the act to which the complaint relates or
- b. such other period as the Employment Tribunal thinks just and equitable.

25. Where a claim has been brought out of time the Employment Tribunal can extend time for its presentation where it is just and equitable to do so. In *Robertson v Bexley Community Centre T/a Leisure Link* [2003] IRLR 434 the Court of Appeal stated that there is no presumption that an Employment Tribunal should extend time unless they can justify a failure to exercise the discretion. Quite the reverse; a Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.

26. In exercising their discretion to allow out of time claims to proceed, Tribunals may have regard to the checklist contained in s33 Limitation Act 1980 as considered by the EAT in *British Coal Corporation v Keeble & Others* [1997] IRLR 336. Factors which can be considered include the prejudice each party would suffer as a result of the decision reached, the circumstances of the case and, in particular, the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has cooperated with any requests of information, the promptness with which the Claimant acted once he or she knew of the facts giving rise to the course of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

### **Time Limits – Discussion and Decision**

27. Taking into account the facts and relevant law, I did not extend time for the presentation of the Claimant's complaints against the Respondent. They had all been brought out of time.

28. The time limits for bringing claims in Employment Tribunals are short – 3 months, and the delay in bringing this case was very lengthy, many times in excess of the statutory limit. The primary time limit for bringing a claim (or contacting ACAS) would have expired on 21 May 2019. The Claimant did not

bring his claim until October 2020, about 16 months after the expiry of the primary time limit for bringing a claim. The Claimant first contacted ACAS in April 2020. Even that was 14 months after the last alleged act of discrimination.

29. The Claimant did not act promptly when he knew of the facts giving rise to the claims. From the Claimant's evidence, he knew about the acts of discrimination when they occurred, but decided that he would not investigate whether he could make a complaint. He told me that he just wanted to get on with his work.

30. The Claimant was a union member throughout his employment with the Respondent, but did not seek advice from the union concerning the discrimination complaints. He was advised by his union about bringing a claim to the Tribunal in February 2020, but did not bring his discrimination complaints until 7 October 2020.

31. The Claimant was capable of undertaking research into his rights – he did so in 2019 when he submitted his grievance. In it, he referred to the "ACAS Code of Practice on Grievance and Disciplinary Procedures issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992."

32. The Claimant was therefore able to undertake appropriate internet research into his legal rights and he had union resources available to him at all relevant times. There was a very substantial delay in bringing the claim and there were not good reasons for this.

33. I considered that there would be substantial prejudice to the Respondent if I extended time for the claims. The allegations against the Respondent are primarily oral allegations, without witnesses. The full particulars of them were provided by the Claimant in April 2021. Some of the allegations were already nearly 5 years ago. Even the delay of 15 months in bringing the claim would inevitably affect the cogency of the Respondent's evidence regarding the mostly oral allegations.

34. The lengthy disciplinary and dismissal processes did not prevent the Claimant from bringing a claim earlier than he did. The Claimant conducted research into employment law during those processes.

35. It would be unjust to the Respondent to require it to deal with very historical allegations where the Claimant has failed to give good reasons why time should be extended.

36. It was not just and equitable to extend time for presentation of the claim, which was presented very much out of time.

37. The Tribunal has no jurisdiction to hear the Claimant's claim and it is struck out.

**Preliminary Hearing**

38. A Preliminary Hearing will be listed to consider whether the Claimant had brought a protected disclosure detriment and automatic unfair dismissal claim in his first claim. I have prepared a separate case management discussion preliminary hearing record in respect of this.

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Employment Judge Brown

Dated: ...20 May 2021.....

Judgment and Reasons sent to the parties on:

.21/05/21.

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For the Tribunal Office