EMPLOYMENT TRIBUNALS

Claimant: Mr Anthony Terence-Hughes

Respondent: Joe & The Juice UK Ltd

Heard at: Croydon (remote public hearing via CVP)

On: 11 May 2021

Before: Judge Brian Doyle

Representation
Claimant: Not in attendance or represented
Respondent: Ms Heidi Watson, solicitor
Ms Nafeesa Hussein, solicitor

JUDGMENT

Acting in accordance with rule 47 of the Employment Tribunals Rules of Procedure 2013, the Tribunal's judgment is as follows:

1. The correct title of the respondent is Joe & The Juice UK Ltd and the title of the proceedings is amended accordingly.

2. The claim has not been presented in time and there is no basis upon which time may be extended on a just and equitable ground.

3. The claim is dismissed.

REASONS

1. Despite notice of this preliminary hearing having been provided to the claimant, he was not in attendance or represented at it.

2. The respondent's representatives have informed me that he has not replied to their communications with him. Similarly, the tribunal has had no communications from him since his claim was presented. In particular, the claimant has not participated in any pre-hearing case management preparation. The signs are that the claimant is not pursuing his claim.

3. In the circumstances, having considered the materials and information available to me (including the ET1 and ET3), I have proceeded in accordance with rule 47 of the Employment Tribunals Rules of Procedure 2013. The rule provides that if a party fails to attend or to be represented at the hearing, the tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

4. I have not made inquiries of the claimant given what the respondent's representatives have told me above. I have proceeded with the hearing. The respondent's representatives assisted me in understanding the possible scope of the claimant's case and the respondent's position in relation to it. I have not heard any evidence and I make no findings of fact at this preliminary hearing.

5. This hearing was originally a private preliminary hearing for case management purposes, but it had been converted to a public preliminary hearing to consider whether the claim was in time and, if not, whether time might be extended.

6. Taking the claimant's case at its highest, he complains that his dismissal on 23 March 2020 was an act of sex discrimination. He further claims that the respondent's failure to respond to his communications about his dismissal after that date and until 8 June 2020 is also an act of post-employment sex discrimination. He does not particularise the legal basis of his claim in any great detail, save to suggest that female employees were not dismissed at the time he was dismissed. He does not explain how his post-employment complaint amounts to discrimination on the ground of his sex (so as to fall within section 108 of the Equality Act 2010).

7. The respondent's case is that with the enforced closure of bars and restaurants in March 2020 as a result of the Covid-19 pandemic, it was forced to make redundancies across its chain of juice bars and coffee shops. Such was the impact of the pandemic (and the resulting government measures) on its business, it had little or no choice but to make immediate redundancies. It decided that it could not furlough the redundant employees because there was doubt as to when any government payments under its furlough scheme would be paid. It decided to make all employees, both male and female, who were within their 6 months probationary period redundant and applied the last in, first out (LIFO) principle for selection in respect of redundancies generally.

8. The claimant was within his probationary period, having commenced his employment on 16 or 19 February 2020. He was made redundant along with other employees, both male and female. The respondent retained a core group of employees based upon length of service.

9. The respondent says that it did not receive any post-employment communications from the claimant, whether in the form of an appeal, complaints, grievances or otherwise, and that it did not communicate with him on 8 June 2020. He is put to proof of these matters.

10. The claimant contacted Acas under the early conciliation scheme on 8

September 2020. An Acas early conciliation certificate was also issued on 8 September 2020. The ET1 claim was also presented to the tribunal on 8 September 2020.

11. Section 123(1)(a) of the Equality Act 2010 provides that a complaint to an employment tribunal under section 120 of that Act (this is such a complaint) may not be brought after the end of 3 months starting with the date of the act to which the complaint relates. However, the tribunal may extend time on a just and equitable basis under section 123(1)(b). Conduct extending over a period is to be treated as done at the end of the period (section 123(3)(a)). Failure to do something is to be treated as occurring when the person in question decided on it (section 123(3)(b) as explained in section 123(4)). This is all subject to any extension of the time limit under section 140B to facilitate the Acas early conciliation scheme.

12. If the claimant's complaint were to be solely about his dismissal, the primary time limitation period would expire on 22 June 2020. Time is not capable of being extended under section 140B because he did not contact Acas until 8 September 2020, which is outside the primary time limit.

13. If the claimant relies upon the respondent's alleged failure to respond to his alleged post-employment communications about his dismissal (either as a free-standing complaint or as part of conduct extending over a period that also embraces his dismissal), then it would be necessary to identify the date of that alleged failure or the date that is the end of that period. That would require evidence from the claimant, as this is contested by the respondent, and the respondent's alleged failure to act would have to be identified for the purposes of sections 123(3)(b) and (4). The best that the tribunal has is the claimant's suggestion that the respondent communicated with him eventually on 8 June 2020.

14. Taking that date as the latest possible date from which the primary time limit begins to run (and that is a generous view taken for present purposes only), that would mean that the claim might have been capable of being regarded as presentable no later than 7 September 2020. Again, however, time is not capable of being extended under section 140B because he did not contact Acas until 8 September 2020, which is outside the primary time limit.

15. On these assumptions, the claim is out of time. The tribunal has no material before it upon which to extend time on a just and equitable ground. The tribunal therefore has no jurisdiction to hear the claim and it must be dismissed.

16. Should the claimant ask the tribunal to reconsider that decision in accordance with the provisions in rules 70-73, then the tribunal would be bound to also consider whether the claim should be struck out under rule 37(1)(a) as having no reasonable prospect of success (there being no apparent basis for the complaint that the claimant's dismissal or post-employment treatment was based on his sex). This would be subject to the procedural requirements in rule 37(2).

17. The tribunal would also need to consider whether the claim should be struck out under rule 37(1)(d) as not being actively pursued (given the claimant's non-

attendance this morning and the absence of any communications with the respondent's representatives or the tribunal hitherto). This would be subject to the procedural requirements in rule 37(2).

18. Alternatively, the question of a deposit order under rule 39 might arise if the claim appears to have little reasonable prospect of success (as explained above).

Employment Judge Doyle
Date: 11 May 2021

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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