



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Simran Heer

**Respondent:** Cathedral Motor Company Limited t/a Arbury Motor Group

**Heard at:** Birmingham Employment Tribunal (via CVP)

**On:** 9 November 2021

**Before:** Employment Judge J Jones

## Representation

Claimant: no appearance

Respondent: Mrs T Worthington (solicitor)

## JUDGMENT following an Open Preliminary Hearing

1. The claims of unfair dismissal and for notice pay are dismissed upon withdrawal.
2. The claims of race discrimination and discrimination because of religion and belief are struck out as being out of time.

## REASONS

1. By a claim form lodged on 9 July 2020, the claimant brought claims of unfair dismissal, race discrimination, discrimination on the grounds of religion or belief and a claim to notice pay. This followed his dismissal on 15 November 2019 from his role as a sales executive with the respondent.
2. The claim for unfair dismissal was withdrawn on 21 August 2020 when the claimant realised there was no jurisdiction to hear it because he had only been employed since 29 August 2019 when he was dismissed. He also withdrew his claim to notice pay at a preliminary hearing (case management) on 12 March 2021 when he realised that

he had been paid in full to the end of November 2019 - a period of three weeks, when he was in fact entitled to only one week's notice.

3. The purpose of this open preliminary hearing was to determine whether the tribunal had jurisdiction to hear the claims of race discrimination and discrimination on the grounds of religion or belief as they were lodged out of time.
4. There was a secondary issue highlighted in the notice of hearing relating to the presence of Mr Timmins as a second respondent. However, it transpired that the claim against Mr Timmins had not been accepted because there had been no period of early conciliation through ACAS in relation to that claim. The claimant was notified of this at the time of lodging his claim and took no steps to challenge it or seek a review.
5. The claimant failed to attend the open preliminary hearing. The tribunal clerk made attempts to contact him via his mobile telephone but these were unsuccessful. The tribunal noted that the claimant had successfully attended the preliminary hearing on 12 March 2021 which was also held via CVP (Cloud Video Platform) and it was unlikely to be a connectivity issue. Further, the claimant had served no witness evidence in accordance with the Order of Employment Judge Hindmarch dated 16 March 2021 which followed that hearing. The respondent's solicitor had received no contact from the claimant since the last preliminary hearing and no input into the preparation of the documents for this open preliminary hearing. In the circumstances, and in the absence of any contact from the claimant or an application to postpone the hearing, the tribunal proceeded.
6. The claims of race discrimination and discrimination for religion or belief were not explained in the claim form. The tribunal had sight of some contemporaneous correspondence between the parties at the time of the claimant's dismissal. This was in the small 51- page bundle of documents produced for the open preliminary hearing at pages 14-18 and 50-51. There was no mention of alleged acts of discrimination in that correspondence – the claimant focussed at that time on what he viewed as the unfairness of his dismissal during his probationary period.
7. The only indication of the nature of the claim for discrimination before the Tribunal appeared in paragraph 4 of the Order of Employment Judge Hindmarch where it is said that “the complaint of race and/or religious discrimination arise[s] from comments he says were made to him in the workplace on or around 8 November 2019 and on the day he was dismissed 15 November 2019, regarding these matters”. He said that these comments were made by Mr Timmins, the dealer Principal. The reference to “these matters” was a reference to the claimant's recent bereavement of a close family member and the Sikh funeral traditions which lasted 2-3 weeks.
8. In light of this limited information, the Tribunal approached the question of time limits on the basis that the last act of discrimination took place on 15 November 2019. Taking account of the period of Early

Conciliation, the time limit for the claimant to lodge his claims of discrimination expired on 17 March 2020. The claims were therefore lodged on their face over 3 months' late.

9. The Equality Act 2010 sets out the time limit within which proceedings for discrimination must be brought. Section 123(1) provides:

“proceedings on a complaint within section 120 may not be brought after the end of—

  - (a) the period of 3 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.”
10. When a tribunal, as here, is faced with considering the second limb of the test in section 123(1), namely, whether or not to exercise its discretion and permit a claim to continue out of time on the grounds that it would be just and equitable to do so, it is the claimant who bears the burden of proof - *Robertson v Bexley Community Centre [2003] IRLR 434, CA*.
11. It is helpful to consider the following matters in carrying out the factor balancing exercise necessary in considering the exercise of discretion: 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 respondent has cooperated with any requests for information, the promptness with which the claimant acted once he knew of the facts giving rise to the claim; and the steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action, although this list should not be applied slavishly as a “tick box” exercise (*Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA, Civ 27*).
12. Here, unfortunately, there was no evidence placed before the Tribunal by the claimant to assist in considering these matters – no explanation for the delay, no explanation of the nature of the claim so that the Tribunal could consider the evidence that would be material and therefore the likely affect on its cogency of the delay and no information about the steps that the claimant had taken to obtain advice. The Tribunal noted that the claimant had commenced ACAS Early Conciliation within the primary time limit for all his claims and that the delay had come later – between receipt of the ACAS certificate on or about 17 February 2020 and the commencement of proceedings on 9 July 2020.
13. The only mention of delay in the bundle appeared on page 6 where the claimant wrote on his Claim Form “Due to Covid-19 I have been advised that this tribunal process will be put on hold. This is now why I am sending you my tribunal request”. This statement is not clear – the suggestion is that the tribunal process would be delayed. This is not an explanation as to why the claimant delayed in commencing that process. Without the claimant’s evidence it was not possible to know what this comment meant, or what the claimant’s thoughts were at the

material time, other than an acknowledgement that delay in some way might be an issue.

14. The Employment Tribunal can only consider cases that it has the jurisdiction to hear. In this case and in light of all the matters outlined about, the Tribunal was not satisfied that it would be just and equitable to allow the claims to proceed out of time and they were, accordingly, struck out.

**Employment Judge J Jones**

**November 9 2021**