



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 10/12/2021

Claimant: Dr C Mallon
Respondent Rasei Ltd

Before: Employment Judge Mr J S Burns

Representation
Claimant: In person
Respondent: Dr S Abbott (CEO)

JUDGMENT

The claim is struck out.

REASONS

1. There was no bundle of documents but I referred to the ET1 and ET3 and heard evidence on oath from the Claimant and Dr Abbott. The latter sent me during the hearing various emails including those summarised in the Schedule. In addition, after cross-examination and before final submissions I allowed the Claimant an hour to search his personal email folders during which period he sent me various emails and other documents all of which I considered before making my decision.
2. The Claimant has claimed a failure to make reasonable adjustments consisting in the Respondent's failure to provide the Claimant with an oral interview before rejecting a job application which the Claimant made to the Respondent on 21 January 2021.
3. The Claimant claims that he was disabled at the relevant time by autism and dyspraxia. For purposes of today's hearing I have assumed that he was so disabled.
4. The matter was listed today as an OPH to consider "*whether any of the claims should be struck out on the grounds that they are scandalous, vexatious or have no reasonable prospects of success; Whether any of the claims should be dismissed because the Tribunal does not have jurisdiction to consider them because they were not presented in time and it would not be just and equitable to extend time; or A deposit order should be made in respect of any of the claims.*"
5. The act about which the Claimant complains was the fact that the Respondent (per Dr Abbott) did not grant the Claimant an oral interview which he had asked for in his CV submitted on 21/1/21, before Dr Abbott decided the same day to reject the application. Notification of the rejection was sent to and received by the Claimant the same day. The relevant email chain is set out in the Schedule to these reasons.
6. Thus the act/omission relied on occurred on 21/1/21. The limitation period therefore begins on 21 January 2021 and the last day for the Claimant to bring his claim would ordinarily have been 20 April 2021.

7. In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted. Day A is when the Claimant applied to ACAS and Day B is the day on which the Claimant received the certificate.
8. The Claimant applied for early conciliation on 26/1/21 and the certificate was issued on 3/2/21.
9. The Claimant subsequently suggested that he might not have received the EC certificate from ACAS on 3/2/21. His suggestion is based solely on the fact that at some point later he subsequently could not find it in his gmail inbox. It is clear that in the first week of May 2021 shortly before 9/5/21, (when he presented this and a number of other similar ET1s against other Respondents, - two of which other ET1s were before me today during the same OPH) the Claimant complained to ACAS that he had not received a number of EC certificates including the EC certificate in the instant matter, and that subsequently, in August 21, long after he had issued the instant claim, he was sent a collection of copies of numerous previous EC certificates which he was by then complaining he had not originally received.
10. The Claimant agreed in cross-examination that he was in touch with ACAS at the time, and that ACAS had his correct email address.
11. The Claimant's oral evidence about the whole subject of his receipt of ACAS certificates was very unclear and inconsistent.
12. It is clear that his management of his emails is poor and disorganized. The fact that the Claimant cannot find an email in his inbox is not good evidence that it was not sent to him. This was graphically illustrated during the hearing today in relation to the email dated 22/1/21 from Dr Abbott which I have set out in the Schedule. The Claimant at first quibbled about whether or not he had received it and said he could not find it in his gmail inbox, but finally agreed that he had in fact received and read it at the time but had not replied to it because by then he had "lost trust" in Dr Abbott.
13. It is not just the EC certificate in the instant matter (2202105 2021) which the Claimant was unable to find in his gmail inbox and hence suggested had not been sent to him. In the two other cases before me today the EC certificates were issued by different ACAS officers on separate different dates, yet the Claimant afterwards evidently could not find those either in his gmail inbox. As the Claimant accepted in final submissions, he is thus suggesting not that a single ACAS officer on a single day in relation to a single claim (this one) made an error by not sending the EC certificate to him, but he is suggesting that at least three different ACAS officers each independently made the same error in relation to different EC certificates on different days. I have no hesitation in rejecting this as wildly implausible.
14. The obvious explanation is that the Claimant having received the ACAS certificate in this matter on the same day it was issued, subsequently deleted it, misfiled it or forgot about it. Given the fact that he has on his own admission issued dozens if not hundreds of similar ET claims against different Respondents over the last 2 years in ETs all over the UK, he has perhaps had difficulty in keeping track of them all.
15. For these reasons I find on a balance of probabilities that the Claimant did receive from ACAS by email the EC certificate in this matter on 3/2/21.
16. A period of 8 days starting on 27/1/21 and ending on 3/2/21 is therefore not counted. The last day on which the Claimant could have brought his claim in time was therefore 28/4/21. The claimant brought his claim on 9 May 2021.

17. Accordingly, the claim is out of time.
18. Per Adeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, the burden is on the Claimant to establish that the Tribunal should exercise its discretion to extend time, which is the exception not the rule.
19. I do not regard the fact that the Claimant mislaid, deleted or forgot about the original EC certificate as making it just and equitable to extend time.
20. I have made allowance for the fact that the Claimant's mishandling/loss of the certificate may have been contributed to by his disability, but he nevertheless is clearly an intelligent person with considerable knowledge of disability law, and abundant recent experience of ET litigation. He agrees that he was aware of the time limits. He co-habits with a partner who has written him a detailed supporting statement and who it is not suggested suffers from any impairment.
21. Setting aside any question whether or not it is vexatious or abusive for the Claimant to issue repeated claims arising from job applications, nevertheless, if he was able to submit numerous applications and bring multiple ET claims then in my judgment it is an inadequate excuse that he then fails as a result of the multiplicity or otherwise to deal efficiently with the time limits and administration necessary for the bringing of timely proceedings.
22. In determining whether to extend time I have considered the balance of prejudice. For the reasons set out below I regard the claim as having little reasonable prospect of success in any event. That being the case, the prejudice to the Claimant caused by not extending time is low.
23. For purposes of a strike out/deposit application made by the Respondent in the alternative to the time point, I have had to consider the substantive merits of the claim, and have heard the Claimant's evidence as to why he contends that he suffered a failure to make reasonable adjustments for his claimed disability. I take the Claimant's version at its highest, and in any event what he says is not disputed and is substantially set out in the email exchange in the Schedule.
24. This claim depends solely on the initial decision by the Respondent not to offer the Claimant an oral interview on 21/1/21. As soon as the Claimant complained the next day Dr Abbott immediately admitted his mistake and offered to reconsider the matter and have a telephone conversation with the Claimant, which offer the Claimant did not have the courtesy to respond to before issuing his ET claim, or at all.
25. The initial failure was very short-lived and the Claimant's actions in applying for the job and then refusing to pursue the matter when the oral interview was offered was inconsistent. Dr Abbott was adamant that the Claimant's CV made it clear that he was not qualified for the very specialised role. If the disadvantage was not getting the role, it seems unlikely that the oral interview would have made any difference. I think it is likely that the Tribunal would conclude in these circumstances that the Respondent had not breached its duty to make reasonable adjustments, which duty is in any event not absolute, but which is measured in human terms which includes the possibility of minor errors and delays.

26. In summary, the Claimant has not satisfied me that it is just and equitable to extend time for this claim to be brought.

27. Hence it is struck out as outside the jurisdiction of the Tribunal.

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Schedule

The Respondent's email dated 21/1/21 rejecting the Claimant's application reads as follows:

Hello Christian,

Thank you for your interest in the Head of Material Science position at Rasei. Unfortunately, we will not be moving forward with your application.

We are looking for candidates with significant experience in Graphene and the manipulation of said material.

We appreciate your time and interest in Rasei and wish you all the best with you next career move.

Kind Regards,

Rasei

This prompted an email from the Claimant on 22/1/21 as follows :

can i ask why you did not follow my reasonable adjustments listed on my cv as i cannot help my medical condition,

equality act has been in place for 11 years and doc attached what your duty is under law

This prompted a further email at 23.18 on 22/1/21 from Dr Abbott as follows:

Christian,

Many thanks for your kind email.

I am dismayed that you feel it necessary to draw attention to a medical condition and reference a point in law and use that as a mechanism to leverage a new position in our recruitment process.

Your CV was reviewed against candidates who were actively working in the Graphene space at the University of Manchester as an example or even conducting research in the specific area we as a company are focused on.

As an organisation everyone is treated equally and everyone has been reviewed based on their experience not on race, disability, age or anything else.

In terms of autism my nephew is autistic. He has food eating difficulties in addition to many other dimensions to the condition. He is one of the most clever, kind and loving children and I would not negate him or view him any differently as with yourself.

2202105 2021

You are clearly a very intelligent man, with an incredible educational record which actually enabled you to get past our first CV pass.

You have a valuable broad range of skills with clear experience in petrol chemical industry and tax advisory, but we are specifically looking for someone with research experience in Graphene and even more specifically it's conductivity. This is quite rare. This was not apparent from your CV where 3 others did have this back drop.

If I am wrong and I frequently am, I will be more than happy to arrange and offer you a phone call for you to explain your relevant experience in the specific space of Graphene conductivity.

I look forward to hearing from you in due course and wish you a great weekend.

Kind Regards

Stuart

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Notice under Rule 71

1. After the above decision and reasons had been finalised, I received from the Claimant an email dated 10/12/21 timed at 16.58 in which he asked for reconsideration of the judgment based on further material he had received from ACAS, which was attached to his email. I have treated this as an application under Rule 71.
2. The attachment insofar as it applies to the instant claim was an email sent at 16.41 on 10/12/21 from ACAS to the Claimant confirming as follows "*Original EC certificate issued via email on 3/2/21...copy of certificate sent by email on 6/5/21*".
3. This ACAS email is consistent with my findings in the reasons for the above judgment that the original certificate was sent to and received by the Claimant on 3/2/21.
4. I consider that there is no reasonable prospect of my judgment being varied or revoked so the application for reconsideration is refused.

J S Burns Employment Judge
London Central
10/12/2021
For Secretary of the Tribunals
Date sent to parties :13/12/2021
