



EMPLOYMENT TRIBUNALS

Claimant: Mr Hassan Mohamud

Respondents: GI Group Recruitment Ltd (1)
Boots UK Ltd (2)

Record of at Open Preliminary Hearing heard at the Employment Tribunal

Heard at: Nottingham

On: 4 November 2021

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: In person

Respondent: Mr Gunstone, Counsel (R1)
Mr Graham, Solicitor (R2)

JUDGMENT

The Employment Judge gave Judgment as follows;

1. The Tribunal does not have jurisdiction to hear the Claimant's claims against the 2nd Respondent's Boots UK Ltd. The claims against the 2nd Respondent are dismissed.
2. The allegations of victimisation with the exception of the Claimant's dismissal are struck out as having no reasonable prospect of success.

REASONS

Background to this Hearing

1. The Claimant presented his claims to the Tribunal on 18 December 2019. In his

complaint he made a claim against the 1st Respondents only. He said that he had been unfairly dismissed, suffered race and disability discrimination and suffered detriments and dismissal because he was a whistle blower. No details of his allegations were provided.

2. On 31 January 2020 he sought to add the claim of victimisation but again provided no details. The Claimant withdrew his claim of unfair dismissal because he did not have enough service to make a claim.
3. On 2 October 2020 the matter came before my colleague Employment Judge Adkinson. He identified that the Claimant intended to include a victimisation claim on his ET1. The detriments identified by my colleague are outlined at paragraph 9.2 of his record of the hearing. They are;
 - 3.1 the behaviour of his colleague, Ladislav, who in front of 20 other colleagues, on 7 November 2019, yelled at the claimant after a briefing and yanked him by the shoulder saying, “why are you not at your workstation”.
 - 3.2 Inese and Jake laughing at the claimant about his ordeal.
 - 3.3 Jake being hostile and dismissive of the claimant’s story about the racist incident he had witnessed.
 - 3.4 the refusal to reimburse him after he had returned to work on 7 November 2019 from hospital in a taxi that had not been authorised by Boots.
 - 3.5 dismissing him whilst he went back outside to talk to the taxi driver.
4. At paragraph 13 the Employment Judge recognised that the employer of the various participators in the events was of great significance.
5. There was a further hearing of this matter on 8 April 2021 before my colleague Employment Judge Blackwell. At paragraph 1.2 of the record he identified the detriments to be relied on. These were;
 - a. Miss Alpine was said to have laughed at the Claimant.
 - b. Miss Alpine is said to have refused to pay for the taxi and shouted at him.
 - c. The Claimant was not aware who told him that he was stood down as the information was given over the intercom.
6. There was then a further hearing on 6 July 2021. This was again dealt with by my colleague Employment Judge Blackwell. He made a Deposit Order of £10.00 in respect of the Claimant in relation to the 1st Respondent. That Deposit Order has

now been paid.

7. So far as the 2nd Respondent is concerned, they only became a party to the claims on 12 April 2021.
8. This hearing was to determine;
 1. In respect of the claims against the 2nd Respondent whether the Tribunal have jurisdiction to hear the claim as they appear to be out of time.
 2. Whether the claims of victimisation against the 1st Respondent should be struck out as having no reasonable prospect of success.

The position about the 2nd Respondent.

9. The Claimant was always employed and managed by the 1st Respondent. His employment had commenced with the 1st Respondent on or around 10 October 2019 and he was assigned to the 2nd Respondent's site at Burton Upon Trent before he was de-assigned during his overnight shift on 6/7 November 2019.
10. His claim is that he was subject to racial harassment by the conduct of Ladislav Halcin a Supervisor employed by the 2nd Respondent and victimisation on the basis that Mr Halcin refused to pay for a taxi which the Claimant had used to return to the warehouse from hospital. These incidents took place on 7 November 2019.
11. The Claimant had commenced ACAS early conciliation with the 1st Respondent only on 15 November 2019 and the certificate was issued on 18 November 2019. He then submitted his claim for race discrimination against the 1st Respondent on 18 December 2019.
12. He did not join the 2nd Respondent as a party until 12 April 2021.
13. The claimant has provided a statement saying that he had been attacked on 30 November 2019 and that he had to attend The Crown Court on 2 occasions in November 2020. No evidence was provided in support of this.
14. In any event this does not explain the delay.

The Law

15. Section 123(1) Equality Act 2010 states that a discrimination claim must be submitted by "the end of the period of 3 months starting with the date of the act to which the complaint arises".
16. Under section 123(1)(b) the Tribunal has the discretion to extend time by such a period as the Tribunal thinks "just and equitable".
17. Mr Graham referred me to the case of ***Bexley Community Centre (Trading as***

Leisure Link) v Robertson [2003] EWCA Civ576 which reminds me that the time limits are to be applied strictly in employment cases and there is no presumption in favour of extending time. The burden is on the Claimant to convince me that it is just and equitable to do so. So, whilst I have a wide discretion the exercise of that discretion should be the exception not the rule.

18. Mr Graham also referred me to the cases of;

- ***Hutchinson v Westwood Televisions Ltd [1977] IRLR69.***
- ***British Coal Corporation v Keeble [1997] IRLR336.***
- ***DPP v Marshall [1998] IRLR494.***

19. Where I am exercising my discretion, I should have in mind;

1. The length of and reasons for the delay.

2. The extent to which the cogency of the evidence is likely to be affected by the delay.

3. The extent to which the parties sued co-operate with any request for information.

4. The promptness with which the Claimant acted once they knew of the possibility of taking action.

5. The steps taken by the Claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

20. In this case the Claimant was aware that Mr Halcin was an employee of the 2nd Respondent on no later than 28 October 2020.

21. The Claimant has not advanced any good reason for the delay in submitting his claim.

22. This is a lengthy delay i.e. his claim was submitted at least 14 months late.

23. I am also satisfied that the cogency of the evidence is likely to be affected by that delay. The 2nd Respondent's had no idea until April 2021 that a claim was being made against them.

24. I am satisfied in this case that it would not be just and equitable to extend time and that the Tribunal does not have jurisdiction to hear the claim and it is therefore dismissed.

The victimisation claims of the Claimant against the 1st Respondent.

25. Mr Gunstone referred me to Rule 37 of the Employment Tribunal Rules of Procedure. That provides;

“(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds;

(a) That it is scandalous or vexatious or has no reasonable prospect in respect of success”.

26. I note in respect of the claim of victimisation that it is admitted that there was a protected act within the terms of section 27(2) Equality Act 2010 in that during the Claimant’s shift at work on 5/6 November 2019 he made an allegation that Mr Salt had acted in breach of the Equality Act by using inappropriate language in the form of a racist joke.
27. The victimisation claims which are set out in his statement of the 1 February 2020 as amended subsequently are those as identified by Employment Judge Adkinson at 9.2 of his record of the hearing of 2 October 2020 which I have already referred to. Namely;
1. The conduct of Ladislav who allegedly yelled at the Claimant after a brief encounter and yanked the Claimant by the shoulders saying, “why are you not at your workstation”.
 2. The colleagues Inese and Jake laughing at the Claimant about his ordeal.
 3. Jake being hostile and dismissive of the Claimant’s story about the racist incident.
 4. The Claimant having to go to hospital and when he returned to work using taxi, they refused to reimburse him and shouted at him.
 5. Dismissing him while he went back out to talk to the taxi.
28. To pursue a claim of victimisation the Claimant would have to be able to satisfy the Tribunal that there was some causal link between the protected act and the matters that he complains of. I am satisfied in this case that the Claimant, even if he was able to establish that the incidents happened, would not be able to establish that they in any way related to his protected act. There is no suggestion by the claimant that Ladislav ,Inese or Jake knew anything about the protected act. Those allegations therefore are struck out except for the allegation relating to his dismissal. I am satisfied in respect of that allegation that should go to a Tribunal who should determine whether the Claimant was dismissed as an act of victimisation i.e. because he had undertaken the protected act.

Listing the Hearing

29. The claims against the 1st Respondent will be heard by an Employment Judge sitting with members on **21 and 22 March 2022 at the Tribunal Hearing Centre, Kings Court, 5a New Walk, Leicester LE1 6DE.**

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **2 December 2021**. This includes, from the Claimant, documents relevant to all aspects of any remedy sought. Documents relevant to remedy include evidence of all attempts to find alternative employment; for example a job centre record or adverts applied to, all correspondence in writing or by email with agencies or prospective employers, all payslips from work secured since the dismissal and the terms and conditions of any new employment.
2. The Respondent shall be responsible for the production of the single joint bundle of documents required for the hearing and will send a copy of the bundle to the claimant **by 16 December 2021**.
3. Oral evidence in chief will be given by reference to typed witness statement from the parties and their witnesses. This includes the Claimant. The witness statements must be full but not repetitive. They must set out all the facts about which witness intends to tell the tribunal, relevant to the issues as identified in this case. The facts must be set out in numbered paragraphs on numbered pages in chronological order. . If the witness refers to a document, they must set out the page number from the bundle. The witness statements will be exchanged **by 27 January 2022**.
4. The Claimant to provide a schedule of loss of the respondent and to the Tribunal **by 27 January 2022**.
5. Respondent to provide a counter schedule of loss to the Claimant and to the Tribunal **by 17 February 2022**.
6. The Respondent will send to the Tribunal 4 hard copies of the bundle and 4 hard copies of all the witness statements together with an electronic copy 3 days before the hearing.

Employment Judge Hutchinson

Date: 13 December 2021

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at

www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Notes

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

(iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

(iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:

<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>

(v) The parties are reminded of rule 92: “Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so”. If, when writing to the Tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.