



EMPLOYMENT TRIBUNALS

Claimant: Mr S Monk

Respondent: Her Majesty's Revenue and Customs

Heard at: Manchester (by CVP)

On: 7 September 2021

Before: Employment Judge Ross

REPRESENTATION:

Claimant: In person

Respondent: Mr D Tinkler, Counsel

JUDGMENT was sent to the parties on 14 September 2021 and reasons were given orally at the time. though written reasons have not been requested, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided because the claimant has indicated he wishes the Judgment to be reconsidered and I consider it is in the interest of justice to provide these reasons.

REASONS

1. This was a hearing to determine whether the claimant's claim for disability discrimination was presented within time and if not, whether it was just and equitable to extend time.

2. I am satisfied that the claimant's claim was not presented within time, and I am not satisfied in the particular circumstances of this case that it is just and equitable to extend time.

3. The relevant law is section 123 Equality Act 2010. I had regard to the well known principles set out in *British Coal Corporation v Keeble* 1997 IRLR33 and *Southwark Borough Council v Afolabi* 2003 ICR 800 and *Abertawe Bro Morgannwg University Local Health Board v Morgan* 2018 ICR 1194.

Facts.

4. I heard from the claimant. I was not provided with any medical evidence to explain the delay in this case.

5. I find the following facts. I find that the claimant suffers from a mental health condition and was too unwell following the events which occurred when he was managed by a manager called Lisa Cornell in 2017 to present a claim to the Employment Tribunal within three months of the last act, which was when the claimant left employment with that manager at HMRC on 30 September 2017. So I find the last day to present a claim within time was 29 December 2017. I entirely accept that the claimant was not well enough to present his claim at that time, but he did not present his claim until over 3 years later. It was first presented 17 May 2021, and in fact it was not accepted by the Tribunal until 4 June 2021 by Employment Judge Dunlop.

6. When considering whether to exercise my discretion I had regard to a number of different factors. First of all I considered the factors referred to in s33 Limitation Act 1980 which is the approach suggested by the case of *British Coal v Keeble*.

7. I considered the length of the delay, the reasons for it, the extent to which the delay is likely to affect the evidence in the case and then the promptness with which the claimant might have acted once he knew of the facts which gave rise to his claim, and any steps the claimant might have taken to get appropriate advice.

8. The extent of the delay is considerable in this case and it is inevitably going to affect the fairness of the evidence at the final hearing because although I accept what the claimant says, that some of what occurred will have been documented in writing, much of the evidence at a Tribunal final hearing depends on the relevant witness evidence of the parties. In this case that is likely to be the claimant, the manager about whom he complains and probably some others employed by HMRC.

9. I consider it is relevant that it is only at this preliminary hearing that the Tribunal and the respondent have had clarification about the type of claim that the claimant had been hoping to bring - a harassment claim and a claim for failure to make reasonable adjustments.

10. At this stage it is well over three years has passed since the events about which the claimant complains. The reality at the moment is that a multiday discrimination case (which is what this would have been) will not be listed until next year at the very earliest and much more likely in 2023, which means there will be a period of five or even six years from those events. I find that a lengthy delay of several years means that it will be difficult for the witnesses to recall events from so long ago clearly. That is one of the reasons why, as a public policy point of view, the Tribunal has fairly strict time limits.

11. It is also not clear why the claimant delayed so long. I find that he was very unwell when his employment with the relevant manager ended in September 2017. I find it is absolutely to his credit that he managed a transfer to another department and so he continued to work, and he has managed to continue working in his new job without any time off sick for his mental health impairment, and indeed he has been able to help others, which is all really positive. But it does not explain why the claimant was not well enough to put his claim into the Employment Tribunal, when he was well enough to continue working.

12. He is clearly a man of intelligence, he had access to the internet, he has been a trade union member and so had access to advice on employment law issues, and he candidly admitted himself that there were points, particularly when he was

helping others over the last couple of years, that he realised something had not been right about the way he had been treated. Yet he did not take steps then to obtain advice or to research his legal rights or present a claim.

13. I step back to consider what is just and equitable.

14. Whilst a delay of some weeks or months following 29 December 2017 may be explicable, a delay in presenting the claim to the Employment Tribunal of over 3 years when the claimant has fortunately been well in terms of his mental health, in terms of being able to continue working, is simply a delay that is too long, and it is not just and equitable in the circumstances of this case, the particular facts, to extend time particularly having regard to the prejudice such a lengthy delay will cause the witnesses in terms of trying to recall allegations of harassment and failure to make adjustments

15. Accordingly the Tribunal does not have jurisdiction to hear the claimant's claim for disability discrimination.

Employment Judge Ross

Date: 10 December 2021

REASONS SENT TO THE PARTIES ON
30 December 2021

FOR THE TRIBUNAL OFFICE

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