



EMPLOYMENT TRIBUNALS

Claimant: Mr Oreis Trinh
Respondent: Pertemps Recruitment Partnership Limited
Heard at: Nottingham
On: 29 October 2021
Before: Employment Judge Phillips (sitting alone)

Representation

Claimant: Mr Trinh, in person
Respondent: Miss Mallin-Martin of Counsel

JUDGMENT having been sent to the parties on 2 November 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT

1. The Claimant does not have the requisite length of service to bring a claim for unfair dismissal. The Claim is not well founded and is dismissed; and
2. The Claimant's claims in respect of discrimination and harassment on the basis of age, disability and religion or belief were presented to the Tribunal outside of the primary time limits. It is not just and equitable to extend the time limits and accordingly the Claims are dismissed.

REASONS

1. This was an open preliminary hearing to determine the question of whether the Employment Tribunal has the jurisdiction to hear the Claimant's claims for unfair dismissal and discrimination.
2. The Claimant complains of unfair dismissal which is a claim is made pursuant to section 94 Employment Rights Act 1996 ('ERA 96'.) In order to bring such a claim,

section 108 ERA 96 requires a claimant to have not less than two years' service to make an unfair dismissal complaint to the Tribunal.

3. The Claimant was employed by the Respondent for less than two years. Therefore, the claimant is not entitled to bring such a complaint. The Claimant has not asserted that there is an automatically unfair reason for his dismissal which would remove the requirement for two years' service. Accordingly, the claim for unfair dismissal is not well founded and is dismissed.
4. I should also note here that although from the papers before me it appears as though this has already been dismissed by virtue of an order of EJ Butler on 7 July 2021. At the outset of today's hearing, I checked whether the parties were aware of such an order and neither party was. It is for that reason that I have dealt with this issue today and reached this conclusion.
5. Although the claimant referenced whistleblowing at today's hearing –this was not an issue disclosed on the facts contained in his claim form, he was aware of his ability to raise it and I have not been asked to amend the claim.
6. Turning next to the question of time limits and Acas, the evidence before the tribunal is clear that the Claimant was, by his own admission aware of the time limit to bring his claims. There are two advice letters from Queen Mary University's legal advice centre. They set out those time limits clearly. Although the Claimant has said he was not aware that Acas early conciliation would stop time running, this too is set out in those letters. I therefore find that the Claimant was aware about the time limits which applied to his claims.
7. In relation to the Claimant's Discrimination claims, he complains of disability discrimination, age discrimination and religion or belief discrimination. For any complaint for such alleged discrimination, brought by virtue section 120 Equality Act 2010 the time limit is set out at section 123 of the same Act. A claim for discrimination may not be brought after the period of 3 months starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable.
8. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule. The onus is therefore on the Claimant to convince the tribunal that it is just and equitable to extend the time limit.
9. When one considers the length of time that has elapsed, the Claimant was aware and did complain about discrimination to his employer. The Claimant had legal advice in March and April 2021, specifically on the question of discrimination and the time limits in Equality Act 2010.
10. The Claimant has failed to diligently present his case; the ET1 is entirely lacking as to the substance of his claim. The only document before the Tribunal which sheds any light on C's claim references three incidents, which occurred on 23 and 28 November 2020. When I asked the Claimant today to tell me the acts of

discrimination, he actually pointed to three new incidents which he says demonstrate discrimination:

- i. One on 10 March 2021 where he alleges he was told if he had disclosed his dyslexia then he would not have got the job;
- ii. Another where he was told to act like an adult in relation to his age. He said he thought this had occurred in April 2021; and
- iii. The acts of his team leader and the general treatment he and other works received.

11. He did not seek to allege that the dismissal was a discriminatory act until his closing submissions in response to the submissions which he had heard from the Respondent. I am Mindful that the Respondent hasn't been able to forcefully make submissions on this point because they were raised at the last possible moment by the Claimant. To my mind, such late mentioning does rather paint a picture of continuous moving sands of the claimant's basis for his discrimination claims.
12. Two of the claims are out of time – namely the March allegation and the team leader comments and behaviour. The 'grow up' comment was alleged by the Claimant to have taken place in April 2011. This appears to be wholly out of kilter with the times and period during which the Claimant was corresponding with the Respondent about the actions of the team leader. Having heard evidence at the hearing, I find that the conversation in which the alleged comment was made was more likely than not to have occurred before March 2021. On that basis, it too is out of time.
13. In terms of the way in which Claimant has managed his claim, he has failed to particularise his claim both at the point of issue and at the hearing. I note that the three incidents he raised as examples of discrimination today, were not to be found in any of the documentary evidence before me. Despite me asking if there were any other discriminatory acts of which he complained during evidence, it was only in closing submissions that he referred to his dismissal as a discriminatory act. This was after having heard the Respondent say in closing that the Claimant was not saying his dismissal was discriminatory.
14. Whilst taking into account the Claimant is a litigant in person, it is clear from the documents and evidence that he has been provided with significant advice from both Citizens Advice and the QM University law centre.
15. The Claimant has not complied with the order of Employment Judge Ahmed of 11 August 2021 to particularise the nature of his disability and the effect on him. This reinforces the view about the Claimant's approach to presenting his claim and the haphazard way in which he has done so. That is not a criticism of the Claimant – navigating the tribunal can be tricky for a litigant in person, however it is a relevant factor in my determination about allowing the case to proceed in terms of ensuring justice and fairness between the parties and the risk to the Respondent of having to defend an ever changing claim.
16. The Claimant has averred that the reason for his failure to bring the claim in time stems from the way in which the Respondent dragged out the grievance procedure.

And on this point, I do have some sympathy, however I have already found, and the Claimant has already accepted, that he was aware of the time limits with which he needed to comply. Given this, he did not approach ACAS with the speed and diligence he could have done, especially following the outcome letter of his grievance. Knowing the time limit of three months, would have led to him approaching ACAS far sooner than a number of working days later.

17. In relation to the merits of the Claim and specifically the incidents upon which the Claimant seeks to rely, for all but one, it is difficult to see on what basis they could be discriminatory acts albeit it is not a factor which I find determinative nor one on which I make any findings today.
18. Finally in relation to the balance of prejudice, on one hand the Claimant would be prevented from bringing his claims being mindful that he is a litigant in person versus the Respondent defending a claim which has not been pursued diligently and where the Claimant was aware of the time limits having had the benefit of advice.
19. In my determination, the balance of prejudice is tipped towards preventing the Claimant from bringing the claims out of time. He knew the time limits with which he had to comply and has provided no substantive explanation as to why he failed to so bring them. In relation to the time which has elapsed, it is considerable in respect of some of his allegations and just out of time in respect of others. The main factor, however, is that his claim is entirely unparticularised. Today is the first time that the respondent has heard some of the allegations.
20. On that basis and for those reasons, I cannot find it would be just and equitable to extend time and accordingly it being out of time, I dismiss the Claimant's claims for discrimination and harassment.

Employment Judge Phillips

Date: 23.12.21