



EMPLOYMENT TRIBUNALS

Claimant: Mr Kamran Ahmed

Respondents: 1) Motus Group (UK) Limited T/A Pentagon Motor Group
2) Mr Richard Watson

Record of at Open Preliminary Hearing heard by CVP at the Employment Tribunal

Heard at: Nottingham On: 22 November 2021

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: Mr Farmer, Legal Representative

Respondent: 1) Mr M Simpson, Solicitor
2) Miss N Walker, Solicitor

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

The Employment Judge gave Judgment as follows:

The claims against the 2nd Respondent Richard Watson are dismissed.

REASONS

Background to this Hearing

1. The Claimant presented his claim to the Tribunal on 19 June 2021. The claim is against two Respondents namely Motus Group UK Ltd T/A Pentagon Motor Group

and Richard Watson.

2. The claims are of direct discrimination, harassment and victimisation.
3. It is not in dispute that the last act of discrimination relied on was 4 February 2020 when the Claimant was dismissed.
4. The Claimant commenced early conciliation against the 1st Respondent on 20 May 2020 and the certificate in respect of the 1st Respondent was issued on 20 May 2020.
5. In respect of the 2nd Respondent though the Claimant only notified ACAS of his claim on 18 June 2020 and they issued the certificate on that date.
6. This hearing is to determine in respect of the 2nd Respondent whether the Tribunal has jurisdiction because the claim has been presented out of time. If I am satisfied that it is out of time, then I have to decide whether it would be just and equitable to extend time.

The Hearing Today

7. Before the hearing commenced, I had the benefit of considering the following:
 1. The original ET1.
 2. The responses from each of the Respondents ie the ET3's.
 3. The record of the closed Preliminary Hearing conducted by my colleague Employment Judge Heap on 10 September 2021.
 4. An agreed bundle of documents.
 5. Written submissions by Miss Walker.
8. At the hearing I heard evidence from the Claimant, Mr Ahmed and I heard submissions from both Mr Farmer and Miss Walker. Mr Simpson did not take part in the proceedings to deal with the jurisdiction.

The Relevant Facts

9. The Claimant was employed by the 1st Respondent as a Sales Executive between 24 July 2018 and 4 February 2020. He was dismissed on that date and the Respondents say that he was dismissed on grounds of performance. He was told this at a meeting on 28 January 2020 when he was given one weeks' notice and his employment therefore terminated on 4 February 2020.
10. The Claimant does not have 2 years' service and cannot therefore claim unfair dismissal under Section 94 of the Employment Rights Act 1996.

11. On 18 April 2020 he raised a grievance about the manner of his dismissal. In the letter he complained about Mr Watson the 2nd Respondent saying that he was a bully and complained that he thought that his dismissal was because of his race and that he had heard language on two occasions which was connected with his race and which were offensive.
12. On 20 April 2020 he commenced early conciliation against the 1st Respondent only.
13. In his evidence the Claimant says that he spoke to an ACAS Advisor, Asma and obtained "legal advice" about his claim. He says that he was unsure who the Respondent should be and that Asma had told him that because the 2nd Respondent was employed by the 1st Respondent, he should only put down the 1st Respondent on the certificate.
14. He says that he was concerned about stopping the clock in respect of his time to issue a claim.
15. It can be seen from this evidence that he actively considered at that time notifying ACAS of his intention to pursue a claim against Mr Watson as he was required to do, and he did not do so. It also shows in his evidence that he was aware of time limits and the need to act swiftly.
16. I do not accept that the ACAS Officer was there to provide him with legal advice. She was not. A decision about who to notify ACAS was his own and if he was in any doubt, he should have obtained independent advice in respect of that.
17. Mr Ahmed was then interviewed in his grievance by the Respondent's on 7 May and received notification of the outcome of his grievance on 20 May.
18. That was the date also when he received the certificate in respect of the proceedings against the 1st Respondent.
19. He did nothing further then until 17 June 2020 when he sought legal advice from his Solicitors who now represent him. Following advice from them he then contacted ACAS again and notified them of his intention to pursue Mr Watson. The early conciliation notification was given on the 18 June 2020. The certificate was issued on the same date.
20. He then presented his claim to the Tribunal on 19 June 2020.
21. By this time Mr Watson had been dismissed by the 1st Respondent's for gross misconduct.
22. The address provided by the Claimant was his work address and when the proceedings were served the 1st Respondent filed their own response in time having obtained an extension.
23. There was then a delay whilst the Claimant sought an order from the Tribunal that they should disclose the 2nd Respondent's address. Once this was obtained

proceedings were served on Mr Watson but not until 16 April 2021.

24. As a result of the contention in his ET3 this hearing has been listed to consider the jurisdiction in respect of the claim against Mr Watson.

The Law

25. Section 123 Equality Act 2010 (EqA) states:

“(1) 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”.

26. Section 140B EqA provides for an extension of time limits to facilitate conciliation before institution of the proceedings. Before a complaint can be made against a party under the Equality Act it is necessary for the Claimant to comply with the requirements of Subsection (1) of Section 18A of the Employment Tribunals Act 1996. This provides the requirement to contact ACAS before instituting proceedings in relation to any matter in respect of which the proceedings are brought. This provides a Claimant with an extension of time to facilitate that conciliation. In this case the Claimant is not assisted by that because by the time he had entered into conciliation he was already out of time by at least 6 weeks.

27. As Miss Walker describes I have a wide discretion to extend time under the just and equitable test although the exercise of the discretion should be the exception rather than the rule as per the case of ***Bexley Community Centre T/A Leisure Link v Robertson [2003] EWCA Civ576.***

28. Miss Walker referred me to the multi-functional approach that I should have regard to as per the list of factors set out in Section 33 Limitation Act 1980. They comprise:

1. The length and reasons for 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 party sued has co-operated with any request for information.
4. The promptness with which the Claimant acted once they new the possibility of taking action.
5. The steps taken by the Claimant to obtain appropriate professional advice once they new of the possibilities of taking action.

29. In a case such as this I must also take into account the balance of prejudice to the party of exercising my discretion in favour or against the Claimant.

My Conclusions

30. In this case the Claimant should have instituted early conciliation in respect of the 2nd Respondent by no later than 3 May 2020. Commencing early conciliation on 18 June 2020 amounted to a delay of more than 6 weeks. It is not just a few days.

31. The Claimant did not contact Solicitors until 17 June 2020 after which he discovered that he needed to contact ACAS.

32. Although he describes taking legal advice from ACAS, I do not accept that ACAS is there to provide him with legal advice. The decision to notify ACAS only in respect of a claim against the 1st Respondent was his own decision and no one else's. He cannot pass the blame to anyone else including an ACAS Officer who is not there to advise him on the law.

33. I am satisfied that at the time he contacted ACAS he knew of his potential claim against the 2nd Respondent. Indeed, he had complained in a grievance to the 1st Respondent just a few days earlier about the behaviour of Mr Watson. He therefore knew that he had a claim against Mr Watson and took no steps in respect thereof until 18 June 2020.

34. If he was in any doubt as to his position, he should have taken legal advice at that stage. We know that he had access to legal advice because he took that legal advice at a later stage i.e. just before the proceedings were to be instituted. There is no reason why he could not have taken that legal advice earlier. He simply chose not to.

35. The Claimant in this case does not plead ignorance of a possible legal remedy against the 2nd Respondent. He was aware that he could bring a claim but did not undertake the requirement that was needed before he could issue the claim until it was too late.

36. It is clear from his evidence that the Claimant was aware of the time limits and the importance of taking action promptly. He did so in respect of the 1st Respondent and even checked that "the clock had stopped" in respect of his claim against them.

37. I am concerned about the prejudice that these delays have caused the 2nd Respondent. He was dismissed in June 2020 and was not made aware of these proceedings until April 2021 when the proceedings were finally served upon him. That delay means that these events that he is being asked to defend occurred more than 12 months prior to him being notified of the claim. This will cause him difficulties, especially as he is no longer employed by the 1st Respondent. The other prejudice that he has to face are the substantial costs of defending this action by the Claimant against him. The costs of those proceedings for him to be separately represented will be many thousands of pounds.

38. On the other hand, the 1st Respondents would be veraciously liable for the actions of their employee and the Claimant will not be prejudiced in pursuit of his claim against the 1st Respondent.

39. In all those circumstances I am satisfied that it would not just and equitable to extend time in this case. The Claimant has not satisfied me that it would be appropriate to extend time and his claim is therefore dismissed because the Tribunal does not have jurisdiction to hear his claim.

CASE MANAGEMENT

Judicial Mediation

40. This is a claim that is very suitable for Judicial Mediation and I strongly urge the parties to consider the use of this. The Claimant is interested, and the Respondent's will contact the Tribunal within the next 14 days to inform us if they are interested. If they are a Judicial Mediation will be set.

Listing the Final Hearing

41. The claims will be heard by an Employment Judge sitting with members at the **Tribunal Hearing Centre, 50 Carrington Street, Nottingham NG1 7FG on Monday 14 November 2022, Tuesday 15 November 2022, Wednesday 16 November 2022, Thursday 17 November 2022 and Friday 18 November 2022 at 10.00am each day.** 5 days have been allocated to hear the evidence and determine the case. The first morning will be reading time and the parties are to attend in good time so that the hearing can commence promptly at 2.00pm on the first day.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant and the Respondent shall send each other a list of any documents that they wish to refer to at the hearing or which are relevant to the case **by 20 December 2021**. They shall send each other a copy of any of these documents if requested to do so.
2. The Respondent shall then prepare sufficient copies of the documents for the hearing. The documents shall be fastened together in a file so to open flat. The file of documents shall be indexed. The documents shall be in logical order. All pages shall be numbered consecutively. The Respondent shall provide the Claimant with a copy of the file **by 17 January 2022**. They will also provide **4 copies of the file for the Tribunal by 9.30am on the first morning of the hearing**.
3. The Claimant and the Respondent shall prepare full written statements of the evidence that they and their witnesses intend to give at the hearing. No additional witness evidence may be allowed at the hearing without permission of the Tribunal.

The written statements shall have numbered paragraphs. The Claimant and the Respondent shall send the written statement of their witness statements to each other **by 14 February 2022. Four copies of each written statement shall be provided for use of the Tribunal at the hearing by 9.30am on the morning of the hearing.**

Employment Judge Hutchinson

Date: 4 January 2022

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