



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 24/2/2022

Claimant: Mr J Perret

Respondent: University of West London

Before: Employment Judge Mr J S Burns

Representation

Claimant: in person

Respondent: Mr T Sheppard (Counsel)

JUDGMENT

The claims are struck out.

REASONS

1. The matter came before me in an OPH to consider (i) whether the claim is within time, bearing in mind the time limit under section 48(3) and (4) Employment Rights Act 1996. (ii) Whether the claim should be struck out as having no reasonable prospect of success - Rule 37 Employment Tribunal Rules of Procedure 2013 (iii) whether the Claimant should be ordered to pay a deposit, not exceeding £1,000, as a condition of being able to continue to advance his allegation or argument of whistleblowing detriment – Rule 39 Employment Tribunal Rules of Procedure 2013; and (iv) further case management as necessary.
2. The claims were for detriment done on the ground that the Claimant had made a protected disclosure contrary to section 47B ERA 1996.
3. The Claimant had been ordered previously (in a telephone hearing on 17/12/21) to provide further particulars of his claimed protected disclosures (which order he had complied with).
4. Unfortunately, despite apparently taking legal advice since the last hearing, he had failed to comply with another order also made on 17/12/21, namely that by 10/2/22 he should provide a witness statement for purposes of today's hearing "*setting out the timing of the bringing of his claims*". No witness statement at all had been provided by him about this.
5. I explored with the parties whether I could reasonably call the Claimant to give evidence about time issues without a witness statement and without an adjournment. After getting an indication of the areas I would seek to explore with the Claimant by way of taking his evidence from him, I gave Mr Sheppard an opportunity to take instructions - and having done so, he confirmed that the Respondent would not be able to respond reasonably with evidence of its own without an adjournment, and that it was possible that if such an adjournment was granted, the Respondent would then apply for an order that the Claimant pay its costs thrown away by the adjournment.
6. I then asked the Claimant whether he wished for an adjournment so that he could have a further opportunity to serve a witness statement dealing with the time issues, so that on a later occasion he could give evidence on oath, or whether he wished to proceed today with the OPH simply on the basis of the documents before me. He stated that he wished for the latter. I accordingly proceeded without witness evidence and on the basis of the papers in the preliminary hearing bundle (which the Claimant had been given a prior opportunity to contribute to) and oral submissions only.

13. The detriments which the Claimant claimed (and as recorded following the telephone hearing on 17/12/21) on the ground that he had made protected disclosures were (i) that he has not been provided with any work by the Respondent since March 2020 and (ii) he was not given enough time to look at a new agreement which he was asked to sign when digital exams were introduced in June/July 2020.
14. Having regard to the pleadings and what appears in the OPH bundle, and to the provisions of section 48(4) ERA 1996, I find that the claim about the withholding of work from the Claimant, which according to the Claimant's claim, was a deliberate act, is a claim about a decision which must have been made in or before March 2020; and the claim about the failure to give enough time to consider a new agreement in June/July 2020 is a claim about a failure which occurred during those months.
15. The Claimant applied to ACAS on 8/7/2021 and received the EC certificate on 12/8/2021. He presented his ET1 on 7/9/2021. The period of three months (plus the early conciliation period) which constituted the primary limitation period for bringing a claim presented on 7/9/2021, started on or about 4/5/2021. Accordingly, the claims in relation to both the claimed detriments (which occurred in early and mid 2020) are significantly (at least nine months) late.
16. In his oral submissions the Claimant stated that he had been waiting for the Respondent to respond internally to his complaints, disclosures and a grievance, and that the Respondent had failed to respond promptly or at all. Even if true, I do not find this to be a good excuse for the Claimant's own delay.
17. The Claimant made a vague reference to the fact that he had been hospitalised in 2021 and that he had suffered anxiety, but had not provided any evidence or details to show that he was incapacitated. In any event the claims were already late by the end of 2020. The Claimant referred to nothing else to explain his delay.
18. The onus of proof in a case like this is on the Claimant to show clearly that it was not reasonably practicable (ie feasible) to bring his claim within the primary limitation period, and that he then brought the claim within a reasonable time thereafter. The Claimant has not shown that it was not reasonably practicable for him to present his claims within the period of three months plus any ACAS limitation period of the claimed 2020 detriments occurring, or that he brought his claims within a reasonable period thereafter. I therefore find that the claims are outside the jurisdiction of the Tribunal.
19. The Claimant in closing made emotional submissions about the claimed iniquities of the Respondent, the fact that at personal cost he was acting in the public interest to promote integrity in the Respondent's exam system, etc. I explained to him that even if these submissions were correct, the determination of the preliminary issue about the timing of his ET claim had to be made independently of these considerations.

J S Burns Employment Judge
London Central
24/02/2022
For Secretary of the Tribunals
Date sent to parties 24/02/2022
