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EMPLOYMENT TRIBUNALS

Claimant: Ahmed Ali

Respondent: London Oratories Limited

Heard at: London East
On: 15 March 2022

Before: Employment Judge W A Allen QC

Appearances

For the Claimant: did not attend
For the Respondent: Mr Buurman, Director

JUDGMENT

1. The Claimant's claim is out of time and therefore falls outside the Tribunal's jurisdiction.
2. The hearing listed for 27 and 28 April 2021 is vacated.

Record of Open Preliminary Hearing

1. This open preliminary hearing was listed to determine whether some or all of the Claimant's claim was out of time; and if so whether it was just and equitable to extend time; and therefore whether the tribunal lacked jurisdiction to hear some or all of his claim.
2. The Claimant, who had attended the last preliminary hearing in this case on 9 December 2021, did not attend today. The notice of hearing had been sent to the parties on 16 December 2021. The tribunal clerk made multiple attempts to contact him by telephone today but she was unable to get hold of him. The Claimant had failed to comply with the case management order relating to the production of evidence at today's hearing. There was no correspondence on the tribunal file from the Claimant.

3. The Claimant's ET1 claim form was presented to the tribunal on 17 June 2021. He claimed unfair dismissal and race discrimination. The narrative attachment to the claim form recounted a series of detriments which were identified and set out at paragraph 12 on page 7 of the eccentrically organised record of the last preliminary hearing on 9 December 2021.
4. These alleged detriments took place between 15 September 2020 and 3 November 2020.
5. The Claimant notified ACAS and obtained his certificate from them on the same day, 17 December 2020.
6. The relevant parts of section 123 Equality Act 2010 states:

123 Time limits

- (1) Subject to sections 140A and 140B, 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.
 - (2) . . .
 - (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
 - (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.
7. Time limits can be extended by any time spent in ACAS early conciliation and claimants are given a period of 1 month in which to bring a tribunal claim after obtaining an early conciliation certificate.
 8. As this Claimant obtained his early conciliation certificate on the same date as his notification to ACAS, he gains no extra time from the early conciliation period. He brought his claim 6 months after obtaining the certificate.
 9. Therefore any matter pre-dating 17 March 2021 (three months prior to the presentation of the ET1 claim form) is out of time – which is all of this claim, given that the last act of detriment is alleged to have taken place on 3 November 2020.
 10. There was no information before the tribunal to suggest that it would be just and equitable to extend time. By order sent to the parties on 13 December 2021, the tribunal had directed the Claimant to prepare a witness statement by 1 March 2022, setting out why the claim form was not lodged in time, what he knew of the relevant time limits, what advice he took about time limits and to explain any other reasons why it would

be just and equitable to extend time. The Claimant did not supply such a witness statement. By letter dated 3 March 2022, the tribunal had given the Claimant an additional period to 10 March 2022 to supply the witness statement. He did not do so and he did not attend today.

11. The Claimant's claim is all out of time and he has failed to supply the tribunal with any basis for extending time on the basis that it might be just and equitable to do so. Therefore the claim cannot proceed as the tribunal lacks jurisdiction.
12. The relevant part of Rule 37 of the 2013 ET Rules states:

37 Striking out

(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—

...

(d) that it has not been actively pursued;

...

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

...

13. Had it not been for the lack of jurisdiction, I would have additionally considered that this claim had not been actively pursued and I would have required the Claimant to show why it should not be struck out on that basis, given that he had failed to attend and failed to comply with tribunal case management orders.

Employment Judge W A Allen QC

15 March 2022