



EMPLOYMENT TRIBUNALS

Claimant **Mr W Maseke**
Respondent **Telefonica UK Limited**

PRELIMINARY HEARING

Heard at: Reading **On: 22 July 2022**
Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: In Person
For the Respondent: Mr O Lawrence, counsel

JUDGMENT

1. The claimant's complaints as set out in the in schedule in the letter of 28 April 2022 at 1.1, 1.2, 1.7, 1.8, and 1.11 have been presented outside the time limit for the presentation of complaints contained in section 123 Equality 2010. It is just and equitable to extend the time for the presentation of complaints, the employment tribunal has jurisdiction to consider these complaints.
2. The claimant's complaints as set out in the in schedule in the letter of 28 April 2022 at 1.4, 1.5, 1.9, 1.13, 1.14, 1.15, 5.1 to 5.13, 5.19 and 5.20 have been presented outside the time limit for the presentation of complaints contained in section 123 Equality 2010. It is not just and equitable to extend the time for the presentation of complaints, the employment tribunal does not have jurisdiction to consider these complaints.
3. The respondent's application for a deposit is refused.

REASONS

1. The claimant has now presented a total of six claims against the respondent. At the time of an earlier preliminary on 1 April 2022 the claimant had presented only five claims of which two he subsequently withdrew. The claimant has however since presented a new claim arising from his dismissal and is seeking to have the withdrawn claims re-instated.

2. This preliminary hearing is to consider whether the employment tribunal has jurisdiction to consider the claimant's complaints which have been presented outside the time limit for the presentation of complaints contained in section 123 Equality 2010. I am also asked to consider whether to make an order for a deposit in respect of any contention that has little reasonable prospect of success.

Case number 3300036/2022 the fifth claim

3. The claimant's complaints in the fifth claim as set out in the schedule in the letter of 28 April 2022 at 5.1 to 5.13, 5.19, and 5.20 are between 5 and 1½ years out of time. The complaints relate to matters which arise from his treatment at the hands of his line manager "Rupert" and a variety of other matters. There is not a coherent narrative of these events which indicates that they form, as the claimant contends, part of a course of conduct which amounts to a single act continuing over a period of time which includes matters that are in time. Complaints in the fifth claim which are in time are made against a different line manager and relate to the disclosure of the claimant's sensitive personal data, withholding information on benefit protection, delay in providing the claimant with information on termination benefits and conduct that the claimant considers to be vexatious over the claimant's final hearing.
4. There is no link, other than the fact that these events happened to the claimant, that knits them to each other so that they form part of a course of conduct or an act extending over a period. The incidents are all of a different nature, involve different people and occurred at distinctly different periods of time.
5. I have gone on to consider whether the out of time complaints should be allowed to proceed on the basis that it is just and equitable to extend time. My conclusion is that it is not just and equitable to extend time. The matters I have taken into account in reaching this conclusion include the fact that some of these matters would clearly have little reasonable prospect of success and it would have been appropriate to consider the imposition of a deposit order if the contentions made in the complaints were to be allowed to continue. Other matters which put forward a coherent complaint that can only be determined after a consideration of the evidence, in respect of these matters, I take into account the fact that the matters took place, in the some instances, more than 5 years before the claimant claim was presented. The matters relating to the claimant's management by "Rupert", his erstwhile line manger, are historic matters that the claimant consciously decided not to pursue at the time. The claimant stated that he made the decision to put them behind him and move on. The claimant does not allege that there was any impediment to his making any complaint at the time if he had been so minded to. The claimant does not say that his view of the treatment changed because of any later discoveries about the events. The claimant always considered this treatment unfair and discriminatory. The events which caused the claimant to decide to claim discrimination in respect of the historic matters in the fifth claim had occurred by the time the claimant brought his earlier four claims but he did not choose to complain at that time. The historic matters raised in the fifth claim could have been raised in the earlier claims but were not.
6. Looking into the historic matters now in dispute so long after they occurred will present difficulties for the parties simply because of the passage of time and the fact sensitive nature of the complaints about discrimination. Extending time in respect of

these historic complaints in the fifth claim is not on the interests of justice, it is not just and equitable to do so.

Claim number 3313184/2020 the first claim

7. I am satisfied that it is just and equitable to extend time in respect of the complaints at 1.1,1.2, 1.7.1.8, and 1.11. All of these complaints contain clear allegations which the respondent and claimant can address in any hearing notwithstanding the passage of time. Whether the claimant should succeed or fail in respect of these matters can only be determined by hearing evidence. It is not, in my view, possible to weigh up the strength or weakness of these claims without considering all the relevant evidence. While it is not immediately clear why race played a part in respect of any of the claimant's allegations, the question whether there was discrimination on the grounds of race requires looking at comparators, and considering any reasons put forward for the less favourable treatment, all of which take place on considering all the evidence. I am satisfied that there is no evidence of prejudice to the parties, in particular the respondent, in allowing the case to proceed.
8. I have also considered the complaints at 1.4, 1.5, 1.9, 1.13, 1.14 and 1.15 are out of time. They are not part of a continuing act or course of conduct part of which is in time they are all distinct different events complained of by the claimant.
9. In respect of 1.4 it is in my view clear that this complaint has little reasonable prospect of success, the complaint is not credible. The reference to a "Raper" complained of by the claimant is to a real person whose name was mentioned in chat messages. It was not a matter directed to the claimant. In respect of the matter at 1.5, on the face of the information before me, the claimant will not be able to show that this event occurred. The allegation has no prospect of success. In the matter at 1.9 the claimant has not set out coherently how he was defamed or explained how race could be shown to form any part of the matters complained of. In respect of the matters at 1.13 the claimant's complaint about being asked questions about Tanzania is not a matter that amounts to less favourable treatment because of his race. The allegations put forward is not a coherent complaint of discrimination on the grounds of race. In respect of the complaint at 1.14, the claimant being asked questions about his marital status is not less favourable treatment on the grounds of his race. In respect of 1.15 the claimant being asked whether he was in the toilet is not less favourable treatment because of his race.
10. In view of my conclusions on the clear and obvious lack of merit in the respect of any of these claims just referred to I am of the view that the respondent is significantly prejudiced by having to prepare a claim to defend these hopeless allegations which are all made out of time. I have therefore come to the conclusion that it is not just and equitable to extend time.

Deposit

11. I am satisfied that some of the claimant's complaints which are in time have little reasonable prospects of success. Generally, the claimant has not explained why race plays any part in the various adverse events of which he complains. Some matters are inherently weak, for example the claimant complains that a delay in providing him information was on the grounds of his race without any clear reason

why his race was a factor in respect of any delay shown, such a complaint has little reasonable prospect of success. In discrimination claims all the evidence has to be considered including the treatment of comparators before a determination can fairly be made. The way that the claimant's individual complaints have been put to me at present is such that some of the complaints I consider have little reasonable prospect of success.

12. However, I decline to make a deposit order because taking into account the claimant's means noting the claimant's inability to pay any deposit other than the most trifling amount and concluding that a deposit order would operate as a bar to the claimant being able to proceed with his claim. I do not consider that in this case I can properly order this claimant to pay a deposit.

Employment Judge Gumbiti-Zimuto

Dated: 26 July 2022

Sent to the parties on:

9 September 2022

For the Tribunal: GDJ