



EMPLOYMENT TRIBUNALS

Claimant: Mr Samuel Potts

Respondents: (1) Barbara Cannon
(2) Ross Cannon
(3) The Salad Kitchen Limited
(4) Samuel Cole
(5) "Monika"

Heard at: London South (by CVP)

On: 30 September 2022

Before: Employment Judge Cheetham KC

Representation

Claimant: no attendance

Respondents: Barbara Cannon and Ross Cannon

JUDGMENT

1. The claim is struck out:
 - (a) the claim was presented out of time and the Tribunal does not have jurisdiction to hear it;
 - (b) the subject matter of the claim is the same as that set out in case no. 2204181/2019, which was struck out in a judgment promulgated on 18 August 2020; and
 - (c) the Claimant has failed to comply with any of the tribunal's orders, which were given on 10 February 2022.
2. The Tribunal intends making a preparation order in favour of the First Respondent in the sum of £210 and the Claimant will therefore pay that sum to the First Respondent within 14 days of receipt of this Judgment.
3. The Claimant has **14 days** from the date that this judgment is sent out to write to the Tribunal and explain why that order should not be made.

4. The listing for a full merits hearing on 22 and 23 March 2023 is vacated and that hearing will no longer take place.

REASONS

1. This is a claim that was received by the Employment Tribunal on 30 May 2020. It arises from the Claimant's employment with the Third Respondent between 29 March 2018 and 17 June 2019. It alleges unfair dismissal and disability discrimination, but lacks any proper particulars. Even the identity of the Fifth Respondent is unclear.

Background to this hearing

2. Under the section of the ET1 requiring details of the claim, the Claimant stated, "*The claim relates to a claim under s.13 in case number: 2204/2019 submitted 16 October 2019*". He referred to a forthcoming hearing in that case.
3. In preparation for this hearing, the tribunal read the reasoned judgment in that case, which followed a hearing at London Central Employment Tribunal on 11 August 2020. After a hearing at which evidence was heard, the claim was struck out as having been presented out of time. However, the reasoning in the 13-page judgment went much further than that and, after a careful consideration of the case, EJ Norris concluded: "*I consider the Claimant's assertion that his dismissal was because of disability to be fanciful and indeed, as I have noted above, I am not persuaded that he believes it himself or will be able to adduce any evidence to substantiate it (or even to shift the burden of proof)*".
4. This present claim was therefore issued shortly before that hearing, but it is clear that it relates to exactly the same subject matter, albeit that first claim was brought against the Third Respondent only.
5. Unfortunately, this previous judgment does not appear to have been brought to the attention of the employment judge who held the case management hearing in this case on 10 February 2022 and set it down for today's preliminary hearing. The issues for this hearing were meant to be whether or not the Claimant was disabled at the material time and also whether the claim should be struck out or a deposit order made. The case was also listed for a 2-day full merits hearing on 22 and 23 February 2023.

This hearing

6. The Claimant did not attend and the tribunal received no communications from him explaining why he might not do so. The hearing was therefore held in his absence.
7. The first point to make is that this claim is significantly out of time. The last day of employment having been 17 June 2019, the claim should have been brought by 16 September 2019 (allowing for any extension of time for Early Conciliation). It is therefore about 8 months out of time. No application has

been made to extend time and no explanation at all has been provided for that lengthy delay. However, given that the same arguments must have been raised (and were rejected) by the previous tribunal, any application to extend time would almost certainly have been hopeless in any event.

8. Secondly, even if that were not the case, the cause of action in this claim has already been considered in the previous judgment and found to be "*fanciful*". There is nothing before me to suggest it is anything other than fanciful, as the allegations are lacking in any particulars whatsoever. Therefore, even if the claim was not 8 months out of time, it would be a claim with no prospects of success at all.
9. Thirdly, and in any event, at the Case Management hearing in February, the Claimant was ordered to provide medical records and an impact statement, to prepare a bundle for today's hearing and to provide a witness statement. He has not complied with any of those orders and done nothing at all to prepare for this hearing, which he has not even attended.
10. Therefore, the tribunal strikes out this claim. It is out of time, has no prospects of success and the claimant has also failed to comply with the tribunal's orders. Quite simply, this claim is an abuse of process.

Costs

11. The claim has also put the Respondents to trouble and expense. Whereas they should have been able to rely on the previous judgment as bringing an end to the claim, they have had to spend time preparing for and attending this hearing and the case management hearing in February. The tribunal therefore intends making a preparation time order under Rule 76 in favour of the First Respondent, which is assessed at 5 hours and which amounts to £210 (5 x £42).
12. Under Rule 77, no preparation time order can be made unless the paying party (i.e. the Claimant) has had a reasonable opportunity to make representations. The Claimant therefore has **14 days** from the date that this judgment is sent out to write to the Tribunal and explain why that order should not be made.

Employment Judge Cheetham KC

Date 30 September 2022

