



# THE EMPLOYMENT TRIBUNAL

**Claimant:** Mr C Cam

**Respondent:** London Fire Commissioner

**Held at:** London South **On:** 14 December 2022 (By video)

**Before:** Employment Judge Siddall

**Representation:**  
For the Claimant: In person  
For the Respondent: Mr B Amunwa

## JUDGMENT

The decision of the tribunal is that the claims for discrimination are struck out as they are out of time and it is not just and equitable to extend time. An application to amend the claim was refused.

## REASONS

1. The claimant brought claims of discrimination because of his age, race and religion on 3 February 2022.
2. A preliminary hearing was arranged as the respondent argued that the claims were out of time and had no prospects of success. At the hearing I heard evidence from the claimant and from Ms Tania Legore of the respondent.
3. The background to the claim is as follows. The claimant was a watch manager in the fire service. On 14 December 2017 an incident took place which led to disciplinary proceedings. He was dismissed on 27 April 2018 but reinstated on 2 August 2018 on a lower rank. He resigned on 31 March 2019.
4. The claimant contacted ACAS on 9 May 2019 and obtained an early conciliation certificate ('ECC'). He then lodged tribunal proceedings on 16 May 2019 alleging that he had been discriminated against and constructively unfairly dismissed ('the first claim'). Unfortunately he did not put his ECC number on the claim form. He sent this to the tribunal on 12 July 2019.
5. At a hearing on 28 May 2020 Judge Sage decided that the first claim must be rejected as the ECC number had not been inserted on the claim form. In her decision the judge referred to the case of **E.On Control Solutions Limited v**

- Caspall** UKEAT/0003/19 which states that in these circumstances the claim must be rejected and the proper course of action is for a claimant to submit a second claim form with an ECC number on it.
6. The claimant did not lodge a second claim at this time but he wrote to the tribunal challenging Judge Sage's decision. A reconsideration hearing was arranged for 12 November 2021 before Judge Braganza. It took place by video. Judge Braganza gave her oral decision at the end of the hearing. She upheld the decision of Judge Sage on the basis of the **Caspall** decision. The claimant agrees that she explained to the claimant at the hearing that the first claim could not proceed and that she asked him if he had lodged a second claim.
  7. On 22 November 2021 the claimant contacted ACAS again and re-started the ECC process. A certificate was issued on 14 December 2021. The claimant says that during this period he spoke to several ACAS officers one of whom advised him that he could lodge a claim for discrimination out of time on the grounds that it was 'just and equitable' to proceed. The claimant also did a google search to investigate his rights.
  8. Judge Braganza's written reasons were sent to the parties on 1 February 2022. At paragraph 20 of her decision she quotes extracts from the **Caspall** case including paragraph 45 which explained that in order to rectify the omission of the ECC number a claimant needs to provide a second claim form containing an accurate ECC number.
  9. On 3 February 2022 the claimant presented this claim ('the second claim') which alleges only discrimination (not unfair dismissal) and referred to the incident in December 2017.
  10. The claimant's evidence is that throughout this period he has spoken to ACAS on several occasions and also to friends who are legally qualified, although he has not taken formal legal advice.

### **Decision**

11. The claims are clearly out of time. The claimant agreed during questioning by Mr Amunwa that his complaints essentially related to the period from 14 December 2017 to the date of his dismissal on 27 April 2018. The claimant had provided a witness statement for this preliminary hearing. He said in his oral evidence that after he had been reinstated in August 2018 he had been on a lower rank and that he had been bullied and humiliated by colleagues. This had led to his resignation. These allegations of bullying were not referred to in either the first or second claim.
12. The claimant also said in his written statement that after he left the respondent he has been blocked from returning in any capacity. He says that he has applied several times to be a trainer with Babcocks who provide training to the respondent, but each time his application has not been processed, he believes because the respondent will have bad-mouthed him. I pointed out to him that the second claim contains no reference to this allegation. I asked him if he wanted to amend his claim to include a claim for victimisation. He said that he did but was unable to provide details of when he applied to Babcocks, stating that it was probably in the 'last six months'. He has not provided any evidence to support his suggestion that the respondent

- has blocked his appointment as a trainer. He is now intending to progress his career elsewhere.
13. I decided that it was not appropriate to give the claimant leave to amend his claim to include a later claim of victimisation. At present the details he has provided are vague and highly speculative.
  14. Therefore if I take the claimant's case at it's highest I find that the last act complained of is 31 March 2019 when the claimant says he was constructively dismissed. That is over 3 years ago.
  15. The claimant acted promptly to pursue his claim in the employment tribunal but unfortunately he made an error in failing to add the ECC number. That claim is therefore a nullity.
  16. Is it just and equitable to extend time based on the procedural history of the first claim? This is an unfortunate case where the claimant, who is not legally represented, made a genuine error when he lodged the first claim. That is why we are here today.
  17. The claimant would not have known that his first claim could not proceed until Judge Sage's decision was issued on 30 May 2020. She referred to the **Caspall** case. If the claimant had looked into this at the time it is likely he would have discovered that his best course of action was to lodge a second claim containing an ECC number. He is clearly a resourceful person who has made quite considerable efforts to investigate his rights. I accept his evidence however that he did not do this.
  18. Judge Braganza informed the claimant at a hearing on 12 November 2021 that the decision of Judge Sage must stand. She checked whether he had lodged a second claim, which at the very least put the claimant on notice that this was a possibility. On the 22 November 2021 he contacted ACAS. At some point between this date and 14 December 2021 (when another ECC was issued) the claimant accepts that he was told that he could lodge a second claim out of time and hope that it would be accepted on just and equitable grounds. He also googled his rights.
  19. I asked the claimant why he delayed until 3 February before bringing the second claim, at least seven weeks later. He replied that he waited for Judge Braganza's written reasons before acting. At the time he was employed as a secondary school teacher and he was very busy. He thought that as the claim related to events that took place so long ago, it was not necessary to act quickly.
  20. I find that the claimant was aware no later than 14 December that he could bring a second claim. He lodged the claim on 3 February.
  21. I have considered whether it is just and equitable to extend time and find that it is not.
  22. First the claim was brought over three years out of time. Ms Legore's evidence is that several people involved in the disciplinary proceedings that took place in 2018 have retired. Emails and paperwork are no longer available.
  23. The claimant says that he has kept all the papers relating to the internal proceedings. I accept however that the respondent's witnesses are now likely to have difficulty in recalling what happened over four years ago. It is doubtful whether a fair trial is still possible.
  24. My decision is that the appellant has simply waited too long before bringing the second claim. Whilst he may not have understood that the first claim

could not proceed until 30 May 2020, the second claim was not brought until around twenty months later. It is clear that the claimant was taking significant steps to investigate his rights throughout these proceedings. He could have discovered the possibility of bringing a second claim in 2020. I accept that he did not find this out until late 2021. But even then he did not act speedily. His evidence was that he did not think a further few weeks mattered. I have to disagree with him on that. Given the age of the allegations, it was incumbent on him to act as soon as possible after discovering that he could bring a second claim out of time. Instead he waited for several more weeks.

25. Taking all these factors into account I find that it would not be just and equitable to extend time and the claims cannot proceed. That brings this claim to an end.
26. This decision is no reflection on the merits of the claimant's assertions that he was discriminated against in the service of the respondent. They remain untested.

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Employment Judge Siddall  
Date: 14 December 2022

Sent to the parties on  
Date: 22 February 2023