



EMPLOYMENT TRIBUNALS

Claimant: Mr D Adams

Respondent: South London & Maudsley NHS Foundation Trust

Heard at: London South **On:** 28/2/2023
(Croydon) via CVP

Before: Employment Judge Wright

Representation:

Claimant: Did not attend/did not send written representations

Respondent: Ms J Twomey - counsel

JUDGMENT

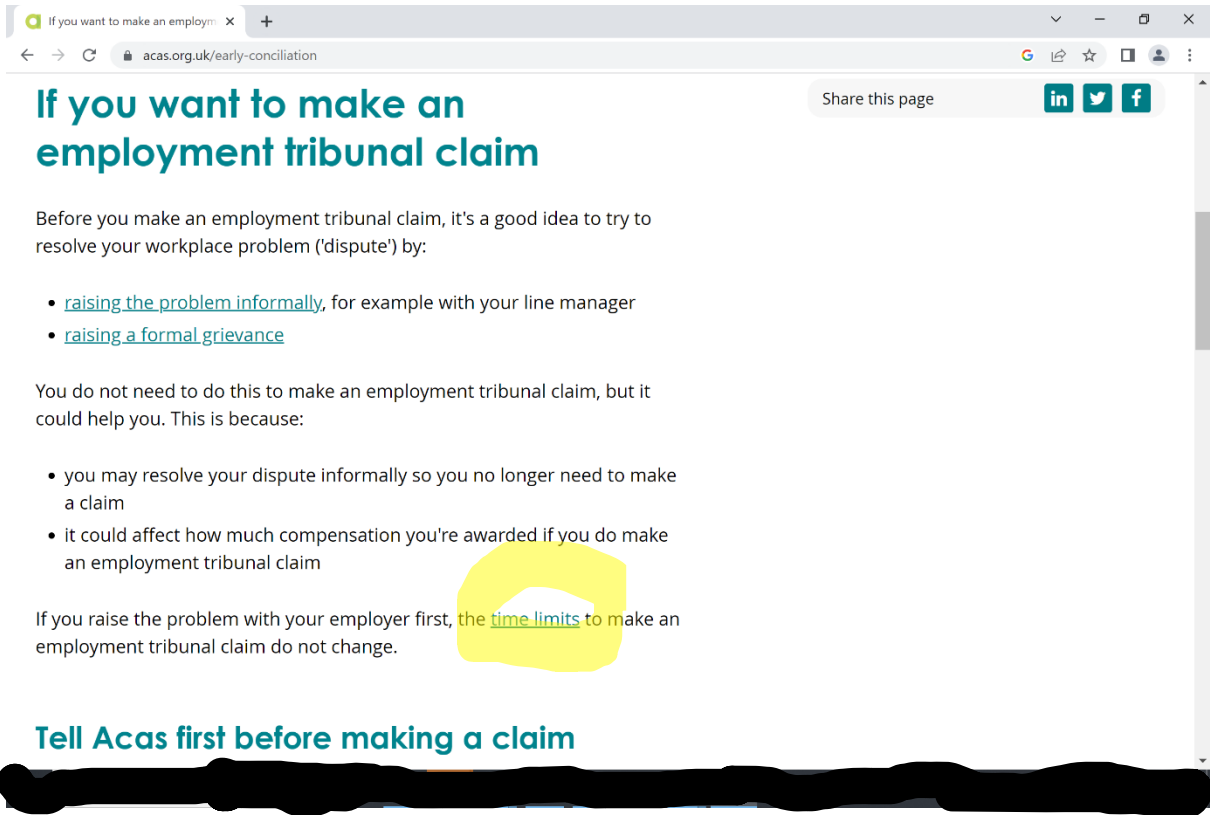
The claimant's claim was presented out of time. The Tribunal does not have jurisdiction. The claim is dismissed.

REASONS

1. The previous hearing listed for the 13/10/2022 was postponed and the parties were informed of this hearing on that date. The claimant replied to an email from the Tribunal to say that he could attend this hearing.
2. The hearing commenced as listed at 2pm. The claimant did not attend and when he was called by the clerk, his telephone went to voicemail. At

approximately 2.15pm the claimant emailed to say that he was having technical issues. Nothing further was heard from him.

3. The Tribunal heard the respondent's application and adjourned until 2.45pm to allow the claimant the opportunity to join the hearing. He did not do so. As the claimant did not attend the hearing, these written reasons have been provided.
4. The claimant had been on notice of the respondent's application to strike out his claim as it had been presented out of time since the respondent's response was presented on 29/4/2022. In addition, the respondent took the time point in its case management agenda and draft list of issues, both of which were sent to the claimant. The claimant did not provide a case management agenda or reply to the respondent.
5. The claimant was given direct notice of the time point in a letter from the Tribunal dated 31/5/2022 and was informed an open hearing would be listed at which the point would be determined.
6. The time point aside, the Tribunal was not satisfied that the claims of unlawful discrimination contrary to the Equality Act 2010 (EQA) relying upon the protected characteristics of age and disability have any reasonable prospects of success. There is no reference to these allegations in the claimant's particulars of claim. In respect of the claim relying upon the protected characteristic of race, the claimant has done no more than to reference his race (West Indian) and that of his colleagues (Caucasian).
7. There is also a question of whether or not the claim has been actively pursued. The claimant has not interacted with the respondent in respect of preparation for this hearing (which was previously postponed) or with the Tribunal.
8. The claimant references events which he said took place between 12/4/2021 and 14/4/2021 and which he said went on for about three weeks, on that basis concluding on the 5/5/2021. The claimant engaged in Acas early conciliation between 12/7/2021 and 2/8/2021. In doing so the claimant has demonstrated that he was aware of the process which he needed to follow in order to present a claim.
9. An internet search for 'Acas early conciliation' gives a link to Acas' website and upon opening that link, the following page appears:



10. Scrolling down slightly, one can see the reference to 'time limits' which is hyperlinked. It is not therefore difficult to establish the time limit to present a claim to the Tribunal.

11. Based upon the dates of early conciliation, the time limit for the claimant to present a claim was by the 2/9/2021. The claimant did not present his claim until 5/10/2021. There was no explanation for the late presentation, either in the claim itself or subsequently. The claimant did not seek to persuade the Tribunal to extend the time limit under s. 123(1)(b) EQA and that it was just and equitable to do so. Ms Twomey submitted that not only had almost two years passed since the events complained of, the claimant had not provided any explanation for the late presentation of his claim. Ms Twomey referred to Robertson v Bexley Community Centre 2003 IRLR 343, that extending time is the exception rather than the rule and the authorities that state the time limits are strict and short in the Employment Tribunals and any exercise of the discretion to extend at time limit, should not be readily exercised. The burden is upon the claimant and in particular, he had not engaged with this issue and had not sought to persuade the Tribunal to exercise its discretion. Those submissions were accepted.

12. In the absence of any explanation or response from the claimant, the claim was presented out of time. It is not just and equitable to extend any time limit and the result is the the Tribunal does not have jurisdiction and the claim is dismissed.

28 February 2023

Employment Judge Wright