



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MR O JONES

AND

Respondent
HYDROSPHERE UK LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 23RD MARCH 2023

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- WRITTEN SUBMISSIONS

FOR THE RESPONDENT:-

JUDGMENT

The judgment of the tribunal is that:-

The claimant's application for reconsideration of the judgment is dismissed. .

REASONS

1. At a hearing on 16th February 2023 I dismissed the claimant's claims of race and age discrimination as having been presented out of time. Reasons were given orally and neither party has sought written reasons for the decision. However on 12th March 2023 the claimant submitted what he describes as an "appeal" against the decision. For the avoidance of doubt any appeal from the employment tribunal lies to the Employment Appeal Tribunal. However I have treated the "appeal" as an application for reconsideration.

2. As neither party has applied for full written reasons I can summarise my decision relatively briefly. The claim form was submitted on 7th September 2022. The single allegation of race discrimination related to an incident in November or December 2021; and the allegations of age discrimination from two WhatsApp messages in March and April 2021. It was accepted that the claims had been submitted out of time and the question before me was whether time should be extended. In brief I considered principally the balance of prejudice and took into account the other well-known factors including the reason for the delay (see below). I decided that the claimant had not satisfied the burden of demonstrating that it was just and equitable to extend time.
3. In terms of the claims themselves the claimant appears from his grounds to accept that I have correctly identified them as claims of harassment (s26 Equality Act 2010). The grounds for reconsideration are difficult to follow, for example the assertion that the decision was made with “Brash Whimsy” in the knowledge that the claimant was defending the claim, but as I understand them appear to involve the following assertions.
4. Firstly the claimant alleges that the outcome was “biased” because in reaching my conclusions I took into account the submissions of the respondent. I confess I find this difficult to follow. In deciding any issue I am bound to consider any submissions made by either party.
5. Secondly he submits that the claims were known to be out of time when the tribunal accepted the claim form. Once it had been accepted the issue of time had fallen away, and it was no longer open to the tribunal to dismiss the claims on that basis. I am afraid that this is straightforwardly wrong. The tribunal accepts at the initial stage claims that are obviously out of time precisely because it has the discretion to extend time if appropriate. That was the purpose of the preliminary hearing.
6. In respect of the decision itself he asserts that I failed to take into account the claimant’s “apathy” and “quiet and timid nature”; that part of my decision was based on the cost to the respondent of defending the claim; and that I took into account the respondent’s denial that the underlying events had occurred despite his having presented evidence that they had.
7. In respect of the first I recorded and took into account the claimant’s submission that he had not wanted to complain internally about these matters or bring a claim whilst still in employment as he feared being victimised if he did so. The reasons he advanced at the hearing for the delay in presenting the claims were therefore taken into account.
8. In respect of the second, whilst I considered the evidential prejudice I did not take into account any costs that would be incurred going forward.
9. In respect of third I recorded in the judgment that the claimant had produced a witness statement supporting the allegation of race discrimination; and that the

age discrimination claim was based on the contents of the WhatsApp messages which were in the bundle. I did not decide not to extend time on the basis of any weakness in the evidence supporting the underlying allegations.

10. In my judgement there is nothing in the application which persuades me that there is any reasonable prospect of the decision being varied or revoked if it were listed for a reconsideration hearing, and I therefore exercise my power under rule 72(1) Employment Tribunal Rules of Procedure 2013 to refuse the application at this stage.

Employment Judge Cadney
Date: 24 March 2023

Judgment sent to the Parties: 04 April 2023

FOR THE TRIBUNAL OFFICE