



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr Omar Ibrahim

Arriva The Shires (Ltd)

Heard at: Watford Employment Tribunal **On:** 30 March 2023
Before: Employment Judge Allott sitting alone

Appearances

For the Claimant: Did not attend

For the Respondent: Ms Alexandra Mosley (in-house paralegal)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claims are struck out as they are out of time and there is no reasonable prospect of the claimant successfully showing that it was not reasonably practicable to bring his claim in time and that time should be extended on a just and equitable basis.

REASONS

1. In its response, the respondent asserted that the claimant's claims are out of time.

The claimant's absence:

2. On 2 October 2022 the tribunal sent a notice of preliminary hearing to the parties. This stated that the preliminary hearing would be heard by video on 15 February 2023 starting at 10am. The notice sets out that the employment judge would determine the following preliminary issues which included:-

“Whether the claims under both the Employment Rights Act 1996 and Equality Act 2010 should be dismissed because the claimant is not entitled to bring it if the statutory time limit has expired.”

3. A direction was made as follows:-

“Any statements or evidence to be relied upon by either party must be sent to the other not less than 21 days prior to the preliminary hearing.”

4. Prior to the 15 February 2023 the claimant neither provided the further information requested in the response nor did he provide a statement explaining why he considered his claims to be in time.
5. The CVP hearing on 15 February 2023 was before Employment Judge Laidler. In the reasons for adjourning that hearing Employment Judge Laidler recited that the claimant connected via his iPad. He was then trying to access the bundle on his mobile phone which proved to be very difficult. In addition, he had only received the bundle at 8.22 on the morning of the hearing. In the circumstances, Employment Judge Laidler decided to adjourn the hearing. Today’s date was fixed while the parties were in attendance and they agreed to it.
6. The claimant has therefore been aware that this open preliminary hearing was to be heard today, 30 March 2023, since 15 February 2023. Ms Moseley, who was present at the hearing on 15 February 2023, could not recall if a start time of 10am had been given on that occasion.
7. Employment Judge Laidler made case management orders. The respondent was to send the claimant a hard copy of the bundle within seven days which it did. The second case management order made was as follows:-
 - “2. The claimant to provide answers to the respondent’s request for further information contained in their ET3 grounds of resistance by 8 March 2023. The claimant should include any information he relies upon in asserting that his claims were presented in time or why it was not reasonably practicable to do so or it would be just and equitable to extend time.”
8. The claimant did not comply with that order by 8 March 2023.
9. The judgement of Employment Judge Laidler was sent out to the parties on 10 March 2023. Consequently, the claimant had written confirmation of this hearing date shortly after 10 March 2023.
10. On 22 March 2023 the claimant sent an email to Watford Employment Tribunal, copied in to the respondent. He attached a document to that email titled “Claimant counterclaim to grounds of resistance”. In that document the claimant makes various allegations of race discrimination, some of which do not appear to relate to any allegations in the claim form. The only part of that document where the claimant may be dealing with the lateness of his claim is where he states:-
 - “12. Claimant assert the grievance and the appeal took such a long time solely of intention to derail a claim to be made to employment tribunal, maybe so that it become disputable in employment tribunal.”
11. Also in his email dated 22 March 2023 the claimant states as follows:-

“Also I would like to add that I have not seen a time for the hearing on 30 March 2023 could a time be confirmed to me please.”

12. Unfortunately, it would appear that no start time was sent to the claimant by the tribunal.
13. Ms Mosley told me that she was away from work until Tuesday 28 March 2023. On her return she rang the employment tribunal to confirm that the start time was 10am. She told me that she asked if the tribunal wanted her to relay the time to the claimant but was told to leave it to the tribunal and that they would contact listing. Again, it does not appear that the start time was sent out to the claimant.
14. At 4pm, 29 March 2023, Ms Mosley sent an email to the tribunal and the claimant which included confirmation that the hearing was due to proceed at 10am today.
15. At 6.29 this morning, 30 March 2023, the claimant sent an email as follows:-

“I am very sorry to inform you all that this meeting has become so sudden for me, that I am regretfully unable to attend because I received/seen this email 2am this morning while I am at work.

Also may I inform that I have not seen a time for this meeting until now, I believe I have been receiving emails very late on this case 3308884/2022 but I was unable to prepare or submit orders on time.”

16. The claimant has known of this hearing date since 15 February 2023 and had it confirmed in writing shortly after 10 March 2023. He has had a hard copy of the bundle since seven days after 15 February 2023. He has had ample time to prepare for this hearing. It is fair to say that the judgment listing this resumed hearing does not have a start time. I accept that the claimant asked for a start time on 22 March 2023 and did not receive a reply from the tribunal. Confirmation of the start time was sent to him by Ms Mosley at 4.20 on 29 March which, for some reason, the claimant says he only saw at 2am this morning,. The fact that the claimant was working a night shift was his choice. He knew the hearing was scheduled for today. It was only the start time that he was unaware of until the early hours of this morning. In my judgment, he could and should have been present. In the circumstances I decided to proceed with the hearing in the absence of the claimant.

Time

17. The claimant resigned with immediate effect on 25 October 2021. The three-month primary time limit for presenting his claim for unfair dismissal would therefore have expired on 24 January 2022. Similarly, the three-month period for bringing a claim in relation to race discrimination for events prior to 25 October 2021 would have expired on 24 January 2022, at the latest.

18. The claimant contacted Acas on 6 May 2022 and the early conciliation certificate is dated 16 June 2022. Accordingly, no time stands to be added on for early conciliation.
19. The claimant presented his claim on 26 June 2022. This is five months and two days late.
20. In so far as the hearing of the grievance is concerned, the claimant presented his grievance on 23 September 2021. It relates solely to the terms of his contract of employment and pay. There is no reference in the grievance to conduct amounting to race discrimination.
21. The claimant's resignation letter on 25 October 2021 is in the following terms:-

“I have submitted my grievance and it has not been dealt with according to the Arriva grievance procedure. Therefore, I feel now that I have to take this matter further and exercise my legal right. However, I have decided to pursue other career prospects because in recent years Arriva Milton Keynes have been discriminating against me, unfavoritism towards me and prejudice, and all these have been exercised by Luke Gilroy and Alan Holmes. I believe they have been racist towards me and all the foreigners in Arriva since they have become managers of Arriva MK.

All these issues have led me to be constructively dismissed from Arriva and I will exercise this through Acas and later employment tribunal....

Please consider this letter as resignation immediate effect and also Arriva MK have giving to chance but to take constructive dismissal.”

22. I take from this resignation letter that the claimant had come to the conclusion that he had been discriminated against on the grounds of race, that he was well aware of his rights to bring a claim to an employment tribunal and the need to contact Acas. Further, the claimant was aware of the concept of constructive dismissal. This suggests to me that he either had researched the law and his rights or had had some advice. Whilst I have not heard any evidence from the claimant on this point, he has twice not taken the opportunity to set out in a document any facts and matters that may have suggested that he was ignorant of the three-month time limit.
23. Notwithstanding that the claimant had resigned, the respondent dealt with his grievance. There was a grievance hearing on 25 November which was reconvened on 15 December 2021. The claimant was informed that his grievance had been rejected on 21 December 2021. The claimant appealed and the appeal was heard on 29 December 2021. The claimant appealed the grievance outcome on 29 December 2021. I have not seen the appeal document but reference is made in a later meeting to an allegation of “several racist abuse during this time”. It would appear that the appeal hearing was on 14 January 2022 and resumed on 11 February 2022. I have not seen an outcome letter and it appears that it just fizzled out at that stage with the parties talking about settlement.

24. Even if the last appeal hearing on 11 February 2022 was the last in a series on connected events or a course of continuous conduct, time would have expired for bringing a claim on 10 May 2022. The claimant's claims are still out of time.
25. The onus on proving that it was not reasonably practicable to present his claim in time and/or that he has presented his claim in such other period as the Employment tribunal thinks just and equitable is on the claimant. He has not taken the opportunity to put in any evidence in advance of this hearing in support of such contentions. The claimant's claim is very substantially out of time and I have concluded that issues relating to the hearing of his grievance appeal do not provide good reasons for the delay.
26. Consequently, in my judgment, the claimant's claims are out of time and the claimant stands no reasonable prospect of successfully establishing that it was not reasonably practicable to bring his claim in time and that he has brought his claim within a period that I consider to be just and equitable. Consequently, I have struck out the claims.

Reconsideration

27. If the claimant wants me to reconsider this judgment then he should present his application for reconsideration in writing (with a copy to the respondent) within 14 days of the date on which this judgment and reasons is sent to him. Any such application for reconsideration should set out:-
 - 27.1 Full details of why the claimant was not in attendance at Watford Employment Tribunal at 10am on 30 March 2023.
 - 27.2 Full details of any information he relies upon in asserting that his claims were presented in time or why it was not reasonably practicable for him to do so or why it would be just and equitable to extend time.

Employment Judge Alliot

Date: 20 April 2023

Sent to the parties on: 30 April 2023

GDJ
For the Tribunal Office