



# EMPLOYMENT TRIBUNALS

**Claimant:** A (subject of an anonymity order)

**Respondent:** Barclays PLC and others

**Heard at:** London East Employment Tribunal

**On:** 1 March 2023

**Before:** Employment Judge Hook

## Representation

Claimant: Mr A Ohringer, Counsel

Respondent: Mr P O'Callaghan, Counsel (who was present by telephone)

**JUDGMENT** having been sent to the parties on 3 March 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. In this case the Claimant was employed as business analyst by Barclays Executive Services Ltd until 20 April 2021. The Claimant said in his claim form that his employment began on 14 November 2016. The Respondent says it was 17 July 2017, but nothing turns on that difference.
2. He presented a claim form on 18 August 2022 (a year and four months after the end of his employment) after pursuing ACAS Early Conciliation on these dates:
  - a. against Barclays Plc – from 26 April 2021 to 7 June 2021;
  - b. against Barclays Execution Services Ltd - from 13 June 2021 to 14 June 2021;
  - c. against Avneesh Singh – from 2 February 2022 to 4 February 2022; and
  - d. against James Kinghorn – from 2 February 2022 to 4 February 2022
3. In his claim for the Claimant identified a number of claims that he said was bringing. He identified two claims under the Employment Rights Act 1996:
  - a. Constructive unfair dismissal (s. 103);

- b. Unlawful detriments (s. 47B );
4. The Claimant also said he was bringing claims under the Equality Act 2010.
  - a. Disability discrimination in the forms of indirect discrimination (s.19), harassment (s. 26) and failure to make reasonable adjustments (ss 20-21); and
  - b. Victimisation (s. 27)
5. The ETI also referred to certain other section of the EqA but in the course of submissions made in this hearing it was clear that purported claims under this were not being pursued and that the EqA claims he sought to pursue were the two mentioned above.
6. The Claimant also referred to three aspects of health and safety regulations, to the Data Protection Act and GDPR and the European Convention on Human Rights (ECHR).
7. His claim form was accompanied by particulars of claim. It is a lengthy document running to 302 paragraphs (and 25 pages) of text and is not always easy to follow.
8. This preliminary hearing was listed to consider whether the Tribunal had jurisdiction to hear the claims brought and whether they were brought in time. The Respondent applied for the claims to be dismissed for lack of jurisdiction either because of the type of claim filed not being one the Tribunal has power to address or because there was no jurisdiction due to the claim being out of time.
9. The Claimant's case is hard to summarise from his lengthy particulars of claim. He says he "resigned in response to [the Respondents'] failure to manage conflicts of interest" and that managers "failed to manager disadvantages and risks" affecting the Claimant. He refers at length to a restructure within the workplace. He refers to a lack of "safeguards" to "disclosures" and "bad faith requests." He refers to raising problems with processes in 2019 although these sound like matters that will have affected the operational effectiveness of the Respondents' business and it is not immediately clear how they would meet the test for protected disclosures. He refers at length to his managers failing to act with openness and says that technology was used around him to monitor him and which has caused him hallucinations and other symptoms. He says that the Respondents did things or required him to do things that resulted in him suffering psychotic symptoms. There is lengthy discussion of "IT issues" but it is not clear which aspects of these go to which part of the Claimant's claims. He also discusses at length how his performance was managed by his line managers. He refers to submitting a number of grievances.

## **JURISDICTION**

10. I shall deal first with the claims purported to have been brought under health and safety legislation, data protection legislation and the ECHR. The Respondent submitted that the Employment Tribunal has no power to deal

with those claims. Counsel for the Claimant quite properly said he could not make any submissions in resistance to the Respondent's submission.

11. The Respondent's submission is correct. The Employment Tribunal does not have an unlimited power. It only has power to hear and adjudicate on certain types of claim where legislation gives it that power. No legislation gives this Tribunal jurisdiction in these matters so they are dismissed. Other courts of tribunals may have power to deal with them.

## TIME

12. For the claims under the ERA and the EqA the time limit for bringing those claims is ordinarily three months (plus extension for the ACAS conciliation period). The last act cited by the Claimant his resignation (that he says was a constructive dismissal) on 20 April 2021.
13. Three months from then would be 19 July 2021. Allowance for the ACAS period, which if one reads as being from 26 April 2021 (when it commenced against the first respondent) to 14 June 2021 (when it concluded against the second respondent) would take the time limit to early September 2021. The presentation of the claim form on 18 August 2022 was eleven and a half months after that and, on the face of it, well out of time.
14. ERA claims may be considered by the Tribunal beyond the time limit **only if "it was not reasonably practicable" for the Claimant to present his claim in time and he then did present it within a reasonable time thereafter**. This power to extend time is created by ss. 48(3)(b) and 111(2)(b) ERA 1996).
15. EqA claims may be considered out of time if it would be **"just and equitable"** to extend time. It is for the Claimant to persuade the Tribunal to exercise its discretion to extend time (see Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327). The discretion is a broad one and all relevant factors should be considered in particular how long the delay has been and the reasons for it (see Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23).
16. The Claimant asked for this ERA and EqA claims to be allowed to proceed notwithstanding the late presentation of his claims.

## THE CLAIMANT'S EVIDENCE

17. The Claimant made a witness statement for this preliminary hearing. It is 18 pages long and is not easy to summarise. The statement is undated but was received by the Tribunal on 21 February 2022. The evening before the hearing the Claimant also submitted several thousand pages of material which appeared to be reams of computer data of no obvious relevance to the hearing. Neither counsel asked the Tribunal to have regard to this material and it was apparent that the Claimant had submitted it on his own initiative rather than on the advice of his counsel.

18. In paragraphs 1-12 of his statement the Claimant makes general statements that he has faced obstacles. He then goes on to discuss his mental health. He says he has experienced hearing voices and psychosis. He says he has experienced “technology interacting with my brain leading to loss of control and privacy.” He said he noticed the voices in his head over the last two years particularly when he was in certain locations or near certain technology. Understandably, he says that experiencing these voices has caused him great distress.
19. He says, “I engaged with ACAS immediately and have actively pursued bringing the claims and the issues I had disclosed internally.” He accepts that he brought the claims beyond the limitation period and says he did not do so because they are serious and complex. He says that he needed to consider all of the facts and then assess them against the relevant law, which he familiarised himself with. He said he could not get any legal support and took as long as he did to make sure his claim was set out as well as possible. He feared that if he submitted the claim in time it would be rejected as not being set out well enough.
20. He goes on to speak of “exposure to technology” that disrupts his ability to think and uses electromagnetic waves and directional sounds as a “psychological weapon”. He says this impacted his ability to submit his claim and he provides several pages on how he believes this technology works. He also refers to having suicidal thoughts at certain points.
21. He also says that he did not have his own computer and used a computer at a public library to prepare his claim but was limited to two hours per session to use this computer.
22. He suggests that the Respondent is responsible for some of the technology that has interfered with this mind and has done this to collect data. He says he has made subject access requests and suggests that failure to answer these may have affected his ability to bring a claim in time.
23. The Claimant was cross-examined by counsel for the Respondents. The Claimant said that since leaving his role at Barclays he has worked “informally”. He has taught himself a computer programming language and has been developing a user interface using the Java computer language. But he has done no paid work. He has made hundreds of applications for employment and has had some interviews. The roles he has applied for are similar to his role at Barclays. He said he has also applied to hedge funds and for jobs in system automation. He updated his CV and thought he started applying for jobs from October 2022.
24. The Claimant said that between the end of his employment and the presentation of his claim he was able to raise complaints about the Respondents with a number of other authorities. He said that:
  - a. around August or September 2021 he made complaints to the ICO;
  - b. in July, August or September he made complaints to Ofcom;
  - c. he also contacted the police and Action Fraud;
  - d. he spoke to people at Microsoft at the end of April 2021;

- e. he noticed certain things about his electronic devices and called the police, he thought this was May and June 2022;
  - f. he spoke to an organisation called Protect, who help whistleblowers, in July and August 2021 and he said it was Protect who told him of the three month time limit to bring a claim;
  - g. He recalled contacting ACAS three times in April 2021 and contacted then against in February 2022 about the third and fourth Respondents; and
  - h. He had been in contact with Vodafone about some matters.
25. There is a letter in the bundle for this hearing dated 24 February 2023 from a community psychiatric nurse in Waltham Forest Early Intervention in Psychosis Services. It says that he has been diagnosed with his first episode of psychosis and it warrants medication and a care plan.
26. In the bundle was also a further document entitled "appointment summary" which indicated that on 26 July 2022 the Claimant said he was "extremely anxious or depressed" and unable to do usual activities, and he was hearing voices.
27. No medical evidence was provided, or drawn to my attention, for any time before 26 July 2022.

## **THE PARTIES' SUBMISSIONS**

28. The Claimant's counsel said he accepted the legal principles as set out in the Claimant's skeleton argument, which I have summarised above under the heading "time". He submitted that the Claimant has a serious mental health problem with a clinical diagnosis and that he had these mental health problems at all material times.
29. Addressing the ERA claims first, he submitted that the Claimant's mental health problems made it was not reasonably practical to submit his claim in time. He had provided the Tribunal with some medical evidence, the letter of 24 February 2023, and it is not mandatory to provide medical evidence.
30. Counsel submitted that there are cases where time has been extended where a Claimant was unwell and unable to deal with basic domestic tasks. The Claimant in this matter had contacted ACAS but that is, counsel submitted, a less complex task than submitting a claim to the Tribunal.
31. Counsel then addressed the second limb of the test: whether the Claimant had presented the claim in a reasonable time. Counsel submitted that it was reasonable in the context of the Claimant's illness.
32. Regarding the EqA claim counsel submitted that the just and equitable test is a wider discretion than applied for the ERA claims and asked the Tribunal to consider the length of delay and the reasons for it. He submitted that the prejudice to the Respondent is limited because this will be a document heavy case rather than relying on recollections.

33. Counsel for the Respondents noted that the Claimant accepted there were no relevant acts after employment ended on 21 April 2021.
34. Addressing the ERA claims counsel for the Respondents accepted that it is clear the Claimant is and has been unwell but it also clear he was able to do many activities such as engaging with the ICO, Ofcom, Vodafone, the police and other organisation regarding various matters that concerned him. If he was to some extent incapacitated, it was not to the extent that he could not make complaints to authorities.
35. Counsel for the Claimant submitted that time should be extended, and the claims should not be struck for being out of time.
36. Counsel for the Respondent reminded the Tribunal that the Claimant accepted that he had known about the time limit for bringing a claim to the Tribunal.
37. He submitted that it was clearly practicable for the Claimant to bring a claim and that, whereas both counsel referred the Tribunal to a number of cases, each case turns on its own facts at the end of the day.
38. In the present case the claim is not a few weeks late but a year late and one would, counsel submitted, expect cogent, medical evidence regarding why he could not bring a claim. It may not be mandatory to supply medical evidence but one would expect it so the Tribunal could understand the effects of the Claimant's disorder at different times and what effect it had on him throughout the period in question.
39. Regarding the EqA claims, counsel for the Respondent submitted that the length of delay in this case has been significant. Extension is usually for a few weeks not for a year and the reasons given by the Claimant for delay do not explain why a year and four months after the end of his employment was required.
40. There would, the Respondent's counsel submitted, be real prejudice to the Respondents in this late claim being allowed to proceed. The claims cover a period going back to 2019 and if the Respondents were required to defend the claim that would have to address matters going back to them. There would be practical difficulties and the quality of evidence deteriorates over time. Due to the Tribunal's heavy lists and case backlog it might likely be 2024 before the case was heard.
41. Counsel submitted that the Tribunal should have regard to the merits of the claim and consider that the claim does not look promising.
42. Counsel submitted that time should not be extended and the claims should be dismissed under r. 53 for lack of jurisdiction for being out of time.

## **TRIBUNAL'S FINDINGS**

### **FACTUAL ANALYSIS**

43. The Claimant has brought his claim about a year and four months after this employment ended (and after the last act complained of) and about a year after time (taking into account an extension for ACAS conciliation) ended.
44. The Claimant is clearly not well. He has provided the Tribunal with a letter from 24 February 2023 that says he has been diagnosed with psychosis and is receiving medication and care in the community from an NHS mental health team. The document titled "appointment summary" also suggests he was quite unwell in July 2022 (the month before he in fact submitted his claim).
45. The Claimant has said he was aware of the three month time limit for bringing a claim from April 2021. In the period from April 2021 to August 2022 (the time from the end of his employment until he brought the claim) he was able to do a lot. He learned a new computer programming language. He applied for hundreds of jobs and was interviewed for some of these. He made contact with and pursued matters with many organisations including ACAS (about this case) the police, Action Fraud, Vodafone, Microsoft, and Protect. Those contacts concerned, to some extent, the issues that are in his case.
46. The Claimant has chosen not to provide the Tribunal with any medical evidence before July 2022 so there is little evidence and certainly no independent evidence as to what his mental health was like for most of the period when he did not submit his claim.
47. The Claimant had access to IT facilities at his local library albeit, he said, for two hours at a time. He said that although he knew of the time limit to bring a claim, he needed time to make it full and extensive.
48. The claim is in part about how he was treated by his managers at work and while it is said by the Claimant that the case will be "document heavy" personal recollections will play an important role. There is some force in the submission of the Respondent that the passage of time will erode the quality of evidence.
49. The claim also involves allegation that the Respondents have used technology that has monitored the Claimant and directly affected his mind to the point of causing his psychotic symptoms. Those are unusual allegations and for them to succeed the Claimant is likely to need a high quality of cogent evidence, beyond bare assertion, that this has happened. There is no indication that the Claimant will be able to supply such evidence.
50. In the Claimant's favour, so far as the issues in this hearing are concerned, is the fact of his illness which is clearly serious now (a diagnosis of psychosis) although there is limited evidence as to the nature of degree of his mental illness for most of the period in question.
51. In the Respondent's favour is that fact that the Claimant was aware of the time limit from a very early stage but despite that did not present his claim until about year after time expired. Also, in the Respondent's favour is the effect that the delay might have on the cogency of evidence and that the

evidence about the Claimant's mental illness, which is central to his application to extend time, is limited. He was in contact with ACAS and other organisations which suggests he could have presented a claim to the Tribunal.

## **CONCLUSION**

52. Access to justice for everyone is of the greatest importance. That includes access to justice for people who are mentally unwell. Common sense should tell anyone that people who are mentally unwell might not be able to access justice, such as by submitting a claim to an Employment Tribunal, as easily as someone who is not mentally unwell. Courts and tribunals must be alive to the potential need to make adjustments to protect access for those who are unwell.
53. Alongside that is the important public interest in protecting respondents and the Tribunal system from cases that are old, brought beyond the time limits set by Parliament, unless there are circumstances that allow time to be extended.
54. Every case will turn on its own facts. In this case there is limited evidence about the Claimant's mental health for the period from when his employment ended to when he presented his claim. Even if I were to accept on the balance of probabilities that he was probably unwell for much of this time there remains no evidence about the nature or degree of his illness and what effects it was having on him. There is no evidence (apart from his own uncorroborated bare assertion) that he could not have brought his claim throughout this period. On the contrary, there is evidence that he was addressing ACAS about this case and addressing a wide variety of other organisations and authorities about matters, some of which were related to this case. He was also making many job applications and was coherent enough in them to secure a number of interviews.
55. I therefore find that he could have brought his claim long before August 2022 and any extension that might have been justifiable to protect his fair opportunity to access justice would not have been as long as he asks for this in this case.
56. In relation to the ERA claims I therefore find that the Claimant has not shown on the balance of probabilities that it was not reasonably practicable to present his claim in time. If I am wrong about that then I also find that it cannot be said, on the balance of probabilities, that he brought the claim within a reasonable time thereafter.
57. In relation to the EqA claims, it is for the Claimant to persuade the Tribunal that it is just and equitable to extend time. I must weigh the balance of prejudice. There is absence of evidence about the Claimant's condition for most of the period in question. He has not shown that he could not have brought his claim earlier. I consider the delay presents a real risk of prejudice to the Respondents in having the answer a claim so long after the events referred to in it with the inevitable loss of quality in recollections and evidence.



58. For these reasons the Tribunal cannot extend time, the claims are out of time and are dismissed for lack of jurisdiction.

**Employment Judge Hook  
Date 27 April 2023**