



EMPLOYMENT TRIBUNALS

Claimant: Mr D Banda

Respondent: LabCorp Clinical Research Unit

AT A PRELIMINARY HEARING

Heard at: Leeds **On:** 6th April 2023

Before: Employment Judge Lancaster

Appearances

For the claimant: In person

For the respondent: Mr P Wilson, counsel, instructed by Ms K Savage, solicitor

JUDGMENT

Although the claims of discrimination because of race, up to and including the date of termination 29th March 2022, were all presented out of time it is just and equitable to extend time so that the claims may continue.

REASONS

1. Once it had been decided, which was done in the course of the listed 1 day preliminary hearing, that leave to amend to add any claims of post-employment discrimination was refused (see earlier Case Management Order sent out on 18th April 2023), it was possible to identify as a discrete issue whether time should be extended to permit any remaining claims to proceed.
2. This was the second preliminary issue which I had, at the first case management hearing on 24th January 2023, identified should be determined.
3. Because a refusal to extend time would necessarily therefore dispose of all claims, and this preliminary issue was now a “knock-out-point” it was proportionate to deal with it before addressing the merits of any specific detailed amendments to the pre-termination claim.
4. Accordingly I took evidence on this issue from the Claimant, although limiting this only to that which had been contained within the original witness statement served in

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compliance with my case management timetable and not a later version which the Claimant had subsequently prepared. The Claimant was also cross-examined and the preliminary hearing bundle was considered. Because of the time this took, closing submissions were appropriately then limited to a maximum of 20 minutes each (under rule 45). The hearing then concluded at 5.10pm and the decision on this issue was reserved.

5. Subsequently the Claimant sought, unsolicited, to make further submissions in writing sent on 17th April 2023. The Respondent's solicitor has replied to this document on 21st April 2023. This further exchange of correspondence has inevitably delayed the taking of the reserved decision. I have, however, decided that no account need be taken of the Claimant's further submission: the hearing had already concluded on 6th April 2023, and it is not proportionate in these circumstances to re-open it.
6. The earlier history of the Claimant's particularisation of his case is set out in the Written Reasons for the Order refusing leave to add an unfair dismissal complaint, which were sent on 21st February 2023.
7. Subsequently following the direction that he provide further information as to the precise substance of any proposed amendments in the form of a table. The first version of this was provided on the due date, 21st February. On that same date the Claimant also provided yet another copy of the "Particulars of Claim", which was now the fourth such document, the most recent before that having been that dated 17th January 2023. This was received just before the previous preliminary hearing on 24th January 2023, and at that hearing it was identified as the single reference point for the amendment application. The Claimant has since then amended the table on two further occasions, 14th March 2023 and 28th March 2023. It was however only at the start of this hearing, 6th April 2023, that it became clear that there was in fact a third version of the table included within the additional papers from 28th March, together with what appears to be yet a further version of the Particulars of Claim document and upon both of which in conjunction the Claimant now seeks to rely. That version 3 of the table is indeed substantially the same as version 2, but there are some alterations and additions. Overall, however, the content and numbering of the allegations has been substantially changed over the course of these various documents having been submitted.
8. It must be noted that the Claimant's approach to the submission of documents in the course of this case has not, in reality, been at all helpful. He should note that in future, if he either fails to do what he is directed to do by the due date, or if he subsequently seeks to supplement any information he has produced in a piecemeal or altered fashion it is likely to be rejected by the tribunal.
9. In whatever form the claim is now to be presented it is, nonetheless, on the face of it out of time. No allegation remains which is later than the date of termination, 29th March 2022. The last date on which the Claimant should have brought his claim (or commenced ACAS early conciliation in order to secure an extension of time), was therefore 28th June 2022. Early conciliation in fact only started on 18th July 2022 and ended on 23rd August 2022, so that the Claimant does not in fact benefit from any extension of time. The claim form was presented on 9th September 2022 and is therefore some 10 ½ weeks late.

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10. However, I note therefore that had the Claimant in fact approached ACAS by the due date, allowing for the full 6 week early conciliation period and the 1 month extension thereafter, his claim presented on 9th September would have been just in time.
11. I accept, repeating what I said at the earlier hearing, that the Claimant was operating under the mistaken assumption that even though he had resigned he still needed to exhaust a subsequently raised grievance appeal before commencing proceedings. Whilst that did not mean that it was not reasonably practicable to have presented the statutory unfair dismissal claim in time, the fact that it was a genuine, albeit an unreasonable error on his part is material when evaluating the reason for the delay in presenting the discrimination complaints.
12. Whilst I do not find that there is any actual established medical incapability, by reason of the alleged PTSD or otherwise, as a reason for delay, I do accept that the Claimant was certainly, at the time following his resignation, affected and distressed by what he had perceived as a sustained period of ill-treatment whilst working for the Respondent. It is therefore not unreasonable for his to assert that he found the recollection of events necessitated by the preparation of his tribunal claim to be stressful.
13. Although time limits are, of course, not to be taken lightly, the original claim, based on the premise that it is properly a series of acts extending over a period and culminating in the alleged constructive dismissal is not significantly late. There are plausibly advanced explanations for that delay.
14. That claim form as originally pleaded was, of course however, wholly inadequate as the basis for defending or trying the case. As I noted in the earlier case management order from the 24th January hearing, whilst the claim was said to be one of discrimination on the grounds of age, religion or belief and race, none of these complaints, however, are particularised within the ET1. The allegations are very generally of:

“inherent negative attitude against Black Christians and institutional racism”;
“ill treatment, loss, discrimination and rampant racism.”
15. That original case could, nonetheless be identified, as a complaint of “multiple (albeit as yet unparticularised) incidents of discrimination, bullying, harassment and victimisation (sic)” over the whole course of the employment which had commenced on 25th November 2019.
16. Any claims of discrimination on the grounds of religion or age have, of course now been withdrawn and dismissed. The generalised complaints of direct discrimination self-evidently always required further clarification. Although that necessary clarification has only emerged in its final form as of the date of this hearing, with version 3 of the explanatory table, it is still in essence the anticipated fleshing out of an inadequately pleaded case.
17. If these allegations are proven they are clearly potentially very serious indeed. There is always a public interest in such claims being decided on the evidence and on their merits where that is possible. It is similarly in the interests of justice that if such

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serious complaints are not substantiated there should be public judgment exonerating the accused Respondent and its employees.

18. I observe that even though the Claimant has, as is apparent from the history, been culpable in his delayed providing of the required clarification of his Tribunal claim, the Respondent is not taken wholly by surprise by the nature of the allegations in that there had been a grievance investigation and an appeal against that outcome which had concluded on 13th June 2022.
19. On balance, I therefore conclude that notwithstanding the intervening 10 months lapse of time since then it is still possible for there to be a fair hearing of the case on its merits, or otherwise on its demerits. This prejudice to the Claimant in being denied any opportunity to have his claims potentially upheld outweighs that to the Respondent in not being afforded, at this still relatively early stage, the benefit of a dismissal on what would be, whilst a permissible interpretation of the rules, a technicality which would preclude any possible scrutiny of the merits of its defence.
20. I certainly would not consider it just and equitable that the Claimant be given no opportunity at all to expand upon the particulars of his general allegations so as to identify any legal claim arising within that factual matrix. Refusing any clarification so that the imprecisely pleaded original ET1 then fell to be dismissed on the grounds that as it stood it could not properly be responded to, would not be in the interests of justice.
21. Having ruled that it would be just and equitable to extend time to allow these claims up to the alleged constructive discriminatory dismissal to proceed, at least in some form, I further consider that the proportionate next step is therefore also to permit the amendment, by substitution of the most recent (6th April 2023) versions of the Particulars of Claim document and the explanatory table.
22. The Respondent shall then submit an amended Response (ET3) and any identified argument that the complaints as now amended have no or little reasonable prospect of success may now be dealt with on a strike-out application or on by way of a Deposit Order, rather than as part of any objection to the amendment application.
23. A separate Case Management Order addresses these further issues.
24. This judgment is not intended to make any findings as to the actual merits of any individual element of the claim as now amended. Whilst I have expressed my view that, if proven, the totality of the claim does give rise to potentially very serious allegations, I have also made it clear that I am not here addressing the merits of any specific detailed amendments to the claim.
25. Nor does this judgment on the extension of time prevent the tribunal at the final hearing from making a finding either that this was not in fact a constructive dismissal, so that that cannot be the last in a series of proven acts of discrimination, or that any earlier allegation is not, in fact, part of a series of acts ending with that dismissal or any other proven act of discrimination over the course of time. If such findings were to be made so that it meant that time was to be taken to start running earlier than 29th March 2022 it would therefore be open to the tribunal to find either that it was or was not just and equitable to extend time. This decision, based, as it is on the presumption that

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there was in fact a series of discriminatory acts and time therefore started with the last in that series on the date of termination, would not necessarily then be binding.

EMPLOYMENT JUDGE LANCASTER

DATE 27th April 2023

JUDGMENT SENT TO THE PARTIES ON

Date: 3rd May 2023

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AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNALS