



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Babalola

**Respondent:** Barclays PLC

**Heard at:** East London Hearing Centre

**On:** 21 November 2022

**Before:** Employment Judge Jones

## **Representation**

Claimant: In person

Respondent: Ms D Masters (counsel) with Ms N Middleton, Solicitor

**JUDGMENT** having been sent to the parties on **22 November 2022** 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. On 22 April 2022, the Claimant brought a claim against the Respondent in the Employment Tribunal in which he complained of unfair dismissal and race discrimination. The Claimant confirmed in his ET1 that his dates of employment were 15 April – 15 June 2021.
2. Early conciliation began on 1 March 2022 and ended with a certificate issued on 11 April 2022.
3. In its response presented to the Tribunal on 1 August 2022, the Respondent contended that the Claimant had not been their employee, which meant that any complaint about dismissal should not proceed against them. The Respondent also submitted that the Claimant had not been employed for over two years as required by section 108 Employment Rights Act 1996 and therefore the Tribunal had no jurisdiction to consider his complaint of unfair dismissal. The Respondent also pointed out that the claims had been submitted significantly out of time as the Claimant's assignment had been terminated on 15 June 2021 and he did not start the ACAS early conciliation process until 1 March 2022, well after the deadline for commencing that process.

4. The Respondent submitted that there were no grounds for extending time either to consider the unfair dismissal or the race discrimination complaints.

5. Lastly, the Respondent submitted that the Claimant's complaints had no reasonable prospects of success and should be struck out on that ground or that a deposit order should be made.

6. On 19 August 2022, REJ Taylor wrote to the Claimant to inform him that on her own initiative, she was considering striking out the complaint of unfair dismissal because it had no reasonable prospects of success. The Claimant had until 2 September to write in to make written representations about that or to request a hearing.

7. The Claimant replied on 19 August to clarify that his complaint of unfair dismissal was a complaint of a discriminatory dismissal.

8. By a judgment dated 31 August 2022, EJ Gardiner struck out the complaint of unfair dismissal because the Claimant did not have two years' service as required by law.

9. By a letter dated 30 September 2022, this matter was listed for a preliminary hearing – open to determine the following:

*'Whether the Tribunal has jurisdiction to consider the race discrimination complaints given the dates of the alleged acts of discrimination and the dates on which the complaints were presented to the Employment Tribunal.'*

10. The Claimant was also ordered to itemise each and every act of discrimination in writing to the Tribunal before 14 October 2022.

11. In addressing the issue of whether the Tribunal had jurisdiction to hear this claim, the Tribunal considered the following law.

## **Law**

12. Section 123 of the Equality Act 2010 states that proceedings on a complaint of race discrimination may not be brought after the end of the (a) period of 3 months starting with the date of the act to which the complaint relates; or (b) such other period as the employment tribunal thinks just and equitable.

13. Section 207A Employment Rights Act 1996 extends the time limits on claims to facilitate conciliation before proceedings are instituted. This only works if the employee contacts ACAS to start the process before the end of the 3 month period referred to above.

14. The Claimant submitted that his claim had not been presented out of time. He submitted that *'time limits should not apply in discrimination claims.'* He did not agree that his claim had been issued late.

15. The Respondent submitted that his claim had been issued late and that it was not just and equitable to extend time to allow it to be considered. The Respondent submitted that the case of *Robertson v Bexley Community Centre* [2003] IRLR 434 is authority for the principle that it is for the claimant to show cause why the tribunal should exercise its discretion in their favour: there is no presumption that it should do so. Although the tribunal has to have regard to the reason given by the employee for their failure to act within the normal time limit and to all other relevant circumstances, the law does not require the tribunal itself to exercise the facts of the case itself before exercising its discretion or refusing to do so.

16. Also, in that case the Court of Appeal stressed that it is not open to the EAT to interfere with a tribunal's exercise of discretion merely because it would have reached a different conclusion on the facts if it had been deciding the issue at first instance. An appeal can only succeed '*where the EAT can identify an error of law or principle, making the decision of the tribunal below plainly wrong in this respect*' (per Auld LJ).

17. In the case of *Chief Constable of Lincolnshire Police v Caston* [2009] EWCA Civ. 1298, the Court of Appeal stated that whether or not to use the discretion to extend time in a discrimination case was a question of fact and judgment, to be answered by the tribunal of first instance, which is empowered to answer it. The Court also confirmed that there is a presumption against extension of time unless the employee can show some exceptional reason why time should be extended.

18. *Harvey* states as follows: 'The perceived weakness of the claimant's case can be a relevant factor when applying the 'just and equitable' test; however, this is subject to two possible caveats: (a) given that the matter will now normally be dealt with at preliminary stage, the claimant must have a fair opportunity to make representations on the respondent's argument that their case is too weak to continue; (b) the ET must still be wary of coming to prima facie views on that issue and if it intends to do so must proceed on rational grounds: *Kumari v Greater Manchester Mental Health NHS Foundation Trust* [2022] EAT 132 (26 April 2022, unreported).

19. A desire to pursue an internal appeal before instigating legal proceedings is not in itself a good reason to extend time, though it can be a factor in the decision; it must be looked at in its overall context and there is no rule that it can only be a good reason if allied to other factors and/or prejudice to the respondent: *Wells Cathedral School Ltd v Souter* EA-2020-000801 (previously UKEAT/0836/20) (20 July 2021, unreported), applying *Robinson v Post Office* [2000] IRLR 804, EAT and *Apelogun-Gabriels v London Borough of Lambeth* [2001] EWCA Civ. 1853.

### Decision

20. The relevant facts are as follows: the Claimant was on a 6-month, temporary assignment with the Respondent from 15 April 2021, which was terminated early and ended on 15 June 2021. This is the last day that the Claimant could have suffered any discrimination. Although he refers in his claim form to '*being made to leave with a negative reference*', the Respondent had no

record of providing the Claimant with a reference and it does not usually provide references when a worker is supplied from an agency. The time therefore starts to run from 15 June 2021. Without any extension of time, the claim should have been presented to the tribunal by 14 September 2021.

21. At the time the assignment ended, the Claimant believed that the termination was related to his race. He believed that his manager lied to management to get the assignment terminated early and that he did so because the Claimant had stood up for the manager's treatment of the Romanian team. He alleges that the manager made racist slurs towards him and towards the Romanian change team and that he challenged him about it, which resulted in a heated argument. This all happened before the assignment ended on 15 June.

22. The Claimant submitted today that he emailed Lisa Treweke in June/July to complain about AP but there was no record of it being received or of her responding to it.

23. The Claimant did not contact ACAS to begin the Early Conciliation process until 1 March 2022.

24. The Claimant contacted the Respondent's '*raising concerns*' team on 11 November 2021, to raise a grievance. This was 2 months after the expiry of the primary time limits. There was no explanation for the delay in doing so. In that grievance, the Claimant alleged that he had been unfairly dismissed due to his skin colour. The Respondent acknowledged the grievance on 15 November and on 24 November, it was referred to its Employee Relations.

25. The Claimant relies on his correspondence with HR/Employee Relations from November 2021 to show that it was reasonable for him not to bring his complaint to the Tribunal before he did because there was a very real possibility of being re-engaged by the Respondent.

26. The Claimant's explanation for the late issue of the claim is that he was hoping and believed that there was a real possibility of him being employed by the Respondent. He wanted to get his job back. He relies on correspondence with the Respondent's HR/Employee Relations team, from November 2021 to show that he delayed in bringing the claim because he had a reasonable belief that there was a very real possibility of him getting his job back.

27. Looking at that correspondence in today's bundle, the Tribunal can see that the Claimant's emails show that he had an awareness of the Tribunal and its jurisdiction regarding discrimination complaints. The Claimant's failure to bring his claim was therefore not due to a lack of knowledge and indeed he did not submit today that his failure to bring his claim in time was because he did not know that he had a right to do so. It is also this Tribunal's assessment of the email correspondence that there is no indication in them that the Respondent was considering re-engaging the Claimant. Instead, the Respondent's HR were seeking to locate the Claimant's job applications in their IT systems, possibly to progress his applications or to provide him with some support. They were providing him with opportunities to apply for jobs. I was not shown anything from the Respondent's HR/Employee Relations that showed that they were going to secure work for the Claimant or offering him a post.

28. On 27 January 2022, the Claimant was informed that as he was not an employee at the relevant time, there was nothing further that could be done about his grievance internally and that he should raise any ongoing concerns with his agency. In the email, Employee Relations confirmed that the correct internal protocols and procedures had been followed in relation to the termination of his assignment. The email was clear that there was nothing further to add in relation to the end of the assignment. This marked the end of the internal process. The Claimant responded on the same day to challenge that and stated his position that as the Respondent was the *'end client by law'*, it had nothing to do with the agency and that *'he had lost earnings due to discrimination and unfair dismissal'*. The Respondent did not correspond with the Claimant any more about this.

29. The Claimant tried to resurrect this issue on 23 February with another email, but it was not responded to as the Respondent had been clear in January that there were no other internal procedures open to him.

30. As already stated, the Claimant first contacted ACAS to start Early Conciliation on 1 March 2022. The Early Conciliation Certificate was dated 11 April 2022.

31. The Claimant submitted a defective claim on 22 April. The effective claim is deemed to have been presented to the Tribunal on 25 June 2022. This is a late claim. The claim was issued 9 months after the expiration of the applicable statutory time limit. The Claimant does not get the benefit of any extensions under the ACAS Early Conciliation scheme as the claim was issued sometime after the three-month time limit ended.

32. The Claimant's complaints of discrimination are unparticularised but from the claim form and from his explanation today, the Tribunal concludes that they relate mainly to his former line manager, referred to in the hearing as AP, and his alleged role in the ending of the Claimant's assignment. There are also allegations related to AP's treatment of the Claimant during the assignment. The Claimant was ordered to provide details of the allegations to the Tribunal and has so far done so to a limited extent.

33. Both parties agree that the manager no longer works for the Respondent. The Claimant believes that he is now working in Oslo. This means that the Respondent would have difficulty in defending this claim as they have no contact with him.

34. In considering whether to apply my discretion to extend time, I note that there is no real explanation for the delay between June and November 2021. Even if the Claimant did send an email to Ms Treweke in June/July, the fact that it did not bring his desired outcome i.e., employment with the Respondent, did not cause the Claimant to bring a claim or to contact ACAS, until many months later.

35. The Tribunal had insufficient evidence about what happened in those months, when the time limits were running out and why the Claimant did not take steps to bring a complaint about what he believed had happened to him. He does not take a decisive step until November, when he raised the grievance. By then the primary time limit had already run out.

36. The Tribunal is aware that this is a complaint of race discrimination and as such, it does not strike it out lightly, especially where the Claimant is a litigant in person. The Claimant's inexplicable delay has meant that the Respondent would have great difficulty in defending in 2024, which is the likely date of a liability hearing, a complaint about the termination of a short assignment which occurred in 2021, with the main witness no longer employed and uncontactable, with no obligation to return to assist it.

37. Time limits in employment cases apply to all claims and not only to represented parties. Time limits apply to discrimination complaints equally as it does to everything else in the employment tribunal.

38. In this case, the Claimant does not have a reasonable explanation or any explanation of his failure to refer the matter to ACAS between June and November 2021. He only raised the grievance in November. From the end of January 2022, he was clear that there was nothing further to be done internally and that any grievance process had now ended. There is still a delay until 1 March before he began the ACAS Conciliation process.

39. In the circumstances, the Tribunal declines to use its discretion to extend time to allow this matter to continue. The claim of race discrimination was brought out of time and the Tribunal has no jurisdiction to hear it. The claim is struck out because it was issued 1 year after the end of the assignment and 9 months after the expiration of the applicable time limits.

40. The claim is dismissed.

**Employment Judge Jones**  
**Date: 17 July 2023**