



# EMPLOYMENT TRIBUNALS

## Claimant

Mr M A Sharif

## Respondents

Slicker Recycling Limited

v

**Heard at:** Bury St Edmunds

**On:** 4 September 2023

**Before:** Employment Judge S Moore

## Appearances

**For the Claimant:**

No appearance or representation

**For the Respondent:**

Ms J Ferrario, counsel

## JUDGMENT ON PRELIMINARY ISSUES

- (1) The complaints of unfair dismissal and discrimination relating to race and religious belief are out of time and the Tribunal has no jurisdiction to hear them. The claim is therefore dismissed.
- (2) The Claimant has 21 days from the date this judgment is sent to him to show cause (i.e. give reasons) why a costs order should not be made against him in the sum of £5,511.00 or at all.

## REASONS

### Introduction

1. At a Preliminary Hearing on 7 February 2023 the following issues were listed for determination at a Public Preliminary Hearing (PPH) today:
  - i) Whether the claim has been brought out of time and the Tribunal has no jurisdiction to hear it.

## Background

2. The Claimant was employed by the Respondent as a Process and Technical Manager between 19 July 2010 and 26 June 2021, when he was dismissed, the Respondent says, on grounds of redundancy.
3. Early Conciliation (EC) took place between 24 September 2021 (day A) and 12 October 2021 (day B).
4. On 13 November 2021 he presented a claim in the Tribunal making complaints of unfair dismissal and discrimination relating to race and religious belief.
5. At a Preliminary Hearing on 21 June 2022 EJ Ord ordered the Claimant to provide further particulars of his discrimination claims by 19 July 2022 and put in place a timetable for disclosure.
6. In July 2022 the Claimant provided further information in a narrative form.
7. At a second Preliminary Hearing on 7 February 2023 EJ de Silva recorded an agreed list of issues but ordered the Claimant to provide further particulars of his discrimination claims by 21 February 2023, namely the dates of the alleged acts to the best of his knowledge.
8. He also allowed the Respondent's application for a PPH to consider whether both complaints had been brought out of time and ordered the Claimant to provide a witness statement for use at the PPH by 18 April 2023.
9. On 28 February 2023 the Respondent made an application to strike out the claim on the basis that the Claimant had failed to provide further particulars of his discrimination complaint.
10. In March 2023 the Claimant provided further information of his discrimination claim, again in a narrative form.
11. On 7 July 2023 the Respondent made a second application to strike out the claim on the basis that the Claimant had failed to provide a witness statement for use at the PPH.
12. On 18 August 2023 the Tribunal ordered that today's PPH also consider the Respondent's applications to strike out on the basis the Claimant had not complied with case management orders, had failed to particularise his claims, and was not actively pursuing his claims.
13. The Claimant did not attend the hearing today and no witness statement has been provided.

## Time Limits

Discrimination

14. The list of issues records 8 alleged discriminatory acts. Four are on unspecified dates, one was on an unspecified date in 2016, one occurred on 31 October 2020 and two occurred in or around March 2021.
15. Accordingly, on the most favourable scenario to the Claimant he had until 1 July 2021 to approach ACAS and present his claim after receiving an EC Certificate.
16. The Claimant approached ACAS on 24 September 2021, at best 2 months and 24 days out of time.
17. Section 123 Equality Act 2010 provides that claims may not be brought after the end of 3 months from the date of the act complained of or such other period as the tribunal thinks just and equitable.
18. Relevant to the exercise of the discretion to extend time on the basis of it being just and equitable to do so include factors such as the length of, and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay and the promptness with which the claimant acted once they knew of the facts giving rise to the cause of action.
19. Here, the Claimant has not provided any explanation for the delay in approaching ACAS, or the further delay of one month plus one day between receiving the EC Certificate and presenting his claim to the Tribunal. No explanation has been given in his claim form, at the previous Preliminary Hearings, or in any of the additional information he has provided to the Tribunal. Further he failed to provide a witness statement for today's hearing, or even attend the hearing,
20. I am therefore not satisfied that it is just and equitable to extend time and it follows the Tribunal has no jurisdiction to hear the complaint of discrimination (relating to race and religious belief).

Unfair dismissal

21. Section 111(2) Employment Rights Act 1996 (ERA) provides that a claim must be submitted within 3 months of the dismissal but may be extended where a tribunal finds it was not reasonably practicable to present the claim before the end of the 3-month period.
22. The Claimant was dismissed on 26 June 2021 so that the primary 3-month time limit would, but for section 207B ERA 1996, have expired on 25 September 2021.
23. However, pursuant to s. 207B(3) ERA, for the purposes of calculating the expiry of the time limit the period beginning with the day after 24 September 2021 (day A) and ending on 12 October 2021 (day B) is not to

be counted, which is a period of 18 days. This means the time limit expired on 13 October 2021 (25 September 2021 plus 18 days).

24. 13 October 2021 is a date that falls within the period beginning with 24 September 2021 (day A) and 12 November 2021 (being one month after 12 October 2021 (day B)), so that pursuant to s. 207B(4) ERA the time limit expired on 12 November 2021.
25. Since the claim was presented on 13 November 2021 it is one day out of time.
26. Further the Claimant has not provided any reason why it was not reasonably practicable for him to have presented his claim in time.
27. It follows the complaint of unfair dismissal is out of time and the Tribunal has no jurisdiction to hear it.

#### **Further Matters and Costs**

28. In view of my decision on the time limit issue, Ms Ferrario did not consider it necessary to pursue her other applications. However, she sought an order for the costs of today's hearing. She stated the Claimant had been informed in a letter of 28 February 2023 that the Respondent took the view his complaints were out of time and that it would make an application to strike out the claim and seek costs from the Claimant. However, the Claimant had neither provided any reasons for the delay in bringing his claims and argue that time should be extended, or withdrawn his claim. Further he had failed to comply with the Tribunal's order requiring him to provide a witness statement for today's hearing or attend the hearing. He had therefore acted unreasonably in the bringing and/or conducting of the proceedings within the meaning of rule 76(1)(a) of the Employment Tribunals Rules of Procedure 2013.
29. The total amount of costs sought was £5,511 plus VAT, being solicitor's costs of £3,111 plus VAT and counsel's costs of £2,400 plus VAT.
30. Since the Claimant was not at the hearing to respond to the costs application, he has 21 days from the date this judgment is sent to him to show cause (i.e. give reasons) why a costs order should not be made against him in the sum of £5,511.00 or at all.

Employment Judge S Moore

Date: 04/9/2023

Sent to the parties on: 12/9/2023

N Gotecha - For the Tribunal Office