



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Johnson

**Respondents:** (1) KOCA Community Projects CIC  
(2) Mr W Judd

**Heard at:** East London Hearing Centre (in public)

**On:** 29 September 2023

**Before:** Employment Judge Moor

## Representation

**Claimant:** did not attend

**Respondents:** Ms Bouffé, counsel

# JUDGMENT

1. All claims are dismissed. The Tribunal has no jurisdiction to hear the claims because they were brought out of the time limit under section 123(1)(a) of the Equality Act 2010 and it is not just and equitable to extend time.
2. The Claimant has brought and conducted the claims unreasonably and is ordered to pay to the First Respondent costs of £3,028.80.

# REASONS

1. This judgment and reasons for it were given orally at today's hearing. Written reasons are promulgated so that the Claimant, who did not attend, sees the reasoning.
2. The claimant presented race discrimination complaints to the Tribunal on 15 May 2023 after an ACAS EC certificate dated 15 May 2023.

## Procedure

3. The Tribunal informed the parties on 18 July 2023, that there would be a preliminary hearing in person today to determine the following issues:

- 3.1. that the Tribunal lacks jurisdiction to hear the Claimant's case, if he was neither an employee nor a worker of the Respondent;
  - 3.2. that the Tribunal lacks jurisdiction to hear the Claimant's case, if the claim was presented out of time and it is not just and equitable to extend time;
  - 3.3. if the Tribunal considers that the claim has no reasonable prospects of success and/or is vexatious;
  - 3.4. alternatively the Tribunal will consider whether the Claimant should be ordered to pay a deposit as a condition of continuing with the case.
4. EJ Massarella ordered the Claimant to provide a witness statement and send it to the Respondent and Tribunal by 29 August 2023 dealing with the following issues:
- 4.1. why he issued his claim when he did and not earlier;
  - 4.2. why he asserts that he was an employee or a worker of the Respondents as opposed to an independent contractor, as the Respondents contend;
  - 4.3. if the Claimant wished to have his means taken into account, if a deposit order was considered, then details of his earnings from all sources of employment/self-employment from January 2023 onwards.
5. The Claimant has not provided a statement stating why he had put his claim in when he did. On means, he has not provided details of his earnings from employment but, in an email on 29 September 2023 the Claimant asked the Tribunal to take into account the 'contribution' he appended to it. In that contribution he stated that: *'I have a savings account with over £40,000 in it.'* He has therefore met his obligation to provide evidence of his means.
6. On 26 September 2023, the Claimant wrote to the Tribunal only, objecting to the hearing being in person and requiring the Tribunal to send a video link for him to attend. He enclosed a 'sick note' stating that he was not fit for work due to *'stress related to work'* from 22 September 2023 to 6 October 2023. He gave no further information about his fitness to attend a hearing.
7. On 27 September 2023 EJ Massarella required the Claimant to send this correspondence to the Respondent in accordance with Rule 92 and observed that *'the fit note you have provided does not state that you are unable to attend a Tribunal hearing in person by reason of ill-health. You may wish to consider submitting additional medical evidence which addresses that issue in terms.'*
8. The Claimant then made his application copied to the Respondent on 27 September 2023 and EJ Massarella refused it for the following reasons:
- 8.1. *'The medical evidence the Claimant has provided states that he is unfit to attend work because of stress related to work. It does not state he is unable to attend a Tribunal hearing in person by reason of ill-health.'*
  - 8.2. *The case was originally listed in person because of the nature of the issues for determination. This is not a mere case management discussion, it is a public preliminary hearing to decide, among other things, whether the Tribunal has jurisdiction to hear the Claimant's case. Absent any sufficient medical evidence in support of the Claimant's application, there are no new*

*circumstances such as to require a variation of the original order. The hearing will take place in person.'*

9. The Claimant did not attend the hearing.
10. Rule 47 of the Tribunal Rules 2013 allows a Tribunal to dismiss a claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be reasonably practicable, about the reasons for the party's absence.
11. This morning, via the Tribunal clerk, I therefore made enquiries as to whether the Claimant would attend, referring to EJ Massarella's decision that the hearing was to be in person. The Claimant informed my clerk that he had made a complaint about EJ Massarella and to inform me that it was 'unlawful' not to provide a video link.
12. As to whether it was unlawful not to provide a video link, this is not the case. Employment Judges have a discretion whether to list a hearing to be in person or by video. It was clear to me that EJ Massarella had exercised that discretion judicially and had set out the relevant factors in his decision. I agreed with it.
13. It seemed to me fair to allow the Claimant time to travel to the hearing now he was absolutely certain it was taking place. The Tribunal informed the Claimant that the hearing would begin in person at 11.30am. In the meantime I read the witness statements and bundle.
14. The Claimant wrote at 10.06am, demanding a 'link' be sent for the hearing via video 'or go through my contribution to the hearing below'.
15. Although the Claimant has written to the Tribunal on several occasions today and yesterday, he still has not provided any information or other evidence that he was not well enough to travel to the hearing.
16. The Claimant did not attend at 11.30am, therefore in accordance with his request, I treated his contribution in the email as an additional witness statement with exhibits and read it before making this decision. I gave it to counsel for the Respondent to consider.
17. As to the Claimant's complaint against EJ Massarella that was not in my power to decide.
18. The Respondents submitted that I should hear the status point. I decided that if I was to hear evidence on the status point it would also be sensible to hear evidence about the time point. I heard the evidence of Mr Judd, read the documents available to me.
19. After hearing the evidence I made findings of fact and my decision on the time point first.

#### **Findings of Fact on Time Point**

20. After hearing the evidence of Mr Judd and reading the Claimant's witness statement and contribution sent on 29 September and reading the documents referred to me from the bundle, I make the following findings of fact.

21. The Second Respondent is the founder of KO Martial Arts Gym ('the Gym').
22. The First Respondent is a separate legal entity to the Gym and was set up to provide martial arts training to community groups. It relies on grant funding as well as donations. Mr Judd is one of its directors.
23. In September and October 2022, the Claimant did some work for the First Respondent to help it raise the grant funding it needed. This was the Claimant's idea. He invoiced Mr Judd at the end of September and October 2022 for the work he had done (no more than 5 hours per week at £20 per hour). Thereafter they agreed, and the documents support this, that any further work Mr Johnson did for the First Respondent, would be voluntary.
24. On 1 November 2022, the Claimant informed Mr Judd that one of the grant applications he had applied for on behalf of the First Respondent, had been successful. L and Q had agreed to provide a grant of £10,000. At this time Mr Judd was not keeping a close eye on correspondence because he was extremely ill but he does remember hearing this news and being pleased about it.
25. While the Claimant says, at that point, that they agreed he '*run [a] community martial arts programme offsite*', Mr Judd was clear in his evidence that this was not true. I find as a fact that there was no agreement between the two that the Claimant would continue to be employed or engaged to do this work. I prefer the evidence of Mr Judd as it was given under an affirmation. And because Mr Judd texted the Claimant on 25 November 2022 and told him that he was '*no longer connected to KOCA in any capacity*'. If it had not been clear beforehand, it was certainly clear at that date that there was no continuing engagement. Further, the Claimant did not send to Mr Judd monthly invoices for the work he alleged had been agreed, as he had done with the previously agreed work in the September and October invoices. I find the invoice purporting to be for work done from November 2022 sent to Mr Judd in August 2023, after these proceedings started, for £32,000 stating that the Claimant had worked 40 hours a week for 40 weeks from November 2022 to August 2023 did not arise out of any actual work agreed or done and was not correct. He did not do any such work.
26. On 25 November 2022, an issue arose between the Claimant and Mr Judd because the Claimant had tried to use the Gym for a group of children without permission at a time when it was not open. The Claimant alleged that Mr Judd '*came across as racist*'. He gave no reasons. Mr Judd, who has done much work in the community responded '*in no way is this racially motivated as you implied. I'm shocked to say the least as I have spent the vast majority of my life battling racism*'. He explained that his concern about the claimant attempting to use the Gym was about insurance. I accept this was the reason.
27. L&Q paid the grant money twice (once in error) and I have seen a bank statement that suggests both payments of £10,000 were then paid into Mr Johnson's personal bank account. When L&Q asked the First Respondent for the second erroneous payment of £10,000 to be repaid, it then discovered that the money had been transferred to Mr Johnson.
28. On 8 February 2023, Mr Judd accused the Claimant of fraud. His allegation was that the Claimant put the grant monies sent from L and Q into his personal bank account without permission. The Claimant responded by email on the same date inviting Mr Judd to call the police and his lawyer and stating, '*in the meantime I will*

*be taking legal action against you for making these false accusations, which is rooted in racial discrimination.'*

29. After that time the Respondents have not spoken or communicated with the Claimant.
30. The ET1 form is therefore incorrect: Mr Judd's accusation of fraud was not made on 9 May 2023; it was made by him to the Claimant on the First Respondent's behalf on 8 February 2023.

## **Legal Principles**

### *Time Limits*

31. Section 123(1) of the Equality Act 2010 provides that a claim under it may not be brought after the end of (a) *'the 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.'*
32. This section is altered by the Early Conciliation provisions such that it is the start of ACAS Early Conciliation which must begin within the primary time limit of section 123(1)(a).
33. The higher courts have made it clear that where a claim has been presented after the primary time limit of section 123(1)(a), then the burden is on the Claimant to persuade the Tribunal to extend time.
34. In normal language, the test whether it is 'just and equitable' to extend time, means that I essentially ask whether it is 'fair' to extend time.
35. I can take into account any factor relevant to the question whether is just and equitable to extend time, but I should always consider the reason for the delay.
36. It is possible in some circumstances, to make claims of post-employment discrimination, see section 108 of the Equality Act 2010. I do not decide that the claims on the face of the claim form meet the requirements of section 108, but for the purposes of the time point only, I have assumed that they do.

## **Application of Facts and Law to Issues**

37. In the ET1 form, the Claimant complains of race discrimination, victimisation, and harassment. He complains of *'William Judd on the 9<sup>th</sup> of May 2023 falsely accusing me of fraudulently taking money raised via L and Q funding'*. He suggests that the Respondents had asked him to work on a program offsite and use those grant funds and that is why the fraud allegation was racist. He complains that this was an *'extension of a racial discrimination campaign I was already subjected to by William Judd'*. The Claimant gives absolutely no details, although the form tells him to, of that alleged *'campaign'* or why it was race discrimination.' From the form it is clear that, whatever the alleged *'campaign'*, it came before the allegation.
38. Thus, the last act in this case was on the 8 February 2023. This was the date upon which Mr Judd accused the Claimant of fraud. I have seen the emails in which he made that accusation. The date given by the Claimant in ET1 form is therefore incorrect. The Claimant plainly knew from the 8 February 2023 that he had been

accused of fraud. And he also plainly thought on that date, and told Mr Judd, that he was entitled to take legal action against him for discrimination.

39. I further find the alleged 'campaign' must have ended on 8 February 2023 was because that was the last day upon which the Respondents and the Claimant had any contact.
40. The last date therefore by which the Claimant should have contacted ACAS to begin early conciliation, under section 123(1)(a) was 7 May 2023. He did not do so until 15 May 2023. He has brought his claim beyond the primary time limit. I must therefore go on to consider whether it is just and equitable to extend time.
41. In my judgment it is not just and equitable to extend time for the following reasons.
42. First, despite EJ Massarella's clear order, and the Respondents' solicitor's reminder, the Claimant has not included any reasons for the timing of his claim in the material he has sent to the Tribunal. I therefore have no evidence of the reason for the delay. This is an important factor against extending time. If there is no reason for the delay before me, it is more difficult to find it is just and equitable to extend time.
43. Second, while the Claimant is a litigant in person, he is plainly someone who is well able to research and write. That much is shown by the successful grant application he did for the First Respondent – raising £10,000 for them. There is plenty of information online that explains the time limits for employment race discrimination claims. In those circumstances, that he is a litigant in person is insufficient a reason to make it fair to extend time.
44. Third, there is no reason on the material before me (beyond the Claimant's witness statement) for why there was a delay. I take into account that on 8 February 2023, the emails show he knew what the allegation was and he thought it to be discrimination. There was nothing further he needed to know before he brought the claim.
45. Fourth, the time limits are set by Parliament to be short so that matters are fresh in the minds of all concerned and so that employment disputes are resolved as quickly as possible. While it could be said that the delay from 7 May to 15 May is short, that is insufficient a reason alone to make it fair to extend time, given the parliamentary intention.
46. Fifth, while the Claimant is at the moment too unwell to work, there is no evidence that his ill health prevented him from making the claim in time.
47. Sixth, I do take into account the state of health of the Second Respondent. He experienced a heart attack in late 2022 and underwent surgery. He has been unwell for some time, spending long periods housebound with COPD a severe and difficult condition. He is experiencing ongoing medical procedures for bowel cancer. He plainly made an extraordinary effort to attend today to give evidence. In those circumstances, without any good reason to extend time, there seems to me a very good reason not to do so. Mr Judd is an individual Respondent and the First Respondent's main witness. He would be put to the stress of preparing and anticipating ongoing proceedings, while he is extremely unwell.
48. I am invited to consider the merits of the case: I do not do so at this stage. They are insufficiently particularised. Certainly on the face of it there is no obvious

reason why the Claimant has accused Mr Judd of 'racism' or discrimination or harassment related to race. If the claim had been presented in time, I would have been using this hearing to find out whether the Claimant could give further information.

49. For all those reasons I do not consider that it would be just and equitable to extend time and do not do so. There are no strong factors for extending time and one very strong factor for not extending time. I therefore find there is no jurisdiction to hear the claims and they are all dismissed.
50. I do not therefore need to decide the other issues before me.

### **Costs Application**

51. The First Respondent made an application for costs. They include solicitor's preparation for today and counsel's fee and VAT. In total £3,028.80
52. The Rules allow me to consider whether to award costs if the Claimant has been unreasonable in bringing or conducting the claims.
53. First I must consider the conduct. I consider there are three elements of unreasonable conduct here:
- 53.1. the claim that the fraud allegation was race discrimination.
- 53.2. the claim of a 'campaign' of harassment and discrimination.
- 53.3. the failure to attend the hearing today.
54. The claim that the fraud allegation was race discrimination was justified in the claim form because the Claimant said he had agreed with the Respondents to use the grant money to deliver the community based martial arts organisation away/offsite. I have found as a fact that this was not true. Mr Judd did not make this agreement with the Claimant. The documents do not support that any such agreement was made. The Claimant did not continue to send monthly invoices showing that work had been done. In any event, it does not explain why it does not explain why the second lot of grant funds, mistakenly paid by L and G, also was paid into the Claimant's account or why the Claimant claims a further £32,000 in respect of that alleged work in one August 2023 invoice rather than monthly invoices. I have found that this invoice was incorrect and agree it was 'a fantasy', as Mr Judd put it in his evidence. If there was no agreement to use the grant money to do further work, the claim that Mr Judd's accusation was race discrimination then becomes unreasonable. This is because there was no good reason, on the evidence I have heard, for the Claimant receiving that money (and the amount again paid in error) and it is therefore unsurprising that Mr Judd made the accusation. On the facts I have heard, and without any other reason provided by the Claimant, it was unreasonable for him to decide that the accusation was based on race rather than the fact of those monies ending up in his account. I do not make any finding of actual fraud. My concern is whether the allegation was reasonably made that the fraud allegation was because of race. In my judgment, after hearing the evidence of Mr Judd and reading the contemporary documents, it was not.
55. Second, the accusation of there being a campaign of discrimination is wholly unparticularised. The claim form requires claimants to give detail of their allegation.

There is no detail at all. The Claimant does not describe in summary the facts of the 'campaign' and does not describe in summary why he alleges it to be because of race. Further, there is nothing in the material the Claimant has put before me for today's hearing that would justify such a claim being made. In my judgment, it was unreasonable to make that claim without either putting at least some information in the claim form or attending today to give further information.

56. Third, this means I must consider whether it was unreasonable for the Claimant not to attend today. I have considered all the factors. First the Claimant is not fit for work. Nevertheless the Claimant is fit to attend a hearing: he has said that himself by requesting a video hearing. He was fit enough therefore to attend a hearing estimated to take a day. What the Claimant has not told the Tribunal is why he cannot travel to attend that hearing and the fit note does not help with this. EJ Massarella suggested he provide it. He has not done so whether by further medical evidence or even by simply telling the Tribunal what the problem is in relation to travel. Is that unreasonable, bearing in mind he is not fit for work? I have concluded it is, mainly because the Claimant has been fit enough to correspond at length with the Tribunal. If he was fit enough to do that he was fit enough to tell the Tribunal why he cannot travel. He has been unreasonable in not doing so and in not attending.
57. Thus I find the Claimant has been unreasonable in conducting and bringing the claim.
58. This means I have a discretion whether or not to award costs. How should I exercise it? The Claimant was sent two warning letters in June 2023 and in September 2023 by the Respondents' solicitor warning that they would seek their costs on the basis that his bringing the claims was unreasonable. He knew such an application would be made. I also take into account that the First Respondent has very limited means: it survives on grant monies and donations. The money they spend in defending these claims would otherwise have been money used on community projects. It seems to me fair in such a case, where the Claimant has acted unreasonably, for the Respondents to be paid their costs so that the money they have expended on these proceedings can go back into the community projects they support. I therefore consider it fair to exercise my discretion to award costs.
59. Finally, I consider the amount of costs is reasonable by reference to the seriousness of the claim; the number of issues at stake today; the need to prepare a witness statement and a bundle; the legal research involved and the importance of the issue to both Respondents. These costs have been expended by the First Respondent.
60. The Claimant has informed the Tribunal on 29 September 2029 that he has £40,000 in his savings account. He therefore has the means to pay.
61. I therefore order the Claimant to pay to the Respondent costs of £3,028.80

**Employment Judge Moor  
Dated: 2 October 2023**