



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Kokkoz

**Respondent:** London Borough of Lambeth

**Heard at:** London South (by CVP)

**On:** 1 September 2023

**Before:** Employment Judge Kumar

## **Representation**

**Claimant:** Mr D Vacciana, Friend

**Respondent:** Ms R Snocken, Counsel

## **RESERVED JUDGMENT**

The application to strike out the claim is refused. The tribunal will decide at the final hearing whether or not the claim for disability discrimination was presented within the applicable time limit.

## **REASONS**

1. This hearing was listed as an open preliminary hearing to consider as a preliminary issue under rule 53(1) whether the claimant's claim should be struck out under rule 37 on the basis that the claimant has no reasonable prospect of success in establishing that his claim has been brought in time.
2. The claimant was represented by his friend, Mr D Vacciana. He gave sworn evidence in respect of the time limit issue. The respondent was represented by Ms Snocken of counsel. Both the claimant and respondent addressed the tribunal by way of submissions.
3. The tribunal had read a witness statement provided claimant on the time limit issue, a report dated 5 September 1998 written by an educational psychologist in respect of the claimant's dyslexia. The tribunal was referred to pages within a 158 page bundle of documents that had been provided by the respondent and also to a separate document which was a print out from LinkedIn.

4. The claimant confirmed that on account of his dyslexia he has trouble reading documents and also on occasion understanding what was being said. We discussed what adjustments could be made to ensure the claimant's participation in the hearing and it was agreed that the claimant would interrupt the judge or Mr Vacciana or Ms Snocken and ask for something to be explained if he did not follow it. We paused regularly to enable Mr Vacciana to explain further anything the claimant wished him to. When considering extracts of documents these were read out aloud. We also had short breaks to enable Mr Vacciana and the claimant to discuss matters arising during the hearing.
5. The claimant confirmed that he no longer sought permission to amend his claim to include a complaint of unfair dismissal.
6. The issue to be determined therefore was whether the claimant had no reasonable prospect of success in determining:
  - i) That his complaint had been brought within 3 months of the date of the discriminatory act complained of or within 3 months of the last act if the act formed part of the continuing act of the purpose of section 123(3)(a);
  - ii) That it was just and equitable to extend time for the presentation of his claim under the EqA, under section 123(1)(b) to the date of the presentation of his claim.

## **Findings of Fact**

7. Having considered the oral and written evidence, the tribunal made the following findings of fact on the balance of probabilities.
8. The claimant was employed by the respondent from 28 November 2005 until 30 September 2021 when he was dismissed by reason of redundancy.
9. The claimant presented his ET1 on 19 January 2022 after a period of early conciliation entered into on 20 October 2021. An ACAS certificate was issued on 22 October 2021.
10. The claimant worked as a public protection officer. The respondent was aware that the claimant had dyslexia and provided him with Dragon dictation software to assist him in his role.
11. In July/August 2020 the respondent started an investigation into an allegation of fraud made by a colleague of the claimant's. A few weeks later, the claimant raised a grievance in relation to the same colleague and the respondent also received two further grievances from other employees about the same colleague.
12. There was a considerable delay in the respondent investigating the grievances and the claimant was not informed of the outcome of his grievance until he was

sent by email a letter and investigation report on 28 July 2021. The report informed him that the outcome of his grievance was that it was not upheld. The claimant did not appeal the outcome of the grievance.

13. By a letter dated 22 February 2021, the claimant was informed that there was a proposed restructure and a consultation was started. The new structure was confirmed on 23 April 2021 and it was confirmed that the claimant's role had been deleted. On 25 May 2021 the claimant was interviewed for the role of licensing officer. He was informed shortly afterwards by telephone that he had not been successful in his interview for the role.
14. On 15 June 2021 the claimant was interviewed for the role of anti-social behaviour enforcement officer. On 6 July 2021 the claimant was informed that he had been unsuccessful in securing the role. Ultimately the claimant was made redundant and his last day of employment was 30 September 2021.
15. The claimant considered that he had been discriminated against in relation to his disability. I make no findings in relation to this for the purposes of this preliminary hearing other than to note that the claimant stated that the discrimination continued beyond the redundancy exercise up to his dismissal.
16. The claimant was assisted from around the time of his grievance by a friend who was an HR professional. This friend put the claimant in touch with another HR professional, Ms S Sutton, who assisted the claimant with making his claim. The claimant did not seek help from his union as he had previously had a bad experience and had not felt that the union had been impartial. The claimant did not take advice from the Citizens Advice Bureau because he felt he would have encountered difficulties in understanding on account of his dyslexia. He did not research making a claim on the internet as because of his dyslexia his use of the internet is limited. The claimant relied upon Ms Sutton in respect of matters relating to the Employment Tribunal. He was used to relying on friends on account of the difficulties he experienced with literacy as a result of his dyslexia and I accept that he placed this amount of reliance in Ms Sutton given her expertise and did not make his own enquiries on time limits. The claimant was not aware of the time limitations for presenting a claim to the employment tribunal and accordingly did not realise that his claim was presented out of time. The respondent challenged the claimant's evidence in respect of this but I was satisfied that the claimant's condition causes him significant difficulties that would have made it difficult to bring a claim without the help of Ms Sutton or another friend he trusted and that he relied on her to know what she was doing.
17. The claimant's ET1 was therefore submitted late.

## **The Law**

18. S123(1) Equality Act 2010 provides that complaints of discrimination 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 further period as the employment tribunal thinks just and equitable

19. S123(3) provides that

- a. Conduct extending over a period is treated as done at the end of the period;

20. Whilst Tribunals have a discretion to extend time in claims of unlawful discrimination there is no general presumption that time will be extended; rather the test to be applied is whether it would be just and equitable to extend to all the circumstances of the case. It is for the claimant to show reason why it would be just and equitable to extend time. Factors may include:

- a. The length and reason for the delay in presenting the claim;
- b. The extent to which the cogency of evidence is likely to be affected by the delay;
- c. The extent to which the respondent co-operated with any requests for information;
- d. How quickly the claimant acted when he knew of the facts giving rise to the claim; and
- e. The balance of hardship and injustice to the parties in either granting or refusing the extension of time.

21. It may also be appropriate, but not mandatory, to consider the relevant merits of the claim having regard to the general principle that in discrimination claims it is often necessary to hear evidence at a final hearing where there are disputes as to facts.

22. Rule 37 Employment Tribunal Rules of Procedure provides that

*(1) At any stage of the proceedings either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds ...*

- a. That it is scandalous, vexatious or has no reasonable prospects of success...

and it cannot succeed on the legal basis on which it is advanced then it will be appropriate to strike out.

23. The case of **Anyanwu -v- Southbank Student Union [2001] ICR 391** provides general authority for the principle that Tribunals should be slow to

strike out claims of discrimination unless it can be satisfied that the claim has no reasonable prospects of success. In particular it says:

*“Discrimination cases are generally fact sensitive and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of the claim being examined on the merits or de-merits of its particular facts is a matter of high public interest”*

24. In **Morgan v Royal Mencap Society [2016] IRLR 428** Mrs Justice Simler reminded Tribunals (paragraphs 13 and 14) that although the threshold for strike out is high, there are cases where if one takes the claimant’s case at its highest, and it cannot succeed on the legal basis on which it is advanced then it will be appropriate to strike out.
25. The respondent drew my attention to the EAT decision of **Secretary of State for Justice v Mr Alan Johnson: [2022] EAT 1** and the need for the tribunal to consider the impact upon the respondent’s ability to defend a claim when the events in question had happened a long time ago, even when the delay in the claim being heard was neither party’s fault.

## Conclusions

26. The claim was presented out of time.
27. However it cannot be said that the claimant has no reasonable prospects of success of establishing that it is just and equitable to extend the time for bringing his claim. I accept the claimant’s evidence in respect of the difficulties he would have had bringing the claim without the help of Ms Sutton and that he relied upon her to advise him on matters such as time limits. I take into account the potential prejudice to the respondent of having to defend a claim in respect of events that happened some time ago but I balance this against the prejudice to the claimant of not being permitted to pursue his claim. In the circumstances I find that the balance of hardship would fall on the claimant.
28. During the hearing I endeavoured to clarify with the claim. The claimant referred to the lack of support he received during the fraud investigation, the grievance and the redundancy exercise in helping him understanding documents and information. It appeared that he was not claiming direct discrimination but the claimant then referred being discriminated against by the person against whom he raised a grievance. He made specific reference to not being given adequate support for the interview that took place on 15 June 2021. He referred to discriminatory acts continuing beyond the date he was notified of the outcome of the interview up to his termination date. There was insufficient time to particularise the complaints that the claimant brings and a further preliminary hearing will be listed:
  - i) To clarify the claims and issues arising;
  - ii) For further case management.

2300200/2022

Employment Judge **Kumar**

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Date 01 November 2023

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**Case No: «case\_no\_year»**