



EMPLOYMENT TRIBUNALS

Claimant: Dr Hamid Reza-Alikhani

Respondents: Uber Britannia Limited

Record of an Open Preliminary Hearing at the Employment Tribunal

Heard at: Nottingham **Heard on:** 26 September 2023

Before: Employment Judge Hutchinson (sitting alone)

Appearances:

Claimant: In person, assisted by Miss M Reza-Alikhani, Daughter

Respondent: Emmeline Plews, Counsel

JUDGMENT

The Employment Judge gave Judgment as follows:

The Tribunal does not have jurisdiction to hear the claims of unfair dismissal and discrimination on grounds of race, religion or belief and age. The claims are dismissed.

REASONS

BACKGROUND

1. On 30 March 2023 the Claimant presented his claim to the Tribunal. He claimed:
 - Unfair dismissal.
 - Discrimination on the grounds of age, race and religion or belief.
2. He said that he had been employed as a Taxi Driver by the Respondent between the 1 January 2020 and 30 June 2022 when he was dismissed.
3. In paragraph 8.2 of the ET1, when providing details of his claim he said that he had been employed by Uber for over 2½ years and had completed over 15,000 trips with no complaints. He said that he had received excellent comments and reviews and had been driving for over 50 years with no accidents.
4. He complained of being dismissed on unproven allegations of multiple reports that passengers had made complaints about him. That he had received no details about these complaints and that he rejected any such complaint.
5. He provided no details of how the allegations amounted to acts of discrimination.
6. He had notified ACAS of the potential claim on 13 February 2023 and on the 27 March 2023, ACAS had issued him with an early conciliation certificate.
7. At a Telephone Case Management Preliminary Hearing conducted by Employment Judge Heap on 21 June 2023 my colleague identified that the claims had been presented out of time because of all of the complaints related to the Claimant's dismissal.
8. As identified by Employment Judge Heap the Claimant confirmed that the only act of discrimination that he was advancing was in respect of his dismissal and she identified that it would appear the claims were likely to be of direct discrimination.
9. Employment Judge Heap also explained about the burden of proof of discrimination claims and noted that the Claimant had not been able to provide her with details of the facts the Claimant would rely on. She noted:

“Whilst the Claimant may consider that those characteristics might have had something to do with the reason for his dismissal that is not going to be sufficient to make out a discrimination claim and he will need to turn his mind to what facts he is going to rely on (rather than a general feeling) before the next Preliminary Hearing.”
10. Employment Judge Heap listed this matter for a Preliminary Hearing which I have heard today to determine whether I had jurisdiction to hear the claims of unfair dismissal and discrimination.

THE ISSUES

11. It is not in dispute that the claims are presented out of time.
12. In respect of the unfair dismissal claim the relevant legislation is section 111(2) of the Employment Rights Act 1996 (“ERA”).
13. If the claim is presented out of time as it is in this case, I have to consider whether it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months and, if so, whether it was presented within such further time that I consider reasonable.
14. In respect of the discrimination complaints section 123(1) of the Equality Act 2010 (“EqA”) provides that claims of discrimination may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates unless I consider that it would be just and equitable to do so.

THE HEARING TODAY

15. The Claimant represented himself but was assisted by his daughter. The Respondent was represented by Counsel who provided me with an agreed bundle of documents. Where it refers to page numbers it is from that bundle.
16. I also had a Skeleton Argument from the Respondent’s Counsel.
17. I heard evidence from the Claimant and submissions from him, his daughter and Miss Plews.

THE FACTS

18. The Claimant worked as a Taxi Driver for the Respondent from 1 January 2020 until 30 September 2022.
19. On 30 September 2022 the Claimant’s account on the Uber App was deactivated.
20. The position was confirmed in a letter to the Claimant on 30 September 2022 (page 107).
21. The letter states:

“Following your recent correspondence with Uber Support we are writing to confirm that under clause 14 of the driver terms we have exercised our right to terminate the driver terms with effect from 30/09/2022.

The decision was made because of multiple reports from your riders of your failure to provide rides with due skill, care and diligence, which constitutes a material breach of the driver terms.

This means you are no longer able to use the Uber Driver App to provide rides for Uber via the Uber Driver App with immediate effect.

Unfortunately, this is a final decision.

Uber will pay you any outstanding payments which are due to you in respect of trips undertaken by you on the Uber Driver App up until today.”

22. The Claimant's account had been placed on hold on 13 August 2022. This related to complaints from customers that the Claimant had appeared to fall asleep whilst driving.
23. The record of this conversation with Jayne Preston from the Respondents is at pages 96-97. This had not been the only complaint concerning him.
24. On 30 September 2022 the Claimant had a conversation with someone called Stephen from Uber Support. The transcript of the call is at pages 104-106. In the call it was explained to the Claimant why the decision had been made to terminate his agreement and that the decision was final.
25. The Claimant contacted the Respondent again on 4 October 2022 and the transcript of the call with Luis from the Respondents with the Claimant is at pages 109-110. It was again explained to the Claimant that a permanent decision had been taken to close his account and he was advised to contact his Union if he was not happy with it.
26. I have also seen an email from the Claimant dated 1 October 2022 where he disputed the allegations that had been made against him. The email makes no mention of any allegation of discrimination (page 111).
27. His email was reviewed and responded to on 9 October 2022 by Muhammad Farhan on 9 October 2022 (page 112). It confirmed that the decision had been made “*after careful consideration*” and that the decision was final.
28. In his evidence to me the Claimant told me that he had tried to instruct lawyers on 3 October 2022 and again on 3 January 2023 and that he had not been unsuccessful in doing so.
29. He also told me that he tried to find other solicitors without success and that he had contacted other charities and Citizens Advice Bureau.
30. He contacted the Nottingham Law School who provide a service to assist unrepresented litigants in person and says that no one could help him.
31. He says that he had a short period of illness which lasted about two weeks whilst he was suffering from a cold and says that he was held up by the Christmas Holiday period.
32. He did not though contact ACAS and notify them of his potential claim until 13 February 2023 by which time his claim was already 6 weeks out of time.
33. At no stage did he bother to look on the Government Website which would have

explained to him about time limits, and I am satisfied that there was nothing to prevent him from doing so.

34. He obtained his certificate from ACAS on 27 March 2023 and then submitted his claim 3 days later on 30 March 2023.

THE LAW

Unfair Dismissal Claim

35. Section 111(2) of the ERA provides:

“An Employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal;

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”

36. Section 207B ERA provides for the extension of time limits to facilitate conciliation for the institution of proceedings which applies in this case.

37. Miss Plews referred me to several well-known authorities namely:

- ***Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53***
- ***Walls Meat Co Ltd v Khan [1979] ICR 52***
- ***Porter v Bainbridge Ltd [1978] ICR 943***
- ***Palmer v Southend-on-Sea Borough Council [1984] ICR 372***
- ***Asda Stores v Kauser EAT 1065/07***

38. When I am considering whether it was not reasonably practicable to present the claim in time there are three general rules which apply, namely:

- (1) The relevant statutory provision should be given a liberal construction in favour of the employee.
- (2) What is reasonably practicable is a matter of fact for the Tribunal to decide.
- (3) The burden of proving that presentation in time was not reasonably practical rests on the Claimant.

39. Where a Claimant alleges ignorance of his rights as a reason for failing to present a claim in time, I must ask further questions. The correct test is not whether the Claimant knew his rights but whether he ought to have known about them.

Discrimination Claims

40. Section 123 of the EqA provides:

“(1) proceedings on a complaint within section 120 may not be brought after the end of;

(a) The period of 3 months starting with the date of the act which the complaint relates, or,

(b) Such other period as the Employment Tribunal thinks just and equitable.”

41. Miss Plews referred me to a number of cases namely:

- ***Trust House Forte (UK) Ltd v Holstead EAT 213/86***
- ***Roberston v Bexley Community Centre T/A Leisure Link [2003] IRLR 434***
- ***Adelodji v University Hospitals Birmingham NHS Foundation Trust [2021] ICR***
- ***Southwark London Borough Council v Afolabi [2003] ICR 800***
- ***University of Westminster v Bailey EAT 0345/09***
- ***Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132***

42. I am reminded that I have a wide discretion to hear claims which are out of time within a period which I consider to be just and equitable but there is no presumption that I should do so unless I can justify failure to exercise the discretion. I must be convinced that it is just and equitable to extend time. The burden is on the Claimant to convince me that it is just and equitable to extend the time limit and that the exercise of the discretion is the exception rather than the rule.

43. Amongst other factors that I need to take into consideration are:

- (1) The length of the delay.
- (2) The reasons for the delay.
- (3) Whether the delay prejudices the Respondent.
- (4) A lack of knowledge that was reasonable.

44. I can also consider the strength of the claim.

MY CONCLUSIONS

45. I am satisfied that the Claimant's working relationship with the Respondent ended on 30 September 2022. It could not be clearer that the Respondent decided to terminate the contract.
46. Any claim therefore needed to have been brought by 29 December 2022.
47. The Claimant did not contact ACAS until 13 February which meant that he was six weeks late already. There was then a further period of early conciliation before the Claimant was issued with his certificate and then presented his claim.
48. I am satisfied that the Claimant knew within the first two weeks of the termination that he would not be re-engaged and therefore by 11 October 2022 there was no point in entering into further discussions with Uber.
49. The Claimant accepts that he tried to obtain legal advice as early as 3 October 2022 but took no further steps about pursuing that despite his comment that he was *"relentlessly pursuing this further"*.
50. I am satisfied that there was no contact between the Claimant and Respondent after 9 October 2022 so there was no reason for any further delay if he wished to pursue his claim.
51. I am satisfied that his short period of having a cold and the Christmas period did not justify his delay. Neither of those events prevented him from investigating or pursuing his claim.
52. Whilst I can understand that he was having difficulty finding a solicitor. Apart from the two pieces of evidence he provided about contacting solicitors on 3 October 2022 and 4 January 2023 there is no evidence that he made any further attempts during this period.
53. Similarly, in respect of his contacting Citizen Advice Bureau's and legal charities he has provided me no evidence about when he did this or which ones, he approached.
54. In any event the Claimant did not need a solicitor to present his claim to the Tribunal or contact ACAS under the early conciliation procedure. He could have contacted ACAS as many litigants in person do and could then have completed his claim on time and again as many litigants in person do. The fact that he did contact ACAS on 13 February 2023 and subsequently presented his claim shows that there was nothing to prevent him from presenting his claim earlier.
55. There is no reason why he could not have found out about the existence of time limits and what steps he needed to take to present his claim. There is plenty of information in this regard on the internet.
56. In this case the Claimant did not make any contact with ACAS until 13 February 2023

by which time the claim was well out of time already.

FINAL CONCLUSIONS

UNFAIR DISMISSAL CLAIM

57. I am not satisfied the Claimant has established that it was not reasonably practicable for him to present his claim for unfair dismissal within the 3 months' time limit. He has not discharged the burden of truth. It was perfectly feasible for the Claimant to present his claim for unfair dismissal in time and there is no excuse for his delays. The claim of unfair dismissal fails and is dismissed.

DISCRIMINATION CLAIMS

58. I am satisfied that the Claimant has not established that it would be just and equitable for the Tribunal to hear the Claimant's claim out of time.

59. In this case there has been a significant delay and the Claimant has provided no good reason for that delay.

60. The claim itself is a weak claim because apart from ticking the relevant boxes on the ET1 the Claimant has not provided any facts in support of his contention that he had suffered discrimination on any grounds.

61. He has been given plenty of opportunity to do so. I have noted the discussions that he had with Employment Judge Heap when she explained that "*a general feeling*" is not enough.

62. It is now almost a year after the act to which the complaint relates, and the Claimant has still not particularised any claim of discrimination.

63. The Claimant himself and the contemporaneous documentation at the time of termination doesn't refer to any discrimination at all and the reason for the termination related entirely to the standard of his driving.

64. In all the circumstances I am satisfied that it would not be just and equitable to extend time and the claims of discrimination also fail and are dismissed.

Employment Judge Hutchinson

Date: 9 November 2023

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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