



EMPLOYMENT TRIBUNALS

Claim Number: 1303611/2023
Claimant: Mr Muhammad Namat Ullah
Respondent: MGB Restaurants Limited

FINAL HEARING

Heard at: Midlands West (by CVP) **On:** 3 January 2024
Before: Employment Judge Robin Broughton

Appearances

For the Claimant: in person
For the Respondent: Mr M Green, counsel

REASONS

for judgment of 3 January 2024

The claimant's claims were struck out having been presented late.

Background

1. It was agreed between the parties that the correct respondent was MGB Restaurants Limited who held, at the relevant time, the franchise of the McDonalds restaurant in Small Heath, Birmingham.
2. This hearing was arranged to consider whether or not it would be just and equitable to extend time under section 123 Equality Act 2010 in relation to the claimant's discrimination complaints against the respondent. His unfair dismissal complaint had already been struck out as he lacked qualifying service.

Facts

3. The claimant was employed by the respondent from June 2022 until 7 September 2022 and, whilst employed, he apparently brought a grievance complaining of race discrimination, albeit that was not upheld.
4. He was subsequently dismissed for allegedly eating the respondent's food without permission.

5. The disciplinary hearing was on 7 September 2022 and dismissal was confirmed a couple of days later.
6. On or around 15 September 2022, the claimant appealed against his dismissal and attended an appeal hearing on 7 October 2022. The appeal was not upheld and so the claimant, having spoken to others seeking advice about the next steps, understood that he was to contact ACAS and did so.
7. On 9 November 2022, early conciliation commenced and ran until 24 November 2022. The claimant was provided with an early conciliation certificate on that date and informed of the need to provide such a certificate, if intending to bring an employment tribunal claim.
8. As a result of the above, the claimant's claim would have been due, under the primary time limit, as extended, to have been presented on or before 23 December 2022, but it was not submitted until 19 April 2023.
9. There was no dispute about those primary facts.

Deliberations

10. I firstly considered the reasons for the claimant's delay which he said that was due to not knowing of his rights and/or time limits.
11. He also that he said he was suffering from depression, something he had suffered from previously and which, he said, had returned following his dismissal, such that, at some point between his dismissal and approaching ACAS, he had gone to visit his GP and had been prescribed the anti-depressant, citalopram.
12. There was no evidential support for that, although it was not disputed by the respondent.
13. I note that during that period of depression, the claimant was still able to appeal. He was able to find out about the possibility of a claim and the ACAS process. He was able to contact ACAS, who informed him about the possibility of an employment tribunal claim, including on the certificate from early conciliation.
14. The claimant was also able to find, via the internet, a new job seemingly early in the new year in 2023. He was able to apply for that job and, indeed, was successful. He started work for a few weeks, albeit said he was unable to continue due to his mental health. Again, there was no medical support for that.
15. It appears from all the above that the claimant was aware of the ACAS early conciliation process in time and, as a result, he was also aware of the possibility of

an employment tribunal claim. If he still wasn't then aware of time limits, whether via the internet, ACAS or others, he was capable of finding out.

16. He could have researched it on the internet as he had that facility. He could have asked ACAS. The claimant said at least part of the reason he didn't do so was due to his ill health, but he could do all of those other things already listed, including contacting ACAS and starting a new job. It seems, therefore, unlikely that his alleged mental health challenges would have prevented him from being able to either research the time limit for a claim or to bring such a claim.
17. There was no evidence to support his mental health challenges, nor to explain how he could work and contact ACAS, but not bring a claim sooner. There was no evidence to support how or when his mental health had improved sufficiently to take such steps. Indeed, the claimant's evidence appeared to suggest that his mental health deteriorated in, or around, February 2023, when he left his new employer.
18. As a result, if he did not know of the time limits, which seems unlikely given his contact with ACAS, he could have found out by other means. There was no evidence of any specific efforts to find out more, nor any medical evidence of particular challenges at the various relevant times within the delay.
19. That is not to say that I don't accept that with English not being the claimant's first language, disabilities, including depression and, indeed, a lack of knowledge of his rights did not make it more difficult for the claimant. None of those appeared to me to be a sufficiently good reason to justify the delay, let alone fully explain the claim being presented almost four months late. That, however, is not my only consideration.
20. Given the challenges that the claimant did have and the test I have to apply, I went on to consider the potential prejudice to the parties of allowing or not allowing the claim to proceed. Clearly there would be prejudice to the claimant if not allowed to proceed as he would not have a means of having his claims heard and, potentially, determined in his favour.
21. In that context, it does appear to be common ground that the claimant did raise a race complaint when employed by the respondent and there was specific, albeit unparticularised, reference to a race complaint in his claim form.
22. It was far from clear, however, on the papers and evidence before me, who might be the respondent's witnesses even in relation to that allegation but at least on race the respondent may have had some information in relation to it from the claimant's grievance.
23. The claim form also intimated claims of sexual orientation discrimination, disability discrimination and religion or belief discrimination but there were no particulars at

all on the form in relation to those claims and no evidence that the respondent would previously have been aware of them. They remain unparticularised and would appear, on the face of the pleadings at least, to have little or no prospect of success.

24. There would be considerable prejudice to the respondent having to answer still unparticularised claims, including those regarding race, at least 16 months after the events and the claimant's dismissal.
25. It would then, potentially, be a further year before those claims getting to a full hearing which could, inevitably, affect the cogency of the evidence.
26. I heard that the respondent no longer runs the restaurant in question. It seems likely that there may well have been significant staff turnover since the event and going forward, so there would be very significant prejudice to the respondent having to answer still unparticularised allegations so far down the line.
27. I am reminded that granting an extension of time is the exception rather than the rule under s123 Equality Act 2010 and so, for all of the reasons given, I don't consider that it would be just and equitable to extend time in this case. Accordingly, all the claimant's claims of discrimination are dismissed.

Employment Judge Broughton

Date: 30 January 2024