EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr M Alyas	**v**	Trinity College

Heard at: Reading (by CVP) **On:** 8 February 2024

Before: Employment Judge Anstis (sitting alone)

Appearances
For the Claimant: Dr L Irving-Bell
For the Respondent: Mr O Holloway (counsel)

JUDGMENT having been sent to the parties on 21 February 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION

1. This preliminary hearing has been convened by order of EJ Gumbiti-Zimuto to consider whether the tribunal has jurisdiction to consider the claimant's complaints having regard to the time limit provisions of the Employment Rights Act 1996 and the Equality Act 2010.

2. Everyone agrees that the claimant's claims were all brought outside the standard time limit for such claims, so the question becomes whether I should extend time in accordance the applicable principles on extension of time.

3. At this hearing I heard oral evidence from the claimant, his representative Dr Irving-Bell and Dame Hilary Boulding and Sir Ernest Ryder for the respondent. In addition to this, a number of witness statements had been submitted on behalf of the claimant. Some of these amounted to testimonials to the claimant's character, which is not a matter at issue for this hearing. Others described the health difficulties he faced concerned with his employment at the respondent and its termination.

THE FACTS

4. The claimant was employed by the respondent as workshop supervisor. He was dismissed for alleged gross misconduct. The detail of that is not a matter for today's hearing. The claimant brings a claim of unfair dismissal and it is agreed that the effective date of termination of his employment was 22 July 2022. The claimant also brings four claims of direct race discrimination. Three of those race discrimination claims arise in March 2022 and one in February 2021.

5. The claimant's dismissal on 22 July 2022 came at the end of a lengthy period of investigation, with the police being involved at one stage. The claimant's dismissal was decided upon by Dame Hilary Boulding, President of the respondent. When the claimant appealed there was no-one more senior at the respondent who could hear the appeal. Dame Hilary drew in Sir Ernest Ryder, Master of Pembroke College, to undertake the appeal. I accept it is common practice for one college to offer another assistance in this way.

6. From the point of submitting his appeal onwards, the claimant has had the benefit of support and assistance from Dr Irving-Bell, who represented him today.

7. The circumstances in which this occurred are not entirely clear, but it was the claimant's case that he had attempted to seek advice from ACAS about bringing a claim prior to his dismissal. This was later explained by Dr Irving-Bell as being him being referred by his trade union to ACAS, but this eventually going nowhere because ACAS could not understand arrangements within the college. I am somewhat puzzled by the reference to the trade union referring the claimant to ACAS, but it is clear that the claimant was, at the latest by the time of his dismissal or shortly thereafter, contemplating the possibility of an employment tribunal claim. The possibility of an employment tribunal claim is referred to in the claimant's appeal letter.

8. The appeal hearing was convened on 27 September 2022 but then adjourned for a substantial period of time, being resumed and the outcome being given to the claimant on 1 November 2022.

9. It was part of the claimant's case that this appeal process was too long. At times it seems to have been suggested by the claimant that this was a deliberate delay to frustrate his right to apply to the employment tribunal.

10. I do not accept that. Dame Hilary explained that the initial delay had been caused by the summer holiday at Oxford University, and difficulties with fitting the hearing into Sir Ernest's diary. The delay from the first to second hearings were caused, as Sir Ernest described, by his desire that evidence produced at or around the time of the initial appeal hearing should be referred back to the respondent for further investigation. The appeal hearing was not deliberately delayed to frustrate the claimant's rights.

11. Sir Ernest accepts that during the 27 September 2022 appeal hearing he made particular remarks attributed to him in the notes of the hearing. The relevant paragraph from the notes is:

> *"MA queried whether he can only go to an employment tribunal within three months of being dismissed from the College. ER noted that the three month date is from the result of the appeal rather than three months after the College's decision but added that MA must speak to his solicitor about this and ensure that they agree with this time frame. ER added that MA is right to be concerned about this and to take advice."*

12. There may be some cases in which it is correct to say that the three month time limit runs from the result of the appeal, but the parties agree that that was not correct in the circumstances of this case.

13. Although the claimant did not accept this, I find from this note that at that time the claimant was aware that there was a three month time limit for a tribunal application. I also note that Sir Ernest's comment was qualified by the observation that "*MA is right to be concerned about this and to take advice*".

14. In his oral evidence the claimant said that in saying this Sir Ernest had also said something to the effect that he should know about this as he had previously been head of tribunals. There is nothing in the notes to that effect and it is denied by Sir Ernest. I accept that Sir Ernest did not say this. It is not in the notes and Sir Ernest was clear that it would have been improper for him to say anything along those lines. It is, however, perfectly possible that the claimant had heard along the way (but not from Sir Ernest himself) that Sir Ernest had previously held office as Senior President of Tribunals.

15. I accept, based on the notes that he kept from the time, that when this point was revisited on 1 November 2022 Sir Ernest declined to express a view and simply said that it was a matter that the claimant should take advice from.

16. In closing submissions, Dr Irving-Bell said that immediately on learning that the appeal had been unsuccessful (1 November 2022) she had researched the question of employment tribunal time limits and realised that time ran from the date of dismissal, not the date of the appeal outcome. She had at that point identified that the claimant was apparently out of time for a tribunal claim, although she had also discovered the possibility of time being extended.

17. As she explained it, she was keen for the claimant to submit even a late claim, given the possibility of an extension of time. However, she said that at that time the claimant was very unwell and was also unwilling to take on a case against what he saw as the substantial resources the respondent would have to defend his claim.

18. The claimant eventually submitted his claim on 24 January 2023, but this was rejected for failure to comply with the ACAS early conciliation regime. The

claimant was issued with an early conciliation certificate on 8 February 2023, but an application by him for reconsideration of the original rejection was unsuccessful. He issued a fresh claim on 20 March 2023. That was accepted and is the claim I am now addressing.

19. Other points raised by the claimant included that he did not have money to pay for legal advice (I accept that) and that health difficulties had prevented him bringing his claim in time.

20. On the question of the claimant's health, I had extracts from his GP records from 13 January 2022, 25 February 2022 and 27 January 2023 referring to stress at work and referencing the "college investigation". An entry for October 2023 is the first suggestion that the claimant has been prescribed medication although it was the claimant's case that he had been prescribed medication on every consultation.

21. Mr Holloway pointed out that despite his medical difficulties the claimant had been able to obtain and carry out full time work from a week or so after the appeal decision.

22. The claimant's evidence (and the witness statements in support of him) were to effect that his medical condition was much worse than this would suggest.

23. For the purposes of this hearing, I find that the claimant's health was not good, and he was adversely affected by the stress of the investigation and his subsequent dismissal. This affected his personal life and the lives of those around him. However, he was able to function during this period of time and put up (with Dr Irving-Bell's assistance) a vigorous appeal. He was able to continue to work full time. Undoubtedly it was a difficult time for him, but he was able to manage formal procedures such as an appeal, and he was able to work.

24. Finally, I should note that much of the claimant's evidence was to the effect that he had been unfairly treated by the respondent and that this tribunal claim was necessary in order for him to clear his name (although the claimant does not quite use these words). The merits of a claim might be a factor in a just and equitable extension of time, but I do not think they are relevant on the question of whether it was reasonably practicable for the claim to be brought within time or whether it was brought within a reasonable time thereafter.

DISCUSSION AND CONCLUSIONS

Introduction

25. There are two criteria for extension of time that apply to the claimant's claims. The first is that I can extend time for his unfair dismissal claim if I consider that it was not reasonably practicable for him to bring his claim within the standard time limit and he brought his claim within a reasonable time after that. The

second is that I can extend time for his discrimination claims if I consider it just and equitable to do so.

Unfair dismissal

26. The first question is whether it was reasonably practicable for him to bring his unfair dismissal claim within the normal three month time limit.

27. Subject to one point, it is clear to me that it was. The claimant was, by his appeal letter at the latest, contemplating legal proceedings. He had access to some sort of advice via his trade union, even if this was not to his satisfaction. Remarkably it appears from the hearing notes that it was him who suggested to Sir Ernest Ryder that the time limit was three months from dismissal. While his health was not good, he had the benefit of support from Dr Irving-Bell and was able to run his appeal. He could equally as well have submitted an employment tribunal claim.

28. The only thing that could make a difference to this is Sir Ernest Ryder's comments during the appeal hearing, but there are a number of problems with that.

29. An implication of the claimant's case seems to be that he had been intending to bring a claim in time until he heard from Sir Ernest that he had three months from the date the appeal concluded. However, the claimant had never actually put matters like that, and the "*reason for late submission of tribunal application*" document that he adopted as his witness statement for this hearing does not say this nor even mention Sir Ernest's comment at all (nor does the other witness statement from Dr Irving-Bell). There is no direct evidence that Sir Ernest's comment made any difference at all, still less that it made it no longer reasonably practicable for the claimant to bring his claim in time.

30. The second is that Sir Ernest expressed himself in a guarded form: on both occasions he suggested that this was a matter for the claimant to take advice on. I accept that the claimant was not in a position to pay for professional legal advice, but Dr Irving-Bell was well able to check on this point, as appears from her immediate realisation on 1 November that the claim was out of time.

31. Those two factors lead me to conclude that it was reasonably practicable for the claimant to present his claim in time.

32. The third is that even if this did mean it was not reasonably practicable for the claimant to bring his claim within three months it is clear that he did not bring his claim within a reasonable time thereafter. He was fully aware his claim would be late on 1 November 2022, or very shortly thereafter. At that point the onus was on him to act quickly and minimise any delay. It was around this period that he got his other job. His health was not at its best, but he was able to work, and all that had to happen was for Dr Irving-Bell to submit the claim on his behalf. His reluctance to do so, because of the resources possibly available to the

respondent, does not excuse the delay through to 24 January 2023. Of course, the claim was not ultimately accepted until 20 March 2023, but somewhat different factors in practice apply to extensions for failures of early conciliation, and in this case I consider the presentation was not done within a reasonable time thereafter whether it is January or March 2023 that counts.

33. Accordingly I find that it was reasonably practicable for the claimant to present his claim in time, and, even if it was not reasonably practicable for him to present his unfair dismissal claim in time, it was not submitted within a reasonable period of expiry of the time limit. Given that, the tribunal has no jurisdiction to consider his unfair dismissal claim.

Discrimination

34. There is then the question of just and equitable extension of time for the discrimination claim.

35. It is recognised that just and equitable extension of time is a broad discretion. A number of factors may be relevant, but none are decisive of themselves.

36. It will always be necessary to consider the extent of and reasons for the delay. The March 2022 claims are seven months out of time – more if March 2023 is taken as the presentation date. The February 2021 claims are eighteen months or more out of time. As Mr Holloway pointed out, if accepted the claims would also involve consideration of matters dating back to 2020.

37. While just and equitable extension of time is often considered a more generous approach to extending time than questions of reasonable practicality, as Mr Holloway points out, the claimant cannot rely on Sir Ernest's comments for this element of his claim since they only arose some time after time had already expired for those claims. We also know that the claimant had access to his trade union given their apparent attempts to refer him on to ACAS.

38. The same that I have said about his health problems applies to the discrimination claims.

39. There is no good reason why the discrimination claims are brought late.

40. The balance of prejudice is typically considered to be an important point these days, but it can itself encompass many things. The underlying merits of the claims may be relevant. Mr Holloway argued that the race discrimination claims were obviously weak. I do not see that, nor, on the other hand, do I consider them obviously strong. The merits of the claims are a neutral factor in the balance of prejudice.

41. What is more significant is what this all means in terms of what will be necessary for a final hearing. I accept Mr Holloway's point that allowing these claims in now will involve investigations and evidence going back to 2020. That will put the respondent to considerable cost and it is not at all clear what evidence will

be available to it. It seems to me that in those circumstances the balance of prejudice favours the respondent. The claimant should have brought his claims in time but did not and there is no good reason for them being late. To defend the claims now the respondent will have to go back through matters dating back to 2020. In those circumstances I consider that a just and equitable extension of time is not appropriate and should not be granted. The tribunal therefore has no jurisdiction to consider the claimant's complaints of discrimination.

Employment Judge Anstis

Date: 22 February 2024

Sent to the parties on: 28 February 2024

For the Tribunal Office