Case Number: 2305031/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr A Qazi

Respondent: Sequence UK Ltd

Heard at: Croydon/London South **On:** ~~12/1/2024~~ **16/1/2024**

Before: Employment Judge Wright
Ms A Boyce
Ms E Thompson

Representation
Claimant: Ms M Tariq – called to the bar
Respondent: Mr M Greaves - counsel

JUDGMENT having been given to the parties on ~~12/1/2024~~ **16/1/2024** 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

It was unanimous decision of the Tribunal to allow the respondent's application to strike out the claims of unlawful discrimination contrary to the Equality Act 2010 (EQA). The claims did not have any reasonable prospect of success and they have not been actively pursued. Furthermore, the claims brought under the Employment Rights Act 1996 (ERA) were presented out of time. They are also dismissed.

1. The claim form (page 11) at a time the claimant was legally represented, referred to discrimination, but said the claimant was not sure whether it was to do with his race, age or his religion.

2. On 17/11/2021 the respondent requested further particulars of the EQA claims and indicated what information the claimant needed to provide to pursue those claims. That at least provided the claimant with a framework for setting out his claim of direct discrimination.

3. There was no evidence-in-chief in the claimant's witness statement in respect of his EQA claims. The respondent referred to Madarassy v Nomura International plc [2007] ICR 867, CA, where Mummery LJ stated that: 'The bare facts of a difference in status and a difference in treatment only indicates a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent has committed an unlawful act of discrimination'. The respondent submitted that this was textbook Madarassy and should be struck out.

4. The respondent's submission that this is a classic Madarassy case is accepted., There is no more than a reference to protected characteristics and a difference in treatment. In the absence of any evidence-in-chief in respect of this element of the claim, the Tribunal concludes that it does not have any reasonable prospect of success, it cannot possibly transfer the burden of proof to the respondent in the absence of any evidence and it is therefore struck out as having no reasonable prospects of success..

5. The respondent also made an application in respect of the claims for unfair dismissal and wrongful dismissal under the ERA; saying they were presented out of time.

6. The claimant said he had taken legal advice or sent correspondence which indicated he had taken advice (pages 287, 352, 364 and 373).

7. The Tribunal accepts that sometimes an employee will say they have taken advice or have a barrister available, when they do not. That is not the case here.

8. Even if the claimant was misled in respect of the outcome of the appeal (told that the outcome would be favourable), once he was informed on the 23/8/2021 his appeal was unsuccessful; he was then aware that if he wished to pursue a claim, he needed to make enquiry and to do so.

9. In paragraph 21 of the 34-paragraph witness statement dated 7/12/2023 (there are two witness statements of the same date, one of 33-paragraphs and one of 34), the claimant referred to Mr Hitchins suggesting to him not to appeal as that may upset the respondent and that the claimant's chances would be better if he did not appeal.

10. That did not make sense as Mr Hitchins was conducting the appeal hearing. He held a hearing on 1/7/2021, adjourned to conduct further enquires and resumed the hearing on 4/8/2021.

11. Even if the Tribunal were to accept that the outcome of the appeal decision caused the claimant to become depressed and anxious; the same must be said of almost every claimant who is dismissed for misconduct. Ultimately, there was no medical evidence from the claimant in respect of this explanation.

12. The claimant needed to contact Acas before the 8/9/2021. This is not an onerous task to undertake.

13. It would appear, from the claimant's representative's letter on 14/9/2021 (page 458) that his representative did not appreciate that the claim was already out of time. Clearly the claimant was well enough to give his representative instructions which led to the letter of 14/9/2021.

14. The same representative had also withdrawn the claimant's protected disclosure claim in writing, which the claimant attempted to resurrect. In the Tribunal's letter of 17/11/2023, this was referred to and the claimant was advised to take this up with his former representative.

15. Notwithstanding any unevidenced health issues, the claimant was legally represented, his claim was presented outside of the time limit, this was not a case where there was any difficulty or confusion over calculating the time limit. All the claimant had to do was to contact Acas before the 8/9/2021. It was reasonably practical for the legally represented claimant to have presented his claim in time. The conclusion therefore is the claims under the ERA were presented out of time and they are dismissed.

_____

Employment Judge Wright

_____

Date 16 January 2024