



EMPLOYMENT TRIBUNALS

Claimant: Mr A Farooq

Respondent: Liverpool Football Club and Athletic Grounds Limited

HELD AT: Manchester

ON: 22 March 2024

BEFORE: Employment Judge Slater

REPRESENTATION:

Claimant: Mr Y Lunat, solicitor

Respondent: Ms A Niaz-Dickinson, counsel

JUDGMENT having been sent to the parties on 3 April 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

1. The claimant brings a complaint of direct race discrimination in relation to his rejection for the role of First Team Operations Officer.
2. The respondent made an application to strike out the claim on a number of grounds. The application to strike out on the grounds of the claim having no reasonable prospect of succeeding on its merits was withdrawn after an adjournment for Ms Niaz Dickinson to take instructions from her clients.
3. These reasons relate to the remaining application to strike out the claim on the grounds of the claimant having no reasonable prospect of success in arguing that his complaint was presented in time or, if not, that it would be just and equitable to consider it out of time.
4. Under rule 37 of the Employment Tribunals Rules of Procedure 2013, a claim may be struck out on various grounds including that the claim has no reasonable prospect of success.

5. Section 123 of the Equality Act 2010 sets out the provisions relating to time limits for discrimination complaints brought under that Act, which include complaints of race discrimination. This provides that proceedings 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, or such other period as the employment tribunal thinks just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period. Time limits are extended to take account of time spent in the early conciliation process with ACAS, if notification to ACAS is made within the normal time limit.

6. Both parties agree that the claim was presented outside the primary time limit which, at the latest, ended on 16 April 2023, the claimant having been informed of the rejection of his application on 17 January 2023. The claimant started early conciliation on 8 June 2023, which was not during the primary time limit, so the period of early conciliation does not extend the time limit.

7. The claimant will say he was not aware of possible discrimination until 5 May 2023 when he found out that a white woman had been appointed in a temporary capacity to the role.

8. The claimant will say he did not know who had been appointed to the role on a permanent basis until 1 June 2023. The claimant then learnt that this person is a white man. The claimant took various steps to try to have his complaint dealt with by the respondent during which he was given what the respondent will now say is incorrect information about the reasons for his rejection and the respondent refused to provide diversity data.

9. The claimant will say he started to research the possibility of taking legal proceedings around 7 June and learnt of the requirement for early conciliation which he started on 8 June. Mr Lunat tells me that the claimant did not seek professional advice until July 2023.

10. Early conciliation took place 8 to 22 June and the claim was presented on 18 July 2023.

11. The respondent points to forensic prejudice because of the delay in memories fading. However, this was a relatively short delay. This is a case where the recruitment process is, on the respondent's case, documented. I do not consider the relatively short delay is likely to result in any real prejudice to the respondent. If the claim is not allowed to proceed, the claimant will lose the opportunity to have his case tested on its merits.

12. I do not include as a relevant factor in my decision, the possible public interest in the claimant being allowed to pursue this claim (an argument raised by Mr Lunat).

13. I conclude that there is at least a reasonable prospect of the Tribunal considering it just and equitable to consider the claimant's claim out of time.

14. I refuse the application to strike out the claim.

15. The time limit issue will be considered, together with all other issues, at the final hearing of the claim.

Employment Judge Slater
Date: 26 April 2024

REASONS SENT TO THE PARTIES ON
Date: 3 May 2024

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FOR THE TRIBUNAL OFFICE

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