



EMPLOYMENT TRIBUNALS

Claimant: Mr S Singh

Respondent: Currys Group Limited

HELD at Sheffield ET

ON: 11 December 2023

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: In person

Respondent: Ms R Kyte, Counsel

JUDGMENT

The Judgment of the Employment Tribunal is that the claimant's claim was presented outside the limitation period in section 123 of the Equality Act 2010. It is not just and equitable to extend time. Accordingly, the Tribunal has no jurisdiction to hear the claimant's claim.

REASONS

1. These reasons were provided at the request of the claimant.
2. The claimant presented his claim form on 30 June 2023. Before doing so, he went through mandatory early conciliation as required by the Employment Tribunals Act 1996. This process commenced on 29 April 2023 and ended on 10 June 2023.
3. This matter was before the Tribunal at a telephone hearing held on 11 September 2023. It was listed to determine whether the claimant's claim was presented outside the limitation period in section 123 of the Equality Act 2010 and if not, whether it is just and equitable to extend time to vest the Tribunal with jurisdiction to hear the matter. It was dealt with by the same Employment Judge who heard the case today. The Tribunal adjourned the hearing on that occasion with directions.
4. It was identified at the last hearing that the claimant's complaint was one of harassment related to race. The issues in the case were identified as follows:
 - 4.1. *Did the respondent do the following things:*

4.1.1. *By Andrew Wroe, the claimant's branch manager at the time, making a racist remark towards the claimant.*

4.1.2. *By Andrew Wroe making a racist remark about one of the respondent's customers in the presence of the claimant?*

5. As was observed in paragraph 4 of record of the 11 September hearing (which is within the hearing bundle at pages 36 to 39) the claimant was unable to be precise as to the date upon which these incidents took place. However, there can be no dispute that the incidents took place on the same day, and they took place no later than 1 March 2018. It was upon that date that the claimant lodged a grievance with the respondent about Mr Wroe's conduct.
6. The matter was investigated by Scott Watson, general manager. The grievance was then heard by John Paul Gillespie, regional manager. Mr Gillespie wrote to the claimant with the grievance outcome on 25 April 2018 (pages 44 and 48 of the bundle). Mr Gillespie upheld that part of the claimant's grievance relating to Mr Wroe's impugned remarks.
7. The claimant then raised a second grievance on 2 September 2022. The grievance is at pages 49 and 50. It raised no new complaints. Rather, it sought to revisit matters about the grievance procedure from March and April 2018. The Tribunal notes that the claimant did not appeal against the outcome of Mr Gillespie's decision at the time that it was made.
8. In September 2022 the claimant said in his grievance that the respondent had penalised him by permanently relocating his place of work from Doncaster to Meadowhall. At the time that the incident took place in 2018, the claimant worked at the respondent's Doncaster Frenchgate branch. After he made the grievance, he was temporarily moved to Doncaster Baxtergate and then following the grievance outcome he was moved to Meadowhall. Mr Wroe remained *in situ* in his role as general manager at Doncaster Frenchgate.
9. The claimant's grievance dated 2 September 2022 was not upheld. It was dealt with by John Narejko, general manager. The claimant then took the opportunity of appealing. The appeal was rejected by David Porter, general manager. The correspondence generated by the September 2022 grievance may be found at pages 49 to 61 of the bundle.
10. When the matter came before the Tribunal on 11 September 2023, it was identified that the claimant's claim was presented outside of the time limit in section 123 of the Equality Act 2010. This provides that proceedings on a complaint relating to an act done may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks to be just and equitable.
11. The claimant recognised today that the claim was presented outside the relevant time limit so the issue today was concerned with the question of whether time should be extended on just and equitable grounds. An extension of time is the exception and not the norm. Were it to become the norm then the will of Parliament in prescribing a short limitation period would be thwarted. However, exceptional circumstances do not have been shown to justify an extension of time.
12. The length of and the reason for the delay and the balance of prejudice will always be relevant considerations. There is no obligation on the claimant to

explain the delay but a failure to do so will be considered in weighing what is just and equitable.

13. There is no issue that there is a significant delay. Giving the claimant the benefit of the doubt, upon the basis that the impugned remarks were made on 1 March 2018 then the limitation period expired on 31 May 2018 (plus any period spent undertaking mandatory early conciliation). As the claimant did not present his claim form to the Employment Tribunal until 30 June 2023 it follows that this claim is around five years out of time. On any view, that is a significant period.
14. The first reason given by the claimant for the lengthy delay was that he felt intimidated by Mr Wroe. The Tribunal heard a recording of a conversation between the claimant and Mr Wroe. It is not clear when this took place. Plainly, it took place prior to Mr Wroe's summary dismissal for gross misconduct by the respondent on 26 November 2019.
15. The Tribunal accepts that, on the face of that audio recording, Mr Wroe adopted an inappropriate management style towards the claimant. The Tribunal can therefore accept that the claimant felt ill at ease and intimidated around Mr Wroe. However, that of course only gets the claimant so far given that Mr Wroe left the respondent's employment at the end of November 2019.
16. The claimant sought to argue that Mr Wroe was still exerting influence on the respondent's managers who were seeking to intimidate him. The claimant had the opportunity of naming the managers involved when asked to do so at the September 2022 grievance. The Tribunal refers to page 114 and 115. The claimant could name only Mr Wroe as engaging in intimidating conduct.
17. The Tribunal was therefore not convinced that the claimant was intimidated by management from pursuing the matter further after April 2018 and certainly not after November 2019. The claimant sought to refer to the conduct of a manager named Joe Burns as corroboration. However, Mr Burns' conduct appears to have taken place in February 2018 (page 106) shortly after which the claimant raised his grievance about Mr Wroe. Whatever intimidation the claimant may have felt at the hands of Mr Burns did not prevent him from raising his grievance against Mr Wroe.
18. There was also no evidence of any malign influence on the part of Mr Wroe enduring after November 2019. The Tribunal considers that Ms Kyte must be right to suggest that it is against the probabilities that Mr Wroe would be able to exert any influence on the respondent's management after departing from their employment in ignominious circumstances. When giving evidence in cross-examination, the claimant was engaged in what amounted to little more than speculation about management conduct and about who was saying what to whom.
19. It follows therefore that the claimant was left unpersuaded by the claimant's evidence that he was deterred from pursuing an Employment Tribunal claim by management intimidation. The Tribunal then moves on to the question of whether there was any medical impairment preventing the claimant from pursuing matters sooner.
20. The claimant produced a testimonial from his temple. The Tribunal fully accepts that the claimant will have benefited enormously from their pastoral support. However, this falls short of being compelling medical evidence showing good medical cause for the delay.

21. The Tribunal also notes, from the evidence of the respondent's witness Mr Stephen Brady, that the claimant did not have any periods of sickness absence until 7 December 2020. The Tribunal has little doubt that the claimant felt that he ought to carry on working as best he could and that he did so stoically. However, with the best will in the world, if his mental health had been affected to the extent claimed, one may have expected some medical evidence of this (even if not to the extent of taking time off work).
22. In conclusion, therefore, the Tribunal's judgment is that the claimant has not satisfied the Tribunal that there was a good reason for the lengthy delay before bringing these proceedings.
23. That is, however, not the end of the matter. A failure to satisfactorily explain the delay will not necessarily be fatal to a claimant's application for an extension of time.
24. The Tribunal will also consider the balance of prejudice. This must be more than simply the claimant's loss of the opportunity to bring the claim or the respondent's loss of a limitation defence. It is a question of weighing the balance of prejudice between the parties.
25. Here, there is significant forensic prejudice to the respondent. Mr Brady gave evidence (which the claimant realistically could not controvert) that Mr Watson and Mr Gillespie have both left the employment of the respondent. Mr Watson left on 24 April 2020 and Mr Gillespie left on 12 November 2018. Also, Tausif Absul, who was a witness to the incident, left on 24 April 2020.
26. Mr Brady told the Tribunal that the respondent would usually obtain contact details from a departing employee. This is to be expected to deal with any outstanding wages and matters of that kind. However, as time goes on, these details may not be up to date. Mr Brady fairly acknowledged that he had made no efforts to try and contact any of the three witnesses.
27. Realistically, it is now going to be very difficult to procure the attendance at the Tribunal of these key witnesses. The Tribunal of course takes judicial note of the fact that with the passage of time memories fade. By the time this matter gets on before a Tribunal (if allowed to proceed) six years will have expired from the date upon which these individuals were involved in the matter.
28. The claimant argued with some justification that Mr Gillespie found Mr Wroe to have made the impugned remarks. However, that is not the end of the issue.
29. The respondent may wish to invoke the defence open to them that they took all reasonable steps to prevent Mr Wroe from conducting himself as he did. The opportunity to investigate the prospect of a defence has been significantly prejudiced by the delay given the departure of senior managers and difficulty in accessing records.
30. Further, the claimant is plainly aggrieved by the decision to move him to Meadowhall and allow Mr Wroe to stay working at the Frenchgate store in Doncaster. The claimant did not bring a complaint of victimisation arising out of that decision, but it is one that goes to the question of injury to the claimant's feelings. The respondent is entitled to be heard and explain their decision making. They are gravely impaired in being able so to do in the absence of key witnesses.

31. Ms Kyte also argued that at the material time the claimant and Mr Wroe were working for the respondent's Carphone Warehouse stores. Mr Brady says in paragraph 7 of his witness statement that those stores have now closed. Indeed, it appears that Mr Watson and Mr Absul both left as part of a redundancy exercise. This gives rise to a difficulty interrogating old IT systems.
32. The Tribunal accepts that there may be some difficulty in retrieving records pertaining to Mr Wroe and the training which he received. However, there was little in the way of detailed and compelling evidence about the IT issues. This is a factor which is much less persuasive than the difficulty which the respondent now has in procuring live witnesses to speak as to the events and the decisions that were taken around the time.
33. The Tribunal gives little weight to the respondent's lost opportunity to call Mr Wroe to give evidence. Mr Kyte acknowledged that the respondent may have chosen not to do so even had the claim been brought more timeously.
34. In all the circumstances, there was here a lengthy delay. The proceedings were brought well outside of the limitation period of three months. There was no satisfactory explanation from the claimant for the length of the delay. Further, the balance of prejudice favours the respondent. The respondent is significantly disadvantaged now in being able to defend the claim such that the fairness of a trial is significantly prejudiced were matters to be allowed to proceed.
35. In the circumstances, it is the Tribunal's judgment that there shall not be an extension of time in this case. It is not just and equitable so to do. As Ms Kyte rightly submitted, in considering the interests of justice the interests of both parties need to be considered. For the reasons given, it is not just and equitable to extend time and the Tribunal has no jurisdiction to deal with the claimant's claims.

Employment Judge Brain

Date: 9th January 2024

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Sent to the parties on:

Date: 9th January 2024

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For the Tribunal:

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Notes

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