



EMPLOYMENT TRIBUNALS

Claimant: Mr G Singh

Respondent: Royal Opera House Covent Garden Foundation

Heard at: London South ET in public by CVP **On:** 19 February 2024

Before: Employment Judge Rea

Representation

Claimant: Mrs Stirton, lay representative

Respondent: Mr Hignett, counsel

JUDGMENT having been sent to the parties on 27 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

1. The Tribunal had to determine whether the Claimant had any reasonable prospect of establishing:
 - a. That these acts were part of a course of conduct continuing over a period that ended after 7 March 2022; or
 - b. That it was just and equitable to extend the time limit for bringing complaints of discrimination in relation to those acts; or
 - c. In any event, that the claims had reasonable prospects of success.
2. These claims arise from an incident which took place on 22 November 2019. The Claimant complained about the way in which he was spoken to by a dancer when he entered the space in which she was changing to collect belongings belonging to him and the individual he was supporting in his role as Access Support Consultant.
3. The Respondent investigated the incident and provided a response to the Claimant on 3 January 2020. The Respondent considered the matter closed.
4. In March 2022, the Respondent approached the Claimant with an offer of further work. In response, the Claimant submitted a written complaint on 18 March 2022 about the incident on 22 November 2019. The Claimant states that this written complaint was actually prepared by him on 6 December 2019 but was not sent to the Respondent until 22 March 2022.

5. The Respondent carried out an investigation into the Claimant's complaint and provided its outcome to the Claimant on 14 April 2022.
6. The Claimant contacted ACAS to commence Early Conciliation on 7 June 2022 and submitted his claim on 13 July 2022. A preliminary hearing was conducted on 24 November 2023 at which the issues were identified and agreed in relation to the claims of direct race discrimination, indirect race discrimination and harassment related to race. It was recognised that the allegations relating to the investigation into the Claimant's complaint in March and April 2022 are in time but that the earlier allegations are on the face of it substantially out of time.
7. Written and oral submissions were provided by both representatives on behalf of the Claimant and the Respondent. The Claimant gave evidence and was questioned by the Respondent's representative and the Tribunal.

Continuing act

8. The Claimant submitted that the older allegations were connected to the in-time allegations because the Respondent was investigating the incident from November 2019.
9. The Respondent relied on the case of *Barclays Bank plc v Kapur and others* 1991 ICR 208, HL as authority for the proposition that there is a distinction between a continuing act and an act with continuing consequences. Although what happened to the Claimant in November 2019 had a considerable impact on him which persisted for some time, this didn't make it a continuing act of the Respondent or a continuing state of affairs.
10. The Tribunal considered that there was a factual connection between the 2022 allegations and the earlier allegations but this was purely because the Claimant had decided to resurrect his unhappiness about the incident from November 2019. The reality was that the Claimant had not worked for the Respondent in the intervening period of some two and a half years and had had no contact with the Respondent since his pay had been resolved by the end of January 2020.
11. Applying the law to the facts, the Tribunal determined that there was no reasonable prospect of the Claimant establishing that these allegations were part of a continuing act which continued after 7 March 2022.

Just and equitable

12. The Tribunal carefully considered the body of relevant case law regarding the discretion to extend time where this is just and equitable in accordance with section 123 of the Equality Act 2010. Although this is a wider and more generous test than the 'not reasonably practicable' test which applies to other types of claims including unfair dismissal, it should still be the exception rather than the rule (*Robertson v Bexley Community Centre t/a Leisure Link* 2004 IRLR 434, CA). This does not mean that exceptional circumstances are required before the time limit can be extended, the law simply requires that the extension of time should be just and equitable (*Pathan v South London Islamic Centre* EAT 0312/13). The onus is on the claimant to convince the Tribunal that it is just and equitable to extend the time limit in the particular circumstances of that case.
13. The Tribunal must weigh up the balance of prejudice to the Claimant and the Respondent and should consider relevant factors such as the length of and reasons for the delay in bringing the claim, the cogency of the evidence

- affected, whether the Claimant acted promptly when he knew the facts giving rise to the claim and, any steps taken by the Claimant to get appropriate advice.
14. The Claimant provided many reasons for the length of the delay in bringing his claim which were contained in his ET1, his witness statement, the skeleton argument and his oral evidence at this hearing.
 15. In the skeleton argument and oral submissions given by his lay representative, much was made of the fact that the Covid pandemic happened in this time period and that this had an impact on the Claimant's ability to pursue his claim. The Tribunal was told that both the Claimant and his partner were considered vulnerable to covid in view of the Claimant having asthma and his partner a pacemaker.
 16. The Tribunal was also told that the Claimant's dyslexia had an impact on his ability to process what had happened to him, which delayed him making a claim. The Claimant stated that he had to undergo therapy and felt too traumatised to undertake further access work due to the incident in November 2019.
 17. The Claimant also stated that he had felt vulnerable because of his status as a casual worker and worried about the impact on his reputation in his professional circle if he raised a complaint.
 18. The Claimant said in evidence that although he did some research online into bringing a claim and discussed it with others, he did not learn about there being a 3-month time limit.
 19. The Respondent in its submissions commented that the Claimant had taken the 'kitchen sink' approach to justifying the delay in bringing his claim. However, none of these alone or together explained the delay of two and a half years. The Respondent also pointed out that the three-month time limit appears prominently in any online search relating to bringing an employment tribunal claim.
 20. The Tribunal acknowledged that the Covid pandemic had taken place in this time period but did not accept that this was a significant reason for the delay in bringing the claim. Taking the Claimant's explanation of the impact of dyslexia on his ability to process information at its highest, the Tribunal did not accept that this could explain a delay of anything more than a few weeks. In any case, the Claimant accepted that he had been able to prepare his written complaint on 6 December 2019 and so must have been able to process it by that time.
 21. The Tribunal did accept that the Claimant felt vulnerable in view of his status as a casual worker and that he found raising a complaint of discrimination emotionally very difficult. However, the issues with his pay from the Respondent were resolved by the end of January 2020. These potentially deterrent factors are experienced by many of the individuals who bring claims before the employment tribunal within the time limit of three months.
 22. The Tribunal found that it was highly unlikely that the Claimant did not find out about the time limit for bringing a claim when he made his enquiries in early 2020.
 23. The Tribunal weighed up the balance of prejudice to the Claimant and the Respondent. The Tribunal accepted that the prejudice to the Respondent would be high if the extension was granted. The case does not involve many disputed facts, it is the precise details of the behaviour of the dancer and the Claimant and the motivation of the dancer that would need to be determined by the Tribunal. The fact that an understandably limited investigation was carried out at the time meant that it would be very difficult

for the Respondent to produce cogent evidence as it would be mainly based on recollection with very few documents to assist. Some of the potential witnesses have also left the Respondent's employment and securing their evidence is likely to be challenging. The prejudice to the Claimant if the extension of time is not granted is also high as these allegations are integral to his claim.

24. Having considered the relevant factors and the balance of prejudice the Tribunal determined that the Claimant had no reasonable prospect of establishing that it was just and equitable to extend the time limit for bringing these allegations of discrimination.

Merits of in time allegations

25. The Respondent submitted that there was nothing in the circumstances of the case that indicated race was a factor in the way in which the Claimant was treated. In his evidence the Claimant was unable to explain why a white man wouldn't have been treated the same way. The PCPs upon which the Claimant's indirect race discrimination claim were hopeless as the Claimant could not establish any particular disadvantage to Asian people. The Claimant had also been unable in his evidence to explain what it was about the investigation undertaken by the Respondent in March and April 2022 was discriminatory.
26. The Claimant submitted that the Respondent was an unrelentingly white organisation and that under pressure people revert to their unconscious beliefs which explained why the Claimant was treated as he was. The Claimant said that the race discrimination he suffered was implicit and that this could not be properly explored in a preliminary hearing.
27. The Tribunal considered that the Claimant's allegations relating to the investigation carried out in March and April 2022 were very weak. The Claimant was not able to explain what it was that made this discriminatory. The Tribunal recognised the fact that discrimination can be implicit and that this may only be established when all the evidence is before a panel. The Tribunal should therefore be cautious about striking out a discrimination claim on the basis of its apparent merits. However, the Tribunal was satisfied that even taking the Claimant's case at its highest, there was no reasonable prospect of the Claimant establishing that his claims had any reasonable prospect of success.
28. The Claimant's claims are therefore struck out in their entirety.

Employment Judge Rea

Dated 20 March 2024

REASONS SENT TO THE PARTIES ON
22nd March 2024

FOR THE TRIBUNAL OFFICE