



EMPLOYMENT TRIBUNALS

Claimant: Mr S S Beaumont

Respondent: Iceland Foods Ltd

RECORD OF A PRELIMINARY HEARING

Heard by video

On: 2 July 2024

Before: Employment Judge Corrigan

Appearances

For the claimant: In person

For the respondent: Mr A Mohamed, Solicitor

JUDGMENT ON TIME LIMITS

1. It is not just and equitable to extend time to allow the race and sex discrimination claims.
2. The race and sex discrimination claims are therefore struck out as the tribunal does not have jurisdiction to hear those complaints as they were submitted out of time.

REASONS

3. This hearing was listed to determine whether the claimant's discrimination claims were presented in time and if not whether it is just and equitable to hear the claims out of time.
4. The discriminatory acts relied on by the claimant were set out in the list of issues in the bundle at page 93 and essentially consist of long-term mistreatment by three named individuals ending only once the claimant was suspended on 28 June 2021. This included the alleged fabrication of evidence by two of those individuals and another on 9 May 2021 in respect of the incident for which the claimant was suspended and ultimately dismissed. The claimant confirmed that there is no allegation against the person who made the decision to dismiss and

although he said there were other things that he complains about in respect of the dismissal process he was not able to be specific about anything that he says was discriminatory other than the alleged fabrication of evidence by his colleagues on 9 May 2021.

5. I find therefore that the alleged discriminatory acts took place over the period January 2019 to 28 June 2021. The deadline for bringing a claim about them was therefore 27 September 2021. The claimant did not contact ACAS until 28 October 2021, early conciliation ended on 24 November 2021 and the claim was only submitted on 2 January 2022. This was therefore over 3 months late (as the claimant does not benefit from the early conciliation extension where he contacted ACAS after the deadline).
6. The claimant gave evidence in respect of the timing of the claim. He said that he did not begin to think about bringing a claim until he was dismissed and he felt that the discrimination contributed to his dismissal. Before that he hadn't believed that it would lead to him losing his job of over 5 years. He also accepted that he knew that there was discriminatory conduct before that but he did not want to leave his job. Once dismissed he did seek advice promptly with the CAB and was initially referred to ACAS and commenced early conciliation. It was after he contacted ACAS that the CAB contacted him again to give more detailed advice. He said that the time taken to get advice was affected by the pandemic. He says he did not realise and was not advised that there was a different deadline in respect of the discrimination claim for acts up to 28 June 2021 and the unfair dismissal claim. He referred to being advised that he had a case that the dismissal was discriminatory or was contributed to by the discrimination. The claimant also referred to being affected by his health however he has also submitted a fit note that said he had ankle swelling and was potentially fit for work with adjustments. There is no evidence to suggest he was unfit to complete and submit a claim to the tribunal during the relevant time.
7. The respondent referred to the following cases.
 - 5.1 *Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*, and that it is for the claimant to persuade the tribunal it is just and equitable to extend time and 'the exercise of discretion is the exception rather than the rule'.
 - 5.2 The list of potentially relevant factors referred to in *British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT*, derived from s33 Limitation Act 1980, in respect of weighing up the respective prejudice to each party of the decision whether or not to extend the time limit, having regard to all the circumstances of the case. The respondent relied in particular on the length of the delay of several months and the extent to which evidence was likely to be affected by the delay. Other factors include the reasons for the delay, the promptness with which the claimant acted once he knew of the facts which give rise to the cause of action and the steps taken to get advice. I note that, although all relevant factors are to be considered, that rigid adherence to these factors as a "checklist" is to be avoided.

- 5.3 *Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR D5, CA*, in which the Court of Appeal upheld an employment judge's refusal to extend time for a race discrimination claim presented three days late where the alleged discriminatory acts took place long before the employment terminated, and he could have complained of them in their own right as soon as they occurred or immediately following the termination. The respondent refers here to the fact the claimant knew that he had been suspended on the basis of allegedly fabricated evidence from 28 June 2021. The claimant also did not attend the disciplinary meetings to make his case there.
- 5.4 *Wells Cathedral School Ltd and anor v Souter and anor EAT 0836/20*, in which the lodging of an internal grievance was considered relevant to the question of forensic prejudice as it enabled the respondent to preserve evidence, whereas the opposite is the case here. Here the claimant did not submit a grievance or raise the matters with any clarity on appeal so the respondent did not have the opportunity to gather evidence at that time.
- 5.5 *Kumari v Greater Manchester Mental Health NHS Foundation Trust 2022 EAT 132*, and the principle that the apparent merits of a case can be taken into account in assessing whether it is just and equitable to extend time.
8. With respect to forensic prejudice the respondent accepts that two of those accused of discriminatory conduct do still work for the respondent but others who were in the vicinity of the alleged discriminatory conduct are no longer employed to corroborate what was said. Also the third person accused of discriminatory conduct has left, though the claimant says she is related to one of the two that remain employed. He also believes one of the witnesses' is related to them. Mr Mohamed was not able to say whether those who have left were still employed at the date the claimant commenced the claim. However I also note that the claimant did not provide further and better particulars clarifying the claim until 12 October 2023 (having been ordered to do so by 2 October 2023, at the hearing of 18 September 2023). In the claim form itself he only referred to racial comments made in jest and the fabricated statements and so the respondent only responded with a very generic response.
9. The claimant did a schedule of loss only claiming compensation for the unfair dismissal.
10. The respondent also argues that I should take account that the allegation that the witnesses fabricated evidence is weak as the evidence was corroborated by the claimant himself who accepted that his wife was in the van and that the camera was covered. Evidence that the woman was actually driving the van was also given by a 4th witness who is not the subject of discrimination allegations. The respondent also argues that substantial time has now elapsed since the allegations and memories have faded (including the claimant's).

11. Weighing up the respective prejudice, on the one hand the claimant will not be able to raise his claims about discrimination if I do not grant the extension.
12. He did not raise these at any time prior to his dismissal, nor promptly after his dismissal. It is understandable that a litigant in person may not distinguish that there is an earlier deadline for a claim arising out of the provision of a discriminatory statement in dismissal proceedings than for the resultant dismissal itself. However, I also agree with the respondent's assessment that the allegation in respect of fabrication (the one part of the discrimination claim that was in the claim form) is the weakest part, given that the claimant accepts his wife was in the van and accepts a sticker covered the camera.
13. It is noteworthy that the claimant did not give the specifics of the rest of the discrimination claims in the claim form. These do more clearly date back to prior to his suspension and could have been raised at any time over the extended period to which they relate. He only first detailed those claims in October 2023 as that is when he was ordered to give the further particulars. At that time his schedule of loss still focused on the unfair dismissal. In my view that has been his main focus throughout.
14. On the other hand, allowing the extension of time will mean the respondent has to defend claims that were only particularised on 12 October 2023, over two years since the date of the last incident, in circumstances where they have not been documented internally through a grievance process and one alleged perpetrator and some witnesses have left employment. There was some reference during the dismissal proceedings but the respondent describes this as a "vague" allegation against just one individual. Even where the alleged perpetrators are still employed they will be required to respond to allegations that date back 2-4 years from the date they were particularised in a case that will turn on oral evidence.
15. I find that the balance of justice and hardship falls against allowing an extension of time to include allegations that were only set out for the first time on 12 October 2023, but date back to January 2019- June 2021, and which depend on the oral testimony of those involved, and where some of the witnesses have left the employment. I note the claimant says some of those who left are related to someone who remains in employment, but the more significant hardship is in my view the passage of time. Although the claimant will be prevented from bringing separate discrimination claims, his main focus has been on the unfair dismissal throughout and he will still be able to make the points he wants to make about that.
16. I have some sympathy in respect of the claim relating to the fabricated evidence on 9 May 2021 and if that were a discrete incident I would be minded to extend time to include that as I consider it is a big ask to expect a litigant in person to distinguish that this has an earlier deadline than the resultant dismissal, and this was included in the original claim. However, allowing that claim in, allows the more historic claims in as a potential continuing act, and I consider there is a greater prejudice to the respondent in doing that, than to the claimant in not allowing the claim in respect of 9 May 2021. In making that decision I take account of the respondent's case that this part of the claimant's claim, namely

that the witnesses' fabricated evidence because of the claimant's race and/or sex, has difficulties because the claimant accepts that there was a woman in the van as they claimed, and the sticker covered the camera. There is also a 4th witness that corroborates their claims who is not accused of the discrimination. Again the claimant will be able to make the points that he wants to make about the witnesses' evidence in his unfair dismissal claim.

Employment Judge Corrigan
19 July 2024

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