



EMPLOYMENT TRIBUNALS

Claimant: Mr. **CARMO** Rebelo

Respondent: Serco Limited

Heard at: By CVP

On: 28 May 2024

Before: Employment Judge Othen

Representation

Claimant: In person

Respondent: Mr. Moss, consultant

JUDGMENT having been sent to the parties on 4 June 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:

CORRECTED REASONS

1. The purpose of this preliminary hearing was to determine the issues set out in the Case Management Order of Employment Judge Buckley (The Case Management Order) dated 28 November 2023. I was required to determine whether or not it was just and equitable to extend time to hear the claimant's claims of:
 - 1.1. Direct race discrimination and harassment related to race against Maxine Gedling;
 - 1.2. Direct race discrimination against Steve Gedling; and
 - 1.3. Direct race discrimination against Mark Demian.
2. It was provided in that Case Management Order that for the purposes of this hearing, the alleged harassment of Maxine Gedling ended on 1 July 2021, the alleged direct race discrimination of Maxine Gedling ended on 31 January 2019, the alleged direct race discrimination of Steve Gedling ended on 30 October 2021 and the alleged direct race discrimination of Mark Demian ended on 27 August 2021.

3. The claimant raised his claim with ACAS via early conciliation on 3 February 2023 and the conciliation certificate was issued on 17 March 2023. His claim form was submitted on 14 April 2023.
4. I considered documents from a bundle of 119 pages. I heard from the claimant in person and Mr Moss a consultant for the respondent. The claimant gave evidence under oath. He did not produce a witness statement and therefore his evidence was given by way of answers to questions put to him by me and in cross examination. The respondent called no evidence.

The Facts

5. The claims of race discrimination are made against three distinct parties and are discreet allegations ending, at the latest, on 30 October 2021. The individual claims and allegations are set out in the list of issues attached to the Case Management Order at paragraph 6 and 7. In summary, they comprise alleged bullying, blocking the claimant from applying for internal vacancies, and humiliating treatment. The individual managers against whom these allegations are made had no role in the claimant's dismissal or the facts which gave rise to the submission of his claim. The claimant brings claims of unfair dismissal and disability discrimination regarding those events.
6. The claimant's evidence is that from 2018, near the commencement of his employment, he formed a very clear view that he was being subjected to discrimination and harassment by Maxine Gedling because of the way that she treated him and another Asian colleague in comparison to non-Asian colleagues. Under cross examination, the claimant admitted that he knew that his treatment was because of race but that he planned to resign in July 2019 because he had had enough. Most importantly, he gave evidence that in approximately 2019 he was given a pamphlet or leaflet by a female colleague who was aware that he was unhappy about the discrimination and/or harassment that he felt he was being subjected to. She gave him that leaflet and advised him to read it so that he could do something about it. He admits that he didn't look at it until after he was dismissed. He expressed regret about that.
7. Although he was planning to resign in the summer of 2019, because his employment transferred to the respondent from his previous employer, he reconsidered and decided to stay in work to see whether the respondent, as a new company, would handle things differently.
8. From June 2021, it was clear that the claimant became very unhappy about the situation at work. In a series of written emails which were in the bundle (page 73 onwards), he raised complaints about his alleged treatment by Maxine and Steve Gedling and Mark Demian. This led to a mediation meeting between his line managers, himself and Maxine Gedling on 9 July 2021. The claimant was unhappy with the outcome of this and therefore submitted a formal grievance on 16 July 2021 (page 96).

9. The claimant was a trade union member and his trade union supported him through the grievance process. His evidence was that they agreed with him that his treatment was "*not right*". In the bundle at page 74 is an email from the claimant to the respondent's H.R. team dated 29 July 2021 and its subject line included the terms "*facts of discrimination*" and "*harassment*". The email was complaining about the vacancies for which he had applied which he alleged he was not considered for because of race, as a result of discriminatory decisions.
10. At page 75 in the bundle is a further email of that date which sets out his allegation of a "*crystal clear case of discrimination*". In cross-examination the claimant agreed that at that stage, he had concluded that he had been a victim of discrimination for approximately three years by that point.
11. The emails were sent from a home computer email address and the claimant had access to Internet and a computer at home. His previous profession was as a legal stenographer and he was aware of the fact that race discrimination could give rise to legal claims.
12. The claimant was unhappy with the grievance outcome which was issued on 15 September 2021 and the grievance appeal outcome which was issued on 4 **NOVEMBER** 2021. At that time, the claimant's evidence was that he was given no advice by his trade union about whether he could take any further action.
13. He then went on annual leave on 28 November 2021 and unfortunately, on 29 December 2021 had a serious stroke. He never returned to work after that date. The stroke affected his physical and cognitive health. He received physio for a number of months thereafter. His memory was affected as was his ability to speak and move around.
14. Because of his ill-health and inability to work, the respondent ultimately commenced proceedings under its ill-health capability review procedures which comprised a series of meetings from September 2022 onwards. These were held after occupational health advice which was taken in August 2022. Ultimately, it was concluded that the claimant would not be able to return to work and the decision was taken to dismiss him on or around 4 November 2022. The dismissing manager conveyed this decision in a letter of dismissal which was received by the claimant on 8 November 2022.
15. Following his dismissal, he took advice from his trade union who referred his case to trade union solicitors. They apparently advised him that they would not support a claim to an employment tribunal as his claim was not strong enough and they advised him about time limits with regard to his race discrimination allegations. The claimant's evidence is that at that point, his trade union official advised to **HIM** about the three months time limit. He then decided to read the ACAS booklet which he had ~~had~~ kept from when his colleague gave it to him in 2019. He conceded that when he read this, it was easy to understand and this is what prompted him to contact ACAS and to enter into early conciliation on 3 February 2023. He regretted not doing this sooner. His claim was submitted to Tribunal on 14 April 2023.

The Law

16. Section 123 of the Equality Act 2010 (EQA) provides that claims of discrimination should be submitted within three months starting with the date to which the complaint relates or such other period as the Employment Tribunal thinks is just and equitable.
17. This gives the Employment Tribunal a very broad and unfettered discretion to extend time in cases that it believes are appropriate. This discretion has been discussed in a series of key cases which include Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576, and British Coal Corporation v Keeble [1997] IRLR 336. The Bexley case set out the principles that despite this broad discretion, there is no presumption in favour of extending time and the Employment Tribunal should not extend time unless it is convinced that it is just and equitable to do so. The Keeble case referred to the checklist of factors mentioned in the Limitation Act 1980 section 33 and these are factors which I should take into account, when considering the exercise of my discretion to extend time. Therefore these factors are:
- 17.1. The prejudice to the parties if I do or do not exercise my discretion in their favour;
 - 17.2. The length of the delay in submitting the claim;
 - 17.3. The reason for the delay;
 - 17.4. The effects of the delay on the cogency of the evidence which will be available when deciding the case;
 - 17.5. The conduct of the respondent after the cause of action arose;
 - 17.6. Any disability of the claimant arising after the cause of action arose;
 - 17.7. Whether the claimant acted promptly and reasonably once he knew about the cause of action;
 - 17.8. What steps, if any, the claimant took to obtain legal advice.

Application of Law to the Facts of this Case.

18. I must apply the above list of criteria at paragraph 17 to the facts of this case.
19. First of all, what is abundantly clear in this case is the extent of the delay. This varies slightly in each individual claim but even in the case of the last complaints against any of the particular parties to these allegations, this was on 30 October 2021. This was the claim of direct race discrimination against Steve Gedling which therefore, should have been submitted to the Employment Tribunal by 29 January 2022. In fact, none of the complaints of discrimination were submitted for early conciliation until 3 February 2023 which is over a year out of date.
20. In relation to the complaints of direct discrimination against Maxine Gedling, this last took place on 31 January 2019 which was some years prior to that. Overall, the claims of discrimination and harassment took place at least one year or more before the claims were actually submitted. This is a considerable delay and will undoubtedly affect the cogency of the evidence which is before the Employment Tribunal.

21. The claims are of harassment and less favourable treatment and as such, will largely depend on witness evidence. The claims comprise allegations of alleged poor treatment and bullying. Other than the grievance documentation, there will be little contemporaneous evidence and therefore, the case will heavily depend on witness evidence. Memories will have undoubtedly been affected more than a year and in some cases four or five years after the events took place. This will affect the ability of the tribunal to fairly hear the case.
22. The reason for the delay on the part of the claimant in submitting his claims was ignorance of how to pursue his claims and the relevant time limits which applied. I do not find that his ill-health had much if any relevance. It was not the case that he knew about how to pursue his claims and the relevant time limits and was prevented from doing so because of the effects of his stroke. He only submitted his claims after he had read an ACAS leaflet which he had had in his possession since 2019. He only read this because he had been dismissed and because his trade union solicitors had informed him that they did not intend to support him in a claim to an Employment Tribunal. Once he read the leaflet, that prompted him to contact ACAS.
23. Given that the claimant was not informed about procedure and time limits by his trade union in 2021, I must ask myself whether it was reasonable in all the circumstances for the claimant to believe and act as he did. In all the circumstances, unfortunately, whilst I have the greatest sympathy for the claimant, I have concluded that it was not reasonable for him to have delayed in submitting his claims as he did. He could have read the ACAS leaflet in 2019, or any time thereafter but he chose not to do so. As soon as he did this in 2023, he immediately understood claims procedure and submitted his claim on 3 February 2023. This was information which was readily available to him before then but he chose, for whatever reason, not to research it. I suspect that the reason for this was that he only wanted to action his claims of discrimination once he had been dismissed and he was then driven to doing the research which he could have done before then to enable him to submit his race discrimination claims.
24. I have considered the effect of the delays on the cogency of the evidence. There was no witness or documentary evidence before me about this. In submissions, the respondent's representative informed me that ~~Mr Steve Gedling~~ **MARK DEMIAN** has since left the respondent's employment. This was not evidence but I have considered this as a submission and in so doing, the fact that Mr Moss has a duty not to mislead the Employment Tribunal in the submission. I have concluded that the significant delay in this case is likely to affect the cogency of the evidence for the reasons that I have already described above and this is something which I've taken into account in my decision.
25. Overall, given the length of delay, the reasons for the delay and the effect of the delay on the ability of the Employment Tribunal to fairly hear the case, I have concluded it that it will not be just and equitable for me to extend time to hear the claims and allegations of direct race discrimination and harassment related to race against Maxine Gedling, Steve Gedling and Mark Demian.

26. I have the greatest sympathy for the claimant who, according to his evidence, was not given the advice and support which he alleges he was entitled to by his trade union. I also have the utmost sympathy for his ill-health and his bravery in recovering from a very serious stroke in 2022. I have found him to be an honest and helpful witness during this hearing. However, despite these factors, it is clear that his claims of discrimination were only issued as a result of his dismissal. There is no indication that had he not been dismissed, he would have pursued them and it appears therefore that they were submitted for this reason only. As such I do not consider this is a sufficient reason for the delay in submitting his claims and I find that the Employment Tribunal does not have jurisdiction to hear those claims.

Employment Judge Othen

18/07/24