



EMPLOYMENT TRIBUNALS

Claimant: Saurabh Kejriwal

First Respondent: OANDA Europe Limited

Second Respondent: Catherine Collingwood

Third Respondent: Peter Ashton

Fourth Respondent: Bhumii Shah

Fifth Respondent: Agata Puchalska

Heard at: London Central (via CVP)

On: 20 August 2024

Before: Employment Judge Bunting

Appearances

For the claimant: In person

For the respondent: Mr S Way, counsel

JUDGMENT AT A PRELIMINARY HEARING

The Judgment of the Tribunal is that :

1. The Claimant's complaints against the second, third, fourth and fifth respondent are dismissed as being out of time (s123 Equality Act 2010).

WRITTEN REASONS

INTRODUCTION

1. This case was listed for a preliminary hearing on 20 August 2024 to determine a number of issues as follows:

1.1.1. Whether the claims against the second to fifth respondent were out of time.

1.1.2. Whether the claimant is disabled within the meaning of the Equality Act 2010.

- 1.1.3. Whether the victimisation claim should be struck out as there is no reasonable prospect of success (on the basis that the two protected acts were not qualifying disclosures).
 - 1.1.4. Whether, if the victimisation claims should not be struck out, a deposit order should be made.
2. In the event, there was not sufficient time to resolve 1.1.3 or 1.1.4, and those issues have been adjourned (along with other case management directions) until a further case management hearing on 07 November 2024.
3. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way. There were no issues relating to connectivity during the hearing.
4. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net.
5. There was an agreed hearing bundle of documents of 201 pages of PDF, and bundle of authorities of 129 pages as well as a three page letter of support for the claimant from the Centre for ADHD & Autism Support.
6. In addition, there were 14 pages of written submissions from Mr Way.
7. The claimant had previously requested adaptations:

My mind only works in lay language. As soon as I put it into legal language like acts and detriments and consequences, I lose all focus and it becomes foreign to me, and I even have trouble explaining what transpired. Same goes for the Tribunal's and my solicitor's instructions - I do have trouble understanding what they mean since these formats are not accessible for me, but I'm still trying my best.

This is normal for ADHD people. Unfortunately the neurotypical world is often not cognizant of the challenges we have, and see our presence as a giant inconvenience, which in many ways is also what this case is about.

My ADHD coach has assured me that asking to break down complex legal language into accessible language is a reasonable adjustment I can ask for. I respectfully request the Tribunal's patience and understanding should I get any legal terminology confused or wrong.

8. I bore these in mind during the hearing.
9. I read the bundle, and heard evidence from the claimant on his own behalf in relation to the question of time limits. Following that, I heard submissions from the claimant and from Mr Way.
10. I then gave an oral judgment in which I found that, in relation to the second to fifth respondents, the claims were out of time and that time should not be extended. For that reason, the claims were dismissed.
11. Subsequently, the claimant has requested written reasons for the decision, which I set out below.
12. Following that, I heard evidence from the claimant, and submissions from him and Mr Way, on the question of whether the claimant had a disability for the purpose of s6 Equality Act 2020.
13. I then gave an oral judgment in which I found in favour of the claimant on this issue.
14. There has not been any request for written reasons in relation to that decision (or part of the decision).

15. The terms of r62 Employment Tribunal Rules of Procedure 2013 are unclear as to whether the request for reasons by the claimant should be taken as a request for both decisions that were heard on the day

16. The relevant part of the rule reads :

62.—(1) The Tribunal shall give reasons for its decision on any disputed issue, whether substantive or procedural (including any decision on an application for reconsideration or for orders for costs, preparation time or wasted costs).

(2) In the case of a decision given in writing the reasons shall also be given in writing. In the case of a decision announced at a hearing the reasons may be given orally at the hearing or reserved to be given in writing later (which may, but need not, be as part of the written record of the decision). Written reasons shall be signed by the Employment Judge.

(3) Where reasons have been given orally, the Employment Judge shall announce that written reasons will not be provided unless they are asked for by any party at the hearing itself or by a written request presented by any party within 14 days of the sending of the written record of the decision. The written record of the decision shall repeat that information. If no such request is received, the Tribunal shall provide written reasons only if requested to do so by the Employment Appeal Tribunal or a court.

17. It seems to me that on the 20 August 2024 there were two disputed issues that were decided (the time limits and the question of disability). Whilst they were heard on the same day, they were heard sequentially.

18. In those circumstances, I have produced written reasons below relating to the question of time limits, as being the decision that the claimant does not agree with. If requested (by the claimant and/or the respondent) then written reasons for the disability claim can be produced.

FACTUAL BACKGROUND AND SUMMARY OF EVIDENCE

19. The claimant was employed by the first respondent as a Senior Copywriter from 01 March 2023 to 31 August 2023. The respondent is an online currency trading company.
20. The second to fifth respondents are all employees of the first respondent. There was an initial six month probationary period, during which time he was managed by the third respondent. The second, fourth and fifth respondents were all working for the first respondent in one capacity or another.
21. The claimant seeks to bring a number of claims relating to his claimed treatment by the respondent. This includes a claim for discrimination on the grounds of disability.
22. The claimant says that he has the following disabilities: ADHD (Attention Deficit Hyperactivity Disorder), anxiety and depression. In addition, he states that he now diagnosed with ASD (Autism Spectrum Disorder), although he was not aware of that at the time, and does not seek to rely on it for this claim.
23. He states that these disabilities impact on him in a number of ways which he set out in a Disability Impact Statement, and elaborated on at the hearing.

Timings

24. The relevant time periods for the five respondents are as follows (the first date being the date of the receipt by ACAS of notification of the claim, and the second date being the date of issuing of the certificate):

- **First Respondent:** OANDA Europe Limited – 04 October – 15 November 2023
- **Second Respondent:** Catherine Collingwood
- **Third Respondent:** Peter Ashton – 02 December-04 December 2023
- **Fourth Respondent:** Bhumii Shah– 02 December-04 December 2023
- **Fifth Respondent:** Agata Puchalska – 02 December-04 December 2023

25. The claim form was issued on 14 December 2023.
26. The claimant was dismissed on 23 August 2023. Three months from that date is 22 November 2023.

The Law

Time limits

27. The normal time limit for presenting all the claims that the claimant seeks to bring is as set out in section 123 of the Equality Act 2010.
28. Section 123(1)(a) provides that a tribunal shall not consider a claim unless it is presented before the end of the period of three months beginning with the date of the matter complained of.
29. Section 123(1)(b) provides an exception in that the tribunal can consider a case where the claim was made within such a further period that the tribunal thinks is 'just and equitable'.
30. The normal time limit is extended by section 140B of the Equality Act 2010 to take account of the obligation to enter into early conciliation facilitated by ACAS.
31. In order to determine how the normal time limit will be extended by early conciliation, it is first necessary to identify Day A and Day B and then apply the extensions in section 140B(3) and 140B(4) accordingly. They are defined in section 140B(2). Day A is the day on which the prospective claimant initiates the early conciliation process and Day B is the date of the EC certificate issued when the process is concluded.
32. The extension under section 207B(3) applies in every case. It operates to "stop the clock" during the period in which the parties participate in Early Conciliation as it provides that in working out when a time limit expires, the period beginning with the day after Day A and ending with Day B is not to be counted.

33. It is for the claimant to show that it is just and equitable to extend time (*Robertson v Bexley Community Centre, t/a Leisure Link*, 2003 IRLR 434, CA).
34. In assessing this, there are no specific factors to consider set out in the legislation. I have regard to the factors in s33 Limitation Act 1980, but am not to treat this as a checklist to be followed in employment cases (*Southwark LBC v Afolabi*, 2003 ICR 800, CA and *Abertawe Bro Morgannwg University Local Health Board v Morgan*, 2018 ICR 1194, CA).
35. I shall set out s33(3) Limitation Act 1980:

In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11, by section 11A, by section 11B or (as the case may be) by section 12;

(c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which

the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

36. There is no requirement to show exceptional circumstances (*Pathan v South London Islamic Centre*, EAT 0312/13).

Analysis and Conclusion

Time Limits

37. It was agreed that the claimant was dismissed on 23 August 2023, which would be the last date of any act complained of in relation to the first Respondent.
38. As Mr Way pointed out, there are different time limits for different respondents as they were all alleged to have taken different actions at different times. It may be, therefore, that there could be a different conclusion in relation to each of them.
39. I indicated that I would take 23 August 2023 as a starting point for each of them and, if I considered that on that basis I would extend time, I would then go back and consider each individual respondent's case on its own merits.
40. The effect of the time limit means that any claim must have been brought by 22 November 2023. Here, ACAS were not approached until 2 December 2023. Even then, the claim form was not lodged until 14 December 2023.
41. It must be noted that the claim against the first respondent was contemplated as early as 04 October 2023, as that was when the ACAS process was initiated.
42. The test for an extension gives a wide discretion. However, it is not open-ended, and I remind myself that it is for the claimant to show that it is just and equitable to extend time.

43. In deciding this, I take all the factors that the claimant has raised into account. I consider that the s33 factors are a useful starting point, although they are not a formula to be applied, nor is it a 'checklist'.
44. I also remind myself of that fact that I am not looking at whether the case is an exceptional one, I am applying the test as set out in the statute.
45. Here, the length of the delay is a relatively short one; approximately two weeks at the most.
46. Against that, the claimant was aware of the cause of action against the individual respondents before then as can be seen by the fact that he contacted ACAS by 4 October 2023 about his case.
47. The question of prejudice is an important one. In one sense it could be said that in relation to any particular individual respondent there is very little prejudice as the extra delay of a couple of weeks would not make any difference to their recollection, or to the documents that are available to them.
48. In addition, the Tribunal hearing the case against the first respondent will inevitably look at the points that are raised against those individual respondents.
49. Against that is the fact that, as Mr Way said, the claim will carry on anyway. All the issues that the claimant wishes to raise against the second to fifth respondents will be litigated, and conclusions made on the allegations. If any or all of those individual respondents have behaved wrongly, then this will be ventilated and findings made.
50. It could be said, and I do not underestimate the importance of this, that the lack of individual liability in the Tribunal may mean a lack of accountability. I do take that into account, and therefore do not accept Mr Way's argument that there is no difference, but the fact remains that the claimant will (if his case is correct) get some satisfaction.

51. Considering the other potentially relevant factors, it was not suggested that the respondent had contributed to any delay on the claimant's part. Nor was it suggested that any of the respondents had misled the claimant in any way to suggest that he could only start proceedings against a corporate respondent.
52. The claimant relies on his medical condition as part of his explanation for the delay. There is some medical evidence, and it is accepted that the claimant has ADHD (and is now diagnosed with ASD, although that diagnosis was not available at the time).
53. However, in relation to his mental state at the time, the claimant was taken to a medical report from 03 December 2023 (Dr Sreedan, page 77 bundle), which was contemporaneous with the events in question. In this, the claimant stated that he had no feeling of self-harm or suicidal ideation, as opposed to his evidence at the hearing.
54. The claimant's evidence was that he would generally say this to a doctor at the beginning of any interview. I do not accept that the claimant would generally lie to a medical professional in such a way. That medical evidence is the best evidence of his state of mind at the time.
55. In any event, the claimant's evidence was that his mental state would fluctuate during the course of the day, and certainly over the course of a week. There would be good points and bad points and, whilst there may have been times when he would have been unable (or at least found it difficult) to sit down and organise his thoughts to take the case forward, there would have been a number of occasions when he could have done so.
56. In those circumstances, I do not consider that the medical evidence provides a proper explanation for the delay.
57. In early October 2023, the claimant was able to contact ACAS with a view to bringing a claim against the first respondent. At that point (or shortly afterwards)

he was aware of the time limits applicable in his case, and the need to act quickly. This can be seen by the timetable in relation to the first respondent.

58. The claimant states that he was not aware until late in the process (and close to the deadline) that he could bring a claim against an individual. I do not consider that it has been satisfactorily explained why this was the case.
59. If anything, it would appear to be more natural to a potential claimant that the individual who had wronged him, rather than the company, who would be at fault, and that the claim would more naturally be brought against an individual who was actually at direct fault for any particular wrong.
60. As stated, I consider the s33 factors in the Limitation Act 1980:
 - (a) the length of the delay is approximately two weeks, which is significant, but not particularly long. However, for the reasons above, I do not consider that the delay has been adequately explained.
 - (b) I do not consider that the delay would have caused any evidential difficulties to the respondent.
 - (c) There is nothing in the conduct of any of the respondents after the cause of action arose that is of relevance.
 - (d) As set out above, whilst the claimant had ADHD, and would have been affected by ASD, I do not consider that this provides an explanation for the delay. Nor does it suggest that it is more likely than not that he would not have been able to proceed against the individual respondents.
 - (e) This is related to the above, but the claimant was aware throughout, or could have found out had he made enquiries, that there was (on his account) a cause of action against all the respondents.

(f) We have limited medical evidence, as noted. Whilst the claimant did not get legal advice, he did do an amount of research into his case and how to bring a claim. He was able to put together a claim against the first respondent and set out why liability attached to it.

In addition, the claimant was able to 'get his head around' what are fairly complicated questions of law in relation to the Equality Act, and comply with the time limits against the first respondent.

In those circumstances, whilst he may not have had legal advice, he had certainly undertaken sufficient research to have realised that he could have brought claims against the individual respondents.

61. Drawing the above together, the most significant points in the claimant's favour is that there is a relatively short period of delay and a lack of evidential prejudice to the respondents.
62. Against that, the claimant either was, or should, have been aware of the fact that he could bring claims against the individual respondents. Further, if he is not permitted to bring those claims, then there is very little prejudice to him given that the claim will proceed against the first respondent. Whereas there is a real difference for the second to fifth respondents between them being a witness versus being a named respondent.
63. On balance I do not consider that the claimant has shown that it would be just and equitable to extend time.
64. To the extent that there is an application to amend the claim to add the second to fifth respondent, that is refused. It was not made in writing and raised at the hearing for the first time.
65. More significantly, it is effectively raises the same issue and I do not consider that I could properly conclude that the claim be amended at this stage in light of my conclusions on the respondent's application.

Conclusion

66. My decision is therefore that the claims against the second, third, fourth and fifth respondent were not brought in time, and it is not just and reasonable to extend time.

Employment Judge Bunting

06 September 2024

Sent to the parties on:

13 September 2024

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For the Tribunal Office:

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