



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mr A Watfa

Respondent: United Colleges Group

Heard at: In public by CVP (Claimant joining by telephone)

On: 3 September 2024

Before: Employment Judge Adkin

Appearances

For the claimant: In person

For the respondent: Mr C Kennedy of Counsel

REASONS

1. At hearing on 3 September 2024 I dismissed the complaint of unfair dismissal given that the Claimant did not have sufficient jurisdiction pursuant to section 108 of the Employment Rights Act 1996 and struck out a complaint of disability discrimination on the basis that it is no longer possible to have a fair hearing pursuant to section 37(1)(e) of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules").
2. The Claimant requested written reasons at the hearing.

Background

History & injury

3. In 2003 the Claimant was working for the Respondent or a predecessor of the Respondent. The Respondent says that he was not an employee, but rather he was a contractor. It seems that that distinction is not hugely important for present purposes. He suffered a significant injury to his hand which resulted in

the amputation of his right middle finger. Some time after the accident he was dismissed and he says he received a letter saying that he was no longer required to work for the Respondent. At the time that he was dismissed he had just a few months' service.

4. The Claimant brought a claim for personal injury in the Civil Courts there seemed to have been settlement negotiations. Although I asked him about this, I am still somewhat unclear as to exactly what happened: whether there was a settlement negotiation or whether in fact a Judge made a decision. In any event there was finding or suggestion of contributory negligence leading to a deduction. The Claimant was sent a cheque which I understand to be compensation but says that he objected in principle and for that reason would not accept the money, he said that he returned the cheque.

Mental health

5. The Claimant says that since that time (I take a face value what he says) that he has had periods of mental health difficulties which have been caused by the events that I have described.

Present claim

6. After a very long period the Claimant commenced an ACAS conciliation period on 22 September 2023. The conciliation period ended three days later on 25 September 2023.
7. The Claimant then presented a claim in the Employment Tribunal, the date of that claim is 25 September 2023. Not very much detail was given in that claim form, which was brought against the City of Westminster College (that has subsequently been amended to the present Respondent).
8. What the Claimant says is that he was employed between the 26 March 2003 and his employment ended on 25 September 2003. He worked as a Centre Services Assistant.
9. He is seeking to bring claims of unfair dismissal and disability discrimination. The form itself does not give very much detail but he says this:

“Since 2003 after the accident sustained and the Unfair Dismissal whilst working at the city of Westminster college, I have suffered mental health problems and physical health as well. In recipient of industrial disablement benefits as a result of the impact the of the accident at the city of Westminster College.”

Response & application to strike out

10. The Respondent put in a response and subsequently in an email dated 19 July 2024 the Respondent made an application to strike out the claim.

11. The strike out application in summary refers to the fact that the accident was a very long time ago, 20 or 21 years ago. It states that the Claimant was never an employee, he was a contractor and it argues that there should be a strike out under Rule 37 of the Tribunal Rules of Procedure.

Claimant response to strike out application

12. Employment Judge Glennie wrote to the parties by letter on 23 July 2024 that he was considering striking out the claim striking out the claim under rule 37 of the Rules of Procedure on the grounds that:
 1. Given the lapse of time (approximately 20 years) since the events with which the claim is concerned, it is no longer possible to have a fair hearing of the claim; and/or
 2. There is no reasonable prospect of the claim succeeding, given the generally applicable time limits of 3 months (subject to extension) for bringing claims to the Tribunal.
13. The Claimant promptly responded with his own comments in an email dated 31 July 2024 he explains reasons for the delay, he says that it was a traumatic accident, he says that he was deeply disappointed and shocked to have received notice of termination and that decision was unjustified and discriminatory.
14. He says he has had plastic surgery, but his right hand remains handicapped. He is receiving medication for damage nerve and anti-depressants. He says that he has been admitted on three different occasions to a mental health unit as a result of the psychological impact of the accident. He says that records of his medical conditions can be obtained from his GP, his gives an address. He says there is a comprehensive medical record. He says that the Department of Work and Pension has acknowledged and confirmed the impact of the accident.
15. He says that the effect on him has been devastating and he had not suffered depression or mental health before the accident.
16. He makes reference to the National Insurance legislation and a decision of Lord Denning in the case of R v Medical Appeal Tribunal ex parte Gilmore [1957] 1 Q.B. 574. That is an authority about ouster clauses.

The present hearing

17. The Employment Tribunal in a notice of hearing dated 19 August set up this hearing.
18. The hearing is to determine subject to the discretion of the Judge conducting the hearing whether the claim should be struck out on the grounds that:
 - (a) It has not reasonable prospect of success given the lapse of time since the event complained of

(b) It is no longer possible to have a fair hearing in respect of the claim given the lapse of time since the events complained of

19. I have heard submissions from Mr Kennedy who is essentially amplifying the points made in his client's strike out application. He emphasises that the standard time limit is three months whereas this claim is more than 20 years out of time. He says there is no prospect of a fair hearing, individuals involved are likely to have moved on. He emphasised that the Claimant was not an employee and he was there for six months or thereabouts.
20. On the other hand the Claimant says that there are some documents that relate to the accident because he has had fairly recent reference to them, records of the accident in his correspondence with a government benefits agency. He discussed with me why it was he would not accept compensation at that time and emphasises that he was suffering mental health problems but physical and mental health problems until recently.
21. Mr Kennedy says by way of reply to the submissions put forward by the Claimant that why he cannot comment specifically on personal injury discussions if the Claimant was well enough to engage in that litigation he would have been well enough to put in a claim to the Employment Tribunal.

Decision

Unfair dismissal claim

22. Given the Claimant's length of service there is no way that he could have brought a claim for unfair dismissal even if he had brought a claim at that time. There is no jurisdiction to hear a claim if someone has less than two years' service and it seems to be common ground that he just had a few months service, so any claim of unfair dismissal cannot succeed and is struck out on the basis that it has no reasonable prospect of success.
23. In any event it is difficult to see how the Claimant would satisfy the test in section 111 of the Employment Rights Act 1996, i.e. that it was not reasonably practicable for him to present a claim and this being so he presented it within a reasonable period thereafter. Even allowing for the fact that he has periods of mental illness, it is clear that he was involved in litigation and the claimant personal injury. In other words he was, as the Respondent's counsel says, able to present a claim in that forum. It would be difficult to see therefore why he could not have presented a claim in the employment tribunal.

Disability discrimination claim

24. The more difficult question for me is the claim of disability discrimination which is a different claim with a different test for extension of time, i.e. what is "just and equitable".

25. It seems to me on the circumstances described by Mr Watfa that this would be a claim of direct disability discrimination i.e. because he was disabled he was dismissed. (The material events pre-date the creation of a claim of disability-related discrimination under section 3A of the Disability Discrimination Act 1995, which happened by an amendment in 2005.)
26. There is not a requirement to have a particular period of service for this type of complaint. It may not matter that he was a consultant because the definition of employee is broader for the purposes of a claim disability discrimination than it is for unfair dismissal.
27. So there might be the basis for a claim. It seems to me that the loss of a finger, the injury would be likely to amount to a disability although I am not deciding that now but likely to be the case.
28. The Claimant traces his mental-health difficulties to the circumstances of the injury. The Employment Tribunal is not the correct forum to bring a complaint arising from an injury, and in any event the Claimant appears to have pursued a claim of personal injury, based on what he has said.
29. I can see however that the Claimant could argue that as a result of that disability he lost his job. No doubt the Respondent will say it was the inability of him to do his job rather than the injury itself but that is an argument that might be had at a hearing. There is potentially the basis of a claim there, although I can see that there would be problems with it.

Delay

30. As to the reasons for the delay I am prepared to accept that it might be appropriate to extend time because of someone's mental health difficulties. I can see that it might make it difficult for someone to bring a claim, I accept from what he said that the Claimant has had mental health difficulties. If I was going to make a decision about a "just and equitable" extension which is the basis on which disability discrimination claims under the Equality Act 2010 are brought out of time I would need more detailed medical evidence to look at the periods where the Claimant had been unwell before making a decision. I could also consider the Respondent's arguments about prejudice caused by such a delay. That would require a separate Preliminary Hearing. I would not seek to second guess the outcome of such a hearing.

Conclusion on no reasonable prospect

31. I think on the basis of what I see here, looking at (a) no reasonable prospect – which is the first element I must consider, although it is a very, very long time since the material events and there are problems with the claim I cannot say that there is no reasonable prospect of success so I am not going to strike out the claim on that basis.

Fair hearing no longer possible

32. I am going to turn to the second basis (b) that the Respondent argues that it is no longer possible to have a fair hearing given the lapse of time.
33. I accept the Respondent's case that it will be no longer possible to have a fair hearing for the reasons which follow.
34. Time limits in Tribunal cases are short, they are three months, Parliament expects that Tribunal claims are brought promptly so that the evidence is fresh and not stale. If this matter was listed for a hearing it would be heard next year because it takes some time for these cases to be prepared so in other words it would be 2025. The accident was in 2003 so in other words there would be a 22 year delay between the accident and the circumstances following it and the claim being heard by a Tribunal.
35. In my judgment it would not be possible to have a fair hearing even if the dismissing manager could be found to give evidence. Even if the Respondent was able to track down key witnesses, which must be in doubt, in my view the prejudice to the Respondent would be very great and it would be unfair of them to explain their actions 22 years after the event. There can be no reasonable expectation that they would have retained a full file of documentation relating to this matter after this period. Explaining what had happened and why their actions were or were not discriminatory it seems to me is something that would be very difficult after that period of time has lapsed. The prejudice to the Respondent would be very great, such as to amount in my judgment to a situation in which it was no longer possible to have a fair hearing.
36. For those reasons I am going to allow the Respondent's application and strike out the claim.
37. I understand that in part the Claimant says that he has had a lasting problem as a result of the injury, I do understand that and I am very sympathetic to that but the place for him to receive compensation for that was bringing a claim for personal injury at that time, which I understand he did.
38. As for his claim that the dismissal itself has caused him lasting difficulties as I have said my finding is it is simply just too late to bring a claim so long after the event and my finding is it that it will not be possible to have a fair hearing.

Employment Judge Adkin

Date 12 September 2024

JUDGMENT SENT TO THE PARTIES ON

17 September 2024

FOR THE TRIBUNAL OFFICE