



EMPLOYMENT TRIBUNALS

Claimant: Mr S A Ali

1st Respondent: Clearwater Solicitors Ltd

2nd Respondent: Mr M M Yaqub

3rd Respondent: Mr S A Khan

Heard at: Liverpool (in private; by video hearing)

On: 18 November 2024

Before: Employment Judge Buzzard (sitting alone)

REPRESENTATION:

Claimant: Mr A Ali (Father)

Respondents: Mr R Katz (Consultant)

JUDGMENT having been sent to the parties on 25 November 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 Issues

1.1. The claimant has made four claims. These are:

1.1.1. A claim of unfair dismissal;

1.1.2. A claim of breach of contract;

1.1.3. A claim of sex discrimination; and

1.1.4. A claim of discrimination by failure to make reasonable adjustments.

1.2. The discrimination alleged by the claimant occurred at some point in the period from January 2022 to July 2022.

- 1.3. The date of the claimant's dismissal was determined at a previous preliminary hearing before Employment Judge Horne on 9 August 2024. The decision reached by Employment Judge Horne was that the claimant's effective date of termination of employment was 24 April 2023.
- 1.4. In respect of all respondents the claimant commenced early conciliation on 28 July 2023, and that conciliation ended on 14 August 2023. The claimant presented his claim form on 13 September 2023.
- 1.5. Based on the date it was found that the claimant's employment ended, the time limit for his claim of unfair dismissal and his breach of contract claim expired on 23 July 2023. The claimant did not commence early conciliation until some days later, and accordingly he does not benefit from any additional time to allow for early conciliation, and his claims of unfair dismissal and breach of contract were both presented to the Employment Tribunal outside the time limit.
- 1.6. The claimant's claims of discrimination were presented significantly out of time, the discriminatory acts having occurred in the first half of 2022 and the process of making a claim in relation to them having commenced in the second half of 2023.
- 1.7. Accordingly, for all claims, the issue at this hearing was limited to whether an extension of time could or should be granted to bring the claims within the jurisdiction of the Employment Tribunal to consider.

2. The Law

- 2.1. For all the claims relevant to this hearing the normal time limit is three months, either from the date of dismissal for unfair dismissal and breach of contract, or from the date the alleged discrimination ended for the claimant's discrimination claims. When, as here, the normal time limit has not been met, the claimant must seek an extension of time.
- 2.2. The legal provisions relating to the extension of time limits for presenting claims to the Employment Tribunal depend on the type of claim. In this case there were two different rules to be applied.

3. *Extension of Time for Unfair Dismissal and Breach of Contract claims*

- 3.1. For both these claims, where a claim is presented outside the normal time limit for presenting the claim, the Employment Tribunal only has a power to extend time if the claimant can show that it was not '*reasonably practicable*' for the claim to be presented in time. If that test is met by the claimant, then an extension of time can only be granted for such further time as is '*reasonable*'.
- 3.2. It is for the claimant to establish that it was not reasonably practicable for the claim to be presented in time. It is not for the respondent to establish that it was.

4. Extension of Time for Discrimination Claims

- 4.1. When, as here, a claim of discrimination is presented outside the normal time limit for presenting a claim, the Tribunal has the power and discretion to extend time if it is found to be '*just and equitable*' to do so.
- 4.2. There is guidance on the exercise of this discretion. In **Roberston v Bexley Community Centre (trading as Leisure Link)** CA 11 March 2003 the Court of Appeal stated:

'It is of also importance to note that time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of discretion is the exception rather than the rule.'

- 4.3. This confirmed that it is for the claimant to establish that it would be just and equitable to extend time, it is not for the respondent to establish that it would not be just and equitable to extend time.
- 4.4. The guidance of the EAT in **British Coal v Keeble** [1997] IRLR 336 is also of relevance to the exercise of this discretion. This guidance suggests that factors to be considered when considering extending time should include (but are not limited to):
 - 4.4.1. The length of, and the reasons for, the claimant's delay.
 - 4.4.2. The extent to which the cogency of the evidence is likely to be affected by the delay.
 - 4.4.3. The extent to which the respondent had co-operated with any requests for information.
 - 4.4.4. The promptness with which the Claimant acted once he knew of the facts giving rise to the cause of action.
 - 4.4.5. The steps taken by the Claimant to obtain appropriate professional advice once he knew of the possibility of taking legal action.

5. Evidence

- 5.1. No oral evidence was heard. This was raised with the parties, in particular with the claimant's representative as the claimant has the burden of proof in seeking extensions of time. The claimant's representative, although

appearing as the claimant's father, was formerly a solicitor. He confirmed that the applications for an extension of time would be pursued based on documents and submissions only.

- 5.2. The claimant had prepared a signed statement. This was read by the Employment Tribunal. It does not relate in any way to the timing of the claimant's claims. It provides a background of the claimant's employment with the first respondent, states that the claimant was a disabled person and sets out the basis for the substantive claim of breach of contract. Even if it had been given significant weight without the opportunity for cross examination of the claimant, nothing in it assists with the decision before this Employment Tribunal.
- 5.3. The claimant has been found to have been a disabled person in relation to injuries to his legs that occurred in January 2022. Nothing in the statement suggests how or why this would have prevented him pursuing his claim, especially noting he was fit to return to work as a trainee solicitor by July 2022.
- 5.4. In addition, the Employment Tribunal was provided with a bundle of documents that were referred to in submissions by the parties.
- 5.5. Noting the different legal tests, the discussion of the extension of time applications is set out separately in these reasons. However, there are some background findings relevant to both legal tests. These are as follows:
 - 5.5.1. The claimant was employed as a trainee solicitor. There is no dispute that the claimant was fit to resume work after the accident that caused the injuries to his legs by the summer of 2022. On this basis it is found that the claimant was, or should have been, aware of the fact that there are time limits for litigation. If the claimant was not aware of the specific time limits in the Employment Tribunal, he had the skills and opportunity to make himself aware of the relevant time limits.
 - 5.5.2. The claimant was informed of his dismissal in writing, in January 2023, that dismissal to take effect at the end of the relevant notice period. The date of dismissal, the end of the notice period, was stated in that written communication to be 24 April 2023. The claimant's representative conceded that the claimant accepts he read this dismissal email. That is the date that was confirmed by Employment Judge Horne to be the effective date of termination.
 - 5.5.3. After the claimant's dismissal the claimant made efforts to communicate with the respondents to seek to resolve his grievances. There is no dispute that the respondents refused to engage with the claimant, ignoring his attempts to communicate with them.

- 5.5.4. The claimant has not produced any evidence that suggests that he lacked the capacity to make a claim at the relevant times.

6. *Unfair Dismissal and Breach of Contract Extension of Time Findings*

- 6.1. The evidence shows that the claimant was informed that the date his employment would end was 24 April 2023. The claimant accepts he saw this. That is the date the claimant's employment ended.
- 6.2. The claimant's representative stated in submissions that the claimant believed his effective date of termination was 30 April 2024.
- 6.3. The claimant's representative submitted that there had been a degree of trust by the claimant, given the second and third respondents were family friends. The Employment Tribunal was directed to evidence of communication with the respondent in the period after the termination of the claimant's employment.
- 6.4. The claimant's representative submitted that the claimant was trying to be civil and reasonable, but that the respondents had ignored him.
- 6.5. The claimant's representative further suggested that the claimant had been told his employment ended on 30 April 2023. No evidence that would support that submission was presented. Nothing before the Employment Tribunal could explain why the claimant would or could have formed the belief that his employment continued after 24 April 2023.
- 6.6. Based on the evidence seen it is difficult to understand how it can be credibly argued that it was not reasonably practicable for the claimant to present his claims of unfair dismissal and for breach of contract in time. The claimant has legal training, was fully aware of his potential to claim and his rights and was also aware that the respondents were not engaging with his attempts to communicate.
- 6.7. Given that it is found it was reasonably practicable for these claims to be presented in time, there is no power to extend time. The claimant's claims of unfair dismissal and breach of contract are therefore dismissed as having been presented out of time.

7. *Discrimination claims Extension of Time Findings*

- 7.1. The alleged act of sex discrimination relates to a decision the parties agree was made in or around March 2022. The process of making the claim of sex discrimination did not start until 28 July 2023. This is well over one year after the alleged discrimination.

- 7.2. The alleged failure to make reasonable adjustments has been found by Employment Judge Horne to have ended in July 2022. This is a year before the claim in relation to this was made.
- 7.3. In relation to both claims, there is no suggestion that the claimant was not aware of the facts upon which he now seeks to make claims.
- 7.4. The Employment Tribunal was not directed to evidence that the claimant had sought to raise complaints of discrimination prior to being informed his employment was being terminated.
- 7.5. The claimant has not put forward any credible explanation of the reason why he did not present his claims earlier. It was suggested in submissions that the claimant thought that the time limit ran from the date of dismissal. This was not supported by evidence of that belief. Regardless, this suggested belief is not something that can be viewed as credible. If time limits did not start until the end of employment, this would mean long serving employees would be able to bring claims against their former employers years, if not decades, after the events complained about. It is not credible that two persons with legal training, one of which has qualified as a solicitor, could believe this.
- 7.6. The delay in bringing these claims is substantial. It is relevant that these are not claims that the respondents were already aware of, meaning that they were not afforded the opportunity to preserve evidence at or around the relevant times. This presents a real prejudice to the respondents now being asked to defend their actions.
- 7.7. The claimant has not presented evidence to the Employment Tribunal that meets the requirement that he shows that this is a case where it would be *"just and equitable to extend time"*. The unexplained delay is very significant, and the respondents had no prior knowledge of the potential claims which inevitably prejudices them.
- 7.8. Accordingly, the claimant's claims of discrimination are dismissed as being out of time in circumstances where it would not be just and equitable to grant the substantial extension of time that would be required.

**Employment Judge Buzzard
17 January 2025**

Judgment sent to the parties on:

28 January 2025
For the Tribunal:

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>