



EMPLOYMENT TRIBUNALS

Claimant: Mr N Ncube
Respondents: Sainsbury's Supermarkets Limited

Heard at London Central (by CVP)
On: 31/7/2025
Before: Employment Judge Mr J S Burns

Representation

Claimant: Mr M G McKetty (Legal Consultant)
Respondent: Mr M Timm (Counsel)

JUDGMENT

The claims are struck out.

REASONS

1. I heard evidence from the Claimant. I was referred to a bundle of documents of 61 pages and in addition I was sent and considered two extracts from the Claimant's bank statement and the medical evidence he wished me to consider (and which he sent at my request late in the hearing following which I then adjourned for several hours so that I could read and consider it before resuming for final submissions).

Findings of fact

2. The Claimant was employed by the Respondent from 18/9/2020.
3. On 6/5/23 he was involved in some physical altercation away from work which he describes as an assault. He attended at a hospital and was admitted to A&E and found to have a small hemorrhage within the right occipital lobe. This was a very small bleed not requiring any surgical intervention and he was discharged the next day. There were outpatient follow-ups culminating in telephone consultation with the Imperial College neurosurgery unit on 24/6/24 following which the consultant wrote a letter confirming the following about the Claimant; *"He is very well. No seizures or seizure like episodes. Working in a demanding job. No focal symptoms."* He was then seen at Barts Hospital on 6/7/23 by a Neurosurgery Registrar who following an assessment wrote a letter confirming that the Claimant was starting back at work, and that he *"was without signs or symptoms presently"*.
4. After 6/7/23 there is no more neurosurgical evidence and no further medical evidence at all until 9/10/24 which is the date of a letter confirming a telephone conversation on 7/10/24 between the Claimant and the Hammersmith Talking Therapies Service during which the following is recorded *"During our assessment you reported to me that you are experiencing*

symptoms of PTSD. We discussed this further and you informed me that the impact of these symptoms is you are reliving parts of your traumatic event and you do not feel safe in public. You added that you do not trust others and are therefore spending more time alone indoors...Having discussed the treatment options available, we have agreed that you may benefit from Cognitive Behavioural Therapy for PTSD. A member of our admin team will contact you when an appointment becomes available."

5. The Claimant went on long term sick leave from about 20/8/2023 following which he never returned to work.
6. On 24/8/2024 the Claimant had been absent from work for over a year, and following a final absence review meeting with him on 20/8/24, a letter was written by a Respondent manager confirming that the Claimant had stated that he was still not fit to return to work and he could not provide a specific date when he would be fit, and that therefore *"my decision is to terminate your employment effective from 22/8/2024 on the grounds of ill health capability"*.
7. The letter stated that the Claimant would be paid 4 weeks' notice in lieu of notice, pay in lieu of holidays not taken and a medical severance payment. The letter was posted by special delivery and the Claimant confirmed that he received and read it the following week, ie on about 27/8/24.
8. I find that 27/8/24 at the latest was the effective date of termination.
9. Following the dismissal, the Claimant did not attend work. The Respondent paid the Claimant £2031.94 on 19/9/24 by way of net severance money due. 19/9 was the usual date for payments of the monthly salaries. He says he received some further payments from the Respondent on 10/10/24.
10. The Claimant appealed his dismissal, raising various points, and included references to a previous grievance he had raised, an equal pay grievance and complaints about the safety of his work environment when the Claimant had been at work prior to 23/8/23.
11. An appeal (against dismissal) meeting was held (by video) which the Claimant attended. The appeal was dismissed by letter dated 14/9/2024. In that letter the author stated that the various grievances which the Claimant had referred to in his appeal had been resolved from the Respondent's point of view in an outcome letter it had issued dated 26/5/2024.
12. The Claimant stated in evidence that after his dismissal he contacted and received advice from the CAB. He was unable to give an exact date when this occurred.
13. He also moved his home out of London.
14. He submitted a further written complaint to the Respondent in November 2024 and attended a further meeting about that later that month.
15. He applied to ACAS for early conciliation on 6/12/2024 and the certificate was issued on 23/12/24. The Claimant presented his ET1 on 22/1/25 claiming unfair dismissal, race and disability discrimination and (unspecified) "other payments".

16. The ET1 completed by the Claimant states in box 5.1 that the date of termination of employment was 22/8/24.
17. Attached to or accompanying the ET1 was statement from him which included "*my contract was terminated with immediate effect on 22/08/2024, exactly 12 months after my sickness absence began on 22/08/2023*"
18. The statement is not a formal pleading but indicates that the subject matter of the claims are (i) the dismissal and (ii) "*corporate abuse and discrimination since late 2021*", which in context is clearly a reference to matters prior to the long-term sick-leave which started on 22/8/23. The statement does not include any reference to the appeal against dismissal.

A summary of relevant law relating to time limits

Re Unfair Dismissal

19. The primary time limit in which to present a claim for unfair dismissal arising under Section 94 Employment Rights Act 1996 is set out in Section 111 Employment Rights Act 1996. Ordinarily, that would be "before the end of the period of three months beginning with the effective date of termination" (Section 111(2)(a) ERA 1996).
20. Alternatively, the claim must be presented to the Tribunal "within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months" (Section 111(2)(b) ERA 1996).
21. Section 111(2A) qualifies that the time limit referred to above, is subject to any extensions of time afforded by Section 207B ERA 1996 (i.e. allowing for any period of ACAS Early Conciliation).

Re Discrimination

22. Section 123 of the Equality Act 2010 provides that 'proceedings on a complaint within section 120 may not be brought after the end of—(a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable.'
23. It is for the Claimant to satisfy the tribunal that it is just and equitable to extend the time limit and the tribunal has a wide discretion. There is no presumption that the Tribunal should exercise that discretion in favour of the claimant. It is the exception rather than the rule - see Robertson v Bexley Community Centre 2003 IRLR 434
24. The Tribunal may have regard to the checklist in section 33 of the Limitation Act 1980 as modified by the EAT in British Coal Corporation v Keeble and Ors 1997 IRLR 336, EAT: The length and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party has cooperated with any

requests for information, the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action, and the steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action.

25. The Court of Appeal in Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 IRLR 1050 noted that "factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

Conclusion

26. The causes of action complained of in the ET1 end with the dismissal on 27/8/24. The three month primary limitation period in relation to the dismissal would have expired on 26/11/24. As ACAS EC was started after that date the three-month period was not thereby extended. The ET1 was presented on 22/1/25. Hence any complaint about the dismissal is nearly two months late.
27. Any complaints about matters which occurred prior to the Claimant's long-term sick-leave, (which the ET1 statement suggests makes up most of not all of the race discrimination claim), would be about 14 months late as a minimum and some of it far longer than that.
28. The Claimant in his statement/submissions for the OPH and in his oral evidence gave his reasons for the lateness of his claim.
29. He suggested that he believed that the date of dismissal was later than 22/8/24 because of the claimed delay in paying him his severance/notice pay which he received only on 19/9/24 and 10/10/24 and/or because he received "ambiguous information" about the make-up of his severance pay.
30. He then stated that he thought that he was not dismissed until after his internal appeal against dismissal was dismissed on 14/9/2024.
31. I do not believe this evidence and in any event any such beliefs, if they were genuine, would be unreasonable.
32. The Claimant had been told in the dismissal letter that he would be paid severance payments and that he had been dismissed. Even if the calculation of the severance pay

was unclear to him, that would be irrelevant and would not change the fact that they were not wages for ongoing employment.

33. The dismissal letter is perfectly clear that the dismissal was on 22/8/24. While the EDT would have been delayed as a matter of law until the date when it was read by the Claimant, which date I have found was no later than 27/8/24, he would have no doubt then that he had been dismissed.
34. Furthermore the Claimant himself when completing his ET1 and writing his ET1 statement was clear that he had been dismissed with immediate effect in August 24. He also repeated this in a statement which he provided for today's OPH, in which he stated in paragraph 3 that his dismissal was on 22/8/24.
35. He then stated that it was a term of his contract that he would not be dismissed until he had exhausted his internal appeal. His contract was referred to but it contains no such provision.
36. The Claimant then referred to his claimed poor mental health, suggesting (as a reason for not submitting his ET claim in time) that *"My brain injury left me with long-term cognitive issues including fatigue, difficulty processing new information, and a limited attention span. At the same time, I was dealing with severe anxiety and depression, taking daily antidepressants, and attending talking therapy just to stay afloat. I wasn't just mentally unwell. I was scared, isolated, and deeply hurt. My therapist later identified that I was showing signs of PTSD"*.
37. I have reviewed above the medical evidence provided by the Claimant and his representative.
38. It does not support the claim that the incident in May 23 left the Claimant with *"long-term cognitive issues including fatigue, difficulty processing new information, and a limited attention span"*. The available medical evidence in fact states the opposite.
39. Nor is there any diagnosis of severe depression and anxiety, or evidence of any prescription for antidepressants. The Claimant has been given ample opportunity to produce this evidence but has not done so.

40. Even the PTSD evidence is really just a letter from a “wellbeing practitioner” accepting the Claimant’s assertion over the telephone that he was experiencing symptoms.
41. There is no medical or objective evidence that the Claimant, (even if he was feeling depressed, and taking antidepressants, which is a common situation for people who have lost their jobs) was incapacitated from claiming in time.
42. On his own evidence, during the period when he should have been submitting his claim he (i) submitted a detailed and multifaceted appeal (ii) attended and participated in an internal appeal hearing (iii) submitted a further written complaint in November (iv) moved home out of London and (v) attended the CAB where he was advised about his employment issues. As he was able to do these things, he would have been able to submit an ET1 claim also.
43. The Claimant was in no doubt about the time limits. He stated in his written submission for today in paragraph 19 “*The Claimant was aware that he had 3 months to submit a claim to the Employment Tribunal, and that it was mandatory that he formally contacted ACAS, in order to gain a registration number.*”
44. I do not find that it was not reasonably practicable for the unfair dismissal (and the “other payments”) complaints to be presented before the end of that period of three months. Nor do I find that these claims were presented within a reasonable time after the three months expired. Even after the ACAS certificate was issued on 23/12/24, the Claimant unaccountably waited for another month before presenting his claim on 22/1/25.
45. In relation to the discrimination claims, the cogency of the evidence would be likely to be affected by the delay, especially where the Claimant is claiming about matters which he says go back to late 2021. Even the evidence in relation to the dismissal would have to go back to 2023 when the long-term absence began. This would prejudice the Respondent and hamper a fair trial.
46. The Claimant has not satisfied me that he had any good reason for the delay in bringing his claims, especially in the three month period following dismissal. He took advice from the CAB and knew about the time limits but did not comply with them. I do not find it is just and equitable to extend time for the discrimination claims.
47. Hence the claims are outside the jurisdiction of the Tribunal and must be struck out.

J S Burns Employment Judge
London Central
31/07/2025
For Secretary of the Tribunals
Date sent to parties
8 August 2025
