EMPLOYMENT TRIBUNALS

BETWEEN

MR R GODFREY

Claimant

- and -

MIZUHO INTERNATIONAL PLC

Respondent

Heard at: OPH, held London Central, by CVP

On: 6 October, 2025

Before: Employment Judge O Segal KC

Representations
For the Claimant: In person
For the Respondent: Ms S Tharoo, counsel.

JUDGMENT

1. The Claimant's application to amend his claim is allowed in part (in respect of the 2013 recruitment process), but otherwise refused.

2. This claim is dismissed as being presented out of time.

REASONS

1. First, I express my gratitude to C and Ms Tharoo for their assistance during the hearing.

2. The Claimant ("**C**"), by an ET1 presented on 14/11/20, brought complaints pursuant to ss 13 and 15 of the Equality Act 2010 (EqA), following the withdrawal by the Respondent ("**R**") on 2 April 2013 of a job offer it had made to C on about 20 March 2013.

3. By his Agenda submitted in advance of the first case management PH on 11 June 2021, C recorded that he wished to apply to amend his claim as set out in that document, the parts of which are relevant today being a claim that R discriminated against him contrary to s. 15 or s 20 in their treatment of him following the revocation of the job offer in 2013 (C accepts that a victimisation claim based on the same allegation must fail because there had been no protected act); more particularly in relation to *"job opportunities post-dating the revocation …"*. C undertook to set out the opportunities relied on and his *"efforts to apply to those roles"* in a table.

4. The fullest details of those 'job opportunities/roles' provided by C were by way of a table under cover of an email to R dated 20 August 2021. It provides relatively high-level information (R characterised it as 'vague') of 7 occasions between 2014 and 2021: all but one are not precisely dated; all communications went through recruiters (rather than directly between C and R); in some of the 7 cases the recruiter contacted C to see if he was interested in a vacancy; in others C put himself forward unilaterally via the recruiter.

5. I accept from R (although C said he could not recall this) that at the PH in September 2021 C withdrew reliance on the 2021 overture he had made in general terms to R when he learned that one of the key managers involved in the 2013 process had left R. R's counsel had a note of that concession and had included reference to it R's submission to the EAT.

6. At that PH in June 2021, the ET ordered a further PH to consider inter alia whether to strike out the claim as being 'out of time' and/or not having reasonable prospects of success; and whether to allow C to amend his claim to add two further complaints:

a. Continuing acts of disability discrimination (clarified by C as referring to s. 15) by the removal of all possible job opportunities from 2013 to the (then) present;

b. Failure to make reasonable adjustments **("RA")** for C's disability in 2013, and continuing at each application from 2013 to the present.

7. Those matters came before me in September 2021 at a PH. I struck out C's claim by a Judgment given with Reasons dated 8 September 2021.

8. C appealed that Judgment, which appeal was allowed to proceed on the single ground that I ought to have determined the application to amend before considering the applications to strike out. In light of case law to that effect, R consented to judgment being entered by the EAT in C's favour on his appeal.

9. The matter was remitted to be heard by myself at an OPH, which came before me today.

<u>Facts</u>

10. C suffers from an autistic spectrum disorder (**"ASD"**), which amongst other things has the effect that C can appear awkward, difficult, odd in social interactions, including at work.

11. I had a bundle of 230 pages, including all the documents previously before me.

12. I heard no further oral evidence.

13. I repeat from my earlier decision relevant factual findings, and record those I have made in addition today.

14. C applied for employment with R in March 2013. He was interviewed and impressed those who interviewed him. They described him, as regards how he presented, according to the contemporaneous notes, as *"friendly and personable … personable … presents himself well … measured and personable … fitting in here"*.

15. Those with whom C had worked and who were approached by R for information about C at this time, spoke well of C. In respect of his personality and interactions with others, it is recorded that *"He comes over as nervous because socially he is and*

can be a little timid in social settings. … immaturity … nice guy … didn't understand the politics … had a good rapport with [clients] …".

16. C did not know at the time he might have a disability as defined by law and did not disclose one to R.

17. R made C a job offer with a 5-day period for acceptance, which period C told me – and I accept for the purposes of today's PH – would in practice always be extended to allow negotiations etc. C sought to negotiate certain terms, including his notice period in the coming days, on one occasion speaking by phone to HR who told him R would not change the notice period. That phone call apparently was ended abruptly by C.

18. On 25 March 2013, an AXA OH Physician certified C as fit to work as a trader.

19. On 27 March one of the decision makers at R, Graham Halliday (**"GH"**) informed C that his behaviour on the phone call to HR had caused a problem. It appears C and GH spoke about the position shortly afterwards. Within the next day or so, C had phoned the relevant HR officer to apologise.

20. On 2 April 2013, R wrote to C: *"Further to your conversation with Graham Halliday, I can confirm that our Offer Letter dated 21st March 2013 has now expired and we will not be extending the deadline for the reasons discussed."*. I consider it a fairly safe inference that the 'reasons discussed' related solely or mainly to the telephone interaction between C and HR referred to above.

21. C says that, at trial, he would be able to show in addition that:

    a. There was a division of opinion at R whether to extend the offer of employment.

    b. It was well known within a relatively small overall 'market' that C sometimes behaved oddly.

    c. Those who knew C best, including some of those whom R had approached in March 2013, were concerned by C's behaviour and that it might be due to a mental health issue.

22. Finally, and this is significant, C says that the above evidence would enable him to show at trial that the narrative to be inferred from the contemporaneous documents referred to above is at best incomplete and perhaps materially inaccurate; that the decision makers at R did have sufficient information/understanding of C's behaviour in social situations/at work to constitute constructive knowledge of a disability and that this is why the job offer was withdrawn, even though (he accepted) on the face of those documents no such case could be made out.

23. As to subsequent job applications/inquiries, it was common ground that in the material sector, recruitment is largely (to quote C) a 'word of mouth' process, at least at the initial stages. That is to say, vacancies are not publicly advertised and there is not an opportunity for those who wish to work for R to apply directly to it in respect of any vacancy.

24. The parties had, in fact, disclosed all documents which could be identified in relation to C's applications/inquiries after 2013 (see below for my determination on that point). There were (in my view, unsurprisingly) very few such documents and they identified only one employee of R (Diego Urra) who had any involvement in considering those applications/inquiries (which involvement was minor, on the face of those documents). There are no documents evidencing C's 'speculative' (C's word) inquiry to R in June 2021, including from C or the recruiter C contacted despite C making his amendment application a very short time after that inquiry.

25. Other than that the applications/inquiries did not result in C being interviewed or offered a job, what I have set out above comprises pretty much the only factual information available in relation to them.

<u>The law</u>

26. The parties agreed that in relation to the amendment application, I should have regard to the <u>Selkent</u> principles:

    a. The nature of the amendment – in particular, whether the amendment sought is a substantial alteration relating to substantively new facts/a new cause of action.

b. The applicability of time limits. If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions.

c. The timing and manner of the application. An application should not be refused solely because there has been a delay in making it. However, delay in making the application is a relevant discretionary factor.

d. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery.

e. The paramount consideration is the relative injustice and hardship involved in refusing or granting an amendment.

27. C referred me to some other authorities which refer to the need for an appropriately flexible approach in discrimination cases.

28. As to the extension of time, it remained common ground (and I therefore do not set out the relevant provisions and authorities) that:

a. The decision whether to extend time was on the basis whether it would be just and equitable to do so.

b. That allowed tribunals a wide discretion.

c. However, that discretion had to be exercise in accordance with case law which identifies the primary matters to be considered, namely:

i. The length of and reasons for the delay.

ii. The respective prejudice to the parties in granting/refusing the application – a factor which has been given added emphasis in recent decisions of the EAT.

iii. The underlying merits of the claim (though no ‘mini-trial’ is to be undertaken).

Discussion

The amendment application

29. Before I addressed the substantive amendment application, C raised an issue about disclosure.

30. In listing the PH to consider the amendment application, the ET had directed that there be *"mutual disclosure of all documents relevant to the OPH issues …"*. In respect of the applications/inquiries made after 2013, both parties took that to mean that they should disclose any documents available on reasonable searches evidencing or relating to those applications/inquiries. C's argument was that R had not complied with the ET's direction.

31. I am bound to say that I do not read the ET's direction as requiring the parties to disclose all documents that would be disclosable for the purpose of a trial in relation to those applications/inquiries. Nevertheless, that is what the parties understood. R's position is that, based on the somewhat imprecise information C had provided, it had done a reasonable and proportionate search, including by searching for all documents which included C's name, and had produced the results of that search. R stated that it had a policy to shred such documents after 6 months. All this had been set out by R in its Amended Grounds of Resistance.

32. C contended that R's position should be rejected as incredible. I do not agree. In respect of applications/inquiries based on 'word of mouth', not made directly but via recruiters, most of which cannot be precisely dated and where the person(s) at R who might have considered them cannot be identified, it does not surprise me that a proportionate search by R yielded few results. Moreover, it did yield some results, demonstrating that a search was conducted. Thus, C's position has to be either that R had done a proportionate search and deliberately withheld some of the documents generated, or R had done only a partial or overly superficial search. There is no proper basis for my finding such position to be valid. I also note that C accepted that R's disclosure had been apparently complete in respect of all documents relevant to the 2013 application which resulted in interviews and a job offer.

33. I therefore proceeded to consider the substantive amendment application.

34. C's case, he explained, is that he had been in effect 'blacklisted' (his word) by R following the withdrawal of the job offer in 2013; that there had thereafter been a 'continuing failure to act' on R's part, by refusing to consider his later applications/inquiries because of an unwillingness to make the necessary RA's (providing a mentoring manager for C) if it were to employ him.

35. C suggested that his proposed amendments to include the 'rejection' by R of his post-2013 applications/inquiries were not new claims, because they were allegations of the same type of discrimination (in particular under s. 15) as his original claim. C also argued that that all of R's rejections of his applications/inquiries, from 2013 until the date of his amendment application, constituted 'conduct extending over a period' within the meaning of s 123.

36. As to why C had not made those claims earlier, he relied in part on the same reasons which he had relied on in respect of the 2013 recruitment process, namely that it was only in 2019 that he was diagnosed with ASD and only late in 2020 that he realised the full significance of that as regards the effects on his behaviour and the potential causative link between his ASD and the revocation of R's job offer in 2013. As to the further delay between November 2020 (which he presented this claim) and June 2021, C said he continued to gain a greater understanding of his condition and that he had initially 'latched onto the most overt act' (the 2013 withdrawal of a job offer).

37. C did not accept R would be significantly prejudiced if it had to defend claims in relation to applications/inquiries between 2014 and the date of his amendment application and anyway no more prejudiced by reason of the delay in raising those claims in June 2021 rather than November 2020.

38. As to the strength of those claims, C argued that since the PH in September 2021 he had come to the view that his case on R's constructive knowledge of his having a disability:

    a. Was stronger as at 2013 than he had realised in 2021;

    b. Had arguably become stronger still by reason of information about another case C had brought against RBS (later NatWest Market plc) (**"the RBS case"**)likely coming (C believed) to the attention of the relevant sector.

39. I should now record the information that came to light during today's PH about the RBS case. C had worked for RBS between 2006 and 2011, during which period he asserted that RBS had gained constructive knowledge that he had a disability. In December 2018, C brought the RBS claim complaining that he had suffered disability discrimination under s. 15 between 2017 and (by later amendment, I assume) 2019 due to RBS' refusals to appoint him or consider him for appointment to various vacancies. At a PH in August 2020, the ET held that C had been disabled at the material time. The final hearing of the RBS claim was in November 2021, where the ET held RBS had not had actual knowledge that C was disabled. As to constructive knowledge, and on consideration of a considerable amount of evidence from C's ex-colleagues and friends, the ET held that RBS did not have the requisite constructive knowledge, even allowing for further reasonable inquiries; and that in any event C would not have permitted such further inquiries. The claim was therefore dismissed.

40. C appealed the findings as to RBS' knowledge of a disability, heard by the EAT in May 2024 ([2024] EAT 81). The EAT found, materially, that the ET had applied the wrong legal test in considering constructive knowledge (focusing on C's actual disability, ASD, as opposed to whether he had <u>a</u> disability), but dismissed the appeal on the basis of the factual finding that C would have resisted the further inquiries necessary to establish constructive knowledge.

41. For the purposes of C's amendment application today, I take the following from the RBS case to be relevant:-

    a. Even based on day to day working experience with C over some 5 years, the question whether RBS had constructive knowledge that he was disabled, was, at best, moot.

    b. C was alert by December 2018 to the possibility of brining claims in respect of a potential employer rejecting his job applications/inquiries on the basis of constructive knowledge it had gained from prior interactions with him.

    c. Only in/after August 2020 at the earliest, might information about the RBS claim have become known to those working at R – and whether it did become known to them is pure speculation.

42. Returning to the Selkent criteria:-

43. Other than in relation to the addition of a RA claim in respect of the 2013 recruitment process, the amendments seek to introduce substantively new factual claims.

44. All of the claims in relation to subsequent applications/inquiries were well out of time by the time of the amendment application (save in respect of the speculative inquiry in 2021, which I have found C withdrew in any event).

45. C has no good explanation for why he did not include those claims when he issued these proceedings in November 2020. Moreover, in light of the RBS case, there seems to have been no good reason not to have brought those claims in late 2018/early 2019.

46. On the key issue of the balance of prejudice:

    a. For the reasons I gave in the 2021 PH Judgment and Reasons, I consider C's prospects on establishing constructive knowledge on R's part in the period 2013-2021 to be weak. I do not consider them to have improved materially if at all by reason of the RBS case.

    b. Further, C's belief that he was 'blacklisted' by R is almost entirely speculation (the only evidence C relied on before me was that he would have expected to be considered for some of the vacancies where a recruiter had introduced his name to R in that context, along with the names of others). Contrast the original claim about the 2013 process, where if C were to establish constructive knowledge, his s. 15 claim would be a strong one.

    c. The prejudice to C in refusing the amendments is not nearly so great as in respect of the 2013 process. Not only are the later claims much more speculative for the reasons given, the potential remedy is also much more speculative: C would have to demonstrate not only that he was 'blacklisted', but also that he had a significant chance of being recruited by R ahead of other candidates including whoever had actually been appointed to any vacancy.

    d. The forensic prejudice to R in allowing the amendments would be fairly extreme and much greater than in respect of the 2013 recruitment process, where the decision-making was significantly evidenced in documents and relatively transparent. In respect of the subsequent applications/inquiries, however, the dates and other details are not precise and there is almost no documentation evidencing any decision-making process and the relevant individuals cannot even be identified in most cases. Further, if the claims had been brought earlier, more documentation might have been available.

47. For the above reasons, I do not allow the amendments in respect of the applications/inquiries subsequent to 2013.

48. For completeness, had C not withdrawn his application to amend to include the inquiry he made in about June 2021, I would have refused that on the basis it had no reasonable prospect of success: neither party has been able to produce a single relevant document in respect of what C himself described as a speculative inquiry. Moreover, by June 2021, the managers who C believed had blacklisted him were all but gone – indeed C told me that the reason he made the inquiry at that time was because the manager who had caused the job offer in 2013 to be withdrawn had just left R in June 2021 (which R confirmed was correct).

49. Finally, I turn to the application to amend to add a RA claim in respect of the 2013 recruitment process. I allow that application. It is more by way of a re-labelling than the addition of a substantively new factual complaint and R would suffer little forensic prejudice by its addition.

<u>Whether to strike out the claim</u>

50. I shall not repeat the detailed reasons given in September 2021 for striking out the claim (which were not the subject of a successful appeal).

51. I asked C if there was any basis for my reaching a different decision now that I had allowed the introduction of a RA complaint. C reiterated that in his view his case on ‘knowledge’ had become stronger, or at least he was now able to articulate it more persuasively since 2021; but he had to accept that the test for ‘knowledge’ is the same in respect of a s. 15 and a s. 20/s. 21 claim.

52. As to merits, I understand C to have accepted – in any event, I so hold – that the s. 20 claim could not be as strong as (certainly no stronger than) the s. 15 claim if knowledge were to have been established: it is not in dispute that the reason the job offer was withdrawn in 2013 was because of C's conduct, which he relies on as arising from his disability and which he also relies on as pointing to R's constructive knowledge; so, if knowledge were established on that basis, the s. 15 claim would succeed subject to the proportionality defence. The RA claim would face overlapping but additional hurdles.

53. For convenience, I repeat the summary of the reasons for striking out the claims in relation to the 2013 recruitment process.

54. Despite accepting C's explanation for the delay in presenting his claim (although somewhat less compelling in light of the RBS case, which was not brought to my attention in September 2021) and accepting that he would be caused significant prejudice if the claim is struck out, I am clear that it would not be just and equitable for me to extend time for these claims to be heard, given:

    a. The very long delay in its presentation.

    b. The significant prejudice caused to R in terms of the reliability of the non-documentary evidence available to it.

    c. The considerable difficulty C would face in establishing R's constructive knowledge of a disability in April 2013 in light of the contemporaneous documents, making his claim a weak claim.

Employment Judge Oliver Segal QC

Date: 6 October, 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

17 October 2025

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FOR THE TRIBUNAL OFFICE