



EMPLOYMENT TRIBUNALS

Claimant: Simon Andriesz

Respondent: TFS Derivatives Limited

Heard: London Central by CVP link **On:** 10 February 2025

Before: Employment Judge Sutton KC

Appearances

For the Claimant: Mr J. Robertson, friend

For the Respondent: Mr A. Smith, counsel

JUDGMENT

1. The Claim issued under Case Number 2201479/2022 is dismissed for lack of jurisdiction, the same having been commenced outside the statutory limitation period prescribed by s.123 of the Equality Act 2010.
2. The complaint brought under s.47B of the Employment Rights Act 1996 (detriment on grounds of protected disclosures), which comprised part of the Claim issued under Case Number 2204781/21, is dismissed pursuant to Rule 51 of the Employment Tribunal's Rules of Procedure 2024, the same having been withdrawn by the Claimant. The remaining complaints brought in that Claim shall proceed to a final hearing for determination.

REASONS

1. At a Case Management hearing which took place on 15 November 2024, Employment Judge Webster directed that a Preliminary Hearing should take place to determine whether the Tribunal had jurisdiction to hear the Claimant's second claim brought under Claim No 2201379/2022.
2. The Claimant issued a second claim on 23 March 2022. Following a narrowing of the issues, the sole complaint which the Claimant intended to advance under this claim was one of discriminatory constructive dismissal contrary to s.39 of the Equality Act 2010, the protected characteristic being disability.
3. The Respondent sets out the relevant timeline at paragraph 64 of its consolidated Grounds of Resistance dated 22 July 2022, which shows that the Claimant was required to present his second claim at the latest on 22 March 2022. It was therefore presented a day late.
4. As noted in paragraph 14(1) of Employment Judge Webster's Case Management Order dated 15 November 2023, it was conceded by counsel representing the Claimant at that hearing that his second claim was presented out of time as the Respondent maintained. Mr Robertson at today's hearing also accepted that the claim was presented outside the primary limitation period. The Tribunal so finds
5. The issue for the Tribunal is therefore whether time should be extended on '*just and equitable*' grounds, so as to permit the second claim to proceed. To facilitate such a hearing, Employment Judge Webster made case management directions for the Claimant to send to the Respondent a preliminary hearing bundle for agreement and any witness evidence to be sent to the other side by 27 January 2025.
6. In the event, the Claimant did not comply with the order in relation to the bundle and it fell to the Respondent to produce a bundle for today's hearing. Neither has the Claimant submitted any witness statement to support his case that time should be extended on *just and equitable* grounds.
7. The Claimant did not attend today's hearing but was apparently contactable throughout. Indeed, Mr Robertson was given the opportunity to liaise with the Claimant and to obtain his instructions in the course of the hearing, but the Tribunal had no opportunity to question the Claimant himself about what had occurred to explain to the late presentation of his second claim.
8. In his submission on the Claimant's behalf, Mr Robertson indicated that fault lay with the Claimant's solicitors. Although the Tribunal noted that assertion, no evidence was adduced to support it. There was no waiver of privilege, which might enable to the Tribunal to examine what had passed between the Claimant and his earlier legal advisers. Neither was any correspondence or other documentation placed before the

Tribunal to assess Mr Robertson's submission. The explanation was therefore in essence a generalised and unevidenced assertion.

9. On behalf of the Respondent, Mr Smith drew the Tribunal's attention to the broad and unfettered nature of the Tribunal's discretion in deciding whether or not to extend time. A number of relevant authorities were cited to the Tribunal in Mr Smith's written submissions in his discussion of relevant legal principles and guidance.
10. Mr Smith acknowledged that the lack of an explanation for the delay in issuing proceedings was not of itself fatal to the Claimant's position. But it was inevitably a significant factor in the exercise of the Tribunal's discretion.
11. In reaching its decision, the Tribunal took due account of the fact that the period of delay in presentation of the claim was a single day. But no explanation beyond the unproven and unsupported assertion of fault on the part of the Claimant's legal advisers has been put forward to account for the delay.
12. As is often emphasised, time limits are there to be adhered to and, notwithstanding the breadth and flexibility of the Tribunal's discretion, they cannot be discounted without at least some reason. The fact that the period of delay is limited does not of itself constitute a sufficient basis for extending time. There is no *de minimis* principle.
13. On behalf of the Respondent, it was submitted that the Claimant has been able to mitigate fully the financial losses that might have flowed from the termination of his employment with the Respondent. It was further submitted that the conduct which the Claimant intended to rely upon as supporting his constructive dismissal complaint was prayed in aid in support of the complaints advanced in his first claim, which will proceed to a full hearing and will attract a remedy if they are found to be meritorious.
14. The Respondent also submitted that the Claimant had the benefit of legal representation and, having earlier commenced proceedings in the Employment Tribunal, must be assumed to have familiarity with essential procedural matters such as limitation periods for bringing claims.
15. The Tribunal was asked to take account of what were said to be the poor merits of the second claim. Specifically, it was asserted that the complaints raised by the Claimant had been extensively investigated by an independent firm of solicitors and found to be without merit.
16. Mr Robertson contended, on this point, that the investigating firm lacked apparent impartiality, having been instructed by the Respondent. While noting the Respondent's submission, the Tribunal did not consider that it could place any real weight on this point as a discretionary factor, given the limited scope for evaluating the underlying dispute.

17. Having weighed all of the matters raised by Mr Robertson on the Claimant's behalf and by Mr Smith for the Respondent, and having taken due account of the case law guidance, the Tribunal was not persuaded that the Claimant has discharged the burden of showing that it would be just and equitable to extend time, notwithstanding the limited period of delay beyond the expiry of the primary limitation period.

Publication of judgments

18. Public access to employment tribunal decisions All judgments (apart from judgments under Rule 52) and written reasons for the judgments (if provided) are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.

Appeals

19. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appealemployment-appeal-tribunal>.

Recordings

20. If a Tribunal hearing has been recorded you may request a transcript of the recording upon payment of any fee due. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings. You can access the Direction and the accompanying Guidance here: <https://www.judiciary.uk/guidanc>

Mark Sutton KC

10 February 2025

Sent to the parties on:

19 February 2025

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For the Tribunal Office:

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