



EMPLOYMENT TRIBUNALS

Claimant: Mr Roger Taylor

Respondent: Cognita Schools Limited, t/a Quinton House School

RECORD OF A PRELIMINARY HEARING

Heard at: Cambridge (in private) **On:** 8 February 2019

Before: Employment Judge Ord (sitting alone)

Appearances

For the claimant: In person

For the respondent: Ms B Hirsch, Counsel

JUDGMENT ON PRELIMINARY HEARING

The claimant's complaints that he was unfairly dismissed and was the victim of unlawful discrimination on the protected characteristic of age are dismissed. The claims were presented out of time and the tribunal has no jurisdiction to hear them.

REASONS

- (1) This matter came before me today to determine whether or not the claimant's complaints should proceed on the basis that they were presented out of time. The essential dates are as follows:
 - 1.1 The claimant's employment ended on 17 November 2017;
 - 1.2 The claimant commenced early conciliation through Acas on 27 November 2017;

- 1.3 The claimant's early conciliation certificate is dated 20 December 2017;
- 1.4 The claimant presented his claim to the Employment Tribunal on 18 July 2018.
- (2) Under section 111 of the Employment Rights Act 1996, a complaint of unfair dismissal shall not be considered by the tribunal unless it is presented before the end of the period of three months beginning with the effective date of termination, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaints to have been presented before the end of that period of three months.
- (3) Under section 123 of the Equality Act 2010, a complaint of discrimination may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or within such further period as the tribunal thinks just and equitable.
- (4) I have had presented to me today a substantial bundle of documents running to 142 pages, a lengthy statement from the claimant running to 210 numbered paragraphs and a statement from Miss Trinity Stewart, HR Business Partner for the respondent. Both the claimant and Miss Stewart were sworn to the truth of their statements and were cross examined. Counsel for the respondent has provided a skeleton argument. Both she and the claimant made closing submissions.
- (5) The claimant had been employed by the respondent as an IT teacher and accepted that he had both the means and ability to carry out internet research in relation to his employment rights. Ten days after the end of his employment, by way of resignation, he had contacted Acas and provided information for early conciliation. He referred to that, in his evidence before me, as being the first step in a process and had written to the respondent on 4 December 2017 saying that he was,
- "...asking Acas to take their first steps prior to making an unfair dismissal claim".*
- (6) The claimant has told me that one of the causes in his delay in presenting complaints to the tribunal was because he was told (allegedly by a tribunal employee, though he says this occurred at a time before tribunal proceedings were issued), that he could not present a claim whilst other external investigations were on foot. Those investigations related to the reference by the respondent, on the advice of the Local Authority Designated Officer, to the Disclosure and Barring Service and the National College for Teaching and Leadership.

- (7) The Disclosure and Barring service wrote to the claimant on 30 April 2018 confirming that they were taking no further action and that had been confirmed by the National College for Teaching and Leadership to be their position as early as 31 January 2018.
- (8) Even if the claimant therefore was waiting for the outcome of those processes, and even if it was legitimate for him to do so, there was a substantial delay between 30 April 2018 and 18 July 2018 when he presented his claim. I asked the claimant to explain that period of delay and he did so by pointing to the fact that in May 2018 he had written to the respondent asking them to make him an offer to settle his claims, but he had received no answer until 11 June. That reply came from the respondent's solicitors to whom he wrote again on 20 June and they replied on 13 July.
- (9) The claimant confirmed, however, that he was aware of the time limits that he faced in relation to both unfair dismissal and age discrimination. Indeed, he had written to the respondent on 4 May claiming that his son's partner worked for a firm of solicitors dealing with relevant matters whom was keen that the claimant should make a compensation claim. Notwithstanding that advice, the claimant did not make any claim for a further two months and fourteen days.
- (10) The claimant has referred to his suffering from a number of health issues but has not provided any evidence to indicate that they were, at any material time, preventing him from taking steps to pursue his claims. Indeed, the correspondence and the other steps which I have already referred to, do not indicate that his health condition have that effect.
- (11) The claimant has not established any circumstances which indicate that it was not reasonably practicable for him to present his claim in time. He accepts that he was aware of the three-month time limit throughout the period, was sufficiently aware of his rights to contact Acas and chose not to present his claim before he did because of other ongoing investigations and thereafter whilst he pursued the prospect of settlement without the need for proceedings. Even accepting that he understood the position to be, that until he received the letter of 30 April 2018 from the Disclosure and Barring Service, he did not believe that he was entitled to bring a claim. That does not explain the delay between that date and 18 July.
- (12) I am satisfied that it was reasonably practicable for the claimant to present his claim in time, but even if I had found that it was not reasonably practicable for him to do so before 30 April as a result of the misunderstanding to which he referred, he has not satisfactorily explained the delay between then and 18 July so that he did not present his claim within any reasonable time thereafter.
- (13) In relation to his claim to be the subject of age discrimination, the same time points arise but the test is different. It is my task to determine whether or not it is just and equitable to extend time to allow the claimant's claim to proceed. I do so by reference to the Limitation Act 1980 (s33) and *British Coal Corporation v Keeble* as well as to the issue of prejudice.

- (14) The claim was presented some four months and seven days after the primary limitation period had expired, even allowing for the extension of time covered by the Acas early conciliation process. The delay after 30 April is entirely unexplained and thus the claimant cannot be said to have acted promptly once he knew of the possibility of taking action (indeed it seems to be the case that he was aware of the possibility of taking action as early as 4 December 2017).
- (15) Although the claimant said that he did not have the financial resources to contact a solicitor, he did not answer my question as to whether or not he had contacted other sources of advice such as the Citizens' Advice Bureau and he referred in his own correspondence to access to professional advice on 4 May 2018. Notwithstanding the fact that he had access to advice by that stage, he waited a further two and a half months before issuing proceedings. The claimant does not explain to me why he considers it just and equitable that time should be extended in his favour. The extension of time is to be the exception and not the rule and there is no presumption in the claimant's favour. In this case the claimant has no valid explanation for the delay and did not act promptly at any stage.
- (16) I must, however, consider the balance of prejudice. To do so I must take account of the prejudice suffered by each party if the claim is, or is not, allowed to proceed and part of that is to consider the merits of the potential claim of age discrimination. The claimant's primary complaint is that he was accused of inappropriate behaviour when he was not guilty of any such conduct. He has not however, set out any prima facie case from which one could conclude that the claim of age discrimination has any reasonable prospect of success. The basis upon which the claimant says that action was taken against him on the ground of his age is, at best, wholly unclear. There are no assertions or pleadings of fact in his tribunal application which would form the basis of a claim of discrimination based on age.
- (17) Thus, if the claim were allowed to proceed the respondent would be put to the cost of resisting a claim which on the face of it, is not only substantially out of time but is also of very little, if any, merit. The claimant's evidence as presented before me is all geared towards the denial of any wrong doing and a complaint about the way he was subject to investigation by, or at the behest of, the respondent rather than any suggestion that the respondent acted as it did because of his age. I find no such link to be even asserted in his tribunal claim.
- (18) In the absence of any cogent explanation of the basis upon which the claimant says that he was the victim of discrimination on the protected characteristic of age, the balance of prejudice is in favour of the respondent. It is not just and equitable to extend time to allow the claim of age discrimination to proceed.

Summary

- (19) Both claims are out of time. It is not just and equitable to extend time for the claim of age discrimination to proceed. It was reasonably practicable for the

claimant to prevent his unfair dismissal claim in time and in any event, he did not present his claim within any reasonable time thereafter.

8 March 2019

Employment Judge Ord

Sent to the parties on:

...12.03.19.....

For the Tribunal:

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