



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr S Ali**

v

**Saint Gobain Building Distribution  
Limited, trading as Jewson**

### **PUBLIC PRELIMINARY HEARING**

**Heard: BY VIDEOLINK**

**On: 8 July 2021**

**Before:**

**Employment Judge JM Wade**

**Representation:**

**Claimant:**

**In person**

**Respondent:**

**Ms D Maguire (Employee Relations Consultant)**

This has been a remote hearing due to Covid 19.

## **JUDGMENT**

The claimant's claims of discrimination because of religion and belief were not brought within three months (nor any appropriate ACAS extension) and the Tribunal does not consider it just and equitable to extend time from early 2016 to 15 February 2021 when these claims were presented. They are dismissed.

## **REASONS**

1. The matter before me today was set out by an Employment Judge at a preliminary hearing by telephone on 10 May 2021 and in orders sent to the parties subsequently. The issue was whether or not the claimant's discrimination complaints were presented to the Tribunal within the time limit in section 123 of the Equality Act 2010.
2. The Tribunal was to decide:
  - 2.1. was the claim made to the tribunal within three months (plus early conciliation extension) of the act or acts to which the complaint relates?
  - 2.2. If not was there conduct extending over a period?
  - 2.3. If so was the claim made to the tribunal within three months (plus early conciliation extension) of the end of that period?
  - 2.4. If not were the claims made within a further period that the tribunal thinks is just and equitable? The tribunal will decide:
  - 2.5. why were the complaints not made to the tribunal in time?
  - 2.6. In any event is it just and equitable in all circumstances to extend time?
3. After that case management hearing the claimant was ordered to provide further information in relation to the acts complained about including, what happened, who

did that act, and how was it done (was it verbal or in writing); and when did it happen? He was also ordered to explain fully what happened when he first considered bringing a claim in 2016 and why he did not bring tribunal proceedings at that time and if you did not do anything between 2016 and 2021, why not. He was also ordered to explain why he decided to bring claim in 2021. The claimant provided his response to this order in an email sent on 17 May 2021. As to the reason for delay, it was not a full explanation, but one line or two.

4. Today I heard from the claimant and Ms Maguire who both gave sworn evidence to the Tribunal, confirming respectively the contents of the claim, the further information sent on 17 May 2021, and the response. Ms Maguire was also able to assist with further information. I made the following findings of fact.
5. The claimant was employed by the respondent from 13 April 2015 to 18 January 2016 as a development analyst at the respondent's Huddersfield head office. After events including concerning holidays and sickness over Christmas, he resigned in a letter on 18 January 2018 stating, "I want resign job as of today. Thanks".
6. His resignation was accepted the same day by letter.
7. The claimant consulted Petherbridge Basra solicitors in Bradford, which had resulted in the contact with ACAS on or around 2 February 2016, with a certificate issued on 10 February 2016, number R110877/16/52. The claimant was either contacted by ACAS or his solicitor and told that the case was not proceeding further or words to that effect.
8. The respondent conducted an investigation into the matters indicated by ACAS and found them unfounded. On 19 February 2016 the claimant emailed the respondent's IT director saying that he now had a baby girl, things had settled down and he would like to come back to work. He met the IT director, but was not re-employed.
9. In July or August the claimant tells me he contacted the respondent for compensation from the sales department but they said he needed to take legal action, which he did in the County Court. He also tells me that MI5 is involved in some way in these events.
10. The claimant managed between 2016 and 2021 from loans from family and benefits. He applied for many jobs and having been unsuccessful decided to reapply to the Employment Tribunal in 2021.
11. The allegations the claimant makes in his further information are that between November 2015 and 16 January 2016 three named colleagues made comments such as, "don't come to Europe as Muslim, come as Hindo [sic] or sikh or whatever". The three allegations are arguable as complaints of harassment related to religion.
12. The claimant presented this claim on 15 February 2021 but it was rejected for want of an ACAS conciliation certificate. That decision was subsequently reconsidered, confirmed to the parties in a letter dated 8 March 2021 with acceptance of the claim. The claimant had approached ACAS in 2021 obtaining a certificate recording EC notification on 19 February 2021 and issue of the certificate on 4 March 2021.

Discussion and conclusion

13. The last date of the arguable allegations is 16 January 2016. A claim needed to have been presented to the employment tribunal by 15 April 2016, or ten days or so later applying the “stop the clock” provisions arising from the claimant’s ACAS certificate, applying Section 123 (1)(a). Applying Section 123 (1)(b), I need to consider whether a time limit of 5 years and one month, that is until 15 February 2021 in respect of allegations ending on 16 January 2016 is just and equitable in this case.
14. The respondent was opposed to me doing so. It relied on a merits argument and that matters had been concluded in 2016. The claimant had indicated a desire to return to work and that matters were concluded. He did not resign because of treatment and there was no complaint about his resignation (as a dismissal) – this was confirmed in the case management discussion in May.
15. The claimant says that ACAS decided not to proceed and it is for the Tribunal to find out why the case did not proceed in 2016.
16. I add to the facts above judicial notice of the communications which ACAS send to parties with their certificates. These include information that claims are subject to strict time limits and need to be presented on time.
17. I also consider that the solicitors approached by the claimant will have well understood the need to present his claim in a timely fashion.
18. The respondent has not told me of particular prejudice, but it is self-evident that allegations concerning alleged comments require witness evidence, in relation to which memory is likely to be degraded. That is overwhelmingly the case concerning allegations which, if this matter were to come to hearing, would be seeking to establish facts from some six years ago.
19. There is prejudice to the claimant in losing the opportunity to pursue his claims, which are arguable harassment allegations. This needs to be weighed against the prejudice to the respondent and to the overarching interests of justice in resolving claims in a timely fashion and acknowledging that extensions to time limits are the exception rather than the rule.
20. In view of the length of extension in time required, the reason for delay would have to have been overwhelmingly compelling. It is not. The claimant has not been **unable** in the past five years to present his claim; he has not done so because he understood then that the case was not proceeding. He appears to take the view that it is for the Tribunal to find out why his case was not presented some five years ago.
21. It is a well established principle of law that if solicitors have failed to present a claim in time, that is not a good reason to extend time. That may or may not be the case here, but even without the involvement of solicitors I am satisfied that the claimant will have been informed in ACAS communications of the need to present his claim within the relevant time limits. While he may have misunderstood the role of ACAS, that is an unreasonable misunderstanding in view of the widely available information

which the vast majority of parties access without difficulty, often in second languages.

22. The prejudice to the parties as a whole, in seeking to address such stale claims is overwhelming after such a long period of delay. The claims are not about losing employment, but about remarks, which may or may not have been made, in circumstances where the claimant expressed a subsequent wish to return to work.
23. Taking all the circumstances into account, any allegations could and should have been presented and determined in 2016 and I have concluded it is not just and equitable to fix a longer time limit pursuant to Section 123 (1)(b). The claims are dismissed.

Employment Judge JM Wade

8 July 2021