



EMPLOYMENT TRIBUNALS

Claimant: Mr W Dourado
Respondent: Tesco Stores Ltd

Heard at: Bury St Edmunds (by CVP)

On: 2/12/2024
Before: Employment Judge Mr J S Burns

Representation

Claimant: In person (assisted by his friend Tino Godinho)
Respondent: Ms I Brown (Counsel)

JUDGMENT

1. The claims of direct race discrimination and harassment related to race relating to the following allegations are dismissed on withdrawal by the Claimant: (i) *“On 26 April 2020 Lisa Snelling said to the Claimant “you don’t have work rather than wasting your time talking with customer” and (ii) “On 8 February 2023 Lisa Snelling asked a colleague, Delroy Fernades, how long the Claimant would take to come out of the toilet”.*
2. It is declared that it is just and equitable to extend time for the Claimant to bring the claims of direct race discrimination and harassment related to race about the following allegation; *“On 13 February 2023, Lisa Snelling yelled at the Claimant “you don’t even know how to speak English, I don’t know why the company has hired your kind of people, so you can keep your mouth shut” with a hands shut” gesture”, so those claims are within the jurisdiction of the Tribunal.*

Reasons for paragraph 2 above

1. The period of three months starting on 13/2/23 expired on 12/5/23. The Claimant applied to ACAS on 1/6/23 and received his certificate on 5/6/23 and presented his ET1 claim on 22/6/23. The application to ACAS was after the three months had expired so did not extend time.
2. The onus is on the Claimant to show that it is just and equitable to extend time. I have a wide discretion to take into account all relevant factors, with a focus on the length and cause of the delay.
3. The claim in paragraph 2 of the judgment above was presented about 41 days late.
4. A major reason for the delay is that the Claimant complained internally the same day about the incident on 13/2/23 and thereafter waited for the Respondent to investigate the matter. He received a brief outcome message from Mr S Mills on 16/5/23, (outside the three-month period in which the Respondent is supposed to deal with such matters) by which time the three month primary limitation period in the ET had already expired. The Claimant was then expecting a further meeting with Mr Mills but this did not happen - this caused some further delay.
5. The Claimant experienced several upsetting events during the relevant period. He was a first-aider to a customer who died in his arms on 17/2/23, he and his family were evicted from their rented home on 17/3/23 and after some delay were placed in cramped temporary Council accommodation until 5/11/23; on 27/3/23 an aunt died and on 25/4/23 his young

son was hospitalized. These matters had a negative effect on the Claimant's mental health as confirmed by a letter in the bundle from Tracy Howard, a Respondent "wellbeing champion". I find that these factors contributed to the delay but also strengthen the case for an extension of time.

6. After what the Claimant regarded as an unsatisfactory outcome to his complaint he approached ACAS in the second half of May 2023 and was advised of his rights, following which he took a little time to access a laptop which he used to comply with ACAS EC, and compile and present his claim in June 23.
7. I do not accept that extending time will cause any significant prejudice to the Respondent. It will have to deal in its evidence at the Final Hearing with an in-time claim anyway (in relation to the investigation into the complaint about the incident on 13/2/23). Lisa Snelling is still employed by the Respondent. If extending time does cause any prejudice, this would be outweighed by the prejudice to the Claimant if he was unable to seek a remedy in the ET for alleged racial harassment which he complained about to the Respondent as soon as it occurred.

Employment Judge J S Burns
2/12/2024
For the Tribunal Office:
Date sent to parties: 03/01/2025
