



EMPLOYMENT TRIBUNALS

Claimant
Mr John Latty

Respondent
v Zurich UK General Services Limited

PRELIMINARY HEARING

Heard at: Bristol (in person)

On: 29 March 2018

Before: Employment Judge C H O'Rourke

Appearances

For the Claimant: Ms L Johnstone – support worker

For the Respondent: Mr A Hazelwood - solicitor

JUDGMENT

1. It is 'just and equitable', subject to s.123(1) of the Equality Act 2010, to extend time to permit the Tribunal to have jurisdiction to hear the Claimant's claim of disability discrimination.
2. The Claimant's claims of unfair dismissal and breach of contract (in relation to notice) are dismissed, upon withdrawal.

REASONS

1. The Claimant presented his claim on 3 February 2019, having been dismissed with effect 28 August 2018. This followed two disciplinary hearings, on 10 August and 28 August 2018. He appealed against the decision to dismiss and the outcome of his appeal was on 15 November 2018. The Respondent agreed that any claim in respect of the appeal outcome was in time, but it was common ground that the two disciplinary hearings and the decision to dismiss were not (the latter event being about four weeks out of time).
2. The Claimant sought both to rely on s.123(3) of the Equality Act 2010, as to a continuing act and the 'just and equitable' provisions of s.123(1). The Respondent disputed both, but accepted, in respect of the former issue that it could not be determined at this Preliminary Hearing without hearing evidence and that therefore it would be more appropriately dealt with at any substantive hearing.

3. In respect of any 'just and equitable' extension, the Claimant relied on the following:
 - a. The delay was brief, a maximum of four weeks.
 - b. Such delay would have no effect on the cogency of the evidence.
 - c. The Claimant was reliant on the advice of a volunteer CAB adviser, who told him erroneously that the three-month time limit would run from the date of the notification of the appeal outcome.
 - d. He was awaiting the outcome of the appeal, as he considered that it might reverse the dismissal decision and while it did not, he asserted that it accepted that some element of the fact-finding at the disciplinary stage was incorrect.
4. Mr Hazelwood, on behalf of the Respondent, submitted that:
 - a. It would not be just and equitable to extend time and that the burden was on the Claimant to justify such an application.
 - b. The principle in **Dedman v British Building and Engineering Appliances Ltd [1974] EWCA ICR 53** applied, namely that a claimant could not rely on the failure of advisers to advise him correctly, to extend time and he could, if left seeking remedy, do so against those advisers.
 - c. It was disputed that the appeal outcome fundamentally changed any of the factual findings of the disciplinary panel and the outcome was upheld.
5. **Conclusion**. I find that it would be 'just and equitable' to extend time in this case, for the following reasons:
 - a. Section 123(1) allows the Tribunal a wide discretion to do so.
 - b. The delay in this case, four weeks, is relatively brief, causing no prejudice to the Claimant and having no effect on the cogency of the evidence.
 - c. I accept that the Claimant relied and acted upon incorrect advice from the CAB. The 'Dedman Principle' does not apply in 'just and equitable' cases, but to those having to meet the much more stringent 'not reasonably practicable' test (such as in unfair dismissal cases). Instead, the relevant case law is that of **Chohan v Derby Law Centre [2004] IRLR 685 UKEAT**, which held that a claimant should not be disadvantaged because of the fault of his advisers.

- d. I also accept that he was awaiting the outcome of the Respondent's internal procedures, which while not determinative of itself, is a factor I can (applying **Apelogun-Gabriels v Lambeth London Borough Council [2002] ICR 713 EWCA**) take into account when reaching my decision.

Employment Judge C H O'Rourke

Bristol

Dated 29 March 2019