



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Kennedy

v

(1) Anovo UK Limited;
(2) Ingram Micro (UK) Limited

Heard at: Norwich

On: 14 July 2020

Before: Employment Judge Postle

Appearances

For the Claimant: In person

For the Respondent: Mr Griffith Jones, Solicitor

JUDGMENT on PRELIMINARY HEARING

1. The claims, as set out in the Case Management Hearing of 2 July 2019, from March 2015 to 2 May 2018 are all out of time and it not being just and equitable to extend time, therefore those claims are dismissed.
2. The Claimant is Ordered to pay a deposit of £200 on condition of continuing with the claims in respect of the claim arising on 16 May 2018 and the claim arising on 11 June 2018, £100 deposit for each on the grounds they have little reasonable prospect of success.
3. The claims arising on 26 July 2018 to 20 August 2018 and the victimisation claim being suspension longer than appropriate, are all struck out as having no reasonable prospect of success.

REASONS

1. This is a Preliminary Hearing to determine firstly time issues, whether the matters complained of are single issues or can be construed as extending over a period of time. In which case, time would run at the end of that period under Section 123(3)(a) of the Equality Act 2010 ("EqA 2010"). The primary time limit for single acts is found at Section 123(3)(b) and runs from when the person in question decided upon the acts complained of.

The time limit is 3 months from the act and extended by the period that is governed by the Acas Early Conciliation. In this case, we know conciliation commenced on 27 June 2018 and concluded on 11 July 2018 and the claim was filed on 22 August 2018. That means the events preceding 7 May 2018 are, on the face of it, out of time.

2. In this hearing we have heard oral evidence from the Claimant. We have heard evidence on behalf of the Respondents' from Mrs Woods, the HR Manager, through a prepared witness statement. The Tribunal also had the benefit of a bundle of documents consisting of 72 pages and a helpful skeleton argument from the Respondents.
3. The witness statement, from Mrs Woods confirms, that in readiness for the general Data Protection Regulations of 2018, all relevant interview notes, correspondence and recruitment information were no longer in the possession of the Respondents as a result of the data being cleansed.
4. Looking at the Claimant's claim, which were identified at a previous case management hearing before, indeed myself in July 2019, pages 44 – 47 of the bundle, they start shortly after the Claimant commenced his employment with the Respondents on 15 June 2015 as a Call Centre Representative, in fact some of the claims appear to start in March 2015 prior to the Claimant commencing his permanent contract with the Respondents.
5. Looking at each of the claims up until 2 May 2018, which are clearly all out of time, the content of each of these relate to isolated single acts; they are clearly not linked or could be seen to be continuing. They are clearly out of time, the next question then, has the Claimant shown good reason why the Tribunal should exercise its discretion to extend time under the just and equitable principles?
6. The Employment Tribunals have a wide discretion to allow an extension of time under the just and equitable test, in Section 123 EqA 2010. But it does not necessarily follow that the exercise of the discretion is a foregone conclusion in a discrimination case. Indeed, the Court of Appeal has made it clear in Robertson v Bexley Community Centre, t/a Leisure Link [2003] IRLR 434, that when Employment Tribunals consider exercising the discretion under s.123(1)(b) EqA 2010, there is no presumption that they should do so unless they can justify failure to exercise that discretion, quite the reverse. A Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule. The onus is therefore on the Claimant to convince the Tribunal that it is just and equitable to extend time.
7. The question I have to ask, is there material before me upon which I could properly exercise that discretion? The Claimant has said he was aware of the Equality Act 2010, he had training in 2012 about the Equality Act, particularly Equality and Diversity. He says that at various times

separated by long periods or gaps in months from March 2015 to May 2018, he felt he was treated unfairly. But the Respondents, he said, always explained to him at the time the treatment and why it was justified. The Claimant did not believe at the time he was being discriminated throughout this period. Furthermore, the Claimant made no effort whatsoever, from his evidence, to explore in this period ways of enforcing his rights if he really felt that his treatment was so bad. In fact, the Claimant has not advanced, before this Tribunal this morning, reasons to persuade the Tribunal that it should exercise its discretion to extend time on the just and equitable principles.

8. I have also considered that there would be considerable prejudice if I were to do so to the Respondents as a result of the five year delay going right back to the beginning of when the Claimant says the treatment he suffered was discriminatory because the Respondents have cleansed a lot of important evidence in readiness for the Data Protection Regulations of 2018.
9. Therefore, the claims are clearly out of time and the Tribunal does not exercise its discretion to extend time.
10. I now deal with the complaints which are in time, commencing with 16 May 2018.
11. Rules 37 and 39 from the Employment Tribunals (Constitution Rules of Procedure) Regulations 2013, state, particularly Rule 37(1)(a),

“A Tribunal may strike out all or part of the claim or response on any of the following grounds: that it is scandalous, vexatious or has no reasonable prospect of success.”
12. Rule 39 states,

“Where at Preliminary Hearing, the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an Order requiring a party to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.”
13. It is true that in the well known case of Chandhok, Mr Justice Langstaff highlighted that there may be occasions when discrimination claims can be properly struck out. One such category is those cases which only relate, or indicate, a possibility of discrimination and without more evidence are insufficient for a Tribunal to conclude that discrimination has taken place.
14. Dealing with the first claim which is in time, of 16 May 2018, having looked at that claim and what is advanced, I conclude that that claim has little reasonable prospect of success and therefore Order a Deposit as a condition of continuing in the sum of £100.

15. In relation to the claim of 11 June 2018, again, I conclude again on the facts advanced, it has little reasonable prospects of success and Order a Deposit as a condition of continuing in the sum of £100.
16. I have Ordered those Deposits on the basis of considering the Claimant was, until recently, gainfully employed.
17. In relation to the claims for 26 July 2018 to 20 August 2018 and the final claim on page 47 of the bundle, that the Claimant was victimised in the length of his suspension being longer than appropriate, I conclude on the facts advanced that they have no reasonable prospect of success. When you look at what is claimed and what is set out at page 46, they clearly have no reasonable prospect of success and therefore I strike those out and those claims are therefore dismissed.

Employment Judge Postle

Date:23/07/2020.....

Sent to the parties on: ..12/08/2020.....

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For the Tribunal Office