



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Akabogu

**Respondent:** Notting Hill Genesis

**Heard via Cloud Video Platform**

**On:** 11 February 2021

**Before:** Employment Judge Davidson

## Representation

Claimant: in person

Respondent: Mr A Allen QC

# JUDGMENT

The tribunal find that the claimant's complaints are out of time and it does not have jurisdiction to hear the claims. They are therefore dismissed.

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## CVP hearing

1. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way.
2. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties.
3. The participants were told that it was an offence to record the proceedings.
4. Evidence was heard from the claimant. I was satisfied that he was not being coached or assisted by any unseen third party while giving his evidence.

# REASONS

## Issues

1. The purpose of the preliminary hearing was to consider the following issues:
  - 1.1. whether any claim or part thereof should be dismissed as out of time;
  - 1.2. whether the claimant should be allowed to amend the pleaded claim;
  - 1.3. whether any claim should be dismissed under rule 37 because it has not reasonable prospect of success;
  - 1.4. whether the claimant should be ordered to pay a deposit under rule 39 on any claim or argument as having little reasonable prospect of success.
2. The claimant submitted a witness statement on his behalf. He also submitted four witness statements in support from former colleagues. These witness statements did not address the issues to be determined and were therefore not of assistance to the tribunal.
3. The claimant gave live evidence and was cross examined.

## Relevant Information

4. The relevant information is as follows:
  - 4.1. The respondent is a community benefit society. The claimant started working for the respondent in March 2014 and he remains employed by the respondent.
  - 4.2. On 25 March 2020 he began early conciliation with ACAS. ACAS issued the early conciliation certificate on 25 April 2020.
  - 4.3. The claimant submitted his claim form on 22 May 2020. The discrimination allegations referred to events in 2016 and 2017.
  - 4.4. A case management hearing took place on 27 October 2020 before EJ Goodman at which the claimant, via his counsel, clarified that his claim related to matters which took place in 2016, 2017, 2018 and stretching into 2019 and was for
    - 4.4.1. direct race discrimination by Mr J Weller and Mr K Brannon (both of whom had left the respondent's employment by 2019);
    - 4.4.2. harassment by Mr Weller; and
    - 4.4.3. victimisation (not particularised).
  - 4.5. EJ Goodman noted that there was little detail of the alleged bullying, there was no account of events between January 2018 and February 2020 and no protected act had been identified. She added that if the claimant sought to add acts or omissions, he should apply to amend the claim. She gave a deadline of 13 November for providing further details of his claim and for any application to amend the claim.
  - 4.6. On 13 November 2020, the claimant submitted a document headed 'Further Information to Particulars of Claim' which the claimant referred to in his covering

email as an 'application for amendment of the claim and further information'. He also attached a N244 Application Notice.

4.7. The Further Information document comprised 25 pages in tabular form split into six numbered sections as follows:

4.7.1. items 1–4 of the Further Information document contained numerous further allegations against Mr Weller and Mr Brannon over the period 2016 to 2019;

4.7.2. item 5 was a claim that “the respondent has kept the claimant in the same role for five years” between 2016-2020;

4.7.3. item 6 claimed that “the respondent used an inappropriate process in investigating a whistleblowing matter” in May 2020.

4.8. It is not clear what discrimination is alleged in relation to items 5 and 6.

4.9. The claimant has not identified what he relies on as a protected act for his victimisation claims. There are various references to grievances raised but it is not clear whether these made allegations of discrimination or how it is alleged that the events he complains of are because of any protected act.

#### Law

5. The relevant part of section 123 Equality Act 2010 states:

##### **123 Time limits**

(1) Subject to [sections 140A and 140B], Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

...

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

6. A tribunal has discretion to extend time where it would be 'just and equitable' to do so under s123(1)(b).

#### Decision

7. I will deal with the time point first and then, if necessary, go on to address the other issues.

7.1. The primary time limit set out in the statute means that any acts prior to 26 December 2019 are out of time. It is accepted that there are no discrimination matters in the ET1 alleged to have taken place after 26 December 2019.

- 7.2. In relation to the Further Information document, I will treat Items 1-4 as further particulars of the claims set out in the ET1 and items 5 and 6 as an application to amend the ET1 to include new claims.
- 7.3. Looking at the evidence on the claim form and the further particulars, there are no claims within time. The claimant has failed to set out a basis for arguing that the acts of Mr Weller and Mr Brennan continue to a time after 26 December 2019, by which time both had left the respondent's employment. He has not linked the allegations against Mr Weller and Mr Brennan with any act which is potentially within time.
- 7.4. The claimant accepts that there is no allegation of discrimination within time so I must conclude that the original claim has been submitted out of time. It must follow therefore that there is no valid claim to amend and the amendment application must fail. In any event, as regards the amendment application, any acts prior to 14 August 2020 are out of time. Item 4 is unspecific with a narrative description covering an extensive period without any specific act of discrimination identified. The complaint in Item 5 refers to something that took place in May 2020, prior to the 14 August 2020 cut-off date. There are, therefore, no acts complained of which are in time as at the date of the amendment application.
- 7.5. The claimant argues that, notwithstanding that the claims are out of time, they are sufficiently important to warrant being heard. He has not put forward any explanation for the lateness of the claims.
- 7.6. I find that the importance of an issue, however significant, is not itself a reason to disregard time limits. Tribunal limits are strict. There must also be a balance between the interests of both parties. I find that allowing these claims to proceed would be unfairly prejudicial to the respondent. The matters complained of took place many years ago and the individuals complained of have been out of the organisation for a significant period. In balancing the prejudice to the parties, the tribunal notes that the claimant is not without a remedy as he told the tribunal that he has submitted another claim relating to other more recent matters
- 7.7. The case law is clear that time limits are strict and the claimant must convince the tribunal to extend time. In this case the claimant has failed to make any application to extend time or made any submissions why it would be just and equitable to do so. He has explained that this is because he does not believe he is out of time.
- 7.8. As regards the amendment application, I find that the matters raised in items 5 and 6 are not further particulars of the ET1 but are new claims. The basis of the claims is not clear and, in any event, they are out of time and no application has been made to extend time.
- 7.9. The victimisation claim remains unspecified and no protected act has been identified. In any event, the allegations of detriment are out of time.
8. In conclusion, I find that the tribunal does not have jurisdiction to hear the claimant's complaints as they are out of time.
9. Having found that the claims are out of time, I do not need to go on to consider the other matters.

Employment Judge Davidson

Date 25 May 2021

JUDGMENT SENT TO THE PARTIES ON  
26/05/2021.

FOR EMPLOYMENT TRIBUNALS