



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Bundu

**Respondent:** Vodafone Limited

**Heard at:** Manchester

**On:** 20 January 2021

**Before:** Employment Judge Slater

## Representation

Claimant: In person

Respondent: Mr S Wyeth, counsel

# JUDGMENT

The Tribunal does not have jurisdiction to consider the complaints of unfair dismissal and race discrimination which were presented out of time.

# REASONS

## Introduction

1. The code V in the heading indicates this was a hearing by video conference (Cloud Video Platform). Both parties were able to participate by these means.
2. This was a preliminary hearing listed to consider whether the Tribunal had jurisdiction to consider the complaints having regard to the relevant time limits.
3. I amended the name of the respondent to Vodafone Limited, no objection being given to this change.
4. The claimant asked for written reasons to be provided, after I had given oral judgment and reasons.

## The complaints

5. I clarified with the claimant the complaints he was bringing. He confirmed these were complaints of unfair dismissal, race discrimination and unauthorised deduction from wages in relation to commission payments due to be paid on 28 April 2020 (for work done in March) and on 28 May 2020 (for work done in April).

6. Mr Wyeth agreed, on behalf of the respondent, that the complaint of unauthorised deductions from wages was presented in time and could proceed to a final hearing. Following my decision that the Tribunal did not have jurisdiction to consider the complaints of unfair dismissal and race discrimination, I dealt with case management of the remaining claim and have made case management orders recorded in a separate document.

7. The claimant informed me that he complained of race discrimination in relation to his dismissal and earlier acts, the last of which was around January 2020, of a manager not telling the claimant and other black people in the same team to stop having a conversation or making noise, but getting someone else, a floor walker, to do this, whereas she approached white employees directly. These earlier acts of discrimination were not detailed in the claim form.

## Facts

8. The effective date of termination and last alleged act of discrimination was 17 April 2020. ACAS conciliation was in the period 29 May 2020 to 26 June 2020. The unfair dismissal and race discrimination complaints about the dismissal should have been presented by 13 August 2020. The claim was presented on 3 September 2020.

9. This hearing was originally listed as a private preliminary hearing for case management purposes. That hearing was converted to a public hearing and extended to 3 hours. The parties were informed by a letter from the Tribunal dated 30 December 2020 that this was:

“to determine whether the Tribunal has jurisdiction to consider the Claim, were they brought within the time required and, if not, whether it would be appropriate to extend time and or whether the claim was brought within further periods was reasonable.”

10. No orders were made for the claimant to prepare a witness statement for this preliminary hearing or for the disclosure of documents relevant to the time limit issue. However, the notice that the hearing was to be by video conference sent by email on 30 December 2020 included instructions about the production of a joint pdf file for use at this hearing which was to include “any other documents relevant to the issues to be determined.”

11. The first explanation the claimant has given as to reasons for not presenting his claim in time was in oral evidence. I record the explanation the claimant has given and return to evaluation of this evidence in my conclusions.

12. The claimant has spoken, at this hearing, of not being able to afford his internet connection at home. However, whether from home or otherwise, the claimant has clearly had access to the internet, at least at times; he spoke of emails to ACAS and presented the claim online.

13. The claimant says he was told he should go to ACAS by his girlfriend and a manager at the respondent who has a law degree. He did this within the primary time limit.

14. The claimant says that the respondent, through ACAS, was not prepared to discuss his unfair dismissal and race discrimination claims but agreed to look at his claim for commission. He says he provided information to them about this, but they did not respond.

15. The ACAS certificate was issued on 26 June 2020 but the claimant did not present his claim until 3 September 2020.

16. The claimant says he understood, based on advice from ACAS that he had 3 months from the issue of the certificate to present his claim, taking this to October (although 3 months would, in fact, take him to late September rather than October). He says he waited to hear from the respondent about the commission but a manager he contacted told him to go on with his employment tribunal case and that is when he presented his claim.

17. I consider it highly unlikely that an ACAS officer would give the wrong advice which the claimant says he was given about time limits. I find that this advice was not given. I accept that the claimant may have misunderstood the position but find that he took no steps to check the correct position. As Mr Wyeth demonstrated during the course of the hearing, a very quick internet search would produce information showing that the claimant did not have 3 months from the ACAS certificate to present a claim.

18. The claimant spoke about mental health issues before and after his dismissal. He produced no medical evidence about his mental health. I accept he spoke to his GP about his mental health but no treatment was given. I asked whether there was any difference in his mental health in the period from his dismissal in April until he presented his claim. His answer did not suggest that there was any deterioration to 13 August followed by an improvement by the time of presentation of the claim. I am not satisfied, on the basis of the claimant's evidence, that his mental health was impaired to an extent that he could not present a claim in time or check the time limit for presenting a claim.

19. The claimant was able to participate in an internal appeal hearing on 14 May 2020.

## **Law**

20. A complaint of unfair dismissal has to be presented within a period of three months beginning with the effective date of termination (subject to the effects of early conciliation), unless it was not reasonably practicable to present the claim in time, in which case it has to be presented within a reasonable time thereafter.

21. A complaint of race discrimination under the Equality Act 2010 must be presented within a period of 3 months, beginning with the act of discrimination (subject to the effects of early conciliation), or within such other period as the tribunal thinks just and equitable.

22. The effect of the early conciliation procedure is that, if the notification to ACAS is made within the initial time limit period, the time is extended by the period of conciliation and there is a minimum period of one month following issue of the certificate in which to present the claim.

23. The onus of proving that presentation of the unfair dismissal complaint in time was not reasonably practicable rests on the claimant. The claimant must explain precisely why they did not present the claim in time. The Tribunal must consider whether, taking into account all relevant facts, it was reasonably practicable for the claimant to present the claim in time. Ignorance of rights will not prevent it being reasonably practicable for a claimant to present their claim in time if they ought to have known of them, for example if they had the facilities and opportunity to find out the relevant information with a quick internet search.

24. The onus is on the claimant to convince the Tribunal that it is just and equitable to extend time to allow the race discrimination complaint to be considered. There is no presumption that time should be extended. The Tribunal must consider whether it was just and equitable to extend time, having regard to all the relevant circumstances, taking a multifactorial approach in which no single factor is determinative. Relevant factors will include the length of and reasons for the delay in starting proceedings.

## **Conclusions**

25. I considered whether the time limit point should be deferred to the final hearing, having invited submissions on this from the parties. However, I considered that the claimant was made aware of the issues to be dealt with today and had a fair opportunity to produce any evidence relevant to the time limit issue, even though no order was made for a witness statement to be produced or for relevant documents to be disclosed. Since all the complaints are out of time, and dealing with this point today would, if the claims do not proceed, save considerable time and expense, I have considered it in the interests of justice that I decide the issue at this preliminary hearing. From the evidence given by the claimant, it is not clear to me that the claimant would be able to provide any better evidence as to the reason for the delay if I deferred a decision on the time limit point. For example, given that the claimant, on his own evidence, only visited his GP once about his mental health and was not receiving any treatment for this, it seemed very unlikely that there would be any medical evidence which would assist the claimant if I did defer the decision.

## **The Unfair Dismissal Complaint**

26. I conclude that it was reasonably practicable for the claimant to present his claim in time. Ignorance of the time limit is no excuse. I have found that the ACAS officer did not advise him that the time limit was 3 months from the certificate. The claimant could easily have found the information about the time limit by a quick search on the internet. I am not satisfied that there was any

health reason making it not practicable to present the claim by 13 August, when he was able to present it by 3 September.

27. I conclude that the Tribunal does not have jurisdiction to consider the complaint of unfair dismissal which is dismissed.

#### The Race Discrimination Complaint

28. The complaint is out of time. I have to consider whether it is just and equitable to consider it out of time.

29. As the claim form stands, I consider that it contains only a complaint of race discrimination in relation to dismissal. I consider that an amendment would be required to pursue other earlier complaints. Since time limit issues would be a relevant factor in considering an amendment application, I have considered the just and equitable point as it would apply to not only the dismissal but also earlier complaints, the latest incident being in January 2020.

30. There is no presumption in favour of allowing a claim to proceed out of time. I must consider all relevant factors, which include the length of delay and the reasons for this.

31. The race discrimination complaint about the dismissal, which is the last alleged act of discrimination, should have been presented by 13 August 2020. The claim was presented on 3 September 2020. This is a delay of 3 weeks. The delay in presenting the claim would not cause the respondent any significant prejudice in terms of memories fading. However, although the delay in presenting the claim is not a very lengthy delay, it is still a significant one where the time limit is 3 months.

32. I have found that the explanation for the delay is, at best, based on a misunderstanding by the claimant of advice given by ACAS. The claimant could, but did not, check the position for himself. I have found that the claimant's mental health was not impaired to an extent that he could not present a claim in time or check the time limit.

33. Although the respondent would not be in any worse a position responding to the claim than if the claimant had presented the claim in time, I conclude that other relevant factors weigh against allowing the claim to proceed out of time. Time limits are important. There is no presumption that claims should be allowed to proceed out of time. I conclude that the claimant could have presented the claim in time. There was no health or other obstacle to doing so. If the claimant misunderstood the position as to the time limit, I consider this insufficient reason to allow the claim to proceed out of time in circumstances where the claimant was aware there was a time limit and could easily have checked the position.

34. I conclude that it would not be just and equitable to allow the claim to proceed out of time. The Tribunal does not, therefore, have jurisdiction to consider the complaints of race discrimination which are dismissed.

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Employment Judge Slater

Date: 22 January 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

8 February 2021

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