



EMPLOYMENT TRIBUNALS
London Central Region

OPH heard by CVP on 8/4/2022

Claimants: Mr J Filipowicz

Respondent: Notting Hill Genesis

Before: Employment Judge Mr J S Burns

Representation

Claimant: in person

Respondent: Ms M Tutin (Counsel)

JUDGMENT

1. Any contract claim which may have been brought by the Claimant is dismissed on withdrawal by the Claimant.
2. The disability discrimination claims are dismissed as they are out of time and it is not just and equitable to extend time.

REASONS

1. At the beginning of today's hearing I asked the Claimant if he was fit enough to conduct the hearing and was happy to proceed and he confirmed that he was.
2. I received an OPH bundle and a written skeleton argument from Ms Tutin.
3. The Claimant presented an ET1 on 19/5/21 claiming disability discrimination. At some point there appears to have been a belief on the part of the Claimant and/or the Respondent that the Claimant also had claimed in contract, although this is not referred to clearly in the ET1. The Claimant agreed today that he is unable to bring a contract claim in these proceedings as he is an existing employee of the Respondent, and he withdrew any such claim.
4. In relation to the disability claims, at a previous PH on 8/9/21, I had listed an OPH on 15/12/21 to consider the following matters:
 - whether the disability discrimination claims have been brought in time
 - if not whether it would be just and equitable to extend time
 - whether the claims should be struck out or a deposit order made on the grounds that they have no or little reasonable prospect of success
 - If this has not been conceded by the Respondent, whether the Claimant was disabled at the relevant time by reason of chronic pain associated with his spine.
5. The fact that the Claimant is and was at the material time disabled as above has subsequently been conceded by the Respondent so that issue had fallen away.
6. I dealt today with the matters in the first and second bullet point above only, it being unnecessary in the circumstances to deal with the matter in the third bullet point.

7. On 8/9/21 I had previously directed as follows *“By 4pm on 15/11/2021 the parties shall exchange by email witness statements of the evidence of any witnesses (including the Claimant) they intend calling at the OPH, such statements to be limited to matters which are relevant to the OPH only”*.
8. The OPH listed for 15/12/21 was adjourned at the Claimant’s request to today because of a personal matter and a fresh direction issued requiring any witness evidence to be served not less than 7 days before the adjourned hearing.
9. The Claimant chose not to serve any witness statement and when at the beginning of today’s hearing I asked him why this was, he explained that he believed the case spoke for itself and that any delays he may have been guilty of in presenting his claim were minor in comparison with the internal delays which he claims the Respondent has been guilty of in dealing with his disability.
10. I am however not able to make findings about any claimed Respondent delay/s not only because the Claimant has not adduced any evidence about this, but also because my task today is not to decide the substantive merits of the claims or defence, but to focus on whether the claims are in time and, if not, whether it would be just and equitable to extend time.
11. In order to ascertain exactly what the claims were I had an extended discussion with the Claimant based on what he had written in his ET1. He explained his claims to me and at the end confirmed that we had identified all the claims he has made in this matter. The claims so identified are as follows;
 - A claim for extra salary for the period January 2019 to March 2020 (as a remedy for “a breach of duty of care” during that period) - a reasonable adjustments claim;
 - Delay in providing a special chair and desk up to March/April 2020 - a reasonable adjustments claim;
 - Forcing the Claimant to go on furlough in April 2020 - a section 13 or 15 Equality Act 2010 claim;
 - The Claimant’s line manager instructing the Claimant on 20/10/20 that if he was in such pain that he had to work on his back or knees or taking medication, he was unfit to work and should take sick leave - a section 13 or 15 Equality Act 2010 claim; and
 - The Claimant’s line manager confirming on 18/11/2020 that she could not at that stage support his application for progression to level 4 housing officer - a section 13 or 15 Equality Act 2010 claim.
12. The reasonable adjustments claim/s extend over a period but end in April 2020. The other matters complained of in the ET1 were single acts all completed on or before 18/11/20.
13. The last date for the Claimant to apply to ACAS for early conciliation in relation to the last matter complained was 17/2/21. In fact the Claimant applied to ACAS on 19/2/21 by which time he was already out of time. Hence the ACAS application had no effect on extending time. Hence when the Claimant presented his ET1 on 19/5/21 the 18/11/20 matter complained of was over three months late, the 20/10/20 matter complained of was 4 months late and the March/April 2020 matters complained of were over 9 months late.
14. The Claimant conceded in his ET1 that his claims were brought late. He wrote when presenting his claim *“I understand that this claim may be submitted pass (sic) the deadline, I would appreciate your understanding that I do not have a legal support and most days I am struggling just to get through the day”*.

15. This is the only material the Claimant has produced in support of any argument that it would be just and equitable to extend time, but it is wholly inadequate. The Claimant has the onus of showing why he should be granted an extension but, notwithstanding two directions, the first of which was given by me 7 months ago, he has not provided any evidence to explain or justify the admitted significant delay or otherwise show why he should be granted a just and equitable extension.
16. Ms Tutin in her skeleton argument provided a helpful summary of law pertaining to extensions of time in discrimination cases which I have considered but which I do not set out again here for the sake of brevity. Many of the considerations highlighted in the case-law cannot be engaged in this matter because the Claimant has failed to explain his reasons for delay or otherwise make out any case for an extension.
17. The length of delay is considerable and if I extended time I consider that there would be degree of forensic prejudice on the part of the Respondent in attempting to deal with stale matters going back to 2019 and early 2020.
18. For the above reasons I would not have granted an extension and would have dismissed the claims in any event.
19. Other secondary matters which I consider support the correctness of my decision are as follows;
20. There was no time for any ACAS conciliation, the certificate being granted on the same day as it was applied for, (19/2/21) which circumvented the purpose of the whole scheme;
21. The Claimant is an existing employee and litigation is not conducive to an harmonious employment relationship.
22. It is agreed that the Respondent has been engaged with OH trying to help and deal with the Claimant's disability - getting OH reports, ordering special equipment, putting him on furlough for an extended period, agreeing to flexible working etc
23. The claim that there was an historic failure to make reasonable adjustments in delaying the provision of equipment is a matter which has already been addressed internally through an internal grievance process and is not a current issue from a practical work-place point of view.
24. Although I have not investigated this or reached any final decision about it, it appears at face value that the claim that it was unlawful discrimination for the line manager not to support the Claimant's application for career progression in November 2020 when he had been absent from work for most of the period since the end of April 2020, would be a weak claim with little reasonable prospect of success.
25. To the extent that the Claimant was waiting for matters to be dealt with internally, (a matter which however he has not himself stated) he knew the outcome of his latest grievance in mid-December 2020 but still waited 5 months thereafter to present his claim.
26. If there are new claimed discriminatory acts or omissions affecting the Claimant in his ongoing employment, which post-date the ET1 in 2203419/21 and which are not time-barred the Claimant can issue a fresh claim in relation to those matters. However, he should preferably try to work out matters with the Respondent either directly or through ACAS before doing so.

J S Burns Employment Judge

2203419 2021

London Central
8/4/2022
For Secretary of the Tribunals
Date sent to parties : 08/04/2022
