



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 14/4/2022

Claimant: Mr A Kollikho

Respondent: The Net A Porter Group Ltd

Before: Employment Judge Mr J S Burns

Representation

Claimant: no appearance

Respondent: Ms H Patterson (Counsel)

JUDGMENT

1. The Claimant's application to add to/amend his claims is dismissed
2. The claims are struck out.
3. The Respondent's application is otiose and is not dealt with.

REASONS

1. The matter was listed at a previous PH on 22/3/22 for an OPH today to determine principally whether time should be extended so that the claims (which are admittedly brought out of time), can be heard. EJ Goodman recorded (paragraph 3 of the CMO) "*he explained he had worked on a basis in the intervening years but also had psychological therapy in 2015 and 2016, a social worker suggested last year he could bring the claim - the claimant has had some access to legal advice from the CAB and a solicitor - I explained that the tribunal would have to have to understand why the Claim was late and assess the prejudice he would suffer if not allowed to bring claim against the prejudice to respondent if he was allowed to bring claim with limited documents and where witnesses may no longer be employed (for example).*"
2. Subsequently the Claimant provided some medical evidence and an application to add new causes of action to his ET1, but has not provided any witness statement to support any argument for extending time. He elected not to attend the OPH today. Early on 14/4/22 he sent an email which reads "*Please go ahead with the hearing today as previously organised. I failed to find representation to attend in my absence, but I will be keeping an eye on all documentation and the judges outcome regarding the dispute. Any concerns, please do let me know. Many thanks, Alexander Kollikho*"
3. I was referred to an OPH bundle and heard oral submissions from Ms Patterson.

The amendment application.

4. Although mainly a relabelling exercise, the proposed amended claims are significantly out of time, the last allegation being in January 2015. The proposed amendment lacks clarity. The Respondent would be subject to significant prejudice in trying to deal with them - for example they include sexual discrimination and harassment allegations involving

additional individuals all but one of whom cannot be identified or no longer works for the Respondent. The Claimant has chosen not to attend so has not explained why he did not include the subject of the proposed amendment in his original claim form. I have applied the Selkent principles.

The lateness of the claims.

5. Neither Claimant or Respondent can identify with precision when the employment ended. Claimant originally said resigned on 1st October 2014. However, in his further and better particulars served on about 29 March 22, he has made fresh allegations the last of which was in January 2015. The Respondent, because of the lapse of time, cannot find any record of the date or manner in which its employment of the Claimant ended. Giving the Claimant the benefit of the doubt and presuming his employment ended in January 2015, he would have had until May 2015 to submit his claims. However applying this approach he is still well over 6 years out of time.
6. The Claimant applied to ACAS on 12/11/21 - too late to benefit from any extension under regulations and submitted his ET1 claim on 17/12 21 - nearly 7 years after employment ended and 6 and a half years late.
7. The burden on Claimant to show that time should be extended. He has provided no witness statement. I have already referred to paragraph 3 of EJ Goodman's order of 22/3/22. In addition the Claimant has produced some limited medical evidence which indicates that he suffered depression from 2011 and was diagnosed with ADHD and that he was abusing alcohol in 2016 and 2017 when he was depressed and diagnosed with paranoia in November 2018. There does not appear to be anything helpful to his application from January 2015 to February 2016 and in any event there is no reference or explanation why any issues referred to in the medical evidence prevented him submitting a claim in time.
8. Significant prejudice would be caused to the Respondent if these claims were allowed now. It would be very difficult or impossible to have a fair trial. This is not simply because of the Claimant's own poor recollection but because the Respondent has identified 7 witnesses only one of whom is still employed. The Respondent has no record of having ever employed 4 of them. The key witness (KL - now KC) had left the Respondent's employment several years before ET1 was presented and Respondent is unaware of her current whereabouts. CH is another key witness who left in September 2021 before submission of claim. There is no evidence available to Respondent that Claimant raised a grievance during his employment so the Respondent would be faced with having to carry out a fresh investigation over 7 years later with no or very few documents and absent/missing witnesses.
9. The Claimant has referred to section 28 of the Limitation Act 1980 which states in subsection (1) as follows; "*(1) Subject to the following provisions of this section, if on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired*"
10. However the word "*disability*" has the following restricted meaning in the LA 1980 per section 38(2) "*For the purposes of this Act a person shall be treated as under a disability while he is an infant, or lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct legal proceedings*". This is different from the definition of disability under the Equality Act 2010.
11. The Claimant was not an infant nor is it suggested or shown that in the period January 2015 - December 2021 he lacked capacity to conduct legal proceedings. Hence these

provisions are irrelevant.

12. The Claimant has not shown that it was not reasonably practicable to bring his Unfair dismissal and "other payments" claims in time nor has he shown that it would be just and equitable to extend time to allow his discrimination claims to proceed.
13. Hence they are outside the jurisdiction of the Tribunal and must be struck out.

J S Burns Employment Judge
London Central
14/4/2022
For Secretary of the Tribunals
Date sent to parties : 14/04/2022
