



EMPLOYMENT TRIBUNALS

Claimant: Mr J Maurin-Massa

Respondents: (1) PMP Recruitment Limited
(2) Amazon UK Services

Heard at: East London Hearing Centre (by CVP)

On: 27 October 2022

Before: Employment Judge Shastri-Hurst

Representation

Claimant: Ms P Massa (Mother)

Respondents: (1) Mr Brill (solicitor)
(2) Mr Z Sammour (counsel)

RESERVED JUDGMENT

1. The Claimant's claim of race discrimination against the Second Respondent (3207564/2021) is struck out, as the Tribunal does not have jurisdiction to hear it.

REASONS

INTRODUCTION

1. The claimant commenced employment with the first respondent, 'PMP', a recruitment agency, on 13 May 2019. He was assigned to a role within the second respondent, 'Amazon', shortly thereafter. On 21 June 2021, a complaint of a sexual nature was made against the claimant by a colleague at Amazon. The claimant was suspended as a result on 27 June 2021., and was instructed by his Operations Manager at Amazon to leave the site and not return unless or until he was instructed to do so. On 30 June 2021, the claimant's assignment with Amazon was terminated as a result of internal investigations by PMP. On 19 August 2021, the claimant raised a complaint, including a complaint of racism.

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2. The claimant started the ACAS Early Conciliation process against PMP on 6 October 2021; the ACAS certificate was issued on 16 November 2021. The claimant started a separate ACAS Early Conciliation process against Amazon on 11 October 2021, which ended on 21 November 2021. He presented his claim form against PMP to the tribunal on 15 December 2021; his claim form against Amazon was presented a few days later on 19 December 2021. The claims were consolidated by an order sent to the parties on 12 March 2022 - [58]. The claimant brings the following claims:
 - 2.1. Direct race discrimination;
 - 2.2. Unfair dismissal;
 - 2.3. Unpaid notice pay;
 - 2.4. Holiday pay.
3. The claims focus on the claimant's suspension, removal from the Amazon site, and the ensuing investigation and disciplinary process which led to the termination of his assignment with Amazon. It is the claimant's case that he was on the cusp of signing a permanent employment contract with Amazon, but this opportunity was taken away from him as a result of the disciplinary process, that he alleges was tainted by race discrimination. The claimant is Black British.
4. PMP denies the claims. Its position is that the claimant was not dismissed, it was only his assignment with Amazon that was terminated. It also denies any discriminatory treatment against the claimant. In the alternative, if the tribunal finds that the claimant was dismissed, PMP will argue that the dismissal was fair in all the circumstances, by reason of the claimant's conduct.
5. Amazon denies that it was the claimant's employer, and also denies any discriminatory treatment of the claimant.
6. This case has been the subject of a telephone preliminary hearing, on 21 July 2022, before EJ Burgher - [91]. At that preliminary hearing, the judge listed the matter for today's hearing, in order to deal with the issues set out below.
7. The claimant was represented by his mother, Ms Massa. Amazon was represented by Mr Sammour, and Mr Brill attended for PMP. I am grateful to them all for their assistance in dealing with the hearing today. I had the benefit of a bundle of documents of 101 pages, and initially was provided with a skeleton from Mr Sammour and two authorities; I will come back to this later. The claimant gave evidence, and both parties made helpful submissions.

ISSUES

8. The issues for this hearing were set out by Employment Judge Burgher on 21 July 2021 and are as follows – [91]:
 - 8.1. Whether to strike out the claimant's claim against Amazon (claim number 3207564/2021) on the grounds it is being presented out of

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time; and/or that it has no reasonable prospects of success; alternatively,

- 8.2. Consideration will be paid to whether the claimant should be ordered to pay a deposit as a condition of pursuing his claims against Amazon.
9. Mr Sammour clarified that Amazon did not seek to argue that the race claim had no prospects of success, but if the tribunal did decide to extend the time limit so that the race claim continues, he did argue that the race claim has little prospects of success and that a deposit order should be made to reflect this, in the amount of £100.
10. The claimant and Ms Massa clarified that it was common ground that PMP was the claimant's employer, and not Amazon, and that they therefore did not seek to pursue an unfair dismissal claim, or any pay claims, against Amazon.
11. The issues for me to consider today therefore narrowed to:
 - 11.1. Whether the claimant's race claim against Amazon was presented outside the primary three-month time limit, and, if so, whether it was presented within such time as the tribunal considers just and equitable; and,
 - 11.2. If the tribunal finds that the claim is in time, whether the claim has little reasonable prospects of success, so as to merit a deposit being paid in order for the race claim to continue to a final hearing.

PRELIMINARY ISSUE

12. Prior to the hearing, I had seen two emails from Ms Massa, dated 24 and 25 October 2022, indicating that she sought a postponement of today's hearing. Unfortunately, those emails were not copied to the respondents, however Mr Sammour told me that he had thought a postponement may be sought today.
13. From the emails, it appeared that an adjournment was sought on the basis of late receipt of disclosure; it transpired that the disclosure in question was primarily the result of a data subject access request made by the claimant and his mother, as opposed to documents for today's hearing.
14. I explained to the claimant and Ms Massa the purpose of today's hearing, which was to consider the relatively narrow issue of time limits and prospects of success, as opposed to dealing with the facts and merits of the claim itself. However, Ms Massa indicated that she still wished to seek an adjournment on two grounds:
 - 14.1. to have the opportunity to take legal advice; and,
 - 14.2. to have time to read Mr Sammour's skeleton argument and the 101 page bundle produced for the hearing today, both of which she received a couple of days before today's hearing.

15. I therefore listened to both parties' submissions on the issue of an adjournment.

Decision on adjournment application

16. The application to adjourn arose for the first time on 24 October 2022, less than seven days before the hearing. As such, I have to consider rule 30A of Schedule 1 of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013** ("the Rules"), which states:

- (1) An application by a party for the postponement of a hearing shall be presented to the Tribunal and communicated to the other parties as soon as possible after the need for a postponement becomes known.
- (2) Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where –
 - a. all other parties consent to the postponement and –
 - i. it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or,
 - ii. it is otherwise in accordance with the overriding objective;
 - b. the application was necessitated by an act or omission of another party or the Tribunal; or,
 - c. there are exceptional circumstances.

17. The claimant relies on two main points:

17.1. he has not had time to read all the documents the respondents have sent through to him; and,

17.2. he wishes to seek legal advice.

18. Given that Amazon opposes the application to adjourn, r30A(2)(a) is not applicable to this case. I therefore have to consider the other two possible limbs.

19. Firstly, is the need for an adjournment the fault of Amazon or the tribunal – r30A(2)(b)? Ms Massa relied upon the argument that there had been late production of documents and skeleton argument to the claimant from the respondents.

20. I note that the bundle of documents before me is the same as the one that was used by the parties at the July 2022 preliminary hearing, the only addition being the order that arose from that hearing. That order was sent to the parties on 26 July 2022. Therefore, all the documents in the bundle have been seen by the claimant and in his possession for some months; indeed many of them were written by Ms Massa or himself. There is therefore nothing in the bundle that would have come as a surprise to the claimant or his mother, or that has not been seen before. I also note that there were no orders made for this hearing; in other words, Amazon was not in breach of any requirement to send the claimant a bundle within a

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certain time frame. In fact, if anything, it is helpful to have a paginated bundle of documents.

21. In relation to Mr Sammour's skeleton argument, there was no order for a skeleton argument to be produced, however, as standard, many counsel produce skeletons in these sort of cases in order to set out their stall prior to the hearing. This is often a useful exercise for the tribunal and in fact the other party, as they get an understanding of the arguments prior to the hearing. However, Mr Sammour has indicated that, if the skeleton argument causes difficulties, he will happily abandon it and make his submissions in full orally. Further, I am in a position to explain anything to the claimant and his mother that is not clear to them in terms of the law.
22. Therefore, I find that the request for an adjournment is not due to any fault by Amazon (or indeed the tribunal).
23. The second possible route to an adjourn is whether there are any exceptional circumstances here. In short, I find that there is nothing particularly unusual about this case. The tribunal deals with litigants in person and lay representatives day in day out, and the process is designed so that people can represent themselves.
24. Dealing with the claimant's two points specifically:
 - 24.1. The assertion that the claimant and his mother have not had sufficient time to read all the documents. I have already dealt with this above: there is nothing new in the bundle of documents. In terms of Mr Sammour's skeleton, we shall put that to one side, given that Mr Sammour is content not to rely on it. Therefore, there is no prejudice to the claimant in relation to the documents.
 - 24.2. The assertion that the claimant needs time to seek legal advice. The parties have been on notice of this hearing and the issues that we will be dealing with since 21 July 2022. In fact, at the July hearing, Employment Judge Burgher specifically advised the claimant to seek some independent legal advice on the issues to be dealt with today. It transpired that the claimant had indeed sought some legal advice after the July preliminary hearing. The claimant has had ample time to get any further legal advice he required.
25. I considered the overriding objective, and specifically note the following factors:
 - 25.1. The need to deal with issues in a way that is proportionate to the complexity and importance of the issues;
 - 25.2. Avoiding delay as far as possible; and
 - 25.3. Saving expense (on which point I note that, if the case were to be adjourned today, there is a real risk that Amazon, and quite possibly PMP, would apply for their costs of attendance from the claimant);

26. It is also important that both parties are on an equal footing. However, as I have set out already, the claimant has had ample time to obtain legal advice, and in fact has done so.
27. In terms of prejudice to each party if the hearing were to be adjourned, or not; the prejudice to the respondent could be addressed by way of a costs order, if appropriate. On the other hand, if the hearing goes ahead, I see limited prejudice to the claimant, as we are not dealing with the main issues in the case but fairly limited issues. Also, it is not clear what more the claimant could achieve through an adjournment, given that he has already sought legal advice (and has had ample opportunity to do so), and has seen all the documents previously. Even if the hearing today were to go against the claimant, he still has his claims against PMP to pursue.
28. Taking all relevant factors into account, I am not satisfied that any of the requirements under rule 30A are met. Therefore, I refused the application to adjourn today's hearing.

LAW

Time limits

29. The time limit in which a claimant is to present a claim for discrimination is set out in s123 of the **Equality Act 2010**:
 - (1) Subject to s140B, proceedings on a complaint within s120 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.
30. The issue as to whether a claim is brought within such time as is just and equitable has been established to be one of fact for the first instance tribunal.
31. It is well established that, despite the broad scope of the “just and equitable” test, the default position is that time limits within the tribunal are to be strictly adhered to. There should be no presumption that the tribunal’s discretion to extend time will be exercised: indeed, the exercise of discretion should be “*the exception rather than the rule*” – **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434**. The burden of persuading an ET to extend time falls squarely to a claimant.
32. The tribunals have been advised that s33 of the **Limitation Act 1980** does not provide a mandatory checklist, but can offer guidance in the exercise of discretion. Two important factors for consideration will be the length of, and reasons for, delay in presenting the claim, as well as whether the respondent is prejudiced by the delay – **Southwark London Borough Council v Afolabi 2003 ICR 800**. The accepted approach now is to take into account all the factors in a particular case that the tribunal considers are relevant, including the length of and reasons for delay – **Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23**. The strengths and weaknesses of the claim may also be relevant (but not definitive) to a decision on extending time – **Lupetti v Wrens Old House Ltd 1984 ICR 348**.

33. The tribunal must also consider the balance of prejudice to the parties if the extension is granted or refused – **Rathakrishnan v Pizza Express (Restaurants) Ltd 2016 ICR 283**.
34. In terms of ignorance of rights as reason for delay, this will only lead to an extension of time being granted where the ignorance is reasonable. This requires the tribunal to consider not whether the claimant in fact knew about his rights, but whether the claimant *ought to have known* about his rights (and associated time limits) – **Porter v Bandrige Ltd 1978 ICR 943**.

Deposit order

35. The Tribunal has the power to make deposit orders against any specific allegations or arguments that it considers has little reasonable prospect of success under r39 of the Rules:

39(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim...has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

39(2) The Tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

36. The rationale of a deposit order is to warn a claimant against pursuing claims with little merit, which may leave them open to a risk of costs should they proceed with the claim and lose on the same basis as identified as the reason for the making of a deposit order.
37. The purpose of such an order is not to restrict disproportionately access to justice, hence any order made must be for an amount that is affordable by a party, and can be realistically complied with – **Hemdan v Ishmail and anor [2017] IRLR 228**.
38. If I decide to make a deposit order, I must give reasons, not only for the fact of the order, but also for the amount of that order – **Adams v Kingdon Services Group Ltd EAT/0235/18**.

FINDINGS OF FACT

39. I have only made findings of fact so far as they are relevant to the applications before me. Where I have not covered certain facts, it is because they are not relevant to the issues I have set out above.
40. I have not heard any oral evidence on these matters from either party (other than from the Claimant on the limited issue of his means). The facts that follow are therefore based solely on the documents I have seen. These findings will therefore, inevitably, be incomplete. It will be for the tribunal of the final merits hearing to make full findings on what actually occurred between the two parties throughout the relevant chronology. Any findings set out below are therefore not binding on that tribunal.

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41. As set out above, the claimant commenced employment with PMP on 13 May 2019, and started his assignment with Amazon shortly thereafter.
42. In terms of his race claim against Amazon, the claimant asserts that he was treated less favourably than Amazon would have treated someone in his shoes, but who was not Black British, in two ways:
 - 42.1. Requiring the claimant's removal from the site; and,
 - 42.2. Withdrawing an offer of permanent employment with Amazon.

Applicable time limit

43. It is common ground that 27 June 2021 was the date on which the claimant was asked to leave the Amazon site, following a complaint of sexual misconduct being made against the claimant. Amazon denies that it actively withdrew an offer of permanent employment, however Mr Sammour highlights that it is the claimant's case that it was because of the allegations made against the claimant that any such offer was withdrawn. Therefore, in terms of the date on which time starts to run for this second point, it makes sense that (on the claimant's case) any decision to withdraw an offer was made at the same time that the claimant was invited to leave the site.
44. Therefore, in relation to both acts of less favourable treatment, the clock starts to run for the purpose of time limits on 27 June 2021.
45. This means that the claims should have been presented (i.e. the claimant should have commenced the ACAS early conciliation process) by 26 September 2021. He instead waited until 11 October 2021. The claimant's race claim is therefore 15 days out of time.

Claimant's actions from June 2021

46. On 27 June 2021, it occurred to the claimant that the treatment he had experienced that day may be connected to his race. When I asked him why this was, he said that on him asking questions, information was kept from him, such as the name of the complainant. This lack of transparency made him think that there was something else behind Amazon's conduct, and he concluded that it was his race. The claimant also told me that the allegation was like a "bombshell" to him, and the lack of safeguarding put in place by Amazon for him also made him think there was something else going on here, namely race discrimination. The claimant mentioned some historic behaviour by people at Amazon that made him think his race was an issue: he told me that when he made any mistakes, or when social distancing was an issue, he was treated more severely than others. His evidence was that he felt picked on and singled out, and he concluded that this must be because of his race.
47. Towards the end of the claimant's assignment with Amazon (July 2021), he and his mother were given some advice from friends and colleagues who informed them that they should approach ACAS for some advice. As at July, the claimant was unclear as to how the investigation into the alleged

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misconduct would conclude, so ACAS told him to wait to see out the investigation. The claimant mentioned race discrimination to ACAS in mid-July.

48. The claimant told me that ACAS informed him that there was a time limit for presenting claims and gave him a specific date for entering the claim, however he could not remember what that date was. I note that the claimant in fact started the ACAS early conciliation process against the two respondents on two different dates. It seems unlikely that he would do this if he had been told a specific date by ACAS: I therefore find that ACAS did not give him a specific date.
49. At this time, the claimant was suffering with stress due to the impact of the allegation, and the fear that the allegation would affect his reputation. He told me that he was suffering from lack of sleep and lack of appetite. However, he did not seek any professional help for this stress, but relied on family and friends for support.
50. In August 2021, around the time of the claimant making a subject access request, he and his mother obtained some legal advice. The results of the subject access request were received at the end of September 2021, and at this point the claimant's mental state began to improve.
51. The claimant was asked about any research he did online to understand the time limits that applied to race discrimination claims. His evidence evolved on this point. Initially he said he did not realise that they should research time limits. When pushed by Mr Sammour, he then stated that he and his mother tried to look up time limits through Google, but this did not give a clear answer. He said he understood how to use Google, but you have to know what you are searching for. He then told me that in fact he did not try searching for "time limit race discrimination", or anything relating to time limits, but instead was looking up support from ACAS. He and his mother hoped that ACAS would tell them more about the relevant time limits. I find that the Claimant did not in fact use the available resource of the internet to look up any information regarding time limits for race discrimination claims.

The claimant's financial position

52. I explained to the claimant that, if I decided that a deposit order was appropriate, I would need to decide how much money to order him to pay as a deposit. In order to make this decision, I needed to understand a bit about his finances.
53. The claimant commenced a new job in March 2022, and takes home £350 each week. This is his sole source of income. He lives with his parents and contributes to the household by paying £50-£70 each week. He pays £35 a month for his mobile phone, and has no other outgoings he could think of. He has no credit cards or loan repayments, and has savings in the sum of around £3,000.
54. This means that, on the evidence the Claimant gave, he has a disposable income of approximately £270 a week.

CONCLUSIONS

Length and reason for delay

55. The length of delay in presenting the claim is 15 days. I find that the reason for the delay in presenting the claim was the claimant's lack of knowledge of time limits. The issue then becomes whether that lack of knowledge was reasonable in itself.
56. I conclude that the claimant's ignorance of the applicable time limits was not reasonable. He had access to ACAS, who told him of the existence of time limits. He took no steps to find out any more information about time limits, despite having access to ACAS and the internet (on which there is a raft of clear and down to earth information about time limits). Further, the claimant has, at various times during this litigation, sought legal advice, including in July 2021, at which point the claimant was still within the time limit for presenting a claim, and was aware by this time of the existence of time limits from ACAS. A reasonable person would have asked their legal professional for advice on time limits, or would have used the internet to glean more understanding. I therefore find that the claimant's lack of knowledge on time limits was not reasonable.
57. Although the claimant mentioned he was suffering from stress, I am not satisfied that this was a reason for the delay. The claimant and his mother were able to take steps such as contacting ACAS and getting legal advice in summer 2021. Also, the claimant did not seek any medical professional help for his stress.

Merits of the claim

58. In any race discrimination claim, one of the main issues is that of causation. In other words, the less favourable treatment must be because of the claimant's race. It is necessary for there to be something more than just a difference in race and a difference in treatment for a direct race discrimination claim to succeed – **Madarassy v Nomura International plc [2007] EWCA Civ 33**.
59. I gave the claimant several opportunities to explain why he considered that the treatment he was subjected to was because of his race. I have set out his answers in my findings above. Although, evidently, I have not heard all the evidence that a tribunal dealing with the final hearing would hear, it appears that it would be difficult for a tribunal to conclude that there was "something more" here. I conclude that this is a case that does not enjoy reasonable prospects: I do not go so far as to say that it has no reasonable prospects.

Balance of prejudice

60. In terms of prejudice suffered by Amazon should the claim proceed, Mr Sammour has quite sensibly not sought to argue that Amazon would suffer any forensic prejudice. Evidently, Amazon would face the general

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prejudice of having to defend a claim that was presented outside the statutory time limits.

61. What about the prejudice to the claimant if the claim is struck out? The claimant still has his claim against PMP, which not only encompasses race discrimination, but unfair dismissal and pay claims as well. He therefore has the opportunity to air these serious allegations in front of a full tribunal. If those claims are well-founded, the claimant still has a route to a remedy.
62. Taking into consideration all factors of relevance within the facts of this case, I find that the claim was not presented within such time as was just and equitable. The claim is therefore struck out as the tribunal does not have jurisdiction to hear it, given it was presented out of time.
63. In terms of the deposit order, if I had extended time, I would have made a deposit order in the sum sought of £100, as I am satisfied that the claim has little reasonable prospects of succeeding. The sum of £100 would not inhibit the claimant's access to justice, given his financial situation set out above.
64. Given that the claimant clarified in this hearing that his unfair dismissal claim and pay claims are just against his employer, PMP, there are no surviving claims against Amazon. I note that in the claim form against Amazon, the boxes for unfair dismissal and pay claims were not ticked; I therefore do not consider that there were live claims for unfair dismissal and pay against Amazon that need a formal judgment dismissing them.

**Employment Judge Shastri-Hurst
Dated: 9 November 2022**