



EMPLOYMENT TRIBUNALS

Claimant: Mr Abid Hussain

Respondent: The Co-Operative Group Ltd

Heard at: Birmingham

On: 06 March 2018

Before: Employment Judge Cocks

Representation

Claimant: In person

Respondent: Mr A. McPhail, Counsel

RESERVED JUDGMENT

REASONS

1. The Claimant presented his claim form on the 30 March 2017. At the Preliminary Hearing on the 23 February 2018, there was insufficient time to deal with the out-of-time issues. I heard evidence from Mr Hussain and had submissions from both parties. The issue for me is whether any claim is out-of-time and, if so, whether it would be just and equitable to allow it to continue to a full hearing.
2. In order to ascertain when the events about which the Claimant complains occurred, I have had regard to the claim form and, in particular, the response to the request for further information dated 28 June 2017. This was prepared for Mr Hussain by a Solicitor.
3. I have already decided that, in relation to the period 10 May 2016 to 30 March 2017, the direct race and direct disability discrimination claims are struck out, and I have ordered the Claimant to pay deposits as a condition of continuing with his claims for a breach of a failure by the Respondent in respect of the allegations that the Respondent failed to make reasonable adjustments and discrimination arising from disability, again for the same period.
4. Accordingly, from the Further and Better Particulars, the direct race discrimination claim must now relate to the period July 2015 – 09 May 2016. The direct disability discrimination claim is for the period from June 2015 to the 09 May 2016. Subject to the Claimant paying the Deposit Order, the failure to make reasonable adjustments and discrimination arising from disability claims relate to the period June/July 2015 to 10 May 2016.

5. As a result of making the deposit orders, I do not consider it appropriate to deal with the out-of-time issues in relation to those two claims at this point. I do however deal with the direct race discrimination and direct disability discrimination claims from June/July 2015 to 10 May 2016. These direct discrimination claims are clearly out-of-time. The Respondent's case is that the gap from May 2016 to 30 March 2017 cannot be bridged and events prior to the 10 May 2016 cannot be considered as conduct extending over a period. The Respondent further says that there are no good grounds for the just and equitable extension.
6. Mr Hussain submits that he was not aware of the three-month time limit; he was not aware of the statutory time limits and that he delayed putting in his ET1 because he was awaiting the outcome of a grievance he submitted on the 17 June 2016 and says he received the reply on the 02 March 2017. He does not argue that the claims were in time as there was conduct extending over a period. He relies very much on the just and equitable extension of time to enable these claims to go ahead.
7. I heard evidence from Mr Hussain, which was challenged by the Respondent, as to why he did not make his claims earlier. Mr Hussain told me that his Solicitor told him on the 22 November 2016 he could bring claims to the Tribunal. Although he knew about the time limit in November 2016, he only decided to bring a claim after he found out the outcome of his grievance on the 02 March 2017.
8. On pages [114-121] there is a copy of a letter dated 17 June to the Respondents from Mr Hussain's Solicitors, Angels Solicitors LLP. This detailed letter set out Mr Hussain's grievance. It also makes reference to relevant sections of the Equality Act. Whilst accepting that he had told his Solicitors about his situation in detail, and this is reflected in the letter, Mr Hussain says that his Solicitor did not advise him of time limits at that point in time. He further said that when he spoke to his Solicitor no indication was given by the Solicitor and that he could bring his case to the Tribunal.
9. It is put by the Respondent that the Claimant is mistaken about not being told about bringing a Tribunal claim and the time limits for doing so in the June meeting with his Solicitors. Whether or not he was told at that meeting, he certainly, on his own case, knew on the 22 November 2016. Bearing in mind the period concerned is prior to the 10 May 2016, even if the Claimant had brought a claim at that point, it was out-of-time. It was out-of-time in relation to the allegations prior to the 10 May 2016.
10. The Claimant says that he received the grievance outcome on the 02 March and had delayed bringing his claims as he was waiting the grievance outcome. When questioned about this, it was put to him that he had approached ACAS in respect of early conciliation in February and so this could not have been the waiting for the grievance outcome could not have been the reason as this was before the Claimant knew the outcome of the grievance.
11. It is the Respondent's position that it did not receive the grievance in June 2016 and it was not until November that the Solicitors sent a chasing letter. It is put to me that the Claimant has given no clear explanation as to why, if the grievance went in on the 17 June 2016, the Claimant made no attempts to chase it up for nearly six months.
12. I accept the Claimant's evidence that he only knew for certain about bringing a Tribunal claim and the time limits for doing so in November 2016. However, he was legally represented, it is clear from the Solicitor's letter of grievance that they

knew some of the allegations went back to 2015 and yet there has no explanation as to why the Claimant didn't go to ACAS and submit his claim, or instruct his Solicitors to do so, in November 2016. Further, he was legally represented at this time. Whilst it might be understandable from an unrepresented Claimant to think that he should await the outcome of the grievance before bringing a Tribunal claim, a Solicitor would have known that this is not a good reason to delay putting in a claim, particularly one which involves allegations going back to 2015.

Conclusions

13. The allegations of direct race and disability discrimination are clearly out-of-time. Although the Claimant has not made submissions about the matter, I have considered whether they could be seen as conduct continuing over a period ending with a date which would be in time. Irrespective of the gap from the 10 May 2016 to 30 March 2017, there is no evidence that there was a course of directly discriminatory treatment of the Claimant because of his race or disability during this period. Different personnel were involved in events prior to the 10 May 2016. The decision maker in the earlier period was not Mr Gill. There is a clear break which cannot be bridged.
14. Which brings me to whether it would be just and equitable to extend time so that the claims of direct race and direct disability discrimination relating to the period June/July 2015 – 10 May 2016 can go ahead.
15. Whilst accepting Mr Hussain's evidence that he was not advised about time limits to bring a claim to the Tribunal in June 2016, he clearly did know on 22 November 2016. There was then a delay until the 30 March. I do not accept the explanation, as he was legally represented, that he was awaiting the outcome of the grievance. His approach to ACAS before knowing the outcome of the grievance indicates that he intended to bring a Tribunal claim in February. Apart from this, no explanation has been given as to the delay from November to 30 March.
16. But that is only one of the factors I have to consider. I must weigh up the relative prejudice caused to both parties. There is some prejudice to the Respondent in looking at matters between June 2015 to May 2016. Manager's memories fade, Mr Parratt who dealt with the earlier period has left and there is no evidence that decision making by other individuals in the earlier period influenced Mr Gill's decision making.
17. I have also considered the merits of both direct discrimination claims. In effect, the allegations of direct race and disability discrimination are the same allegations for the earlier period as they are for the period from the 10 May 2016 to 30 March 2017. In paragraph 5 of the response to the request for further information, under direct discrimination, the Claimant states that the less favourable treatment which is the subject of his claim against the Respondent began when he returned to work in July 2015 and continued until the claim form was submitted. The less favourable treatment identified was being denied the opportunity to work in the Operations Room and the Goods In office. This claim is essentially the same as the one which has been struck out, the allegations which have been struck out in relation to the later period. The only reason Mr Hussain gives for believing he was discriminated against on the basis of his race is that he was denied the opportunity of working in the Operations Room because he is Asian and that the Respondent did not want Asian workers in the Operations Room. As I found in the strike out application, the Claimant accepted that one other Asian has worked in the Operations Room and the Respondent

told me that there were two Asian workers in that room. Accordingly, I am of the view that for the same reasons as I struck out the direct race discrimination claim for the period 10 May 2016 to 30 March 2017, that particular claim in relation to the earlier period also has little reasonable prospect of succeeding.

18. Taking these factors into account, the lack of good reason for not bringing his claims earlier, and the prejudice caused to the Respondent and the weakness of that particular claim, I find that the claim should not be permitted to continue to Hearing and is dismissed as the Tribunal does not have jurisdiction to hear it.
19. In relation to the direct disability discrimination claim, this is set out in the further details as less favourable treatment because of disability because the Claimant was required to perform picking work in the warehouse or go on sick leave whereas colleagues who did not have his disability were offered work in the Operations room. This claim is clearly out-of-time and I have not been told of how this might be continuing over a period.

Signed in the absence by REJ Monk
Employment Judge Cocks

Date: 11 October 2018

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.