



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MORTON

BETWEEN:

Mr I Jackson

Claimant

AND

The Chief Constable of Kent Police

Respondent

ON: 5 January 2018

Appearances:

For the Claimant: In person

For the Respondent: Ms C Palmer, Counsel

JUDGMENT

1. The Claimant's claim of disability discrimination, was not presented within the relevant statutory time limits set out in s 123 Equality Act 2010.
2. It is not just and equitable to extend the time limit in respect of his claim and to allow the claim to proceed.
3. The Tribunal therefore has no jurisdiction to hear the claim which is hereby dismissed.

Reasons

1. Mr Jackson resigned from his employment on 15 October 2016. He presented his claim to the tribunal on 23 September 2017, almost a year later, having referred his dispute with the Respondent to ACAS on 15 September 2017.

2. The Respondent resisted the claim and made an application to the Tribunal to dismiss the claim on the basis that it had been brought outside the time limit set out in s123 Equality Act 2010 and the Tribunal therefore had no jurisdiction to hear it.
3. The claim was listed for a preliminary hearing to determine the question of jurisdiction, that is, whether the claim had been brought outside the statutory time limit and if so whether it was just and equitable to extend time. Mr Jackson gave evidence at the hearing but there were no witnesses for the Respondent.
4. The starting point in a case of this nature is that time limits should be adhered to unless there are good reasons to extend them (*Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*). The first question therefore is whether the Claimant has put forward coherent reasons for extending the time limit in this case – it is not to be assumed that time will be extended.
5. In exercising their discretion to allow out-of-time claims to proceed, tribunals may also have regard to the checklist contained in S.33 of the Limitation Act 1980 (as modified by the EAT in *British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT*). S.33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case — in particular:
 - a. the length of, and reasons for, the delay. In this case I acknowledge that the delay is considerable in that at least one of the acts relied upon occurred in 2015; the reasons for the delay were explained by Mr Jackson in his evidence. I summarise these as follows. During the course of his employment he did not realise and received no advice to the effect that he might have claims under the Equality Act. He was also suffering from mental ill health during that period. Once he had left his employment in 2016 he was initially too fragile to revisit the events of his employment or to consider bringing a claim but once he felt sufficiently robust to raise the events of his employment with the Respondent he wrote a letter, to which the Respondent then took three months to respond – a length of time that I consider to be unacceptable (he received the response from the Respondent on 7 August). Once in receipt of that response Mr Jackson realised that he had a claim under the Equality Act and he then took steps to raise the matter with ACAS. He approached ACAS on 15 September, almost six weeks later.
 - b. the extent to which the cogency of the evidence is likely to be affected by the delay; I have heard submissions from the Respondent as to the difficulty that would be caused to the Respondent and in particular to the former Inspector Chalk, in asking him to return from retirement, particular in light of Inspector Chalk's caring obligations towards his seriously ill wife; it is pointed out that the Respondent furthermore has

no power to compel him to do so; there is also an inherent difficulty the Respondent says, in recalling matters that took place as long ago as 2015. The Respondent concedes however that most of the relevant documentation is still in existence;

- c. the extent to which the party sued has cooperated with any requests for information; I take into consideration in that regard the fact that the Respondent took three months to respond to the Claimant's letter of May 2016 raising concerns about his treatment. To that extent the Respondent's delayed response has contributed to the delay in the case; as I have already observed that delay was excessive and unacceptable;
 - d. the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; I have heard evidence from Mr Jackson that he did act promptly once he saw in writing the Respondent's explanation for its treatment of him in 2015 and that he only at that point realised that he had been discriminated against. I note again however that there was a delay of almost six weeks before Mr Jackson approached ACAS;
 - e. the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action. I took into account the Claimant's evidence that his Police Federation representative did not provide him with advice about his rights under the Equality Act. Whilst it would also seem that Mr Jackson did not seek that advice I take into consideration that he was suffering from a prolonged period of depression at the time. I accept his evidence that the effects of his condition were such that they presented an insurmountable obstacle to bringing proceedings during the course of his employment or in the period immediately following its termination. He used the word 'suicidal' during the course of his evidence and I have no reason to believe that he was exaggerating the effects of his illness.
6. What is essential is that I balance the respective prejudice to the parties if I allow the claim to proceed. Other relevant authorities on this point are: *Szmidt v AC Produce Imports Ltd EAT 0291/14*, *Pathan v South London Islamic Centre EAT 0312/13* and *Rathakrishnan v Pizza Express (Restaurants) Ltd 2016 ICR 283, EAT*. The Claimant's account of the delay in bringing the claim and the reasons for it is only one of the relevant factors. Weighing the respective prejudice to the parties is an essential step. The prospective merits of the claim are also relevant. I can only adopt a very broad brush approach to the merits of this claim as neither party came equipped with evidence. However on the face of it the Claimant has put forward an account of events that could give rise to justiciable claims of failure to make reasonable adjustments and discrimination in breach of s15 Equality Act. The Respondent drew my attention to the fact that the claims extend as far back as 2015. However it is clear from the Claimant's claim form that there are matters arising in 2016, including matters that prompted his ultimate decision to resign. There are therefore fact sensitive issues as to whether there is a

series of discrete acts in this case, or a continuing act, or a continuing discriminatory state of affairs. Those are not matters that can be determined at this stage of the proceedings. That in my judgment is a powerful factor that points towards allowing the claim to proceed. In my judgment the Claimant's evidence as to his inability to do anything other than focus on restoring his mental equilibrium in the immediate aftermath of his dismissal was compelling. In that respect I have considered the guidance from the Court of Appeal in *Department of Constitutional Affairs v Jones 2008 IRLR 128, CA* on the necessity to take into consideration in a disability discrimination case the effect of the disability itself on the Claimant's ability to present the case to the tribunal within the normal time limit.

7. Taking into account the guidance from the authorities, the Claimant's evidence and the relevant factors under s33 Limitation Act had matters ended there I would have arrived at the conclusion that in this case the balance of prejudice fell in favour of extending the time limit to allow the Claimant's claim of disability discrimination to proceed to a full merits hearing. However there is one more case that is relevant to these proceedings - *Edomobi v La Retraite RC Girls School EAT 0180/16*. In that case the EAT upheld a tribunal's decision not to extend time when there was a delay of some two months in the Claimant bringing her claim after she had received the outcome of a grievance that she had been waiting for.
8. I have already referred to the fact that the Claimant waited almost six weeks after receiving the letter of 7 August before approaching ACAS. He describes himself as having acted promptly at that stage, but I am unable to agree with that assessment. Whilst I find that there are explanations for the Claimant's earlier delays, his hesitation before approaching ACAS at a time when by his own admission he was feeling recovered and had realised that he had a claim against the Respondent, in my judgment tips the balance of prejudice away from allowing an extension of time in this case. The matter was however finely balanced and I do not underestimate the difficulties that the Claimant faced during his employment or the effects of his illness upon him.
9. I concluded however that it is not just and equitable to extend time in this case and the Claimant's claim cannot therefore proceed and must be dismissed.

Employment Judge Morton

Date: 12 January 2018

