



**Case Number 2302677/2020A**

**EMPLOYMENT TRIBUNALS**

**BETWEEN**

**Claimant: Mr. M Loizou**

**and**

**Respondent: Optivo**

**HELD AT London South**

**ON 25 February 2021**

**EMPLOYMENT JUDGE PHILLIPS**

**Appearances:**

**For Claimant: In person**

**For Respondent: Mr T Stephenson, Solicitor**

**JUDGMENT**

1. The Claimant's claim for unfair dismissal is struck out and dismissed.
2. The Respondent's jurisdictional challenges under s123 Equality Act 2010 remain a live issue for determination at the Full Merits hearing

**REASONS**

1. The Respondent is a housing association. It is in the business of providing housing across London, the South East and the Midlands. The Claimant had been until his dismissal on 24 January 2020, employed by the Respondent as a Tax Manager at the Respondent's offices in Croydon, since 22 July 2019. The Claimant in his ET1 Claim [pages 2-22] brings claims of (1) unfair dismissal; (2) sexual orientation discrimination (perception); (3) victimisation; and (4) harassment.
2. The Respondent denies all the claims. The Respondent raises two jurisdictional issues in its ET3/ Response [27-34], namely (1) that the Claimant does not have two years to bring an unfair dismissal claim; and (2) that elements of the

discrimination claim are out of time under s 123 Equality Act and so the Tribunal does not have jurisdiction to hear them.

3. I had before me a small bundle of just over 100 pages, which contained the relevant pleadings and correspondence between the parties and the Tribunal.

#### **Challenge to the unfair dismissal claim**

4. The Claimant has stated he is claiming unfair dismissal. There is no dispute that the Claimant had been employed for just over six months at the time of his dismissal. The Respondent says the Claimant therefore does not have the requisite 2 years' service to bring an unfair dismissal claim and so the Tribunal does not have jurisdiction to hear such a claim.
5. The Claimant said his understanding was that the requirement that there must be two years of employment for an unfair dismissal claim, does not apply where the dismissal, itself, is on the grounds of sexual orientation discrimination. He says the two-year period of service is not required where the claim for unfair dismissal is on the grounds of discrimination, in his case, sexual orientation discrimination. Further, for reasons set out on more detail below, he says in any event, this claim has now been accepted by the Employment Tribunal.

#### **Discussion and conclusion**

6. To present a claim of unfair dismissal, which is entirely a creation of statute, a claimant needs to have the requisite period of service. The normal rule, since 6 April 2012, is that to present a complaint of unfair dismissal, the dismissed employee must have been continuously employed for a period of not less than two years: Employment Rights Act 1996, section 108(1). There are exceptions to this rule, for example an employee who is dismissed for trade union reasons, for health and safety reasons or because of pregnancy, but I am satisfied none of those reasons apply in the Claimant's case here.
7. It was explained to the Claimant that alleging his dismissal was discriminatory is not the same thing as bringing an unfair dismissal claim. While the former claim does remain live, it is my judgment that the latter unfair dismissal claim should be struck out, as it has no reasonable prospects of success, as the Claimant quite clearly does not have the requisite two years continuous service.

#### **Challenge to whether the jurisdiction challenged under s 123 Equality Act remains live.**

8. The Respondent submits that elements of the discrimination claim are out of time and so the Tribunal does not have jurisdiction to hear it. Considering the timescales for ACAS Early Conciliation, the Respondent considers that any matters prior to 6 December 2019 are out of time and that the Tribunal does

not have jurisdiction to hear them. The Respondent further asserts that other allegations made by the Claimant are not related to sexual orientation and/or are incapable of amounting to conduct extending over a period within the meaning of section 123(3)(a) of the Equality Act 2010. The Respondent does not consider it would be just and equitable to extend time to consider such allegations under section 123(1)(b) Equality Act 2010. It says this is a live issue which will need to be determined at the Full Merits hearing.

9. The Claimant says [86/7] that with regard to this jurisdictional issue, he has a letter from the Employment Tribunal dated 30 June 2020 “accepting my Claims”. He says the first paragraph of the Tribunal’s letter of 30 June 2020 reads as follows: “Your claim has been accepted. It has been given the above case number, which you should quote in all correspondence”. He says he included with his ET1 form “a schedule (Summary of Case) showing a detail account of the events” and the Tribunal has therefore implicitly accepted all his claims. He also says that another letter from the Employment Tribunal, dated 30 June 2020 has the Heading: “Notice of Preliminary Hearing”, “Case Management”, “Employment Tribunals Rules of Procedure 2013” and that the first paragraph reads as follows: “An Employment Judge will conduct a preliminary hearing to identify the issues and to make case management orders including orders relating to the conduct of the final hearing”. He says this is another indication that his claims have been accepted. He also relies on the Employment Tribunal letter of 6 October 2020 as a further indication that his claims in his ET1 form had been accepted and “all that is required is clarification of the claims and the issues therein”. In his email of 12 February 2021 [94/5], he summarised his position as follows:

“I do not agree with your comments on Jurisdiction. As stated in my email of 22 January 2021, the Tribunal were provided with my ETI Form a Schedule Summarising my Case, and wrote to me on 30 June 2020 accepting my claim. By accepting my claim, my understanding is that Section 123 Equality Act 2010 has already been considered by the Tribunal. If Jurisdiction was an issue this would have been stated in the correspondence from the Tribunal. The Tribunal have only asked for a clarification of the claims and the issues therein.”

10. The Respondent says that the correspondence from the Tribunal to the effect that his claim has been 'accepted' or about the hearing arrangements does not mean that all heads of claim have been accepted. It says jurisdiction is a live issue which needs to be determined at the full hearing.

### Conclusion

11. The Claimant has unfortunately misunderstood the significance of the correspondence from the Tribunal to the effect that his claim has been 'accepted'. This and references about the hearing arrangements do not mean

that all heads of claim and all allegations have been accepted. Acceptance simply means that the Claimant has complied with the relevant procedural requirements with regard to submitting an ET1, which is not an indication of any substantive findings on jurisdictional or issues of substance. Rule 10 of the Tribunal Rules of Procedure 2013 states that if a claim is not presented on a prescribed form or does not contain certain minimum information, it will be rejected, otherwise it will be accepted. There is then a further period of judicial scrutiny, including at a case management hearing, when issues that relate to jurisdiction will be considered. Sometimes these matters will be dealt with at that time, in other cases they will be left for determination at the full hearing, because that is a more efficient way to deal with them, in accordance with the overriding objective in Rule 2 to deal with cases fairly and justly. Further, Rule 37 provides that at any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim on a number of grounds, including that it has no reasonable prospect of success.

12. The jurisdictional challenges raised by the Respondent have not therefore been determined. They do therefore in my judgment remain very much alive and will need to be determined by the Tribunal that hears the case in December 2021. It is therefore appropriate that the points on jurisdiction remain in the list of issues. The Claimant will of course be free to argue that there are continuing acts and / or the matters should be permitted relying on the just and equitable jurisdiction is section 123 (1) (b).

### **Summary**

13. For the reasons set out above, I have found that (1) there was no jurisdiction to hear the Claimant's unfair dismissal claim due to insufficient service; and (2) the time issues under s 123 Equality Act raised by the Respondent remain live issues, which will need to be determined by the Tribunal which hears the Full Merits Hearing and which should be included in the List of Issues.

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Employment Judge Phillips  
Dated: 25 February 2021  
London South  
Date and place of Order

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