



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Salman Mirza v Migrant Voice

Heard at: Birmingham (by video)

On: 21 October 2024

Before: Employment Judge Housego

Appearances

For the Claimant: In person

For the Respondent: Wilf Sullivan, Board member

JUDGMENT

The claim is dismissed.

REASONS

1. Mr Mirza claims that he was unfairly dismissed. This hearing was to decide whether the claim should be dismissed as being filed out of time.
2. The chronology is as follows:
 - 2.1. Mr Mirza started work for the Respondent, 2 days a week, on 16 January 2017. It was a fixed term contract. The contract was extended multiple times.
 - 2.2. On 11 October 2022 the Respondent extended Mr Mirza's contract by three months, to the end of January 2023, funding this from reserves. They said that they hoped to have a new funder in place by that time so that he could continue.
 - 2.3. On 30 October 2022 the funding of Mr Mirza's contract by an external charity expired.
 - 2.4. Mr Mirza used up his holiday and time off in lieu and so did not work in January 2023.
 - 2.5. On 27 January 2023 the charity which funded Mr Mirza's employment decided to fund the Respondent with a further £57,000. This would fund a role



which was very similar to that of Mr Mirza. That information was placed on their website.

- 2.6. Mr Mirza's employment ended on 31 January 2023, by reason of redundancy. He was paid an enhanced redundancy payment.
- 2.7. On or about 05 February 2023 the charity which had funded Mr Mirza's role telephoned the Respondent's director, Ms Ramadan, to tell her that their application for funding had been successful, in principle.
- 2.8. On 21 February 2023 the charity wrote to the Respondent to say that the grant was now authorised, and funding would commence on 01 May 2023.
- 2.9. The Respondent advertised a role, which was very similar to that held by Mr Mirza.
- 2.10. On 05 April 2023 Mr Mirza saw an advert for that job.
- 2.11. On 19 May 2023 Mr Mirza approached Acas under the early conciliation procedure.
- 2.12. On 31 May 2023 the early conciliation certificate was issued, and Mr Mirza filed this claim the same day.
3. Mr Mirza says that he was not genuinely redundant and that he was dismissed after he raised matters with the Board, which made him unpopular.
4. The Respondent takes the point that this claim was filed more than three months after the dismissal and so is out of time.
5. Mr Mirza says that time should run from 05 April 2023 which was when he saw an advert for his job. That is not the correct approach.
6. The Employment Rights Act 1996 requires that a claim of unfair dismissal must be lodged with the Tribunal within three months of the end of employment, but if it was not reasonably practicable to do so then within such further period as the Tribunal considers reasonable¹.
7. It was not reasonably practicable for Mr Mirza to present his claim prior to 05 April 2023, as he thought that his role was redundant for want of finance.
8. When he saw this job advertisement, he looked at the website of the charity which had funded his work and saw that they had decided to grant the Respondent further funding. That was more or less immediately after he saw the advertisement. When he saw these two things he immediately came to the conclusion that his dismissal was not a genuine redundancy, because the charity had decided on funding it 3 days before his employment ended.

¹ S111(2) Employment Rights Act 1996



9. He did not approach Acas until 19 May 2023, six weeks later.
10. Given that the primary period is three months – about 13 weeks – this was not a reasonable further period (being about half as long as the primary period), and so I dismiss the claim as filed out of time.
11. I explained to Mr Mirza that if I had not done so, I would have struck out the claim as having no reasonable prospect of success.
12. This is because there is no reason to doubt the Respondent's evidence that while the charity had decided to fund the Respondent, the Respondent did not know of this until after Mr Mirza's employment ended.
13. It might (or might not) have been reasonable for the Respondent to further extend his role, funded from reserves, but the Employment Tribunal must not substitute its own view of what it would have done for the decision of an employer. It decides whether what was done was within the range of reasonable responses of the employer. To end Mr Mirza's employment because it had been unfunded for three months is unlikely to be outside that range of responses to the situation.
14. The Respondent did not approach Mr Mirza to offer him the new role, but that cannot reflect on the original decision to dismiss him.
15. The Respondent was right to think that Mr Mirza would see the advertisement of the job, because he did see it. It is unlikely to be thought unfair to advertise the role rather than to offer it to Mr Mirza.
16. For these reasons, even if the claim had been lodged within a short time of reading the advertisement on or soon after 05 April 2023 it would not have succeeded.

Employment Judge Housego
21 October 2024