



EMPLOYMENT TRIBUNALS

Claimant: Mr Gokhan Ozcan
Respondent: Ocado Central Services Ltd

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford (In person) **On:** 5 December 2022
Before: Employment Judge Alliot (sitting alone)

Appearances

For the claimant: In person
For the respondent: Mr C Meiring (counsel)

JUDGMENT

The judgment of the tribunal is that:

1. It is just and equitable to extend the time for the claimant's claim to be presented to the 1 April 2022.

REASONS

1. This open preliminary hearing was ordered by Employment Judge Lewis on 18 July 2022:

“To decide if the Employment Tribunal can hear the claim as it appears to have been presented out of time.”

2. The relevant dates are as follows:-

- The claimant was employed on 3 February 2020.
- The claimant's employment ceased with immediate effect on 18 November 2021.
- The claimant appealed his dismissal on 22 November 2021.
- The appeal hearing was scheduled for 20 December 2021.
- The appeal hearing was rescheduled for 10 January 2022.
- The appeal hearing was rescheduled for 20 January 2022.
- The appeal hearing was rescheduled for 1 February 2022.

- The claimant says that he emailed Ms Kelly Dyke of the respondent on 4 March enquiring about his appeal and received an email from her saying the matter was closed.
3. If time began running from the date of termination of the claimant's contract of employment, namely 18 November 2021, then the three month primary limitation period would have expired on 17 February 2022.
 4. The Acas Certificate date of notification is 24 March 2022 and the certificate is dated 28 March 2022. The claimant presented his claim form on 1 April 2022. Consequently anything before 25 December 2021 is out of time.
 5. In my judgment, it is arguable that the claimant's complaints of disability discrimination extend to the fact that his appeal was not heard and that that represents the end point in a course of conduct. As such, it is arguable that the claimant's claims are in time, although that would be a matter for the full merits hearing having heard all the evidence.
 6. Nevertheless, for the sake of thoroughness, I go on to consider whether time should be extended on a just and equitable basis if time began to run from 18 November 2021. The time expired on 17 February 2022 and the claimant presented his claim form on 1 April 2022, some one month and two weeks late.
 7. Following his dismissal, the claimant, with the assistance of his trade union representative, presented an appeal on 22 November 2021. His appeal asserted that his dismissal went against his condition which could be regarded as a disability under the Equality Act.
 8. Towards the end of 2022 the claimant's mother was becoming increasingly unwell. The claimant went to visit her in Turkey from 18 to 27 October 2022 and from 3 to 17 December 2022.
 9. As set out above, the claimant's appeal was initially scheduled for 20 December and then rescheduled for 10 January.
 10. On 3 January 2022 the claimant was telephoned and informed that his mother was seriously ill.
 11. On 6 January 2022 the claimant flew to Turkey. He had emailed the respondent to say he did not think his trade union representative could make the hearing on 10 January 2022 and it was rescheduled for 20 January 2022.
 12. The claimant told me that he forgot to take his mobile phone with him to Turkey. This was corroborated by evidence from his daughter. I accept that he did not have his mobile phone in Turkey until his daughter brought it out mid-February 2022. While I accept that this may have posed some difficulties in contacting the respondent, I find that it would not have been impossible for him to do so had he been determined to do so.
 13. Once in Turkey the claimant's health unfortunately deteriorated. He was losing his mobility, could not walk and was using a wheelchair. He states that he could not get out of bed from 25 January 2022. Whilst I have had no direct medical

evidence of this, it is clear to me that unfortunately the claimant does have significant health issues and I am prepared to accept that he was badly affected at that time.

14. The claimant's mother sadly died on 11 February 2022 and the claimant's evidence is that the funeral and ceremonies took two weeks to complete.
15. The claimant returned to the UK on 4 March 2022 and, as already recited, contacted the respondent to enquire about his appeal and was told the matter was closed.
16. The claimant told me that he then consulted his trade union representative about the appeal and it was at that point that he became aware of the three month time limit for bringing a claim.
17. The claimant told me he consulted with a law firm on 24 or 25 March 2022. It seems clear to me that as a result the claimant notified Acas on 24 March 2022 and, on receipt of his certificate dated 28 March 2022, brought this claim on 1 April 2022.
18. I have a discretion to extend time under s.123 of the Equality Act 2010.
19. As per the IDS Employment Law Handbook on Practice and Procedure:-

“While employment tribunals have a wide discretion to allow an extension of time under the “just and equitable” test in section 123, it does not necessarily follow that exercise of the discretion is a forgone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisurelink [2003] IRLR 434, CA, that when employment tribunals consider exercising the discretion under what is now section 123(1) (b) Equality Act, “There is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.” The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit.”

20. I have taken into account the following factors:
21. As far as the claimant is concerned, the internal appeal process was continuing until his return from Turkey on 4 March 2022. There is no general principle that it will be just and equitable to extend the time limit where the claimant was seeking redress through the employer's appeal procedure before embarking on legal proceedings. The general principle is that a delay caused by a claimant awaiting completion of an internal procedure may justify the extension of the time limit, but it is only one factor to be considered in any particular case. That said, I have considerable sympathy for a claimant who does not launch an employment tribunal claim at a time when he thinks that his appeal is going to be heard and is, no doubt, hoping to be re-instated upon appeal. In my judgment it is readily understandable that a claimant would not want to antagonise his ex-employer on appeal by presenting a tribunal claim.
22. It is clear to me that the claimant did not know of the three month time limit for bringing his claim until his trade union representative told him on 4 March 2022. I

have considered whether that ignorance was reasonable. Obviously, in November 2021 he had access to such advice in that he had trade union representation. However, given at that stage he was only appealing his dismissal, I consider it to be reasonable of him not to have enquired as to any time limits for bringing a tribunal claim pending the outcome of his appeal.

23. The claimant's health and that of his mother:- It is clear to me that once the claimant left this country on 6 January 2022 his presence in Turkey combined with his own health and the deteriorating health of his mother placed significant difficulties on him accessing relevant legal advice to present a claim. I have no doubt that this period was an emotionally challenging one for the claimant and his family and that he had more pressing priorities to deal with.
24. The claimant became aware of the time limit on 5 March 2022. He took legal advice on 24 March. Whilst that is some delay I do not consider it to be excessive.
25. I have concluded that the reasons for the delay are a reasonable ignorance of the time limit combined with illness, bereavement and being out of the jurisdiction. I find that the delay of six weeks, whilst not trivial, is not excessive. I find that the respondent will not be prejudiced in terms of the cogency of the evidence.
26. Taking into account all the factors that I have to, in my judgment it would be just and equitable to extend time for the claimant's claim to be brought to 1 April 2022.

Employment Judge Alliott

Date:10/1/2023

Sent to the parties on:

3/2/2023

For the Tribunal:

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