



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

J Martin

Enterprise Rent-a-Car
UK Limited

Heard at: Reading by CVP
Before: Employment Judge Anderson

On: 7 March 2022

Appearances

For the Claimant: In Person

For the Respondent: Ms Coyne (counsel)

JUDGMENT

1. The claimant's claims that he was discriminated against on the ground of disability by the respondent carrying out or failing to carry out the following acts:
 - a. Placing the claimant on furlough on 3 April 2020;
 - b. Excluding him from various work meeting since 2013;
 - c. Failing to address an alleged discriminatory practice by Bridge Builders mentoring association or failing to end its relationship with that organisationwere not presented in time.
2. The tribunal found that it was not just and equitable to extend time in accordance with s123(1)(b) Equality Act 2010 for the filing of the claims that the respondent was discriminated against by the respondent excluding the claimant from various work meeting since 2013 and failing to address an alleged discriminatory practice by Bridge Builders mentoring association or failing to end its relationship with that organisation. The tribunal has no jurisdiction to hear those claims.
3. The tribunal found that it was just and equitable to extend time, in accordance with s123(1)(b) Equality Act 2010, for the filing of the claim that the respondent was discriminated against by the respondent by placing him on furlough on 3 April 2020 and time is extended to 29 November 2021.

REASONS

Background

1. At a Preliminary Hearing on 3 September 2020 both the claimant and respondent accepted that complaints made by the Claimant about events that happened before 5 July 2020 are potentially out of time. EJ Tuck QC listed this hearing for

the following purpose: *The ET will determine if any claims have been presented outside the primary limitation period and may consider whether if so, it is just and equitable to extend the time limit.* On 8 November 2021 the respondent wrote to claimant and the tribunal setting out that the complaints listed at paragraphs 4 (viii) (e-g) in the Order of EJ Tuck QC dated 6 September 2021 were out of time and requesting that they be struck out as the ET has no jurisdiction to hear them. The respondent also requested the strike out of claims 4(x) (a-d). The claimant withdrew those claims in a letter dated 20 August 2021.

The Hearing

2. The claimant attended the hearing and gave evidence on oath. I was provided with a bundle of 163 pages which included the claimant's response to the respondent's strike out application, in addition the respondent provided written submissions. The claimant confirmed that he relied on the response in the bundle as his evidence in chief but wished to provide more information about his disability. Oral evidence on the impact of the claimant's disability so far as it is relevant to the issue of time was given by the claimant before cross examination took place.

Relevant facts

3. The claimant has been diagnosed with Persistent Depressive Disorder and the Respondent accepts that the claimant was a disabled person at all relevant times for the purpose of this claim.
4. On 3 April 2020 the claimant was placed on furlough.
5. On 10 June 2020 the respondent commenced a redundancy consultation period with the claimant.
6. On 13 July 2020 the claimant raised a grievance to the respondent, the content of that grievance forms the majority of his claim to this tribunal. The claimant sought professional assistance from an HR advisor in drafting the grievance.
7. On 28 August 2020 the claimant was dismissed. The claimant says unfairly, and the respondent says fairly by way of redundancy.
8. On 5 October 2020 early conciliation commenced. Early conciliation ended on 2 November 2020.
9. This claim was filed on 29 November 2020.

The Law

10. The relevant law on time limits in discrimination claims is found at s123 of the Equality Act 2010.
S123: Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

Decision and Reasons

11. Were the claims brought in time?

- a. The claimant relies on the fact of being placed on furlough on 3 April 2020 as an act of direct discrimination and also a detriment in relation to a claim of victimisation. The claimant said that as the furlough was twice extended there was a continuing act which brought claim within time. Ms Coyne said that the complaint was about placing the claimant on furlough and the extension was not a continuing act but continuing consequences of the first act. I agree that there was one act with continuing consequences, and I find that the claim is out of time (issues 4 (viii)(a) and 4(xxiv)(a) on the list of issues).
- b. The claimant relies on the respondent's failing to end its relationship with the Bridge Builders mentoring association or raise with it that its policies included a discriminatory clause as an act of direct discrimination. Ms Coyne said that the last event arranged with Bridge Builders before the claimant was placed on furlough was on 3 March 2020, the claimant said that respondent had an ongoing relationship with Bridge Builders that still subsists. As the claimant was not involved with the Bridge Builder's mentoring organisation at the time he was placed on furlough or during the furlough, I find that this claim is out of time (issue 4 (Viii) (c) on the list of issues).
- c. The claimant says he was excluded from a range of meetings from 2013 onwards and relies on this as an act of direct discrimination. The claimant was placed on furlough from 3 April 2020 until his dismissal. The claim was not issued until 29 November 2020. Ms Coyne said that the meetings the claimant refers to were suspended during the pandemic and the claimant said that other meetings took place from which he was also excluded, but the fact is that the claimant could not work whilst on furlough and therefore his exclusion from meetings did not continue after 3 April 2020. I find that this claim is out of time (issues 4 (viii) (d-g) on the list of issues).
- d. The claimant relies on a term of the respondent's contract that employees could be summarily terminated if they were sectioned under the Mental Health Act 1983 as an act of indirect discrimination. Ms Coyne said the respondent removed the clause in 2018 so the claim is out of time. The claimant said he believed it was 2019. His case is that the clause was a cause of constant fear that time off might lead to job loss, and it was a "sword of Damocles". The claimant's evidence was that he was not aware the clause was removed until preparing for the hearing. On that evidence I find that the clause was operative to the claimant's knowledge at the time he was dismissed and therefore the claim is brought in time.

12. Is it just and equitable to extend time for those claims which I have found were filed out of time?

13. I must look at the picture in the round and consider all relevant factors. Prominent factors to consider are the balance of prejudice to the parties if the claim is or is not time barred and the length of and reasons for the delay. A consideration of balance of prejudice may also include a consideration of the merits of the claim. Other relevant factors in this case are the promptness of the claimant's actions in

relation to filing a claim as well as his disability, and how that affected his ability to act. I have considered all of those factors.

- 14. Ms Coyne for the respondent said that the claimant was at work throughout the relevant times, he was in a senior and demanding position managing five people and she noted also that the claimant was not subject to any performance management action during the relevant time. Ms Coyne said the respondent would be prejudiced by having to go back and inquire into the states of mind of employees in 2013, or 2016 as it may be. Ms Coyne said that the claimant was able to raise matters of discrimination during that period and also that he had professional advice in July 2020. She also noted that the claim that was filed in 29 November 2020 was almost identical to the grievance.
- 15. The claimant said that his disability is such that all of his energy is involved in attending work and carrying out his role, that to do so is a daily struggle and the grievance he made in July 2020 was at the behest of his friends and family. He admits that he was aware of the employment tribunal but could not recall whether he discussed this with his professional advisor in July 2020. He said that he should be allowed to pursue his claims as he had done what he could bearing in mind the impact of his disability.
- 16. In relation to issues 4 (viii) (c) and (d-g) (Bridge Builders and exclusion from meetings), these claims relate to states of affairs that had existed for many years before this claim was filed. These were years when the claimant was at work and clearly taking an active interest in the respondent’s approach to mental health in general, as evidenced by his assistance of others. There was evidence presented today that the claimant has complained of discriminatory matters in the past and on his own admission he was aware of the employment tribunal. I agree that it would be prejudicial to the respondent to be put to the task of gathering evidence about matters which happened many years ago. I also note that where relevant the claimant can still refer to these matters by way of background to his case on the remaining claims. In relation to issues 4 (viii) (c) and (d-g) I do not find it is just and equitable to extend time.
- 17. In relation to issues 4 (viii)(a) and 4(xxiv)(a) (claims relying on the fact of the claimant being placed on furlough on 3 April 2020) I have considered the same factors. Here the length of the delay is much less and consequently the prejudice to the respondent in responding to that claim is less, as the act took place on 3 April 2020. Taking into account the claimant’s evidence on the importance to him of maintaining his employment with the respondent and his evidence on the impact of his disability on managing both work life and other aspects of life together, I am satisfied that it would be just and equitable to extend time in relation to claims relying on the respondent’s act of placing the claimant on furlough on 3 April 2020.

Employment Judge Anderson
 Date: 9 March 2022
 Sent to the parties on:.....

 For the Tribunal Office