



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr L Fellas

v

Great Yarmouth Borough Council

**Heard at:** Norwich

**On:** 9 October 2019

**Before:** Employment Judge Postle

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr Brett, Solicitor

## JUDGMENT on a PRELIMINARY HEARING

1. The Tribunal did not exercise its discretion to extend time in relation to the late application under the just and equitable principles, pursuant to Section 123 of the Equality Act 2010.

## REASONS

1. This is a Preliminary Hearing to decide whether the Tribunal should exercise its discretion to allow a claim for Disability Discrimination under the Equality Act 2010 to proceed.
2. The complaint of unlawful discrimination must be presented to an Employment Tribunal before the end of the period of three months beginning with the date of the actual acts complained of and that is set out in Section 123(1)(a) of the Equality Act 2010. The acts complained of in this case is the notification to the Claimant on 3 October 2017 that he had been unsuccessful in obtaining a position with the Respondent as a Multi-Disciplinary Enforcement Officer.
3. The last date to bring a claim would be 2 January 2019, subject to any extension under the Early Conciliation rules. Extension of time for late applications is a discretion that the Tribunal can exercise, but that discretion has to be exercised very carefully, balancing up everything and considering in this case, that the claim was finally issued on 14 July 2019.

4. The Court of Appeal have made it clear in a case called Robertson v Bexley Community Service [2003] that there is no presumption that a Tribunal should exercise its discretion unless they can justify the failure by a Claimant to issue in time. It is the exception rather than the rule and indeed, it is a high hurdle for a Claimant to overcome. The onus is on a Claimant to convince the Tribunal that it is just and equitable in all the circumstances to extend time limits.
5. The Claimant in this case has advanced an argument that over the years he has suffered mental health problems and this affected his ability to issue a claim on time. The Tribunal have heard evidence from the Claimant and read a short report from the Claimant's psychiatrist when the Claimant was committed to Northgate Mental Hospital in or about November / December 2018. However, the Claimant, up until July 2018 appears to, over the years held down jobs in the housing sector and indeed previously with the Respondents despite his mental health problems.
6. Following 3 October 2018 when the Claimant was told he had not been successful, on advice from his Mother, he was able to make a Subject Access Request under the Data Protection Act. He also took advice from Acas almost immediately, who advised the right to make a claim and no doubt advised on time limits. It would appear that the Claimant, at the time of the communication to him by the Respondents that he had been unsuccessful, was indeed extremely dissatisfied and unhappy with the Respondent's decision. There is no reason at that stage in October 2017, that he could not have made an application to the Employment Tribunal. He is clearly familiar with the internet and able to use computers, indeed, the Claimant, in July, made his claim to the Tribunal on the internet online. The claim issued is a brief one, it could have been brief in October 2017.
7. The Claimant admits he sought advice on two occasions, in May / June 2019 from Norfolk Community Law, which is an organisation that provides free advice about employment matters and other general legal matters. He did not issue a claim then and there is no reason why he could not have issued at that stage, albeit late then.
8. Throughout the period the Claimant has also had a support worker who could have been proactive in October 2017, last year, or in May or June of this year, in pointing the Claimant in the right direction in making a claim to the Employment Tribunal. It is also clear that the Claimant has had his Mother's support, he has had Acas advice. The Tribunal also have to consider the time delay will have prejudiced the Respondents, given witnesses' memories and the fact that people have moved on from positions who were involved in the decision in 2017.
9. Though I may have sympathy with the Claimant and his mental health problems, the Claimant has not persuaded me, given the facts and the support that he has received that he has discharged the burden in

justifying to the Tribunal that it would be just and equitable to extend time and therefore I do not extend time on the facts and circumstances.

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Employment Judge Postle

Date: 1 November 2019

Sent to the parties on: 1 November 2019

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For the Tribunal Office