



EMPLOYMENT TRIBUNALS

Claimant: Mr I Al-Ojaili

Respondent: Incopro Limited

Heard at: London (Central) **On:** 22 January 2020

Employment Judge: Professor A C Neal

Representation

Claimant: Did not appear and was not represented

Respondent: Ms C Ibbotson (of Counsel)

JUDGMENT

The judgment of the Tribunal is that:

- (1) the Claimant's claim alleging unfair dismissal is dismissed;
- (2) the Claimant's claim alleging unlawful discrimination by reference to the protected characteristic of race is dismissed;
- (3) the Claimant's claim alleging unlawful discrimination by reference to the protected characteristic of disability is dismissed; and
- (4) the Claimant's claim alleging unlawful discrimination by reference to the protected characteristic of religion or belief is dismissed.

Employment Judge

Date 23 Jan 2020

JUDGMENT SENT TO THE PARTIES ON

27/1/2020

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FOR THE TRIBUNAL OFFICE

REASONS

1 The Respondent attended an Open Preliminary Hearing before Employment Judge Professor Neal. That hearing was listed to determine matters set out in paragraphs 3-8 of the attachment to the Respondent's Response Form ET3 presented to the Tribunal on 11 November 2019. Notice of the matters to be dealt with at the hearing was sent to the parties on 27 November 2019.

2 The Claimant did not appear and was not represented.

The Unfair Dismissal Claim

3 The Employment Judge first considered the Claimant's claim alleging unfair dismissal.

4 Having regard to the Claimant's Claim Form ET1 it is alleged that the Claimant had commenced working for the Respondent on 2 May 2018 and that the employment had been terminated by the Respondent on 15 March 2019 (or alternatively, as set out in the Respondent's ET3, on 14 March 2019). The effective date of termination for statutory purposes was therefore at the latest 15 March 2019.

5. In order to be entitled to present a claim alleging unfair dismissal **Section 108 of the Employment Rights Act 1996** requires an employee to have been employed for a period of not less than two years ending with the effective date of termination.

6 The Claimant has not been employed with the Respondent for the qualifying period required by the statutory provision. He is therefore not entitled to present a claim alleging unfair dismissal. The Tribunal has no jurisdiction to hear any such claim.

7 **The Claimant's claim alleging unfair dismissal is dismissed.**

The Discrimination Claims

8 The Claimant's Claim Form ET1 contains allegations of unlawful discrimination by reference to the protected characteristics of (1) race; (2) disability; and (3) religion or belief.

9 None of those three allegations is fully particularised although there are specific allegations set out in the Claim Form ET1 which appear to constitute various allegations of unlawful direct discrimination against the Claimant.

10 In particular there is no specific indication in the Claim Form ET1 as to the date or dates on which particular alleged acts are said to have taken place.

11 Notwithstanding that absence of particularisation it is clear from the content of the Claim Form ET1 that the matters alleged must have taken place during the course of the Claimant's employment with the Respondent. It therefore follows, having regard also to paragraph 4 above, that the latest date for any of those alleged acts is 15 March 2019.

12 The Claimant approached ACAS as required in relation to early conciliation. A certificate issued by ACAS records that the period of early conciliation commenced on 2 May 2019 and ended with the issue of that certificate on 1 June 2019.

13 The Claimant presented his complaint to the Tribunal on 15 August 2019 and the file shows that the Claim Form ET1 was stamped in on that date.

14 **Section 123 of the Equality Act 2010** provides for time limits in respect of the presentation of complaints by reference to the protected characteristics of race, disability, and religion or belief.

15 Having regard to the provisions of Section 123 and taking into account the provisions of **Section 140B of the Equality Act 2010** which serve to extend the time limit under Section 123 to facilitate conciliation before institution of proceedings, it follows that the latest date for presentation of the Claimant's complaints alleging unlawful discrimination was 14 July 2019.

16 The Claimant's complaints alleging unlawful discrimination by reference to the protected characteristics of (1) race; (2) disability; and (3) religion or belief were therefore presented out of time.

17 **Subsection (1)(b) of Section 123 of the Equality Act 2010** provides that notwithstanding not being within the three month time limit stipulated in Subsection (1)(a) a complaint may be presented within "such other period as the employment tribunal thinks just and equitable".

18 The Tribunal has reminded itself of the developed case-law in relation to what is now Section 123 of the **Equality Act 2010**. That has included a group of well-known judgments setting out the underlying principles to be applied in this area, together with recent occasions on which those principles have been applied and approved by later courts and tribunals.

19 Particular attention has been paid to the historical line of cases emerging in the wake of the case of **Hutchinson v. Westwood Television, [1977] ICR 279**, the approach adopted by Smith J. in **British Coal Corporation v. Keeble, [1997] IRLR 336**, the comments in **Robinson v. The Post Office, [2000] IRLR 804**, the detailed consideration of the Employment Appeal Tribunal in **Virdi v. Commissioner of Police of the Metropolis et al, [2007] IRLR 24**, and, in particular, the observations of Elias J. in that case, as well as the decision of the same body in **Chikwe v. Mouchel Group plc, [2012] All ER (D) 1**.

20 The Tribunal also notes in passing the guidance offered by the Court of Appeal in the cases of **Apelogun-Gabriels v. London Borough of Lambeth & another, (2002) IRLR 116**, **Robertson v. Bexley Community Centre (t/a Leisure Link), [2003] All ER (D) 151** (in particular by reference to the comments made by Auld LJ), and observations made by Mummery LJ in the case of **Ma v. Merck Sharp and Dohme, [2008] All ER (D) 158**.

21 The Tribunal has additionally taken note of the fact that what is now the modern Section 123 provision contains some linguistic differences from its predecessors – which were to be found in various earlier statutes and regulations – concerning the presentation of claims alleging discrimination in the employment field. However, the case law which has developed in relation to what is now described as "the just and equitable power" has been consistent and remains

valid. The Tribunal has therefore taken those authorities directly into account in its consideration.

22 In relation to the circumstances of the present case a basic starting point is the important proposition that time limits in employment matters (especially those concerning discrimination) are matters which normally are exercised strictly. Authority to that effect is to be found in the judgment of Auld LJ in the Court of Appeal case of Robertson v. Bexley Community Centre (t/a Leisure Link), [2003] All ER (D) 151. That case was decided shortly after Lindsey J, the then President of the Employment Appeal Tribunal, had observed in the case of Robinson v. The Post Office, [2000] IRLR 804, at paragraph 32, that:

“It is to be borne in mind that time limits in employment cases are in general strictly enforced”.

In other words, the time limit provisions are there for a purpose, so that it is the exceptional case, rather than the normal case, that they will be departed from.

23 It is also a generally received starting proposition that it is for the Claimant who has presented his or her claims out of time to establish to the satisfaction of the Tribunal that the “just and equitable” discretion should be exercised in the particular case. That obligation is not just a matter of the burden of proof. It also raises the question of what is the standard of proof to be established in order to persuade the Tribunal that a period other than the normal three months should be applicable. It is therefore a matter which requires evidence – which may be oral and subjected to cross-examination, or documentary.

24 In the present case the Claimant has not appeared and has not been represented. The Tribunal therefore has nothing by way of evidence to explain why the complaints were presented out of time and no basis upon which to exercise the “just and equitable” discretion provided by Section 123(1)(b) of the Equality Act 2010.

25 That being the case the Tribunal concludes that the Claimant’s claims alleging unlawful discrimination by reference to the protected characteristics of (1) race; (2) disability; and (3) religion or belief were all presented out of time and it is not just and equitable to extend the time for presentation.

Employment Judge

Date _____

REASONS SENT TO THE PARTIES ON

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For the Tribunal Office