



# EMPLOYMENT TRIBUNALS

**Claimant:** Donovan Davy

**Respondent:** Ministry of Defence

**Heard at:** Southampton      **On:** 07 September 2022

**Before:** Employment Judge Housego

## Representation

**Claimant:** In person

**Respondent:** Sophie Garner, of Counsel

## JUDGMENT

The claim is dismissed.

## REASONS

1. A full extempore decision was given, and this is a brief summary.
2. The Claimant was a serviceman. He was in the Army, then in 2015 transferred to the Navy. He says that he was not given proper credit for his long Army service in the terms of his Navy service.
3. Before service personnel can bring a claim for unlawful discrimination they must file a service complaint and bring the action within six months of so doing.
4. The Claimant did file a service complaint, in 2017. He said that his terms were unfair and he named people who he said had been treated better than he was. He did not say that this was by reason of race and did not tick the discrimination box in the form, nor fill in any of the boxes which follow where details of discrimination should be given.

5. He says that the MoD should have appreciated that he is black and the comparators were white and so treated it as a discrimination claim. He says this meets the requirement for a service complaint.
6. The complaint was dismissed, the MoD saying that the others should not have had the terms they got, but there was nothing to be done as they had now both left service.
7. Mr Davy appealed, and mentioned that it was possible there was unconscious bias at work, as perusal of the three personnel records would show the ethnicity of all three individuals.
8. The person taking the appeal declined to deal with this, saying it would need a fresh complaint. Mr Davy did not make a fresh complaint.
9. Appeal to the Ombudsman was unsuccessful and this claim was brought.
10. Mr Davy says that the public sector equality duty meant the MoD should have been proactive. This duty is not so large that the Mod was obliged to look at the complaint and ascertain the ethnicity of the individuals and ask if there was a race discrimination claim. If that was the case, they would also have to ask about the sexuality of the three, and their religions, and about other protected characteristics.
11. It follows that there was no service complaint about race discrimination, and the claim must be dismissed for want of jurisdiction.
12. If Mr Davey was correct about the service complaint there is another issue. He had to bring the claim within six months of the incident about which he complained in the service complaint. As the service complaint was in 2017 and the claim filed in 2021 this time limit is greatly exceeded. While the time can be extended if it is just and equitable to do so, this time is so lengthy that the claim would have had to be struck out as being brought out of time. While this may be a continuing disadvantage, and so not out of time for a person who is not in the military, that does not help Mr Davey as time for him is measured from the date of the service complaint, which was in 2017.
13. If there had been no such difficulty for Mr Davy I would not have struck out the claim as having no reasonable prospect of success, as the MoD accepted that Mr Davy was treated differently (and less favourably) than the comparators. It was, the MoD says, an error that they were treated so, and the way Mr Davy was handled was correct. Whether that is so, or not, would be a matter for evidence.
14. If I had not struck out the claim, I would have made a deposit order. The difference in treatment is accepted, and the difference in ethnicity also accepted. However there were two recommendations in support of Mr Davy's service complaint (his situation was unique and he did not fit easily into the structure of the rules, and the MoD had made errors in the way it handled his case). It is inherently unlikely that the independent people deciding the service complaint, the person taking the

appeal, and the person at the Ombudsman rejecting the complaint were all motivated by unconscious bias against Mr Davy.

15. I acknowledge the depth of feeling Mr Davy has about this issue.

Employment Judge Housego  
Date 07 September 2022

Judgment sent to the parties: 14 September 2022

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.