



EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: The Commissioners for Her Majesty's Revenue and Customs

Heard: in private by CVP **On:** 5 January 2022

Before: Employment Judge Hindmarch

Appearances

For the claimant: In person

For the respondent: Mr Crammond – Counsel

JUDGMENT

The claims of direct race discrimination and victimisation have little reasonable prospects of success as they are out of time.

The Claimant is ORDERED to pay a deposit of £200 (£100 in relation to each head of claim) no later than 21 days from the date this Order is sent as a condition of being permitted to continue to advance his claim. The Tribunal has had regard to the information available as to the Claimant's ability to comply with the Order in determining the amount of the deposit.

REASONS

1. By an ET1 filed on 3 February 2021 A brought complaints of direct race discrimination and victimisation, and of disability discrimination, namely a failure to make reasonable adjustments. Employment Judge Camp at a Case Management Preliminary Hearing on 6 July 2021 listed an Open Preliminary Hearing for 5 January 2022 to consider, amongst other things, whether a deposit order should be made on the basis any claims had little reasonable prospects of success.
2. On the face of it, any claim prior to 17 September 2020 is potentially out of time. As regards the direct race discrimination claim, this concerns an alleged incident said by the Claimant to have occurred in late November 2018, which he says he reported to the Respondent on 30 November 2018, relying on that report as the "protected act" for a complaint of victimisation. As regards the detriments for the victimisation claim, the Claimant alleges a number of

incidents from December 2018 but ending in March 2020. The Respondent says these complaints are significantly out of time.

3. The Claimant's disability discrimination complaints are all concerning an alleged failure to make reasonable adjustments. The Claimant was on sick leave but did return to work on 14 September 2020 and so the Respondent says, given this predates 17 September 2020, this claim is also out of time. The Claimant's own further information seems to suggest the last allegation was 4 September 2020. The Claimant has made an application to amend his claim citing a new allegation of a failure to make reasonable adjustments relating to an incident he says occurred on 6 May 2021, after the claim form was presented. He may seek to argue this formed a continuing act, and this will be a matter for the Tribunal at the substantive hearing.
4. The Respondent argues a deposit order should be made for each claim. It says the claims are all on the face of it out of time. It says the Claimant delayed until 16 December 2020 in going to ACAS for early conciliation, and when the early conciliation period ended on 11 January 2021, he delayed further in not presenting his claim until 3 February 2021. It acknowledges the Claimant may seek to persuade the Tribunal that it is just and equitable to extend time and/or that the disability discrimination matters were a continuing act but it submits that any such arguments will have little reasonable prospects of success given the Claimant had the assistance of his trade union during the internal process, that he suggested in correspondence that he was obtaining legal representation and that contemporaneous documentation shows he was capable of sending coherent emails asserting his rights.
5. The Claimant says his mental health issues (one of the disabilities relied on by him is an adjustment order with depression and anxiety) did impact his cognitive ability and managers at the Respondent caused his condition to worsen.
6. Employment Judge Camp, on 6 July 2021, ordered the Claimant to provide documents about his financial means if he was going to argue that he should not be ordered to pay more than a certain amount as a deposit because he could not afford to do so. He did not provide any such documentary evidence. I asked him about his means and he told me his take home pay was £1,700 per month and his rent and council tax were about £1,100, with food and fuel costs on top and that his "wife participates more than me", suggesting there was a second income contributing to the household expenses.

Legal Principles

7. Deposit Orders are dealt with under rule 39 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 which provides:

"(1) Where at a Preliminary Hearing (under Rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable

prospects of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument

(2) The Tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit”.

Conclusion

8. Taking the direct race discrimination and victimisation allegations at their highest, I find these have little reasonable prospects of success. The allegations, in the direct race discrimination claim, relate to November 2018 and are plainly out of time. The allegations of victimisation end in March 2020 and again are plainly out of time, occurring approximately 11 months prior to the claim being presented. Having regard to the limited information the Claimant preformed about his means, I order him to pay a deposit of £100 each in relation to these claims.

9. I do not make a deposit order in respect of the reasonable adjustments claim. The complaints in the ET1 are on the face of it out of time but very close to the time limit and may fairly be the subject of a just and equitable extension argument if necessary, such that I cannot conclude at this stage that there is little reasonable prospects of success. There is also the new (May 2021) allegation which remains the subject of an amendment application. If this is allowed it is conceivable that the Claimant will contend a “continuing act” and so again I cannot at this stage say this has little reasonable prospects of success.

Employment Judge **Hindmarch**

Date: 13 January 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

24/01/2022
FOR THE TRIBUNAL OFFICE