



EMPLOYMENT TRIBUNALS

Claimant: Mr H Stedman

Respondent: South Stars Entertainment Limited

Heard at: Norwich Employment Tribunal Hearing Centre (by video)

On: 21 October 2024

Before: Employment Judge Curtis

Representation

Claimant: In person

Respondent: Miss McKenzie

JUDGMENT

The judgment of the ET is that:

1. The claim of discrimination arising from disability was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claim is therefore dismissed.
2. The claim of unfair dismissal on the grounds of having made a protected disclosure was not presented within the applicable time limit and it was reasonably practicable to have presented it within the applicable time limit. The claim is therefore dismissed.
3. The complaints of detriment on the grounds of having made a protected disclosure which relate to detriments prior to the termination of the Claimant's employment in April 2022 were not presented within the applicable time limit and it was reasonably practicable to have presented them within the applicable time limit. Those complaints are therefore dismissed.
4. The complaints of detriment on the grounds of having made a protected disclosure which relate to detriments after the termination of the Claimant's employment in April 2022 may have been brought within the applicable time limit. It was not possible to make a final determination of that issue at the hearing today. These complaints will proceed to a final hearing, at which the tribunal will consider whether the complaints were presented within the applicable time limit.

REASONS

Claims and issues

1. By way of ET1 presented on 29/2/2024 the Claimant brings claims which were initially identified as disability discrimination arising out of his employment with the Respondent. In the course of the hearing today the Claimant accepted that his employment was in April 2022, not April 2023.
2. Having reviewed the ET1 in advance of today's hearing, and after discussion with the Claimant to clarify his claims, I was satisfied that he was bringing the following claims:

Discrimination arising from disability (s.15 Equality Act)

- 2.1 The Claimant relies on the disabilities of Attention Deficit Hyperactivity Disorder ('ADHD') and Autism.
- 2.2 This relates to the termination of the Claimant's employment. The termination was carried out by Mr Flack on either 17 or 20 April 2022. The Claimant relies upon three acts of unfavourable treatment, which he says were in consequence of something arising from his disability.
 - 2.2.1 Not being believed when there was a dispute between the Claimant and Mr Taylor, which resulted in the Claimant's employment being terminated on 17 or 20 April 2022. The Claimant asserts that the 'something arising' was that he could not verbalise or explain himself as well as a non-disabled person
 - 2.2.2 Not being believed when there was a dispute between the Claimant and Mr Taylor due to the fact the Claimant did not have as many people supporting his position. The Claimant asserts that the 'something arising' was that he could not build friendships as easily as non-disabled persons
 - 2.2.3 Part of the reason for dismissal was that Mr Taylor did not agree with the way in which the Claimant was carrying out his tasks. The Claimant asserts that the 'something arising' was that he struggled to learn new things without help and training.

Detriment for making a protected disclosure

- 2.3 The Claimant relies on two purported protected disclosures:
 - 2.3.1 During his employment he raised with Sophie Edwards, a park manager named Dave, and Brian Higgins that Mr Taylor opened packages by biting them. The Claimant believed this was a health and safety risk due to the possible transmission of Covid-19 or germs.
 - 2.3.2 At the same time as the above the Claimant told the same people of an incident in which a child had told Mr Taylor that they had a wheat allergy and Mr Taylor had told them they would die. The Claimant believed that this was not said in a way that he thought it was in jest; he reported it as he believed it was inappropriate.
- 2.4 The Claimant avers that he was subjected to the following detriments prior to the termination of his employment, on the grounds of having made a protected disclosure:

- 2.4.1 Brian Higgins labelled the Claimant as a troublemaker
- 2.4.2 The disclosures created tension with colleagues in the workplace
- 2.4.3 Mr Taylor's attitude towards the Claimant changed. Mr Taylor told the Claimant that he was a whining baby and needed to grow up and get a grip; he refused to talk to the Claimant; he told the Claimant that he was not safe to be around children and adults and made other derogatory comments.

2.5 The Claimant avers that he was subjected to the following detriments after the termination of his employment, on the grounds of having made a protected disclosure:

- 2.5.1 In around August 2023 Kelly Garrett denied having previously said that she would "take the Claimant back in a heartbeat" if Mr Taylor left
- 2.5.2 Between August 2023 and the presentation of the Claimant's claim the Respondent gave differing reasons for the refusal to re-hire the Claimant
- 2.5.3 The Respondent refused to re-hire the Claimant

Automatic unfair dismissal

- 3 The Claimant asserts that the sole or principal reason for his dismissal was that he made one or more protected disclosures.

Documents

- 3. I was provided with a bundle prepared by the Respondent together with a series of emails from the Claimant between 29 August 2024 and 17 October 2024. During the hearing the Claimant provided me with an additional document headed 'Claimant's Respondent to the Respondent's Particulars of Response'.

Claimant's applications

- 4. In the recent emails the Claimant made applications for postponement of today's hearing as he had another hearing in Newcastle, and for recusal of EJ Postle on the grounds of apparent bias.
- 5. The Claimant agreed it was not necessary to determine either of those applications as Newcastle ET had postponed their hearing, and EJ Postle was not hearing the Claimant's case today.

Issues for today

- 6. The hearing today was listed for me to determine whether the tribunal has jurisdiction to consider the Claimant's claims in light of the statutory time limit.

Relevant law

Discrimination complaints

- 7. The time limit for the claims of discrimination arising from disability is set out at s.123 Equality Act 2010. The relevant parts provide:

"(1) ...proceedings on a complaint...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

...

- (3) For the purposes of this section-
- (a) conduct extending over a period is to be treated as done at the end of the period
 - (b) failure to do something is to be treated as occurring when the person in question decided on it
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something-
- (a) When P does an act inconsistent with it
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

8. The discretion provided under s.123(1)(b) is a broad one. The burden is on the Claimant to persuade the Tribunal that it is just and equitable to extend time (*Robertson v Bexley Community Centre t/a Leisure Link* [2003] IRLR 434). The relevant factors and how they should be balanced are a matter for the tribunal. The prejudice that the Respondent would suffer from facing a claim which would otherwise be time barred is customarily relevant in such cases.
9. The checklist of factors in s.33 Limitation Act 1980 may be helpful, but it is not a requirement to consider each of those factors. The tribunal should bear in mind that rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very general broad discretion.
10. Potentially relevant factors include: the length of and reasons for the delay; the extent to which cogency of evidence is likely to be affected by the delay; the extent to which the Respondent has cooperated with any requests for information; the promptness with which the Claimant acted once he knew of the facts giving rise to the claims; the steps taken by the Claimant to obtain appropriate advice once he knew of the possibility of taking action.
11. The length of and reasons for the delay is almost always relevant, along with the question of whether the Respondent is prejudiced by the delay, for example by preventing or inhibiting it from investigating the claim while matters were fresh (*Southward London Borough Council v Afolabi* [2003] ICR 800)
12. The best approach is to assess all factors in the particular case that the tribunal considers to be relevant including, in particular, the length of and reasons for the delay (*Adeji v University Hospitals Birmingham NHS Foundation Trust* [2021] ICR D5)
- Claims related to protected disclosures
13. The time limit for the detriment claims is set out at s.48 of the Employment Rights Act 1996. The time limit for the unfair dismissal claim is set out at s.111 Employment Rights Act 1996.
14. Both sections provide that the claim must be brought within three months of the act complained of, or

“within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months”

15. Section 48(4) provides the following in relation to continuing acts:
“For the purposes of subsection (3) –
(a) Where an act extends over a period, the “date of the act” means the last day of that period; and
(b) A deliberate failure to act shall be treated as done when it was decided on;
And, in the absence of evidence establishing the contrary, an employer... shall be taken to decide on a failure to act when he does not act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done”

Evidence and submissions

16. The Claimant gave evidence and was cross-examined. He relied on his written document and also referred to the following matters when explaining the delay in lodging his claim:
- 16.1 In relation to the delay between April 2022 (dismissal) and January 2024 (commencing early conciliation), the Claimant said there was a claim which was lodged in April 2022, although he does not know what happened to it. He thinks the ET might have struck out the claim.
- 16.2 He did not put in a claim before August 2022 as he thought that things might be different when Mr Taylor left; Mr Taylor left in August 2022
- 16.3 He did not put in a claim after August 2022 as there was not a pattern at that time. When he applied for new roles and was rejected he thought that there was a pattern. He first applied for a new role in August 2022 but he was not sure whether that was rejected because Mr Taylor's partner was working there.
- 16.4 The Claimant found out that Mr Taylor's partner left in 2023. He applied again and then received differing explanations as to why he was not re-hired.
- 16.5 He had received an email in January 2023 from Cat Chadwick, but he believed that the non-hiring issue was temporary.
- 16.6 He believes that the reasons for not hiring is really a mask for the refusal to hire C because of his protected disclosures.
17. In cross-examination the Claimant accepted that he had received an email on 6 January 2023 from Cat Chadwick which expressly stated that the Respondent would not reemploy the Claimant under any circumstances. The Claimant said that although he had received that email, he was receiving messages from on-park management and regional management that there was nothing wrong with him per se and that they would contact him regarding auditions in due course. He felt that there had been mixed messages as to whether he was eligible for re-hire.
18. In submissions the Respondent asserted that the Claimant should have lodged a claim upon Ms. Chadwick sending the email in January 2023 which said that the Respondent would not re-hire the Claimant in any circumstances. The Respondent said that it was prejudiced due to the passage of time as some employees who could be witnesses to relevant

matters had left employment. I was not provided with any details of who had left and when.

19. Based on the Claimant's evidence I found that Mr Taylor was a highly relevant witness to the claims relating to termination and the matters leading to termination. Mr Taylor was employed by the Respondent during the 3-month time limit for those claims, but left the Respondent's employment in August 2022.
20. I also found that the Claimant had knowledge of how to bring a claim as he presented a claim shortly after his termination in April 2022, although I was not clear as to what had happened to that claim and make no findings as to that.

Conclusions

21. In relation to all claims relating to termination, my judgment is that they have been presented outside of the statutory time limits and the ET does not have jurisdiction to consider them. I therefore strike them out.
22. In relation to the post-termination detriments, my judgment is that they may have been presented in time. To be clear, I have not make a conclusive decision on whether the post-termination detriments are in time, as there was insufficient evidence at this hearing to allow me to decide that issue. It will need to be determined by the tribunal at the final hearing of the complaints.
23. The reasons for these decisions are as follows.

Discrimination complaints

24. For the discrimination claims:
 - 22.1 The most recent allegation of discrimination arising from disability is on the date of termination of employment, which was April 2022.
 - 22.2 The complaints have been presented significantly after the primary time limit of three months. They were presented approximately 18 months after the 3-month time limit expired.
 - 22.3 The Respondent has been prejudiced by the delay as the main protagonist has left employment
 - 22.4 This appears to be a case where there is a significant factual dispute which is not likely to be resolved by recourse to documents. The memory of witnesses will therefore be of particular importance. Due to the passage of time, there are likely to be difficulties recalling events. The fading of memories would have significantly less impact if the claims had been presented within the normal time limit of three months. In other words, the delay has made the situation worse.
 - 22.5 The Claimant could have presented claims earlier but appears he chose not to do so. In fact, the Claimant believes that he may have presented termination-related complaints shortly after his termination (although I do not have any details of that earlier case before me).
 - 22.6 The subsequent communications with the Respondent do not appear to be matters which could have changed the Claimant's view on the termination-related complaints, nor explain his delay in presenting those claims.

25. Taking those matters into account, I find that it is not just and equitable to extend time. I considered the fact that it is for the Claimant to persuade me that it is just and equitable, and that I have a broad discretion.

Protected disclosure complaints

26. In relation to the protected disclosure complaints which relate to the termination of employment and matters leading up to termination, I conclude that it plainly was reasonably practicable to have presented those complaints in time, as the Claimant says he presented an in-time claim. The Claimant has not provided any explanation as to why it would not have been reasonably practicable to present the complaints in time.
27. I therefore conclude that the tribunal has no jurisdiction to consider the pre-termination protected disclosure complaints as they have been presented outside of the statutory time limit and it would have been reasonably practicable to have presented them in time. This includes the claim of automatic unfair dismissal.
28. For the claims relating to the refusal to re-hire the Claimant after his employment ended, it is not clear to me whether these claims were presented within the statutory time limit. The reason is that there was a lack of clarity around what date(s) the Claimant applied for employment with the Respondent; what date(s) his application(s) were rejected; and the dates on which he alleges he was given differing reasons.
29. I therefore cannot make a final determination as to whether the post-termination detriment claims were presented in time or out of time. I have allowed the claims to proceed to a final hearing and made orders requiring the Claimant to provide additional information in relation to those claims.

Employment Judge **Curtis**

Date: 11 November 2024 _____

JUDGMENT & REASONS SENT TO THE PARTIES ON

15/11/2024

FOR THE TRIBUNAL OFFICE