

FAIR EMPLOYMENT TRIBUNAL

CASE REFS: 1246/19FET
8838/19

CLAIMANT: Michael Hanna

RESPONDENT: Concentrix CVG Intelligent Contact Limited

JUDGMENT ON PRELIMINARY HEARING ISSUES

The judgment of the tribunal is set out in the body of this decision.

CONSTITUTION OF TRIBUNAL:

Employment Judge (sitting alone): Employment Judge Greene

APPEARANCES:

The claimant appeared in person.

The respondent was represented by Mr N Phillips, of counsel, instructed by Carson McDowell LLP.

1. At a Case Management Discussion on 5 September 2019 Employment Judge Orr directed that a Pre-Hearing Review would convene to determine whether the claimant's claims were outside the statutory time limit and, if so, whether time should be extended under the appropriate statutory test.
2. The Pre-Hearing Review came on for hearing on 17 October 2019.
3. In the course of that hearing it became clear that the claimant was asserting that he had made a claim for public interest disclosure causing him a detriment or dismissal. The respondent contested that he had not made such a claim.
4. Accordingly, with the agreement of the parties it was decided that this issue relating to any public interest disclosure claim must be determined before the Pre-Hearing Review issues in relation to time could be determined. It was also identified in the course of that hearing that the claimant had brought claims for discrimination on the basis of religion or political opinion, unfair dismissal, unlawful deduction from wages, non-payment of holiday pay, non-payment of wages including statutory sick pay and a breach of contract.

5. The Preliminary Hearing to consider the preliminary issues was convened on 28 January 2020 to determine all the issues.
6. At the Preliminary Hearing the issues for determination were as follows:-
 - (1) Does the claimant's claim form, including the accompanying documentation, disclose a claim for public interest disclosure that led to or contributed to (a) the claimant's alleged unfair dismissal, or (b) a detriment.
 - (2) If not should leave be granted to the claimant to amend his claim to add a claim for public interest disclosure that led to or contributed to his alleged unfair dismissal or detriment?
 - (3) Whether the claimant's claims, including detriment or dismissal by reason of a public interest disclosure, or any part of those claims are outside the statutory time-limit for lodging such a claim.
 - (4) If any of those claims are outside the statutory time-limit for lodging such claims should time be extended to enable the claimant to continue with those claims.
7. At the Preliminary Hearing, on 28 January 2019, the tribunal considered evidence given by the claimant and submissions by both parties.

PRELIMINARY HEARING ISSUE 1

8. The tribunal concluded that the claimant's claim form, including the accompanying documentation, did not disclose a claim form for detriment or dismissal by reason of a public interest disclosure.

PRELIMINARY HEARING ISSUE 2

9. On foot of the evidence adduced and submissions made the tribunal was satisfied that the claimant's claim should be amended to permit a claim for detriment or dismissal by reason of public interest disclosure.
10. The wording of the amendment is attached to this judgment.

PRELIMINARY HEARING ISSUE 3

11. Apart from the claimant's claim for discrimination on the basis of religion or political opinion, all the other claims the claimant has brought have a time-limit of three months within which to bring the claims and with a discretion to extend that period where the tribunal is satisfied that it was not reasonably practicable to bring the claim within the three months and the claims were brought within such further period as is reasonable.
12. In relation to the claim for discrimination on the basis of religion or political opinion the claim was brought within three months but the tribunal has a discretion to extend time where a claim is late providing it is just and equitable to do so.
13. It was accepted by both parties that all the claimant's claims were late.

14. On foot of the evidence adduced and the submissions made the tribunal was satisfied that time should be extended in all of the claimant's claims to enable them to proceed with those claims. Time was extended to 1 May 2019.
15. Full oral reasons for the tribunal's judgment in relation to each of the Preliminary Hearing issues was given at the hearing.
16. Accordingly, the respondent will have 14 days from the date of the issue of this judgment to amend its response form.
18. A further Preliminary Hearing will take place on **13 February 2020** between **10.00 am and 12 noon** to prepare the claim for hearing.

Employment Judge:

Date and place of hearing: 28 January 2020, Belfast.

This judgment was entered in the register and issued to the parties on:

Submission to Industrial Tribunal Office – Part 2

Office of the Industrial Tribunals and The Fair Employment Tribunal
Killymeal House
2 Cromac Quay
Ormeau Road
BELFAST
BT7 2JD

10th January 2020

Dear Sir/Madam,

At the last hearing I was asked to provide evidence of Whistle Blowing in my case. I was specifically asked to provide list that

- a) Under negligence
- b) Exceptional circumstances

Negligence

Refer earlier documents: **Chronology of Events, Legal Advice Phone Log & Reg Rankin Phone Log**

In the earlier submission: Chronology of Events. I fully accept that my formal application to ITO was submitted outside 90-day period, one day late on 1st May. The reason for delay is that I'm not a trained lawyer and as such I was labouring under the false impression, that I had 6-months to submit my claim. Since emerged that I had 6-months to lodge Sectarian Discrimination Claim but only 3-months to register Unfair Dismissal Claim.

As outlined in earlier Chronology of Events submission. I made various attempts to secure Legal Representation in the weeks before Easter 2019. I went to three specific Solicitors Offices: Mclvor Farrell on Springfield Rd, Flynn & McGettrick on Falls Rd, and Michael Flanagan Solicitor also on Falls Rd. At all three I was only informed that the practise didn't take on such cases. None of receptionist staff offered any advice on 3-month rule. It was only third office, Flanagan's that advised I approach Law Society. Law Society stated that they couldn't recommend specific practise. Only in desperation, ringing back Mclvor Farrell on 24th April was Breen, Rankin suggested.

I immediately visited Breen, Rankin offices, gave my details and phone number to receptionist. Only to be told it would be following week Reg would get back to me as he was in Donegal on holiday. Phone log confirms I rang on 30th April and then next day 1st May. Only on 3rd attempt on 1st May did I get speaking to Reg. it was only then I was informed of 90-day rule. But Reg still advised to immediately formally submit ITO application and plead for court to apply discretion and accept 'special circumstances to hear claim'. Within hour I was in ITO reception and lodged my claim.

Exceptional Circumstances

The major reason for delay was that in mid-February I went out to Uganda to assist in the development of RRMIP (Rural Renewables Microgeneration Industrial Park) on behalf of Ugandan Embassy Dublin and MDT (Masaka Diocesan Trust). Project is to install 3MW solar farm beside 15 new industrial units, which will be powered by private wire from solar farm. It should provide employment for +300, stimulate the rural economy by promoting Agri Co-operative culture. When I returned home at start of March I was then tasked to assist Ugandan Embassy complete AfDB (African Development Bank) tender application. This was finally done by second week in April. I was content to go out to Uganda and continue to assist Ugandan Embassy Dublin, in mistaken belief that I had 6 months to register my claim. Also that securing legal representation could and would be achieved at my first meeting with local solicitor.

'Exceptional Circumstances - Whistleblowing'

Part A: Criminal Offences being committed within Convergys, Springfield Road Site

I consider I have provided sufficient documentation to both Convergys Management and ITO to demonstrate criminal offences being committed within Convergys, Springfield Rd site. At meeting of 16th July, I informed both Paula Martin and Matt Dempster of drug trading and drug taking within site by members of staff. Response of both Senior Managers was to refuse to read or accept my **Draft Statement to Future Employment Tribunal**. Not only did either Senior Manager refuse to read it, they both ran out of the office, leaving document on desk.

I was therefore forced to forward by post **Draft Statement to Future Employment Tribunal** along with **Letter of 19 July 2018**, to Moya Leonard, Convergys HR Manager, Springfield Road Site. Explaining the criminal practises I personally observed within Convergys workspace. This information was further relayed to Convergys Site Manager, in **Letter of 26 July 2018**, to Danielle Doherty, , Convergys Springfield Road Site, Site Director.

In subsequent meeting with Site Manager and Gary Skinner (HR Manager) I also informed both Senior Convergys Managers that one of their employees was fencing of stolen goods daily basis on actual work-floor. These goods were believed to be result of credit card fraud. That individual was never sacked by Convergys Senior Management. He stopped attending one Monday morning, after being arrested by Gardai in Dublin for credit card fraud and sent to Mountjoy Prison.

Part B: H&S implications for Convergys staff placed in danger

My biggest concern around the daily drug taking, drug trading and fencing of stolen goods I personally observed by Convergys staff within Springfield Rd site. Was H&S implications for younger member of staff. Firstly that they would perceive that drug taking within work environment was being condoned by Convergys Senior Management. Secondly, I was particularly worried that young and impressionable new starters were being placed in 'dangerous working environment'.

~~My biggest fear being the possible/probable predatory behaviour by some of those 'Drug Trading Wolves' employed and tolerated by Convergys Springfield Road site Senior Management. That ultimately one of these 'Trading Wolves' would maliciously offer a vulnerable young girl, some still in their late teens, most barely into their 20's. A tampered brownie or gum jelly sweet towards end of their shift. And then as the narcotic kicked in. Invite her to 'a private party'.~~

In danger of mis-quoting Edmund Burke 'The only thing necessary for evil to triumph of evil is for good men to do nothing.' Not on my watch. I raised drug trading, drug taking and other criminal behaviour with Convergys Senior Management on at least 4 specific occasions. I explained that staff were 'free-basing' in Gents upper toilets. I was told these issues would be addressed. From September 2018 to January 2019 I say no remedial measures being introduced or installed throughout the site. Rather Convergys Springfield Road site Senior Management refused to concede the practise of drug taking and drug trading was rampant across the Springfield Road site. They refused to carry out requested drug tests of July 2019. Then decided easiest way to 'rid themselves' of whistle-blowing problem – was to rid themselves of me. Consequently I contend I was unfairly dismissed at end of Jan 2019

Part C: Evidence of Unfair Dismissal performed on Whistle blower

When I returned to work in September, I was allocated to ^{Stephen} Paul Murray's team and had relatively pleasant experience. I was then re-allocated to Paddy Murphy's team, on his return from honeymoon at start of October. Immediately working atmosphere turned to one of threat, harassment and being slighted in front of my peers and colleagues. I was told my work was insufficient and poor quality. This was culminated when normal weekly Coaching Session, typically 10-minute exercise. Became an exceptional event 'observed by Stephen Reilly (Operations Manager) and Alan McKenna (Quality Manager). This was 45-minute session where Paddy Murphy continually harangued and berated me for my sloppy performance. No advice was offered. It consisted of 45-minute tirade by Paddy Murphy shouting at me and saying why was I so poor at my job. It was obvious to me this was Convergys laying down the law to whistle-blowers and presence of both Stephen Reilly and Alan McKenna. Was confirmation it was sanctioned by Convergys Senior Management.

During remainder of my time at Convergys, although I had built up some 18 days holiday. Every time I asked for holidays I was refused – even though I was among the lowest ranking members of staff. Not only that but the bonus promised in Gary Skinner e-mail of 14th September was never paid. My pay anomaly during 26th October when failure by Convergys to provide me with log-in details resulted in me only being paid for 12 hours not 40 hours. Was never resolved. As was failure to pay 3-days Statutory Sick Pay. Plus refusal to allocate me 1 day's Compassionate Leave to attend my uncle Eddie's funeral in January. Even though I was told I would be getting that. Then finally failure to pay outstanding 19 days holidays, built up over 2018.

All these actions and events contribute to my claim for Unfair Dismissal as result of previous Whistle blowing actions. Even my dismissal in January 2019 for breach of DPA procedures. I made minor mistake that I was brought up on by my new Team Leader. I was advised that although serious, he didn't consider it sacking offence. I obviously didn't present major security risk to either Vodafone or Convergys. As I was allowed to continue working on phones for almost the full month of January. Until Paddy Murphy got involved and he brought me to disciplinary panel on 29th January where I was sacked.

I have completed document in honest belief it fully complies with stipulated instructions of Judge Greene.

Michael Giff

Signed:

Dated 9th January 2020