



# EMPLOYMENT TRIBUNALS

Claimant: Mr IM Catuneanu

Respondent: AD Williams Wimbledon Limited

Heard at: London South Employment Tribunal by video

On: 7 March 2022

Before: Employment Judge L Burge

## Appearances

For the Claimant: In person

For the Respondents: Mr Cook, Counsel

## OPEN PRELIMINARY HEARING JUDGMENT

It is the Judgment of the Tribunal that:

1. The Claimant's claims were brought outside of the statutory time limit, it is not just nor equitable to extend time; and
2. The Claimant's claims are therefore dismissed.

## REASONS

1. This Preliminary Hearing had been listed for 3 hours by Employment Judge Hyams-Parish to start at 10am to decide:
  1. Whether the claims have been brought in time;
  2. Whether to permit any amendments to the claim; and
  3. To consider any further direction as appropriate.
2. The notice of hearing had been sent on 21 October 2021. The parties were sent notification that the hearing would take place by video on Wednesday 2 March 2022. On Friday 4 March the Claimant wrote to the Tribunal saying that he would not attend the hearing as he had a lack of reliable internet connection. The Tribunal tried to

contact the Claimant this morning repeatedly until 10.57 when the Claimant answered his telephone and agreed to dial into the hearing.

3. Initially the Claimant said that he did not have the documents in front of him and so he could not proceed today. The Claimant objected to the Respondent having provided copies of his P45 to the Tribunal and said that he wanted that matter dealt with by the criminal courts before his employment claim was heard. The Respondent opposed the request for a postponement. I decided that even though the Respondent would be prejudiced, this would be minimal as the re-listed hearing could take place soon and it was in the interests of justice for the hearing to be postponed to take place in person when the Claimant had access to all the documents.
4. As we were agreeing the date for the re-listed hearing which was to take place in three weeks' time, the Claimant said that he wanted me to recuse myself as I had not agreed to refer the case to the criminal courts. I explained that this hearing was listed to consider whether claims have been brought in time, whether to permit any amendments to the claim and to consider any further direction as appropriate. It was a matter for the Claimant if he wanted to report any matter to the police. I explained that it would be the third part of this hearing when we would talk about documents and what further direction was appropriate. The Claimant then said he wanted a hearing with just the judge, without the Respondent. I explained that it would not be fair for either party to have access to the judge, without the other being present.
5. The Claimant said that he now did not want to postpone the hearing and that he did have access to the documents after all. I asked the Claimant a number of times if he was sure he wanted to continue and he confirmed he did. The Respondent was content to proceed and so I decided that it was in the interests of justice to review my earlier decision and to proceed today. The Claimant said he did not need a break but we had a 5 minute break for him to review his documentation.
6. The Claimant's claims as set out in his claim form were under the Agency Worker Regulations 2010 and were said to be for holiday pay, furlough pay and access to employment. However, the Claimant said that he was not pursuing these as claims, they were examples of what he would have been entitled to had the Respondent treated him as an employee. He said that there were two employees Mr Llobregat and Mr Pete who worked directly for the Respondent. He said his claim was for pay equal to theirs, and they were employed continuously (Mr Llobregat from June 2019 – October 2020). I asked the Claimant if it was his case that he was not told about the permanent vacancy when Mr Llobregat got his job. The Claimant said that it was not his claim, he thought that he should have been paid the same as them (even during the break in his assignments when he was not in fact working for the Respondent). The Claimant confirmed that he was not pursuing a claim that he was not given access to vacancies at the Respondent. The Claimant said that he had told his employer that he was available for work on 11 November but had called in sick and so did not work. The Respondent denied this but in any event they agreed that the Claimant was not paid by the Respondent after 9 October 2020. The Respondent did not have records for any employees with the names Mr Llobregat and Mr Pete working for them.

7. The hearing finished at 13.10. There had not been enough time to consider issues 2 and 3 - whether to permit any amendments to the claim and to consider any further direction as appropriate.

## The Law

8. Section 18 of the Agency Worker Regulations 2010 sets out:

*“Complaints to employment tribunals etc*

*18.—(1) In this regulation “respondent” includes the hirer and any temporary work agency.*

*(2) Subject to regulation 17(5), an agency worker may present a complaint to an employment tribunal that a temporary work agency or the hirer has infringed a right conferred on the agency worker by regulation 5, 12, 13 or 17 (2).*

...

*(4) Subject to paragraph (5), an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning—*

*(a) in the case of an alleged infringement of a right conferred by regulation 5, 12 or 17(2)..., with the date of the infringement, detriment or breach to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the infringement, detriment or breach, the last of them;*

*(b) in the case of an alleged infringement of the right conferred by regulation 13, with the date, or if more than one the last date, on which other individuals, whether or not employed by the hirer, were informed of the vacancy.*

...

*(5) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.*

*(6) For the purposes of calculating the date of the infringement, detriment or breach, under paragraph (4)(a)—*

*(a) where a term in a contract infringes a right conferred by regulation 5, 12 or 17(2), ... that infringement or breach shall be treated, subject to sub-paragraph (b), as taking place on each day of the period during which the term infringes that right or breaches that duty;*

*(b) a deliberate failure to act that is contrary to regulation 5, 12 or 17(2) F5... shall be treated as done when it was decided on.*

*(7) In the absence of evidence establishing the contrary, a person (P) shall be taken for the purposes of paragraph (6)(b) to decide not to act—*

*(a) when P does an act inconsistent with doing the failed act; or*

*(b)if P has done no such inconsistent act, when the period expires within which P might reasonably have been expected to have done the failed act if it was to be done...*"

9. In the case of *Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434* the Court of Appeal said of the just and equitable test:

*'a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.'*

## Conclusions

10. The Claimant's pleaded claim was for holiday pay, furlough pay and access to vacancies under the Agency Worker Regulations 2010. I understood the Claimant as saying that he wanted to amend his claims as he said that he was entitled under the Regulations to the same basic working and employment conditions as Mr Pete and Mr Llobregat. I made it clear that the first step was for me to consider whether the Claimant's claims were out of time, but in any event as the Claimant was last paid by the Respondent on 9 October 2020, the dates would be the same for his proposed amended claim. The Claimant again asked for me to recuse myself as I would not decide that issue, nor would I allow him to send the Tribunal Mr Pete's telephone number.
11. I explained that the Agency Worker Regulations set out that complaints could be brought to an Employment Tribunal if they were submitted within 3 months of the date of the infringement. Under his existing, or his proposed amended claim, the last time we was paid was the last date that the Respondent had allegedly infringed the Regulations. The Claimant notified ACAS of his claim on 3 February 2021 and submitted his claim on 9 February 2021.
12. Looking at the Claimant's claim as set out in his claim form, and the claim as he described it in this hearing (for the same pay as permanent members of staff), the last date that he says he did not receive the correct amount of pay was 9 October 2020. The Claimant should have contacted ACAS by 8 January 2021. As he did not do so, there was no extension to the time limit. As such, in bringing his claim on 9 February 2021, the Claimant brought his claim 32 days late.
13. I explained that it seemed he had brought his claim late and explained, at length, why. I asked the Claimant, three times why he put in his claim when he did and why it was just and equitable to extend time but he would not answer my question, instead he talked about his view that the Respondent was dishonest, why I should recuse myself as I did not allow him to obtain Mr Pete's telephone number and why the Tribunal should not make a decision as the P45 issue was not resolved. Mr Cook responded that the Claimant had failed repeatedly to answer the question being asked and had provided no explanation for why there was a delay in submitting his claim.
14. I declined to recuse myself. The Claimant wanted the Respondent to be subject to criminal sanctions for providing his P45 to the Tribunal, he wanted to delay the

proceedings, and then to go ahead, and he wanted to provide the telephone number for a permanent employee. None of these circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased. The Claimant simply did not like the decisions.

15. I have decided that the Claimant did not enter his claim in time. The Claimant had to enter his claim by 8 January 2021. Pursuant to s.18(5) of the Agency Worker Regulations I could then decide to extend time if, in all the circumstances of the case I considered it was just and equitable to do so. The Claimant gave no reasons why he submitted his claim when he did and why it would be just and equitable to extend time. I have therefore concluded that the Tribunal cannot hear his complaint as it would not be just and equitable to extend time in all the circumstances of the case. The Claimant's claims are therefore dismissed.

EJ L Burge  
7 March 2022

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