

Employment Test



January Training Day 2009

Please do not open this test paper until the test starts.

Please circle the type of test you are taking on your answer paper.

Please write your candidate number on each sheet of answer paper.

Good luck.

Scenario

Adam works for Bedfordshire Canine Delights. In February 2008 a new manager Enid was appointed as his supervisor.

Adam is black and quickly realised that Enid treated him differently to his white colleagues. She made disparaging remarks about his work and excluded him from work events. This quickly escalated to bullying. Adam was made very unhappy by this. He did not complain at the time because he didn't want to lose his job.

On 8th December 2008 Enid was promoted to Vice-President for Marketing (Dog Food). This job was based in a different office, so Adam no longer encountered her. Enid was replaced with Fred. Adam's relationship with Fred was much better.

On 12th January 2009 Adam was the last to leave the office. This meant that he had to lock the building and set the burglar alarm. When he attempted to activate the alarm, he found that his code did not work. He rang Fred, who told him that there had been problems with the alarm system recently. Fred told Adam to lock the building and go home. Adam did so.

That evening the office was broken into onto. Computer equipment worth approximately £5,000 was stolen.

The next day Adam was handed a letter inviting him to a meeting to discuss his failure to set the alarm. It said that he had failed to follow the alarm procedures and that disciplinary action was being considered. The meeting was arranged for 16th January

This meeting was chaired by Enid. Adam felt that she managed the meeting very badly. She was rude to him and did not allow him to give an explanation. She appeared to have made up her mind before the meeting started.

At the end of the meeting Adam was dismissed. Adam believes that his previous poor relationship with Enid and her racist attitude towards him were the real reason for his dismissal.

He appealed to Mr Gregson, Enid's superior. An appeal meeting took place on 23rd January 2009. Mr Gregson upheld the decision to dismiss.

Adam has come to you for advice on starting a tribunal claim for racial harassment (regarding Enid's actions as his supervisor), race discrimination (in respect of Enid's decision to dismiss) and unfair dismissal.

Questions

1. What was the applicable statutory dispute resolution procedure in respect of the claims for:
 - a. Racial harassment
 - b. Race discrimination regarding his dismissal
 - c. Unfair dismissal
2. Is there anything that Adam must do before making his claim to the tribunal?
3. How long does Adam have to lodge his claims in the ET?

Note on statutes

You have been provided with the statutes needed to answer these questions. These have been lightly edited to omit irrelevant material. You are not expected to know or to address anything outside what has been provided.

All the heads of claim relevant to the questions are listed in both Schedule 3 and 4 of the Employment Act 2002.

Employment Act 2002 (Dispute Resolution) Regs 2004

3 Application of dismissal and disciplinary procedures

(1) Subject to paragraph (2) and regulation 4, the standard dismissal and disciplinary procedure applies when an employer contemplates dismissing or taking relevant disciplinary action against an employee.

(2) Subject to regulation 4, the modified dismissal procedure applies in relation to a dismissal where—

(a) the employer dismissed the employee by reason of his conduct without notice,

(b) the dismissal occurred at the time the employer became aware of the conduct or immediately thereafter,

(c) the employer was entitled, in the circumstances, to dismiss the employee by reason of his conduct without notice or any payment in lieu of notice, and

(d) it was reasonable for the employer, in the circumstances, to dismiss the employee before enquiring into the circumstances in which the conduct took place,

but neither of the dismissal and disciplinary procedures applies in relation to such a dismissal where the employee presents a complaint relating to the dismissal to an employment tribunal at a time when the employer has not complied with paragraph 4 of Schedule 2.

4 Dismissals to which the dismissal and disciplinary procedures do not apply

[Regulation 4 does not apply to this case.]

6 Application of the grievance procedures

(1) The grievance procedures apply, in accordance with the paragraphs (2) to (7) of this regulation, in relation to any grievance about action by the employer that could form the basis of a complaint by an employee to an employment tribunal under a jurisdiction listed in Schedule 3 or 4, or could do so if the action took place.

(2) Subject to paragraphs (3) to (7), the standard grievance procedure applies in relation to any such grievance.

(3) Subject to paragraphs (4) to (7), the modified grievance procedure applies in relation to a grievance where—

(a) the employee has ceased to be employed by the employer;

(b) the employer—

(i) was unaware of the grievance before the employment ceased, or

(ii) was so aware but the standard grievance procedure was not commenced or was not completed before the last day of the employee's employment; and

(c) the parties have agreed in writing in relation to the grievance, whether before, on or after that day, but after the employer became aware of the grievance, that the modified procedure should apply.

(4) Neither of the grievance procedures applies where—

(a) the employee has ceased to be employed by the employer;

(b) neither procedure has been commenced; and

(c) since the employee ceased to be employed it has ceased to be reasonably practicable for him to comply with paragraph 6 or 9 of Schedule 2.

(5) Neither of the grievance procedures applies where the grievance is that the employer has dismissed or is contemplating dismissing the employee.

Employment Act 2002 (Dispute Resolution) Regs 2004 continued

15 Extension of time limits

(1) Where a complaint is presented to an employment tribunal under a jurisdiction listed in Schedule 3 or 4 and—

- (a) either of the dismissal and disciplinary procedures is the applicable statutory procedure and the circumstances specified in paragraph (2) apply; or
- (b) either of the grievance procedures is the applicable statutory procedure and the circumstances specified in paragraph (3) apply;

the normal time limit for presenting the complaint is extended for a period of three months beginning with the day after the day on which it would otherwise have expired.

(2) The circumstances referred to in paragraph (1)(a) are that the employee presents a complaint to the tribunal after the expiry of the normal time limit for presenting the complaint but had reasonable grounds for believing, when that time limit expired, that a dismissal or disciplinary procedure, whether statutory or otherwise (including an appropriate procedure for the purposes of regulation 5(2)), was being followed in respect of matters that consisted of or included the substance of the tribunal complaint.

(3) The circumstances referred to in paragraph (1)(b) are that the employee presents a complaint to the tribunal—

- (a) within the normal time limit for presenting the complaint but in circumstances in which section 32(2) or (3) of the 2002 Act does not permit him to do so; or
- (b) after the expiry of the normal time limit for presenting the complaint, having complied with paragraph 6 or 9 of Schedule 2 in relation to his grievance within that normal time limit.

(4) For the purposes of paragraph (3) and section 32 of the 2002 Act the following acts shall be treated, in a case to which the specified regulation applies, as constituting compliance with paragraph 6 or 9 of Schedule 2—

- (a) in a case to which regulation 7(1) applies, compliance by the employee with the requirement in regulation 7(2);
- (b) in a case to which regulation 9(1) applies, compliance by the appropriate representative with the requirement in sub-paragraph (a) or (b) of that regulation, whichever is the later; and
- (c) in a case to which regulation 10 applies, the raising of his grievance by the employee in accordance with the procedure referred to in that regulation.

(5) In this regulation “the normal time limit” means—

- (a) subject to sub-paragraph (b), the period within which a complaint under the relevant jurisdiction must be presented if there is to be no need for the tribunal, in order to be entitled to consider it to—
 - (i) exercise any discretion, or
 - (ii) make any determination as to whether it is required to consider the complaint, that the tribunal would have to exercise or make in order to consider a complaint presented outside that period.

Employment Act 2002

32 Complaints about grievances

- (1) This section applies to the jurisdictions listed in Schedule 4.
- (2) An employee shall not present a complaint to an employment tribunal under a jurisdiction to which this section applies if—
 - (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 2 applies, and
 - (b) the requirement has not been complied with.
- (3) An employee shall not present a complaint to an employment tribunal under a jurisdiction to which this section applies if—
 - (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 2 has been complied with, and
 - (b) less than 28 days have passed since the day on which the requirement was complied with.
- (4) An employee shall not present a complaint to an employment tribunal under a jurisdiction to which this section applies if—
 - (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 2 has been complied with, and
 - (b) the day on which the requirement was complied with was more than one month after the end of the original time limit for making the complaint.
- (5) In such circumstances as the Secretary of State may specify by regulations, an employment tribunal may direct that subsection (4) shall not apply in relation to a particular matter.
- (6) An employment tribunal shall be prevented from considering a complaint presented in breach of subsections (2) to (4).

Schedule 2

Part 1: Dismissal and Disciplinary Procedures

Chap. 1 Standard Dismissal and Disciplinary Procedure

1 Step 1: statement of grounds for action and invitation to meeting

- (1) The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead him to contemplate dismissing or taking disciplinary action against the employee.
- (2) The employer must send the statement or a copy of it to the employee and invite the employee to attend a meeting to discuss the matter.

2 Step 2: meeting

- (1) The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension.
- (2) The meeting must not take place unless—
 - (a) the employer has informed the employee what the basis was for including in the statement under paragraph 1(1) the ground or grounds given in it, and
 - (b) the employee has had a reasonable opportunity to consider his response to that information.
- (3) The employee must take all reasonable steps to attend the meeting.
- (4) After the meeting, the employer must inform the employee of his decision and notify him of the right to appeal against the decision if he is not satisfied with it.

Employment Act 2002, Schedule 2 continued

3 Step 3: appeal

- (1) If the employee does wish to appeal, he must inform the employer.
- (2) If the employee informs the employer of his wish to appeal, the employer must invite him to attend a further meeting.
- (3) The employee must take all reasonable steps to attend the meeting.
- (4) The appeal meeting need not take place before the dismissal or disciplinary action takes effect.
- (5) After the appeal meeting, the employer must inform the employee of his final decision.

Chap. 2 Modified Dismissal Procedure

4 Step 1: statement of grounds for action

The employer must—

- (a) set out in writing—
 - (i) the employee's alleged misconduct which has led to the dismissal,
 - (ii) what the basis was for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, and
 - (iii) the employee's right to appeal against dismissal, and
- (b) send the statement or a copy of it to the employee.

5 Step 2: appeal

- (1) If the employee does wish to appeal, he must inform the employer.
- (2) If the employee informs the employer of his wish to appeal, the employer must invite him to attend a meeting.
- (3) The employee must take all reasonable steps to attend the meeting.
- (4) After the appeal meeting, the employer must inform the employee of his final decision.

Part 2: Grievance Procedures

Chap. 1 Standard Procedure

6 Step 1: statement of grievance

The employee must set out the grievance in writing and send the statement or a copy of it to the employer.

7 Step 2: meeting

- (1) The employer must invite the employee to attend a meeting to discuss the grievance.
- (2) The meeting must not take place unless—
 - (a) the employee has informed the employer what the basis for the grievance was when he made the statement under paragraph 6, and
 - (b) the employer has had a reasonable opportunity to consider his response to that information.
- (3) The employee must take all reasonable steps to attend the meeting.

Employment Act 2002, Schedule 2 continued

- (4) After the meeting, the employer must inform the employee of his decision as to his response to the grievance and notify him of the right to appeal against the decision if he is not satisfied with it.

8 Step 3: appeal

- (1) If the employee does wish to appeal, he must inform the employer.
- (2) If the employee informs the employer of his wish to appeal, the employer must invite him to attend a further meeting.
- (3) The employee must take all reasonable steps to attend the meeting.
- (4) After the appeal meeting, the employer must inform the employee of his final decision.

Chap. 2 Modified Procedure

9 Step 1: statement of grievance

The employee must—

- (a) set out in writing—
 - (i) the grievance, and
 - (ii) the basis for it, and
- (b) send the statement or a copy of it to the employer.

10 Step 2: response

The employer must set out his response in writing and send the statement or a copy of it to the employee.

Race Relations Act 1976

1 Racial discrimination

- (1) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if—
- (a) on racial grounds he treats that other less favourably than he treats or would treat other persons; or
 - (b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but—
 - (i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and
 - (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and
 - (iii) which is to the detriment of that other because he cannot comply with it.

3A Harassment

- (1) A person subjects another to harassment in any circumstances relevant for the purposes of any provision referred to in section 1(1B) where, on grounds of race or ethnic or national origins, he engages in unwanted conduct which has the purpose or effect of—
- (a) violating that other person's dignity, or
 - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

54 Jurisdiction of employment tribunals

[This section gives jurisdiction to hear Race Relations Act cases against employers to the employment tribunal.]

68 Period within which proceedings to be brought

- (1) An employment tribunal shall not consider a complaint under section 54 unless it is presented to the tribunal before the end of—
- (a) the period of three months beginning when the act complained of was done.

Employment Rights Act 1996

111 Complaints to employment tribunal

- (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
- (2) Subject to subsection (3), an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—
 - (a) before the end of the period of three months beginning with the effective date of termination, or
 - (b) 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.
- (3) Where a dismissal is with notice, an employment tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.