

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE EQUAL OPPORTUNITY TRIBUNAL

(Referred pursuant to S. 39(2) of the Equal Opportunity Act 2000 as amended by Act No. 5 of 2001)

E.O.T. No. 0002 OF 2012

BETWEEN

DEREK SALANDY

Complainant

AND

**THE PETROLEUM COMPANY OF
TRINIDAD AND TOBAGO (Petrotrin)**

Respondent

CORAM:

His Honour Mr. Rajmanlal Joseph - Judge/Chairman

Her Honour Ms. Leela Ramdeen - Lay Assessor

His Honour Mr. Harridath Maharaj - Lay Assessor

APPEARANCES:

Mr. Shankar Bidaisee appeared on behalf of the Complainant

Mr. Russell Martineau, S.C appeared on behalf of the Respondent

Date of Delivery: June 30, 2016

JUDGEMENT

1. This case concerns the allegation by the Complainant that he was discriminated against by the Respondent on the basis that *“he was continuously discriminated by and/or treated unequally by the Respondent in regard to his employment and more specifically his remuneration package contrary to Sections 8 and 9 of the Equal opportunity Act, Chapter 22:03”*.
2. For the purpose of this decision it is not necessary to delve into all the particulars of his complaint except to indicate that the Tribunal at this stage is only required to give a ruling on a preliminary point raised by the Respondent that the Complainant had lodged his complaint outwith the six (6) month limitation period as established by Section 30 (2) of the Equal Opportunity Act, Chap. 22:03 (the Act). And that his complaint should be dismissed.

RESPONDENT’S SUBMISSIONS

3. The essence of the submissions of the Counsel for the Respondent are as follows:

The hiring of Mr. Brett (a foreigner) on April 23, 2007 constituted the date of the alleged act of discrimination. However, the complainant only lodged his letter of complainant to the Equal Opportunity Commission (EOC) on August 12, 2008. And that pursuant to Section 30 (2) of the Act the prescribed six (6) month period began to run from that date, and therefore his complaint was outwith the limitation period; and there were no “exceptional circumstances” for the Commission to extend time.

4. In addition, the concept of a “continuing breach” as advanced by the Commission is without substance, since there is no analogous provision in our Act as exist in the English Race Relations Act, which makes express provision for the treatment of such an act as extending throughout the duration of the contract; and cited *Hendricks –v- Metropolitan Police Commissioner* [2003] 1 ALL ER 654 and *Sougrin –v- Haringey Health Authority* [1992] IRLR 416 as authority for that proposition.

COMPLAINANT’S RESPONSE

5. Essentially, the position of counsel for the Complainant was that the act complained of was a continuing one and in any event when the Respondent had participated in the conciliation process at the Commission, it had waived the raising of any question of delay. In addition, Counsel adopted the authorities cited by the Commission in their statement filed (with leave of the Tribunal) on March 14, 2016; in particular the following cases:

- (a) *Hon. Partick Manning and 17 Others –v- Chandresh Charma* [2009] UKPC 36
- (b) *Mazibuko and Cebekhulu –v- The State* [2010] 1 SACR 433
- (c) *Bue –v- Peter Browne & Co* [1990] 2 QB 495
- (d) *Backlays Bank PLC –v- Kapur & Others* [1991] 1 ALL ER 646
- (e) *Calder –v- James Finlay Corp. Ltd* [1989] IRC 157

ISSUES FOR DETERMINATION

6. (a) Whether the Complainant’s complaint was lodged with the Equal Opportunity Commission outside the limitation period established by Section 30 (2) of the Act.
- (b) Whether the act complained of was a continuing act or a single act of alleged discrimination with continuing consequences.

ANALYSIS

7. In order to deal with the first issue hereinabove, it is useful to set out Section 30 of the Act in its entirety:

“30 (1) A person who alleges that some other person has discriminated against him or has contravened section 6 or 7 in relation to him may lodge a written complaint with the Commission setting out the details of the alleged act of discrimination.

(2) A complaint under subsection (1) shall be lodged with the Commission within six (6) months from the date of the alleged act of discrimination.

(3) Notwithstanding subsection (2), the Commission, in exceptional circumstances, may accept a complaint which is lodged more than six (6) months after the date of the alleged act of discrimination”.

It is clear from a plain reading of Section 30 that it has created a limitation period of six (6) months for the alleged act of discrimination. In addition, subsection (3) allows the Commission to extend time, providing that there are exceptional circumstances to so do.

8. It is the contention of Counsel for the Respondent that “the prescribed six (6) month period began to run from April 23, 2007, so that when the complaint was made on August 13, 2008, the six (6) month period had expired some 9¹/₂ months before. Counsel for the Respondent submitted that the date of the alleged act of discrimination was April 23, 2007, but provided not one scintilla of evidence in support.

9. Further, at paragraph 1 (iii) of its defence the Respondent indicated that:

“The Complaint of the Complainant of discrimination against him was not lodged with the Commission within six (6) months from the date of the alleged discrimination as required by Section 30 (2) of the Act and there are no exceptional circumstances to justify acceptance of the late complaint as required by Section 30 (3) of the Act”.

10. It is clear from a reading of the Commission’s Report dated November 3, 2010 that the Commission never addressed its mind to the issue of whether there were exceptional circumstances; presumably because the Commission came to the conclusion that the alleged act of discrimination was a “continuing one” , but this issue would be dealt with later in my analysis.

11. Furthermore, in the said paragraph 1 (iii) of its defence the Respondent further indicated that:

“The Respondent complained to the Commission about the lateness of the complaint dated the 12th day of July, 2010”.

In its letter to the Commission dated July 12, 2010 the Respondent indicated that the complaint was outwith the six (6) month period stipulated by Section 30 (2) of the Act. And their records show that the act that gave rise to the alleged discrimination occurred on April 23, 2007 when Mr. Brett was engaged by PETROTRIN.

12. How can one input to the Complainant that he had knowledge or was aware of the “superior” remuneration package contained in Mr. Brett’s contract for the period 2007 April 23 until 2009 March 31 (exhibited as “C.J. 1” in the Supplemental Witness Statement of Carrol Jarvis, then, Head of the Human Resource Services of the Respondent, filed on October 14, 2015). The only credible evidence that the Complainant became aware of Mr. Brett’s employment at the Respondent was an email from Leslie Chang dated April 23, 2007 and addressed to 47 named employees, including the Complainant, indicating that: “Mr. Luis Cuauro Brett has joined Petrotrin as the Process Engineering Superintendent – Heavy Oils (Admin Building Room 241, ext. 2141) effective April 23rd, 2007. Your cooperation and support would be kindly appreciated”. (This email is exhibited and marked “B” in the Complainant’s Reply to Defence filed on July 31, 2015). And this email did not condescend to give particulars of Mr. Brett’s remuneration package.

13. The only other indicator that the Complainant had some knowledge of the remuneration package of Mr. Brett is contained in paragraph 12 of his Witness Statement filed on October 2, 2012 wherein he stated.

“I also heard through the ‘grapevine’ in the latter half of 2007 that Mr. Brett was receiving a salary of over TT\$50,000 per month which was approximately twice the salary I was receiving at the time. I did my own inquiries and found this to be true”. The Complainant then went on to articulate in a graphic manner how he felt on verifying the information that the foreign national was receiving almost twice his monthly salary.

14. The Complainant stated that he got 'grapevine' information during the latter half of 2007, that is, sometime during the period July to December 2007. By itself, this 'grapevine' knowledge may not be sufficient to impute to the Complainant the requisite knowledge to form the opinion that he was allegedly discriminated against by the Respondent. To do so would be to give legitimacy to rumormongering.

15. However, the Complainant went on to validate this 'grapevine' information. Thus, at this point in time the Complainant can be taken to have the requisite knowledge that he was allegedly discriminated against. To be sure, while the Complainant did not give an exact time when he founds the information to be true; it is reasonable to infer that it would be before the end of 2007. Consequently he was out of time when he lodged his written complaint to the Commission on August 12, 2008.

16. The second issue is whether the act complained of, is a "continuing one". Counsel for the Respondent opposed this position contending that the alleged act of discrimination was nothing more than a single alleged act of discrimination with continuing consequences. Of course, this position was opposed by counsel for the Complainant.

17. The Equal Opportunity Act, Chap. 22:03 (the Act) deals specifically with discrimination in employment, Section 8 states:
"An employer or prospective employer shall not discriminate against a person –
(a) in the arrangements he makes for the purpose of determining who should be offered employment;

(b) *in the terms or conditions on which employment is offered; or*

(c) *by refusing or deliberately omitting to offer employment”.*

18. It is further evident from a plain reading of Section 8 that the Act places an obligation on employers – whether in the public or private sector – to engage in non discriminatory employment practices. That being the case, it is clear that when in April 23, 2007 the Respondent hired Mr. Brett as a Process Engineering Superintendent and allegedly offered him terms and/or conditions of employment superior to that given to the Complainant, where the parties appear to be on a similar footing – in terms of qualifications and experience – such conduct may offend Section 8 (b) of the Act. And that on each and every occasion the superior pay package is paid to Mr. Brett during the course of their contract of employment the alleged discriminatory conduct continues. And is so continued until the employment of Mr. Brett comes to an end (which it did in September 2010). In short, this was an act extending over a period and not an isolated specific act such as dismissal. In *OKORO & Another –v- Taylor Woodrow Construction Ltd. & Others* [2012] EWCA Civ. 1509. The English Court of Appeal drew a distinction between a state of affairs that continued throughout employment, and a one-off event that had continuing consequences.

19. Further, support for the above proposition can be found in the decision of the Court of Appeal in *Chandresh Sharma –v- The Honourable Patrick Manning And Others*, Civ. App. No. 144 of 2005, where the court held that “what is alleged is a continuing breach of a continuing duty”. And as a result, time was extended for the appellant to pursue his

judicial review application. This decision was subsequently affirmed by the Privy Counsel in PC Appeal No. 22 of 2008.

CONCLUSION

20. That the fact that the Complainant had knowledge that Mr. Brett was in the latter part of 2007 being paid a superior pay package to himself, meant that when he submitted his written complaint to the Commission on August 12, 2008 he was outwith the six (6) month limitation period imposed by Section 30 (2) of the Act. However, it is the opinion of this Tribunal that the Complainant's alleged act of discrimination by the Respondent was an act that continued while Mr. Brett was in the Respondent's employ, that is, until September 2010. As a result, the complainant's case must move forward.

ORDER

21. The Respondent's application is dismissed. The Respondent to pay Complainant's cost of this application, to be taxed in default of agreement.
22. The foregoing decision is made and delivered in accordance with section 44 (7) of the Act, which states:

"The decision of the Tribunal in any proceedings shall be made by the Chairman and shall be delivered by him".

**HIS HONOUR MR. RAJANLAL JOSEPH
JUDGE / CHAIRMAN
EQUAL OPPORTUNITY TRIBUNAL**

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