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EMPLOYMENT TRIBUNALS

Claimant: **Miss L Voisin**

Respondent: **East Thames Group**

Heard at: **East London Hearing Centre** **On: 11 September 2017**

Before: **Employment Judge Martin (sitting alone)**

Representation

Claimant: Ms E Slater (McKenzie Friend and Advocate)

Respondent: Ms C Musgrave (Counsel)

AMENDED RESERVED JUDGMENT ON PRELIMINARY HEARING

The judgment of the Employment Tribunal is that:-

(1) The Tribunal does not have jurisdiction to hear the Claimant's complaints of unfair dismissal and disability discrimination. Accordingly those claims are hereby dismissed.

(2) Further and/or in the alternative, the Claimant's complaints of unfair dismissal and/or disability discrimination should be struck out for failure to comply with the order of the Tribunal made on 28 November 2016 and/or for failure to actively pursue those complaints. Accordingly the complaints of unfair dismissal and disability discrimination are hereby dismissed.

REASONS

Introduction

1 The Claimant gave evidence on her own behalf.

2 The Tribunal were provided with a bundle of documents marked Appendix 1. The Claimant's representative attended and produced a number of additional documents which were added to the bundle.

The law

3 The law which the Tribunal considered is set out below.

4 Section 97(1) Employment Rights Act 1996:

> "Subject to the following provisions of this section, in this Part "the effective date of termination" –
>
> …
>
> (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect …"

5 Section 111(2) ERA 1996:

> "… 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."

Section 111(2A):

> "…section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2)(a)."

6 Section 123(1) Equality Act 2010:

> "proceedings on a complaint within section 120 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."

7 Section 18A(1) Employment Tribunals Act 1996:

> "Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that

matter."

Section 18A(4) Employment Tribunals Act 1996:

> "If –
>
> (a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or
>
> (b) the prescribed period expires without a settlement having been reached,
>
> the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant."

8 Section 18A(7) Employment Tribunals Act 1996:

> "A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases.
>
> The cases that may be prescribed include (in particular) –
>
> > cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter;
> >
> > cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are;
> >
> > cases where section 18B applies because ACAS has been contacted by a person against whom relevant proceedings are being instituted."

Section 18A(8):

> "A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4)."

9 Regulation 12(1) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013:

> "The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be –
>
> (a) one which the Tribunal has no jurisdiction to consider; or
>
> (b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process;
>
> (c) one which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies."

10 Regulation 12(2) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013:

> "The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a), (b) or (c) of paragraph (1)."

11 Regulation 13(4) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013:

> "If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified."

12 Regulation 37(1) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013:

> "At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –
>
> …
>
> (c) for non-compliance with any of these Rules or with an order of the Tribunal;
>
> (d) that it has not been actively pursued…"

13 The case of *Robert Cort & Son Ltd v Charman* [1981] ICR 816 where Mr Justice Browne-Wilkinson stated in the EAT that, regardless of the position at common law, the effective date of termination (EDT) for statutory purposes is the date on which the termination takes effect, meaning the date on which the employee is actually dismissed.

14 The case of *Parkinson v March Consultancy Ltd* [1998] ICR 276 where it was recognised that an employer may have cause to summarily dismiss an employee between the date of notice is given by the employee and the end of that notice period. The EAT held that in constructive dismissal cases with notice, dismissal occurs when the notice given by the employee expires unless the contract is terminated earlier as a result of an intervening act.

15 The case of *Société Générale London Branch v Geys* [2013] IRLR 122 where the Supreme Court held that "It is a necessary incident of the employment relationship that one party notifies the other in clear and unambiguous terms that the right to bring the contract to an end is being exercised, and how and when it is intended to operate. These are the general requirements applicable to notices of all kinds and there is every reason why they should also be applicable to employment contracts. Both employer and employee need to know where they stand. With regard to a PILON clause it is necessary therefore that the employee not only receives their payment in lieu of notice,

but that they receive notification from the employer, in clear and unambiguous terms that such a payment has been made and that it is made in the exercise of the contractual right to terminate the employment with immediate effect."

16 The case of *British Coal Corporation v Keeble* [1997] IRLR 336 where the EAT effectively set out the same factors to consider as to whether or not to extend time as are set out at paragraph 33 of the Limitation Act 1980, namely the length of the delay; the reason for the delay; all the circumstances of the case; the extent to which the cogency of the evidence is likely to be affected by the delay; the prejudice to both parties, the extent to which the parties sued had cooperated with any request for information; the promptness with which the claimant acted once she knew of the facts giving rise to the cause of action; and the steps taken to get professional advice once she knew of the cause of action. It was recognised that the Tribunal did not need to go through every factor but had to consider every significant factor.

17 The case of *Thomas v Nationwide Building Society* [2014] WL 10246841 a case to which both parties referred in particular:-

17.1 Paragraph 15 of the judgment where the first issue which had to be considered was whether the claim should be rejected. It was conceded that the claim form was defective and should have been rejected.

17.2 Paragraph 20 where the employment judge stated:

> "Her claim instituted relevant proceedings on a claim form that incorrectly asserted that they were covered by an early conciliation exemption … Under Rule 12(2), the rejection of her claim was mandatory: it "shall" be rejected."

17.3 Paragraph 22 where the employment judge turned to the second issue, namely should the rejection be revoked.

17.4 Paragraph 31 where the Employment Judge accepted the submission that:

> "… a claimant who has incorrectly asserted reliance on an exemption can, upon realising her error, rectify that defect by embarking on the ACAS early conciliation procedure after the claim form has been rejected."

17.5 Paragraph 37, where the employment judge held that:

> "… as Rule 13(4) makes clear, this claim is treated as having been presented on the date that the defect was rectified …"

18 The case of *Edomobi v LA Retraite RC Girls School* UKEAT/0180/16. In that case the EAT reviewed the various cases dealing with extension of time on just and equitable grounds. At paragraph 14 the EAT held that:

> "there is no presumption that the ET should exercise the discretion in favour of a Claimant – it is the exception rather than the rule …"

At paragraph 31 the EAT held that:

> "The purpose of the time-bar is to promote finality and certainty. The structure of section 123 is that the claim may not be brought outside the time limit unless the Claimant persuades the ET that it is just and equitable to extend time. I find it difficult to see how a Claimant can discharge the burden of showing that it is just and equitable to extend time if he or she simply does not explain the delay…"

Paragraph 15 of the EAT considered the various factors referred to in the case of *British Coal Corporation v Keeble* as referred to above.

The issues

19 The issues which the Tribunal had to consider were firstly, whether the Claimant's complaints of unfair dismissal and disability discrimination were out of time. If so, the Tribunal then had to consider whether time should be extended. In the case of the complaint of constructive unfair dismissal the Tribunal had to consider whether it was reasonably practicable for the claim to have been presented in time and whether it was presented within a reasonable time period thereafter. In the case of the claim of disability discrimination the Tribunal had to consider whether it was just and equitable to extend time.

20 Secondly, the Tribunal had to consider whether the Claimant's complaints of unfair dismissal and disability discrimination should be struck out for failure to comply with the order made by the Tribunal on 28 November 2016 and sent to the parties on 15 December 2016, specifically in relation to those orders relating to the early provision of the Early Conciliation Certificate and provision of medical records and further information relating to the Claimant's disabilities.

21 The Tribunal also had to consider in that regard whether the Claimant's complaints should be struck out because she had failed to actively pursue her complaints.

Findings of fact

22 Following an accident in 2013, the Claimant brought a complaint of personal injury. She instructed solicitors to pursue that complaint. It appears, although it is not clear, that such instructions were on a no win/no fee basis. At the time her solicitors obtained a medical report and details of her medical records from her GP, as is noted from the documents provided by the Claimant at the outset of the hearing this morning at pages 84 and 85.

23 The Claimant was employed by the Respondent as a Support Worker since 2004.

24 On 22 June 2017, the Claimant sent an email to her manager resigning from her employment. That email is at page 78 of the bundle.

25 In the email she raises concerns about a number of disciplinary investigations and hearings which have been called to discuss her absence. In the email, she states that she considers that there is a breach of the implied term of mutual trust and confidence.

26 At the end of the email, she gives 4 weeks notice and asks the Respondent to confirm the final date of service. At the time she was on sick leave.

27 In evidence before the Tribunal, the Claimant said that she spoke to ACAS a few days before she sent her email resigning from her employment. She said that ACAS told her to consider putting in a grievance to her employers, but she said that she did not want to do this.

28 On the same day, namely 22 June 2016, the Respondent's manager replied to the Claimant and gave her the opportunity to withdraw her resignation, so that the Respondent could consider matters further. The manager asked the Claimant to confirm whether she was going to withdraw her resignation by 27 June. That email is at page 77 of the bundle.

29 On 27 June 2017, the Claimant sent an email stating that she did not wish to withdraw her resignation and confirmed that her resignation would take effect on the date of her original resignation letter, namely 22 June 2016, the date of her original email. In her email, she also asked to view her personnel file. The email is at page 77 of the bundle.

30 On 28 June 2016, the Respondent sent a further email enclosing a letter to the Claimant accepting her resignation and stating that the last date of her employment would be 22 June 2016. They informed her she was not required to work her notice but would instead be paid her contractual notice by way of pay in lieu of notice. That letter is at page 81 of the bundle.

31 On 29 June 2016, the Claimant sent a further email to the Respondent and said that she understood that her notice was contractual and could only be varied by mutual agreement and that she wished to view her personnel file and that it was her intention to do this during her notice period. She asked the Respondent to confirm that she would still be able to view her personnel file if she agreed to pay in lieu of notice. She asked about the next steps to make to follow up that request. That email is at page 81A of the bundle.

32 On the same day the Respondent provided the Claimant with details of the procedure for making a subject access request. They made it clear that the end of her employment would not have any impact on her right to make that request. That email is at page 81B of the bundle.

33 In evidence before the Tribunal, the Claimant said that she was signed off sick in June 2016 and could not have worked her notice because she was on sick leave.

34 The Claimant issued her ET1 on 22 September 2016. In her claim form she stated that she did not need the ACAS Conciliation Certificate because her employers had been in touch with ACAS.

35 In her ET1 the Claimant stated at page 4 that her employment ended on 22 June 2016.

36 She also stated on her ET1 that she had started a new job on 1 July 2016.

37 Finally, in her ET1 she stated that she would upload her witness statement setting out details of her claim, none of which was contained in the ET1 form.

38 In evidence before the Tribunal, the Claimant said that she was told by a colleague about bringing a claim to the Employment Tribunal and told by that colleague that she had to contact ACAS before bringing a claim. The Claimant said in evidence that she had contacted ACAS before she had sent the email on 22 June. In evidence she appears to accept that she was incorrect when she stated on the ET1 that her employer had contacted ACAS and that no certificate was required.

39 In evidence before the Tribunal the Claimant also stated that she had tried to contact ACAS by email on 22 September. She said that she had not heard from them and that she then contacted ACAS by telephone on 23 September 2016.

40 The ACAS certificate is at page 60 of the bundle. It shows that the Claimant first notified ACAS about the claim on 23 September, the certificate was issued on the same day.

41 In evidence before the Tribunal the Claimant said that, whilst she was employed by the Respondent, she also worked for another organisation on a zero hours contract. She said that after she left the Respondent she started doing more hours for them. She said that she thought she had started doing this in around August. She said that by August she was working about 100 hours a month.

42 The Claimant also said in evidence that during August she was approved for foster caring following an application process that she had made to undertake foster care work.

43 On 26 September 2016, the Tribunal wrote to the Claimant requesting her to file her witness statement.

44 On 10 October 2016, the Claimant sent in her witness statement. She has not provided any details of why there was a delay in filing that statement.

45 In their response form the Respondent raised a number of jurisdictional issues, in particular relating to the ACAS certificate and whether the complaints were out of time.

46 The case came before Employment Judge Martin by way of a closed preliminary hearing on 28 November 2016 when directions were made about the future conduct of

this case. In particular:-

46.1 The Claimant was ordered to file on the Respondent a copy of the ACAS certificate by 19 December 2016.

46.2 The Claimant was also ordered by 9 January 2018, to file further and better particulars relating to her alleged disabilities. She was relying on both mental and physical impairment.

46.3 She was further ordered to provide further particulars of her complaints in relation to her claim for disability discrimination

46.4 Finally she was also ordered to disclose copies of her medical records to include bother GP and hospital medical records.

46.5 A copy of the order is at page 35-42 of the bundle. It was sent to the parties on 15 December 2016.

47 At the disciplinary hearing the Claimant was unrepresented. The directions were explained to her. She indicated during the course of the directions hearing that she understood what she needed to do to progress with the case. It was however suggested to her that she might want to seek some advice.

48 The Claimant said in evidence to the Tribunal that she had tried to obtain legal advice, but had not been able to afford to do so.

49 On 16 December 2016, the Respondent's solicitors wrote to the Claimant to remind her to provide them with a copy of the ACAS certificate by 19 December 2016.

50 On 19 December 2016, the Claimant sent a certificate number to the Respondent's representative purporting to be the number on the ACAS certificate but it was not the correct number of the certificate.

51 On 23 December 2016, the Claimant obtained a letter from her GP. It stated that she was suffering from anxiety and stress and had been seen by a therapist. The letter also stated that the Claimant suffered from back pain and had seen the orthopaedic team and had had physiotherapy. It also stated that she took anti-inflammatory drugs and painkillers for her back pain. The document is one A4 page. It did not contain details of the Claimant's GP records or any consultant or hospital records. The letter is at page 53 of the bundle.

52 In evidence before the Tribunal, the Claimant said that she thought that the letter her doctor had provided did not give sufficient details to comply with the order made by the Tribunal. However she admitted that she did not contact her doctor to obtain any more information, but just thought that the Respondent could do so.

53 On 13 January 2017, the Respondent's representative made an application for an unless order requesting that the Claimant's claims be struck out for failure to provide the ACAS certificate and her medical records. That letter is at page 50 of the bundle. It was copied to the Claimant.

54 On 16 January 2017, the Claimant emailed the letter which she had received from her GP of 23 December 2016, to the Respondent's representative.

55 The Claimant sent the ACAS certificate itself on 27 February 2017.

56 The Respondent's application was listed for a preliminary hearing to consider whether the Claimant's complaint should be struck out for failing to comply with the order of the Tribunal and/or because she was not actively pursuing her claims. The hearing was listed for 3 March 2017.

57 The Claimant asked to have the hearing listed for 3 March adjourned because she said that she was too unwell to attend. The hearing was re-listed for April.

58 On 17 March 2017, the Respondent wrote to the Tribunal asking that the preliminary hearing also consider whether the Claimant's complaints were in time and/or whether time should be extended, as well as considering whether the claims should be struck out. That letter was sent to the Claimant.

59 The Claimant instructed Ms Slater who appears before us today to represent her at the end of March. She asked to adjourn the hearing in April.

60 The hearing was adjourned in April until May. It was then adjourned again in May due to **lack of Judicial Resources**. It was re-listed in July. It was then adjourned in July by the Tribunal and re-listed for September.

61 The Respondent's representative said that they had sent bundles to the Claimant and received a number of documents from the Claimant's representative, namely being a document entitled "Physical Impairments" and "Mental Impairment" which then attached medical report for the accident in 2013 which document is at pages 82-107 of the bundle; a document entitled "In Order to Attempt Areas of Agreement"; and a document entitled "Specific Details of Incidents of treatment by the Respondents" and the case of *Thomas v Nationwide Building Society*. The Respondent's representative said that some of those documents were sent to them at 8.30pm last night and some were handed to them this morning.

62 The Claimant's representative apologised for the delay in providing these documents and said that she had some personal issues during the period whilst she was advising the Claimant, which had taken precedence over this case.

63 The document entitled "Specific Details of Incidents of treatment by the Respondents" states that it is partially drafted and detailed some of the incidents of harassment. Both the Claimant in evidence and her representative indicated that it was not a complete document and that there was further information which had not yet been provided.

64 The Claimant said in evidence that she had sought legal advice following the hearing on 28 November 2017, but had not been able to pay for it. She said that she had struggled to understand the orders made at the hearing. She said that she had then been referred by a friend to her representative who was acting for her today. She

said that Ms Slater had then begun to assist her around March 2017.

65 In evidence before the Tribunal, the Claimant was not able to explain why she had still not obtained her medical records or provided all the information relating to her claim nor indeed why the documents produced by her representative were produced the night before the hearing for a hearing which that had been fixed six months earlier, during which time she had been represented. In evidence the Claimant said that if she was allowed to continue with her claim, she would comply with all orders of the Tribunal.

66 In evidence the Claimant said that she had suffered from stress during June to September 2016, but she did not produce any medical evidence to that effect. She also acknowledged in evidence that she had been working a lot of hours during that time.

67 In the document produced for her by her representative entitled "In Order to Attempt Areas of Agreement" it stated, as was confirmed by the Claimant in her evidence that she found the proceedings stressful and that she suffered from stress and anxiety, but basically had "buried her head in the sand" in relation to these proceedings.

68 In evidence before the Tribunal, the Claimant said that she did not agree to accept in pay in lieu of notice and thought that the last day of her employment was 28 July 2016, because she had not agreed to the pay in lieu of notice.

Submissions

69 The Respondent filed written submissions and referred to the case of *Thomas* and *Edomobi* and other cases referred to earlier in this judgment.

70 The Respondent's representative submitted that the date of termination was 22 June 2017. She relied on the letter sent by the Respondent and submitted that the claimant had been paid in lieu of notice i.e. that the Respondent did not require the Claimant to work her notice. She then submitted that the claim was not filed on 22 September, but on 10 October when it fully complied with the rules and could only be accepted by the Tribunal on that date. She submitted that the claim should have been rejected because the Claimant had wrongly indicated that she did not require an ACAS certificate and had not filed a witness statement or any particular of her claim. The Respondent's representative submitted that that was not filed until 10 October i.e. 20 days after the claim should have been submitted. She also submitted that the last day for any discrimination must have been 22 June, namely her last day of employment.

71 The Respondent's representative submitted that it was reasonably practicable for the Claimant to have brought her claim. She further submitted that it was not just and equitable for time to be extended. She explained that a number of witnesses for the Respondent were now no longer available and had left the Respondent's employment. She submitted that, even now it was not clear what claims were being pursued by the Claimant. She said that there was substantial prejudice to the Respondent in the Claimant being allowed to continue with this claim, bearing in mind some 14 months had now expired since the Claimant had first raised this claim and the

case had not progressed any further.

72 The Respondent's representative also submitted that the claim should be struck out for failure for the Claimant to actively pursue it and/or failure to comply with the orders of the Tribunal. The Respondent's representative submitted that even now the Claimant, who had been represented for the last six months, had not complied with the order to provide her medical records which had still not been provided. She had also not provided full details of the allegations of discrimination as acknowledged by herself and her representative.

73 The Claimant's representative submitted that the claim was in time. She said that the Claimant had to agree to accept payment in lieu of notice and that she had not done so. The Claimant's representative submitted that therefore the effective date of termination was 28 July 2016, namely after the period given by the respondents to allow the Claimant to consider whether she wished to resign and then a further one month's notice.

74 The Claimant's representative also relied on the case of *Thomas v Nationwide Building Society*. She said that, if there was any defect in the claim form, it had been rectified and therefore the claim should be allowed to continue.

75 The Claimant's representative submitted that the discrimination had continued after the date of termination on 22 June and continued during the notice period because the Claimant was not allowed to work her notice. She did not lead any evidence on this issue.

76 The Claimant's representative submitted that the Claimant had not complied with the orders because she had not understood them; was suffering from stress and anxiety; and had basically "buried her head in the sand" in relation to this claim. She said that she now represented the Claimant, but she had had some personal issues which had meant that she had not been able to progress this case particularly well either, but if the Claimant was allowed to continue her claim, she would cooperate with any orders of the Tribunal.

Conclusions

77 This Tribunal finds the effective date of termination of the Claimant's employment was 22 June 2016 for the following reasons:-

77.1 It is clear from the letter sent by the Respondent to the Claimant acknowledging her resignation that the date her employment was intended to terminate was 22 June 2016.

77.2 Indeed the Claimant herself clearly understood that to be the date of termination, because it was the same date that she put in on her ET1 claim form.

77.3 The Tribunal has taken account of section 97(1) of the Employment Rights Act 1996 and the cases of *Geys*, *Robert Cort* and *Parkinson*, and take the view that the effective date of termination means the date on

which the termination takes effect. In this case it was the date on which the Claimant was clearly notified by her employers as to when her employment would terminate on the basis that they were paying her a payment in lieu of her notice.

78 This Tribunal considers that the Claimant's ET1 should have been rejected initially because:-

78.1 The Claimant failed to contact ACAS and obtain an ACAS certificate as required under the Employment Tribunals Act 1996. It is clear that the Claimant knew she was required to follow that procedure because she stated in evidence that she had tried to contact ACAS on the date she filed her ET1 and in fact did so the next day. The Tribunal considers that she was effectively trying to mislead the Tribunal regarding the position relating to ACAS when she submitted her ET1 form.

78.2 Further the Claimant did not provide sufficient details for the Respondent to be able to respond to the claim as required under the rules. Her witness statement setting out the details of her claim was not in fact received until 10 October 2016.

79 The Claimant's claim should have effectively been rejected because of these two errors. The ACAS certificate was obtained by the Claimant on 23 September (albeit that she did not provide the certificate to the Respondent at that time but some five months later). The witness statement providing details of her claim was not filed with the Tribunal until 10 October 2016. Accordingly the Tribunal taking into account the case of *Thomas* considers that the ET1 should be accepted. However the Tribunal then went on to consider on what date the claim should be accepted. The Tribunal finds that the date when the claim could be accepted, namely when the Claimant had complied with the requirements under Rule 12 ,was 10 October 2016. Accordingly the Claimant's claim was out of time.

80 The Tribunal then considered whether it was reasonably practicable for the Claimant to file her unfair dismissal claim in time. The Tribunal notes that the Claimant did attempt to file her claim in time. The Tribunal also notes that the Claimant has produced no evidence to show why she was unable to file the claim properly in time. In that regard, the Tribunal comments further at paragraph 86 on the reasons given for the delay in both filing her claim and pursuing it, which reasons as is noted at paragraph 86 are rejected by this Tribunal.

81 In relation to the complaint of disability discrimination, the Tribunal did not accept the argument that was submitted by the Respondent about this being a continuing act. No evidence either in the form of documents or oral evidence was led on this point, until it was raised at the very end by the Claimant's representative on submissions. Therefore, for the reasons referred to above, that claim is out also out of time.

82 The Tribunal then went on to consider whether time should be extended on just and equitable grounds, in relation to the complaint of disability discrimination.

83 The Tribunal reminded itself of the purpose of time limit, which should be the exception rather than the rule taking account of the case of *Edomobi*.

84 The Tribunal also considered the various factors referred to in section 33 of the Limitation Act 1980 and the case of *British Coal Corporation v Keeble*.

85 In that regard the Tribunal noted that although the delay was about 20 days, the actual delay in these proceedings has been over 14 months because of the delay in the Claimant complying with orders and actively pursuing her claim.

86 The Tribunal went on to consider the reason for the delay. It noted as indicated above that no reason was given other than that the Claimant had "buried her head in the sand" and that she was anxious and stressed about the claim. However, in relation to the latter no medical evidence was produced to that effect. Indeed it was noted that the Claimant was in fact working long hours during this period. The real reason it seems was because the Claimant was unrepresented and did not seem to understand how to get on with these proceedings, because she effectively buried her head in the sand. That in itself cannot be sufficient reason, otherwise every unrepresented claimant or respondent would be able to raise the same argument.

87 The Tribunal has noted that the Claimant admits that she was aware of the steps that she had to take in pursuing her claim but did not do so within time. It is also noted that although she complains that she was not able to seek legal advice, she did seek legal advice previously when she had a personal injury claim. She has also been represented in this case for the last 6 months and the case has still not progressed.

88 As to the Claimant's cooperation with regard to these proceedings it is quite clear from the comments as referred to below that the Claimant did not cooperate or indeed get on with these proceedings once she had issued her ET1.

89 The Tribunal then went on to consider whether there was any prejudice to either party in relation to these proceedings. The Claimant has now raised substantial further claims in a document which she has filed today, some 14 months after she raised her initial ET1. Even now at this late stage she says that there are further particulars of discrimination to her claim which have not been provided to the Respondent. The Respondent is at a disadvantage. They say that even at this stage they do not know the case which they have to meet and are now in a position where a number of their employees have left the organisation, so they would not be in a position to deal with these claims.

90 Most significantly in this case the Tribunal has taken into account the substantial delay by the Claimant in complying with orders of this Tribunal and even now she has still not fully complied with the orders. It is quite clear she has not cooperated with either the Respondent or this Tribunal in trying to progress her claim. At this stage she has still not provided her medical records nor has she provided full details of her claim for disability discrimination. This is despite the fact that over the last six months she has had assistance by way of representation. Even having had this representation and assistance, she has still not progressed her claim any further.

91 Accordingly this Tribunal is not minded to extent time in relation to complaint of disability discrimination.

92 On that basis this Tribunal finds that both the claims of constructive unfair dismissal and disability discrimination are out of time and time should not be extended. Accordingly both claims are hereby dismissed.

93 Further, in any event, the Tribunal would have struck out the Claimant's complaints of constructive unfair dismissal and disability discrimination on the basis that she has failed to comply with orders of the Tribunal and failed to actively pursue those complaints:-

93.1 Some 10 months after the order was made requiring the Claimant to provide copies of her medical records she has failed to do so. This is despite the fact that she has had advice and representation for six months of that time period.

93.2 It is also noted that she has still not as admitted by her in evidence some 10 months after the original order, provided full details of the claims of disability discrimination which she is pursuing.

93.3 This is against a pattern of the Claimant failing to produce information when she is required to do so. It started with her providing what would appear to be misleading information to the Tribunal when she filed her ET1 in the first place, then failing for over three weeks to produce a witness statement in support of her claim. It is also noted that the ACAS certificate which she obtained was not produced until five months after she had obtained it. Furthermore, the letter which she received from her doctor was not produced until some three weeks after it was provided to her and that was only after an application was made by the Respondent.

93.4 That pattern of behaviour in failing to comply with orders/rules is such that it would concern this Tribunal that the Claimant would be unable even with representation, which she has had for the last six months, to actively pursue these complaints or indeed comply with orders of this Tribunal.

94 For those reasons this Tribunal considered if the claims had not been out of time that they would have been struck out in any event.

Employment Judge Martin

5 October 2017