EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
AND	
ANIEL JANAGAL	**CONNECT ADVERTISING & MARKETING LLP**

WRITTEN REASONS FOR JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HEARING HELD AT: Birmingham **ON :** 18 January 2019

EMPLOYMENT JUDGE Algazy QC

Representation

For the Claimant: In person

For the Respondent: Ms. R. Kennedy – Counsel

The judgment set out below was handed down on 18 January 2019 and oral reasons were provided at the time.

By letter dated 5 February 2019, the claimant requested written reasons and applied for the judgment to be reconsidered. These written reasons are provided pursuant to that request.

JUDGMENT

The Judgment of the Tribunal is that:

> The Tribunal does not have jurisdiction to hear the Claim and it is not just and equitable to extend time for bringing he Claim in accordance with Section123 Equality Act 2010.

W R I T T E N R E A S O N S

1. By a claim form issued on 28 March 2018, the claimant brings claims for direct age discrimination against his former employer, Connect Marketing and Advertising LLP.

2. As acknowledged by the claimant, the Claims are out of time. Today's preliminary hearing was to determine whether it is just and equitable to extend time under section 123 of the Equality Act 2010.

3. Directions were given at the preliminary hearing on 31 August 2018 in respect of this hearing together with consideration of whether the claimant should pay a deposit if the claims were to proceed beyond today.

4. The claimant gave evidence on his own behalf and the respondent called no evidence. The claimant represented himself and the respondent was represented by Ms Kennedy of counsel.

The Facts

5. These were largely not in dispute and I can take the relevant dates from the claimant's witness statement and chronology.

6. The claimant commenced work with the respondent as a data officer on 9 March 2016. Put shortly, he complains of failures in respect of promotion and progression at the respondent due to his youth.

7. Daniel Boughan was the data team lead. It is alleged that he made a number of remarks regarding the youth of the claimant both to the claimant himself and others.

8. The first of these was in early August 2017 when it is alleged that the claimant was told that he was young and naïve and did not really know what he wanted. Similar remarks were repeated some days later.

9. Around 14 September 2017 the claimant gave contractual notice of three months. By agreement this was brought forward to 27 October 2017.

10. In conversation on what's app with a former colleague, Pascal Windcross on 9 November 2017, she refers to Daniel mentioning something about the claimant being too young for the data specialist role.

11. After a period in a temporary role with Signet jewellers, the claimant was offered a job with Wolverhampton City Council on about 21 November 2017. The claimant told the tribunal that this was confirmed around 3 December 2017 and he commenced work in his new role on 12th of December 2017.

12. The claimant's evidence was to the effect that he did not want to do anything, such as lodge a grievance, until he had secured a full-time role. He was apparently concerned that the respondent would not provide any or any proper reference which would assist him in finding a new job.

13. The claimant first approached ACAS on/or about 1 December 2017. This was the first of three approaches to either ACAS and/or the CAB. The second being on/or about 15 December 2017.

14. The claimant confirmed to the tribunal, more than once, that neither agency had told him that he had to exhaust internal procedures before launching a claim. It was his evidence to the tribunal that that was an impression that he had incorrectly gained. Nonetheless it appears that that was the basis on which the claimant proceeded.

15. Time ran out against the claimant on 26 January 2018.

16. On 8 January 2018 the claimant had a further what's app conversation with one Joshua Jones with whom he had worked at the respondent. Mr Jones apparently confirmed that Daniel had said something along the lines of the claimants age being the reason that he did not progress at the respondent company.

17. The claimant submitted his grievance email on 10 January 2018. The unsuccessful outcome was communicated and received by the claimant on 22 March 2018. He contacted ACAS the next day. That was a Friday and the following day after that he attended the football club at which he worked as a steward.

18. Having worked on it over the weekend, the claimant submitted his ACAS conciliation form on 26 March 2018. On the 28 March 2018 the claimant submitted his ET1 to the tribunal.

19. The claimant appealed the grievance outcome on 31 March 2018. This was unsuccessful and the appeal outcome was communicated to the claimant in the first week of June 2018.

The Law

20. Section 123(1) of the Equality Act 2010 (“EqA”) provides that he time limit for a discrimination claim to be presented to a tribunal is at the end of the period of three months starting with the date of the act to which the complaint relates.

Continuing conduct

21. For today’s purposes, in respect of continuing conduct, I take the C’s case at its highest. That is, I approach the question of jurisdiction on the basis that the conduct continued until the date of his employment terminating. Section 123(3) EqA further provides that earlier acts may still form the basis of a claim if those acts are part of "conduct extended over a period", and the claim is brought within three months of the end of that period.

Just and equitable extension

22. The tribunal has the discretion to extend the time limit for a discrimination claim to be presented by such further period as it considers just and equitable – Section 123 (1)(b) EqA

23. **Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576** held that a tribunal has a wide discretion when considering whether it is just and equitable to extend time. the same case is authority for the proposition that time limits are applied strictly in employment cases, and that there is no presumption in favour of extending time.

24. The burden is on the claimant to convince the tribunal that it is just and equitable to extend time and the exercise of discretion to extend time is the exception, not the rule.

25. I was also referred to the case of **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR** and I have particular regard to §§ 18 and 19 of the judgment of Leggat L.J. :

> **"18. First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980 , section 123(1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see *British Coal Corp v Keeble [1997] IRLR 336)* the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see *Southwark London Borough Council v Afolabi [2003] ICR 800* , para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998 : see *Dunn v Parole Board [2009] 1 WLR 728* , paras 30–32, 43, 48 and *Rabone v Pennine Care NHS Trust (INQUEST intervening) [2012] 2 AC 72* , para 75.**
>
> **19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."**

26. In deciding whether it would be just and equitable to extend time, I had regard to the case of **Hutchinson v Westward Television Ltd [1977] IRLR 69** for the principle that I am entitled to take into account anything that I deem relevant.

27. I also took into account:

    27.1 The length of and reasons for the delay.

27.2 The extent to which the cogency of the evidence might be affected by the delay.

27.3 The promptness with which the claimant acted once he knew of the possibility of taking action.

27.4 The steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action.

27.5 Whether the delay affected the ability of the tribunal to conduct a fair hearing.

27.6 The prejudice that each party would suffer if an extension were granted or refused.

CONCLUSIONS

28. In spite of valiant efforts by Ms Kennedy, I was not persuaded, particularly in light of the detailed grievance investigation and appeal, that the respondent could point to any real prejudice.

29. However, from the largely undisputed facts, I am unable to discern any basis that would render it just and equitable to extend time for the claimant to bring his claims.

30. On any view, by around 3 December 2017 the claimant had no reason not to commence either internal proceedings or ACAS conciliation or both. By that date the claimant had a secure full-time post and had had the benefit of ACAS advice, albeit that he appears to have misunderstood or misinterpreted the situation. He acknowledged that he did not conduct any Internet research or even basic research into the issue of time limits until after the outcome of his grievance appeal on 23 March 2018.

31. I pause to note that, from the claimant's presentation of his claim and supporting documentation, he is clearly an intelligent and articulate individual. I find him to have been a candid and forthright witness in

respect of the circumstances in which he delayed taking the appropriate steps to ensure these claims were lodged in time.

32. I further note that having regard to the overall merits of the claims as advanced and identified in the list of issues annexed to the case management order of 31 August 2018, the claimant would appear to be facing something of an uphill struggle with regard to his discrimination claim based on age. He accepted in cross-examination that his comparators were in fact very similar in age. That observation comforts the tribunal in its decision not to extend time but it is emphasised that the same conclusion would have been reached regardless of the apparent merits or otherwise of the claim that is advanced.

33. In those circumstances I do not need to consider the issue of deposit. The claims are accordingly dismissed for want of jurisdiction.

Signed by _____on 20 June 2019

Employment Judge Algazy QC

Sent to Parties on

_S.Hirons 21.6.19_____