Appeal No. UKEAT/0067/19/LA

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON EC4A 1NL

At the Tribunal
On 17 June 2019

Before

HER HONOUR JUDGE EADY QC

(SITTING ALONE)

MR IAN PEARCE — APPELLANT

(1) BANK OF AMERICA MERRILL LYNCH
(2) BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LTD
(3) MERRILL LYNCH — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR T H CROXFORD QC (of Counsel) Instructed by: Russells Solicitors Yalding House 152-156 Great Portland Street London W1W 5QA
For the Respondent	MR B CARR QC (of Counsel) Instructed by: DAC Beachcroft LLP Solicitors The Walbrook Building 25 Walbrook London EC4N 8AF

SUMMARY

30D: Jurisdictional Points – extension of time – reasonably practicable

The Claimant sought to pursue complaints of protected disclosure detriment before the ET but had lodged his claim out of time. The ET accepted that, given the Claimant's ill-health, it had not been reasonably practicable for the claim to be presented within the primary (three month) time limit. It found, however, that the claim had not then been presented within a reasonable period thereafter and dismissed his claim as being out of time. The Claimant appealed.

Held: dismissing the appeal

The ET was entitled to look to the Claimant for an explanation as to why he had not been able to lodge his claim before the date on which it was finally submitted. The Claimant's case before the ET had focused on the period up to notification to ACAS under the early conciliation ("EC") procedure; there was little explanation as to why he had still not lodged his claim with the ET until one month after the issue of the ACAS EC certificate. The ET had permissibly inferred that the further delay was because the Claimant's legal advisers had erroneously assumed he could gain the benefit of the one-month extension of time afforded under the EC process. That, however, was not the case where, as here, the primary time limit had expired before any contact was made with ACAS. In the circumstances, the ET had been entitled to find that the Claimant's claim had not been lodged within a reasonable period after it had become reasonably practicable for him to commence proceedings. The reasons for that conclusion were adequately explained, such that the Claimant was able to understand why he had lost on this point.

HER HONOUR JUDGE EADY QC

Introduction

1. This appeal concerns the approach to be taken to the question of reasonable practicability, when concerned with the application of a three-month time limit in a protected disclosure detriment case, in circumstances in which the would-be Claimant is suffering from health problems potentially impacting upon their ability to bring such a claim.

2. In giving this Judgment, I refer to the parties as the Claimant and the Respondents, as below. This is the Full Hearing of the Claimant's appeal, against the Judgment of the London (Central) Employment Tribunal (Employment Judge Paul Stewart, sitting alone on 27 June 2018; "the ET"), by which the Claimant's claim of having suffered detriment for making protected disclosures was dismissed as having been presented out of time. The Claimant was represented by Counsel before the ET, but not by Mr Croxford QC who now appears. Mr Carr QC appeared for the Respondents below, as he does today.

3. The Claimant's appeal was initially refused on the paper sift, but was subsequently permitted to proceed to a Full Hearing, after a hearing under Rule 3(10) of the **Employment Appeal Tribunal Rules 1993**, on amended grounds of challenge, as set out below.

The Background to the Appeal and the ET's Decision and Reasoning

4. The Claimant is employed by the Respondents as Managing Director Head of Sterling Credit. He has been unable to work since mid-July 2017 as a result of ill-health. It is the

Claimant's case that his ill-health absence is due to detriments he suffered as a result of his having made protected disclosures in the course of his employment.

5. These matters are the subject of the Claimant's ET claim, which was lodged on 7 February 2018. The ET concluded, however, that it did not have jurisdiction to determine the Claimant's claim, on the basis that it had been lodged out of time. Specifically, the ET found the Claimant's mental health difficulties were not such as to mean that it had not been reasonably practicable for the claim to have been presented prior to 7 February 2018.

6. In reaching that decision, the ET had regard to evidence from the Claimant, his wife (Ms Erica Pearce), Ms Judy McBride (a psychotherapist executive coach and mediator who had seen the Claimant as a patient, from 6 May 2015 until her retirement at the end of 2017), and Mr Jonathan Bowman-Perks MBE (who had known the Claimant since 2014 and had worked with him as an executive coach). It had also received documentary medical evidence, including a report from the Claimant's treating consultant psychiatrist, Dr Hindler, albeit that had been prepared as an assessment of the Claimant's fitness to work return to work - for the purpose of an application to the Respondents' insurers, Unum - rather than for the ET proceedings.

7. As the ET recorded, it was the Claimant's case that he had made protected disclosures in July and September 2015 and he complained of having suffered detriments in consequence commencing in 2015. Subsequently, he complained of having suffered further detriments culminating in what he said was a false accusation against him at a mid-year review meeting on 14 July 2017. The ET further recorded that the Claimant had started to suffer symptoms of depression in the spring and early summer of 2016.

8. The Claimant told the ET that events on 14 July 2017 were the final straw that tipped him over the edge and said that for several months thereafter – and, indeed, up to the date of the ET hearing, he was extremely unwell. Although the Claimant was off work on sick-leave with effect from 17 July 2017, he complained of further detriment having been meted out in mid-August 2017, in terms of communications made to his clients and how his concerns regarding this were then handled by Human Resources.

9. The ET essentially accepted the evidence it had received concerning the Claimant's health problems and his inability to attend work or communicate with the business, certainly until sometime into October 2017. It found that he was "*fit to and did communicate with solicitors on 25 October 2017. That was two months and 14 days from the date of the last detriment he alleges he suffered*" (ET Judgment, paragraph 47).

10. Although the ET made no findings as to whether the Claimant had suffered detriments as he claimed, the date of the last detriment pleaded within his ET1 was on or about 11 August 2017. That meant the three-month time limit for bringing a protected disclosure detriment claim in the ET expired on or about 10 November 2017. The Claimant in fact lodged his claim on 7 February 2018, nearly a further three months later.

11. Applying the time limit provision, set out at Section 48(3) of the **Employment Rights Act 1996** ("the ERA"), the question for the ET was thus twofold; (1) Whether it had been reasonably practicable for the claim to have been presented on or about 10 November 2017? if not, (2) was it presented within such further period as the ET considered reasonable?

12. Returning to events in October 2017, the ET accepted that, at a meeting with his solicitors, the Claimant had found it difficult to recount the history of events but observed:

> **"…it is difficult to understand how a professional advisor might not have realised firstly that the Claimant was someone who was likely to be making an application to the Employment Tribunal and, secondly, time must already have started to run. He was, after all, a man who had been off work ill since 14 July 2017. That was 3 months and 11 days ago." (ET paragraph 48)**

13. The ET noted that the Claimant's solicitor had advised him to draft a response to the Respondent, but he was apparently unable to complete that task. It was only when he received a further pressing email from the Respondent on 28 November 2018 that he returned to his solicitor, who then arranged for a meeting with Counsel on 5 December 2017, albeit the primary time limit had already expired some three weeks previously. It then took a further 16 days for the Claimant's legal team to contact ACAS under the Early Conciliation ("EC") provisions. At paragraph 51 of its Reasons, the ET recorded that it had not been provided with any explanation as to why the Claimant's legal team had needed 16 days for this purpose.

14. The ET further observed that, although the ACAS EC provisions provide for a potential extension of time of one month following the conclusion of EC certificate, this only applied where the reference to ACAS took place during the primary limitation period; it could have no extending effect when, as here, that period had expired.

15. In the Claimant's case, EC ended on 8 January 2018, although it seems that no contact was made with the Respondents during the EC period. It is entirely up to a would-be Claimant as to whether to agree to such contact being made; they are not required to agree. In any event, the ACAS EC certificate required for the pursuit of any ET claim by the Claimant was then issued on 8 January 2018. On the same date, the Claimant met with Dr Hindler (his treating consultant psychiatrist), who recorded that the Claimant had run out of medication over the Christmas/New

Year period and had: "*experienced insomnia, a marked elevation in anxiety and heightened irritability over that time.*" Dr Hindler's report also recorded further meetings with the Claimant on 25 January 2018, 12 February 2018 and 31 March 2018. On 25 January 2018, the Claimant was reporting increased anxiety, after having received notification that Unum had rejected his claim for income protection, and it was noted that he had initially reported suffering from insomnia, but had then been able to sleep well once his medication had been increased, albeit Dr Hindler recorded that the Claimant's mood was low compared with other recent appointments. On 12 February 2018, the Claimant reported ongoing anxiety and on 21 March 2018 he informed Dr Hindler that there had been agreement for his ET claim to proceed, but that his short-term memory and concentration were very poor.

16. Returning to the ET's findings, it was noted that the Claimant's claim had been lodged on 7 February 2018, precisely one month from the date of the ACAS EC certificate. The ET inferred that this had been because the Claimant's advisors had mistakenly believed they had one month to lodge the Claimant's ET1 from the date of the issue of the EC certificate on 8 January 2018; that was not so. The ET explained its understanding of the position in this regard as follows:

> **"I infer from the fact that the claim form for this case was not presented to the Employment Tribunal until 7 February 2018, but the Claimant's advisors considered they had one month from the date of the issue of the early conciliation certificate by ACAS on 8 January 2018. If so, that would indicate that they had misread the effect of Section 207(b) and in particular subsection (4). That subsection provides that, if a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A, (the date on which contact is made with ACAS) and ending one month after Day B(the date of the issue of the Early Conciliation certificate) the time limit expires instead at the end of that period. However, if the time limit of 3 months has already expired by the time ACAS is contacted for the purpose of early conciliation then subsection (4) can have no application." (ET paragraph 53)**

17. The ET accepted it was not reasonably practicable for the Claimant to have presented his claim within the period of three months from the last of the detriments he claimed to have suffered. It did not, however, accept that he had presented his claim within a reasonable period thereafter; as the ET reasoned:

> **"I do not consider that the period until 7 February 2018 constitutes a reasonable further period for him to present his claim, principally because of the delay after the Claimant met with his legal team on 5 December 2017." (ET paragraph 54)**

The Appeal

18. The Claimant's appeal was permitted to proceed on the following grounds:

(1) The ET failed to take relevant facts into account, in particular the uncontested evidence of the Claimant's inability, or limited ability, by reason of ill-health to process and provide coherent instructions, comment on detailed documents and make an informed decision to issue proceedings; those effects continuing through to February 2018.

(2) Further or alternatively, the ET failed to give adequate reasons to support its conclusions: having found as a fact that it was not reasonably practicable for the Claimant have brought his claim prior to the expiry of the primary limitation period, the ET the found it was not reasonable to extend time until the date on which he presented his claim (7 February 2018) but failed to state its conclusion as to the date when the reasonable period to present the claim would have expired, merely stating that it was prior to 7 February.

19. The Respondents resist the appeal, essentially relying on the ET's reasoning.

The Legal Framework

20. The Claimant is seeking to pursue a complaint of detriment due to having made protected disclosures - a claim brought under Section 47B of the **ERA**. By Section 48, such a claim is to be brought in the ET, but by Section 48(3) it is provided:

> **"An [employment tribunal] shall not consider a complaint under this section unless it is presented—**

> **(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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."**

21. As the statue thus makes clear there are two limbs to the formula: first, the employee must show that it was not reasonably practicable to present this claim in time; second, if he succeeds in doing that, the ET must be satisfied that the time within which the claim was in fact presented was reasonable.

22. The way in which the ET should approach the test of reasonableness for these purposes - both in deciding in what was reasonably practicable and determining whether any further period was reasonable - is informed by the case law arising from the same test applied to unfair dismissal claims before the ET (see Section 111(2) **ERA**). As that case law has made clear, the question of what is, or is not, reasonably practicable, and as to the period within which it would be reasonable to present the claim thereafter, are questions of fact for the ET to determine. The appellate courts will be slow to interfere with an ET's decision on either limb, see **Palmer and Saunders v Southend-on-Sea Borough Council** [1984] IRLR 119 CA; **Wall's Meat Co Limited v Khan** [1979] ICR 52 CA and **Riley v Tesco Stores Limited** [1980] ICR 323 CA.

23. Although time may be extended to allow for ACAS EC (see Section 48(4A)(a) and Section 207B of the **ERA**), as the ET observes, this would only be possible where the reference to ACAS takes place during the primary limitation period. That was not this case.

The Parties' Submissions

The Claimant's Case

24. The Claimant contends that the reasonably practicable test was plainly intended to apply to those who were unable to meet the primary time limit and the ET's focus ought properly to have been on the Claimant's state of mind, viewed objectively (see **Adams v BT plc** [2017] ICR 382 EAT). It was also relevant that the drafting of a claim in ET proceedings might take considerable work (and see the observation at paragraph 21 **Luton Borough Council v Haque** [2018] ICR 1388 EAT). That was all the more so in a protected disclosure detriment case, where the would-be Claimant remained in employment, and where the protected disclosures in issue were raised in a regulatory environment - where the stakes were high for all concerned. Specifically, in the present case, the Claimant was making allegations of serious regulatory breaches that, if proven, would have potentially career-ending effect on the particular employees against whom the allegations were made, and serious regulatory consequences for the employer. Such claims could not be made without proper grounds for doing so, which required detailed instructions and a Claimant who could fully understand advice and take decisions based on that advice. Professional conduct obligations would not permit baseless allegations of serious misconduct. The ET had made no finding of fact but the Claimant was readily able to give clear and coherent instructions at any time, still less to swiftly and effectively amend and approve draft grounds of claim.

25. On the other hand, the ET had made a number of findings that demonstrated acceptance of the Claimant's case as to his ill-health and the link between that and work; see, for example, the ET at paragraphs, 13, 22 and 28. It had also accepted his evidence as to his inability to give proper instructions; see, for example, paragraph 23. Those were relevant findings to which the ET was bound to have regard when subsequently determining questions of reasonable

practicability. It had, however, failed to have regard to those matters and to the more specific evidence relating to the period after the consultation with Counsel on 5 December 2017. From the medical evidence - see the references taken from Dr Hindler's report cited above - it might be inferred that the Claimant's health had got worse after 25 October 2017 (a point in time when the ET had accepted that the Claimant was unable to give instructions to his lawyers) and also suggested that he had been suffering from particular anxiety on 4 December, the day before the meeting with Counsel.

26. The evidence from the witnesses of fact also attested to the Claimant's ongoing difficulties, the Claimant himself having stated (at paragraph 15 of his witness statement):

> **"It was only in late 2017 and early 2018 that I was able to even think about instituting and becoming embroiled in legal proceedings. Even in February 2018 of this year (when we were working on the Particulars of Claim) it was very difficult for me to give my solicitors proper instructions and specifically I recall that I found it particularly difficult to process and comment on the Particulars of Claim drafted by my legal team. It was difficult for me to recall what happened factually, to process advice and to understand the implications of the history of the matter upon the legal position."**

See also the evidence from Judy McBride at paragraphs 15 and 17 of her witness statement, from the Claimant's wife at paragraph 10 of her statement and from Mr Bowman-Perks at paragraphs 14 to 16 and 18 of his statement.

27. Although the Claimant's case before the ET might have focused on what he had described as the relevant period - that is, July to December 2017 - it was implicit that the ET must have found that he was well enough to give instructions to bring a claim at some point between mid-December 2017 and 7 February 2018; it had needed to explain the basis for that finding because the evidence all went the other way. Although it was right to say that the Claimant's health plainly did improve sufficiently for a claim to be put in on 7 February 2018, there was no evidential foundation to suggest he had experienced any sudden improvement at some stage. The

only reasonable inference was that it had taken some time for him to be able to give instructions for the lodgement of his claim. Either the ET had failed to engage with the relevant and undisputed evidence or it had failed to give adequate reasons for its conclusion.

The Respondents' Case

28. Addressing the first ground of appeal, the Respondents take issue with the premise on which that ground is founded; namely, that there was uncontested evidence as to the Claimant's inability, or limited ability, by reason of his ill-health to process and provide coherent instructions, comment on detailed documents or make an informed decision to issue proceedings; those effects continuing through to February 2018. Specifically, the Respondents observe that the Claimant's case before the ET had focused on what he and his legal team had described as "the relevant period", namely the period between July to December 2017. Thus, the content of the witness statements adduced by those giving the evidence in support of the Claimant went no further than to address his health to December 2017. Although there were observations by the Claimant, and others, that he continued to suffer from the same problems thereafter, it had not been his case before the ET that it was only on or around 7 February 2017 that he was able to sign off on the ET claim - coincidentally the same day as the end of the one-month ACAS extension, the Claimant's legal team wrongly thought the Claimant had gained. For the Respondents it was contended that this: (1) undermined the suggestion that there was uncontested evidence as claimed; (2) supported the inference drawn by the ET that the Claimant's advisors mistakenly operated on the basis that - once contact was made with ACAS, on or about 21 December 2017 - there were no points that needed to be addressed with regard to the reasonable period for the purposes of a possible extension of time under Section 48(3) of the **ERA** - the Claimant's case before the ET having obviously been prepared on the basis that an explanation only needed to be provided up to the date on which notification was sent to ACAS.

29. That meant that there were a number of periods of delay for which there was simply no explanation. There was no explanation as to why it took from 5 to 21 December for ACAS to be contacted, notwithstanding the minimal requirements for ACAS notification. There was no explanation of what went on during the notional EC period and no explanation for the delay after 8 January - when those acting for the Claimant had taken an additional month before putting in a claim - the timing of which entitled the ET to infer this was because they wrongly thought there was a one-month extension; that was the Respondents' submission made before the ET and the ET had been entitled to accept it. Although there obviously did come a time when the Claimant could put in a claim, there was no evidence - which could have been given by the Claimant himself - as to why this could be done on 7 February 2018, but not before. It was wrong, moreover, to criticise the ET for focusing on the period that had been the specific focus of the Claimant's own case below.

30. As for the second ground of appeal and the reasons challenge, the Respondents submit: (1) there was no obligation on the ET to identify the expiry date of the reasonable period of extension potentially available under Section 48(3) - the statutory test directs the ET to consider the actual period of delay and consider whether that period was reasonable; (2) it was, in any event, a matter of obvious inference that the ET concluded that the reasonable period in fact came to an end at some earlier date than that on which the claim was presented - allowing that there might have needed to be some time for the Claimant to approve the lodgement of his claim, the ET did not need to specify a precise date but was entitled to find this was before 7 February 2018; (3) more generally, the Claimant knew the periods of delay which were of concern to the ET - he knew why he had lost, he did not need to know what might have been a reasonable period had the facts of his case been other than they were.

Discussion and Conclusions

31. As the case law makes clear, what is, or is not, reasonably practicable, or what is, or is not, a reasonable period for an extension of time thereafter, are essentially questions of fact for the ET to determine. Provided the ET has applied the correct legal test, has had regard to that which is relevant, and has not taken into account that which is irrelevant, and provided its conclusion is not properly to be described as perverse, it would not be open to the EAT to interfere.

32. In the present case, it was apparent that the ET accepted the Claimant's evidence about his ill-health. More specifically, it accepted he had established that it had not been reasonably practicable for him to present his claim within the primary three-month time limit. The question was whether he had then lodged it within a reasonable period thereafter. On this question, the difficulty for the ET was that the Claimant's case focused on what he characterised as the "relevant period", that is, the period between July and December 2017 (see paragraph 6 of his witness statement). Although his evidence, and at least some of the medical and other witness evidence, suggested that his difficulties continued up to, and after, the lodgement of his claim, on 7 February 2018, it was clear that the Claimant was labouring under the impression that the real issue for the ET related to the period up to his notification to ACAS, on 21 December 2017. Indeed, that is essentially what the Claimant himself said in his evidence before the ET.

33. The ET was, however, entitled to look to the Claimant for an explanation as to why his claim had not been presented within a reasonable period following the expiration of the primary time limit. Contrary to the Respondents' submissions, I do not read the ET as having made a clear finding that a decision had been made on 5 December 2017 to institute ET proceedings, albeit that might have been a permissible inference to be drawn from Dr Hindler's report

recording what the Claimant had said in their meeting on 8 January 2018 (see the passage cited by the ET at paragraph 31). It is clear, however, that the ET considered it was entitled to look to the Claimant for some explanation as to why it had then taken a further 16 days for any contact to be made with ACAS (see the ET at paragraph 51) - the necessary first step before he could bring any ET proceedings. Mr Croxford QC says that, given the ET's acceptance of the Claimant's evidence as to the effect of his ill-health, it might reasonably be inferred that the Claimant was not in a position to give clear instructions on 5 December and that it had then taken some time before he could agree to matters being progressed. I cannot accept that submission. Even allowing for the difficulties that face potential Claimants who seek to bring protected disclosure detriment claims, and even allowing for the particular difficulties facing this Claimant, I cannot say the ET was wrong to consider that an explanation was needed for the period from 5 to 21 December 2017, not least given (as the ET found) that it should have been obvious to the Claimant's legal advisors that time was likely to be an issue - this was, after all, someone who had not been working for over four months by this time - and also given the very limited requirements for ACAS notification (which did not require the detailed consideration alluded to in relation to the drafting of an ET1 in **Haque**).

34. That said, it is right to note that the Claimant's evidence did go on to address (at least in part) the ongoing difficulties he faced when thinking about instituting and bringing ET proceedings (see paragraph 15 of his statement), evidence that can be seen to have been supported by the medical evidence adduced in the report of Dr Hindler. There was, therefore, evidence before the ET that explained the difficulties that the Claimant experienced up to, and even continuing after, the date he lodged his ET claim. What there was not, however, was an explanation as to when the Claimant had managed to resolve these difficulties, so as to be able to approve the lodgement of his ET claim, something that he was plainly able to do by 7 February

2018. Although there was evidence before the ET of difficulties suffered by the Claimant due to his health problems in mid to late December 2017 and January and February 2018, the fact is that there obviously did come a time when he able to give instructions and take informed decisions in relation to this litigation and he did lodge a claim on 7 February 2018. On any case, therefore, there came a time when it had been reasonable for him to commence the proceedings. The question for the ET was whether this only arose on or around 7 February 2018; was that further period reasonable?

35. For the Claimant it is said that it might reasonably be inferred that there was no bright line, no red-letter day, so to speak, on which the Claimant was suddenly able to give the required instructions. Rather, it might reasonably be inferred - in particular, given the medical and other evidence that the ET had accepted relating to the Claimant's health - that this had occurred over time. That might be so, but the ET was still entitled to look for an explanation as to what had happened between any decision to make a notification to ACAS and the lodgement of the ET claim. Given the focus of the Claimant's case - the way in which he had identified the relevant period - and given the timing of events after ACAS notification, the Respondents' contention before the ET was that it was obvious what had happened: those acting for the Claimant had proceeded on the mistaken assumption that he only needed to provide an explanation up to his notification to ACAS; thereafter, they had wrongly assumed he was protected by the ACAS EC provisions, and by the one-month extension of time that those allowed, but that, of course, was not the case. Although Mr Croxford QC says that a similar one-month extension might be reasonable, given the difficulties facing the Claimant, that is not what the statue provides. The ET was entitled to look for an explanation other than a mistaken view of the law; after all, it had to determine whether the further period that had passed was reasonable in the circumstances.

36. Mr Croxford QC says that, even if such an error had been made, there was no clear finding by the ET that this had caused the Claimant's claim to be lodged when it was. That however, is not a fair reading of the ET's reasoning. The question for the ET was, as I have said, whether, having accepted it was not reasonably practicable for the Claimant's claim to be lodged within the primary three-month time limit, it was reasonable that the Claimant then did not lodge it until 7 February 2018. The ET plainly concluded that was not the case; the point at which it had been reasonable for the Claimant to present his claim had arisen at some point before that. The statute requires that the ET consider the period that has passed and determine whether or not that was reasonable. As the Respondents have said, the ET was not bound to specify the precise date on which it would have been reasonable for the Claimant to present his claim; it was entitled to find that the date on which it would have become reasonable for the claim to be presented would have fallen within a period of time, starting from some point within December 2017, to some point prior to 7 February 2018. Adopting that approach, the ET was entitled to look for an explanation as to why the Claimant had been able to present his claim on 7 February 2018 but not before. On that question, it is apparent that the ET accepted the Respondents' submission. The reasonable inference was that this was because those advising the Claimant had mistakenly thought he was protected once he notified ACAS and once the EC certificate was issued for a further month thereafter (see the ET at paragraph 53).

37. That, ultimately, is the answer to the appeal. Whatever sympathy one might have for the Claimant, the ET reached a permissible view that the reason why his claim had not been lodged at some point between mid-December 2017 and 7 February 2018 was not because of his ill-health, or for the other reasons identified by Mr Croxford QC on this appeal, but was because a mistake had been made as to the way in which the ACAS EC provisions operated in these circumstances. I cannot say that was an impermissible conclusion on the evidence and I do not consider that it

reveals any error of approach on the part of the ET. Moreover, given the ET's explanation of its reasoning in this case, I am satisfied that the Claimant is able to understand why he lost and that the reasoning provided is thus adequate to the task. In those circumstances, I am bound to dismiss the appeal.