



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107326/2019

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Held in the Edinburgh Employment Tribunal on 16 August 2019

Employment Judge S Cowen

10 **Mr J Barbour**

**Claimant  
In Person**

15 **Lloyds Bank plc**

**Respondent  
Represented by:  
Ms Dickson -  
Solicitor**

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### JUDGMENT OF THE TRIBUNAL

1. The Tribunal has no jurisdiction to hear the claim brought by the Claimant on the basis that it was brought out of time.

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### NOTE OF HEARING AND REASONS

2. The Claimant claims unfair dismissal, notice pay, holiday pay, unlawful deductions of wages, and detriments and dismissal as a result of making a public interest disclosure.
3. The name of the Respondent was identified as and amended to read Lloyds Bank plc.
4. The matter came before me to decide a preliminary issue of whether the claim was brought in time. The claim, is on the face of it very much out of time; the Claimant's effective date of termination having been 27 or 29 November 2010 (the difference between the parties makes no active difference in this case)

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**E.T. Z4 (WR)**

and the claim having been issued at the Employment Tribunal on 13 June 2019.

- 5 5. The Claimant gave evidence to the Tribunal to explain his situation and why there had been such a significant delay in bringing his claim before the Tribunal. An agreed bundle of documents was referred to by both parties. A skeleton argument and authorities were provided by the Respondent.

#### FACTS

- 10 6. The Claimant worked for the Respondent from 1 April 1999 to 29 November 2010 (at the latest). He was employed as a Financial Planning Manager. From approximately 2004 onwards the Claimant wrote a number of letters to members of management at the Respondent, informing them of his concerns that the practices of the bank were fraudulent. The Claimant claims these are protected disclosures under s.47B Employment Rights Act 1996.

- 15 7. In 2007 the Claimant was the Respondent's top performing consultant. In February 2009 the Claimant attended an appeal hearing as a result of a complaint of bullying he had raised against his manager. Around that time the Claimant was very stressed and was placed on medication by his GP. He believed that he was denied access to information held by the Respondent.

- 20 8. The Claimant wrote to the bank chiefs to tell them of his concerns and was then absent from work for approximately 6 months from February 2009 as a result of his mental ill health. He returned to work in July 2009, when a further investigation was carried out. He was absent again for a period of two weeks in September 2009 when he believed he had been overlooked for a new position. In January 2010 he had to carry out a role play as part of a re-validation process. This increased his anxiety and he was unable to pass the exam. He was allowed to resit it twice but was unable to face the exam a further time, due to the severity of his symptoms.

- 30 9. The Claimant was absent from work again from 1 April 2010 to 29 November 2010, having been first diagnosed with PTSD in September 2010, with

5 elements of depression. The Tribunal saw a letter from Dr Anthony Ayles, a GP working in occupational health, indicating PTSD and depression. By October 2010 he was experiencing shakiness, insomnia, poor concentration, inability to relax, and a sense of constantly worrying about work related problems.

10 10. He was due to attend a meeting on 26 November 2010 at which his continued employment was to be considered in light of his ill health. The Claimant did not feel well enough to attend this meeting and the decision to terminate his employment was taken in his absence. He was informed of this the same day. His employment was terminated on 29 November 2010.

11. The Claimant had taken legal advice at the beginning of 2010 with regard to a freedom of information request. He also received assistance from a neighbour who is an academic lawyer. He also had the benefit of Trade Union support during his disciplinary procedure, prior to his dismissal.

15 12. After his dismissal in November 2010 he took legal advice in early 2011 with regard to a claim for Public Interest Disclosure detriment and/or dismissal. By this time he was not in good mental health. He had received a response to his freedom of information request which included his personnel file, much of which had been subject to redaction. The Claimant found this difficult to cope with, as he believed it meant that he could not prove the disadvantage/detriment he believed he had suffered since 2005. The Claimant's mental health declined significantly after this.

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13. A letter dated 19 September 2011 from Dr T D Rogers, a consultant psychiatrist described the Claimant's condition at that time as continuing to experience anxiety symptoms, including constant worrying and an inability to relax. The Claimant told Dr Rogers that he felt he would perform poorly at a job interview and his concentration was not good enough to master new skills in the workplace. Dr Rogers concluded that the overriding appearance was one of anxiety disorder and diagnosed a Generalised Anxiety Disorder.

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30 14. During the period 2011-2015, the Claimant's concentration and memory were affected and he struggled to absorb the content of documents which he read.

He commenced counselling in 2011 and continued this until 2015. He has not had any psychiatric appointment since 2015.

15. On 25 April 2012 the Claimant commenced action in the Court of Session to recover damages for personal injury from his former employer. He was able to provide instruction to his solicitor in order to pursue this case, but never attended court himself. The Claimant settled this case in 2015, but did not receive his expenses until 2016.
16. Once the personal injury claim was settled, the Claimant once again wrote to Lord Blackwell at the Respondent in September 2016 to inform him of his concerns. He also wrote to the Financial regulator the Financial Conduct Authority, who was not able to assist him.
17. The Claimant first considered himself fit enough to undertake the preparation of the Tribunal case, in February 2019. The Claimant was aware of the time limits which applied to a claim for Public Interest Disclosure detriment as he had researched them on the internet.
18. He raised his claim with ACAS on 16 May 2019, who issued a certificate on 17 May 2019. The Claimant issued his ET1 on 13 June 2019.

#### THE LAW

19. There are strict time limits in which a claim for compensation must be brought before a Tribunal. Each of the claims made by the Claimant must be brought within three months of the date of the detriment or dismissal. S.111 Employment Rights Act 1996, sets out the time limit for claims of unfair dismissal.
20. S.111(2)(b) states that if the claim is not issued within the three month limit, it **must be** “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. The burden of proof that it was not reasonably practicable for the claim to be made in time, lies on the Claimant.

22. The Tribunal must take into account all the circumstances of the case, before making a decision of fact as to whether it was reasonably practicable for the Claimant to have brought the claim in time, as set out in **Palmer and another v Southend on Sea Borough Council [1984] ICR 372** and endorsed by the Court of Appeal in *Marks and Spencer v Williams-Ryan [2005] EWCA Civ 470*.
23. There are three questions which must be considered by the Tribunal in deciding such an application, these are; what was the original time limit; was it reasonably practicable to issue within that period; if not, then when was a reasonable period thereafter in which the Claimant could have issued, as set out in *Norbert Dentressangle Logistics Ltd v Hutton 2013 WL 5905564*.

#### CONCLUSIONS

24. The Claimant in this case was aware of the time limits which applied. He took legal advice within the three month time limit. Therefore the issue in this case was not one of ignorance of the law, nor inappropriate legal advice. The only issue relied upon by the Claimant in this case, is one of illness.
25. The Claimant was absent from work with mental ill health for long periods of time prior to his dismissal. He did not attend his final disciplinary meeting as he did not feel able to cope with the meeting. In October 2010 he described feeling shakiness, insomnia, poor concentration, inability to relax, and a sense of constantly worrying about work related problems. He described that he was crippled by his symptoms and not able to conduct his day to day affairs.
26. The original time limit for commencing the claim in the Tribunal should have been 28 February 2011. The Tribunal concludes that although the Claimant was able to meet with his solicitor in early 2011, he was not mentally well enough to compile, issue and conduct litigation in the Employment Tribunal. The Tribunal is satisfied that the Claimant was not coping with day to day activities and would not have been well enough to read the forms, or concentrate on filling them in. The Tribunal is therefore satisfied that having

taken into account all the circumstances, it was not reasonably practicable for the Claimant to have brought his claim to the Tribunal by 28 February 2011.

27. The Tribunal then considered the period within which it would have been reasonable for the Claimant to have issued his proceedings. The Tribunal is not satisfied that that period extends to 13 June 2019.

28. The Tribunal accepts that the medical evidence provided shows that he was suffering from a Generalised Anxiety Disorder in September 2011 and that he may not have been able to initiate his claim in the Tribunal at that time.

29. However, the Tribunal has also taken into account that the Claimant was able to conduct litigation in the Court of Session by way of instructions to his solicitor on or before 25 April 2012 (the date on which the writ of summons was issued). On the basis that this would have involved collating, reading and considering documents, engaging with a lawyer to provide instructions and receiving advice on the litigation process, the Tribunal considers that if the Claimant was well enough to undertake these tasks for his personal injury claim, he would also have been able to do these tasks for his Employment Tribunal claim. The Claimant chose to pursue that claim first.

30. Whilst the Tribunal recognises that the Claimant's health has not been consistent during the period of November 2010 to June 2019, it is clear that he has been able to provide sufficient instruction to his solicitor, at relevant times, to be able to conduct the personal injury litigation. The Tribunal also noted that the Claimant has not had any psychiatric appointment since 2015 and was also able to write to Lord Blackwell in September 2016.

31. The Tribunal considers that it would have been reasonably practicable for the Claimant to have brought the claim on or around 25 April 2012. On that basis, the claim has been brought out of time and the Tribunal has no jurisdiction to hear the claim.

I confirm that this is my judgment or order in the case of **Barbour v Lloyds Bank plc** and that I have signed the judgment by electronic signature.

**Date of Judgment: 23 October 2019**

**Employment Judge: Sally Cowen**

**Entered Into the Register: 24 October 2019**

**And Copied to Parties**