EMPLOYMENT TRIBUNALS

Claimant: Mr A Lal

Respondent: Securitas Security Services (UK) Ltd

Heard at: Birmingham **On: 27 and 30 September 2019**

Before: Employment Judge Miller

Representation
Claimant: In person
Respondent: Ms J Bann - solicitor

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim of unfair dismissal is dismissed. The tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal because

    a. The Claimant presented his complaint of unfair dismissal out of time.
    b. It was reasonably practicable for the Claimant to present his claim in time. Time is not extended for its presentation.
    c. The claimant had not been continuously employed for a period of not less than two years ending with the effective date of termination.

2. The Claimant presented his complaint of race discrimination out of time. It was not just and equitable to extend time for the presentation of the Claimant's claim and the Claimant's claim of discrimination is dismissed.

REASONS

Introduction

1. The claimant in this case, Mr Lal, was engaged by the respondent (Securitas Security Services (UK) Ltd) to undertake work as a security guard and before that as an event steward. By a claim form dated 10 December 2018 following a period of early conciliation from 24 November 2018 to 28 November 2018 the claimant brought claims of unfair dismissal and race discrimination against Securitas security services UK Ltd.
2. The claim of unfair dismissal is brought in respect of the decision of the respondent to end the claimant's contract on 29 June 2018. I spent some time at the start of the hearing clarifying the claimant's claims of race discrimination. The claimant is of British Indian origin and his claims are as follows:
    a. In October 2017, the claimant was working at the Travis Perkins site. He called Mr Taylor following an accident at work. The claimant says that Mr Taylor was angry and aggressive and shouted at the claimant. The claimant said that Mr Taylor does not speak to workers of white heritage in that way.
    b. In October 2017, the claimant was working at the Goodyear site. Mr Taylor attended the site and, the claimant says, Mr Taylor ignored him, walked past him and spoke to a colleague, James, who is white.
    c. On 27 September 2017 the claimant applied to be vetted by the police to be assigned to crime scene protection by sending an application form to Mr Taylor. The claimant says that Mr Taylor failed to forward his form to the appropriate place for consideration.
3. These claims were all identified on the claimant's claim form. The claimant also said that he had experienced ongoing poor treatment from Mr Taylor in his conversations with him. He said that the last contact he had with Mr Taylor was, he initially thought, in January or February 2018 although in evidence it seems more likely that this was in March 2018. The contact in March 2018 was Mr Taylor offering the claimant a shift and the claimant said he was unable to do it. The claimant did not identify any specific incidents when he said that Mr Taylor, or any other employee of the respondent, had allegedly discriminated against claimant in this way. I therefore treat this element of the claimant's allegations as context on which the claimant could potentially rely in support of his claims of discrimination.
4. I asked claimant to confirm that he was not relying on any other allegations or incidents formerly base of his race discrimination claims. The claimant confirmed that the matters set out above comprise the whole of his claim.

The hearing

5. Mr Taylor is the service delivery manager for the respondent with responsibility for managing security officers in his region. This included the claimant at the time. Mr Taylor attended to give evidence at the hearing and produced a witness statement. Mr Lal also produced a witness statement and gave evidence.

6. Mr Lal explained that he had a learning disability – namely dyslexia and I sought to ensure that he was able to question Mr Taylor and present submissions. In the event, however, Mr Lal was wholly capable of reading and assessing the evidence and framing and asking relevant and concise questions there were no occasions during the hearing in which it was apparent that the claimant required any more assistance than any other unrepresented person does in understanding the complex law and procedures inherent in bringing a claim to the Employment Tribunal and was able to present his case in a clear way.

Issues for the preliminary hearing

7. There are two matters for me to consider today: firstly, in respect of the claim for unfair dismissal, whether the claimant is an employee and, if so, if he has been employed for 2 years. It is not disputed that the claimant is a worker for the purposes of the Equality Act 2010. The second matter is whether the claims for unfair dismissal and discrimination are out of time and, if so, whether I should exercise my discretion to extend time for the claimant to bring his claims.

8. I consider first the claimant's status as an employee.

The law

9. The relevant legal provisions are as follows:

10. Section 94(1) Employment Rights Act 1996 says

> (1) An **employee** has the right not to be unfairly dismissed by his employer.

11. "Employee" is defined by s230 Employment Rights Act 1996 which says

> (1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
>
> (2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

Continuity of employment

12. Section 108(1) Employment Rights Act 1996 provides that

> Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

13. Continuity of employment is dealt with in section 210 to 213 Employment Rights Act 1996 which says:

210 Introductory

(1) References in any provision of this Act to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

(2) In any provision of this Act which refers to a period of continuous employment expressed in months or years—

(a) a month means a calendar month, and

(b) a year means a year of twelve calendar months.

(3**) In computing an employee's period of continuous employment for the purposes of any provision of this Act, any question—**

(a) whether the employee's employment is of a kind counting towards a period of continuous employment, or

(b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment, shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with section 211.

(4) **Subject to sections 215 to 217, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.**

(5) **A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous**.

211 Period of continuous employment

(1) An employee's period of continuous employment for the purposes of any provision of this Act—

(a) (subject to [subsection] (3)) begins with the day on which the employee starts work, and

(b) ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.

(2) …

(3) If an employee's period of continuous employment includes one or more periods which (by virtue of section 215, 216 or 217) while not counting in computing the length of the period do not break continuity of employment, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period, or the aggregate number of days falling within

those periods, calculated in accordance with the section in question.

212 Weeks counting in computing period

(1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.

(2) …

(3) Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is—

(*a*) **incapable of work in consequence of sickness or injury,**

(*b*) absent from work on account of a temporary cessation of work, or

(*c*) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose, or

(*d)* …

counts in computing the employee's period of employment.

(4) Not more than twenty-six weeks count under subsection (3)(*a*)…between any periods falling under subsection (1).

14. This means, therefore, that to be able to consider a claim of unfair dismissal the tribunal must be satisfied both that the claimant is an employee – i.e. employed under a contract of employment – and that he has been so employed for two continuous years up to the date of his dismissal.

15. What constitutes a contract of employment has been considered in numerous cases, but the starting point is the case of *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 1 All ER 433, QBD, i*n which MacKenna J said

> *'A contract of service exists if these three conditions are fulfilled. (i) The servant [employee] agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master [employer]. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.'*

16. In *Carmichael and anor v National Power plc* 1999 ICR 1226, HL, it was held that a lack of obligations on one party to provide work and the other to accept work would result in 'an absence of that irreducible minimum of

mutual obligation necessary to create a contract of service'. In that case, the claimants were engaged on the basis that they would be available on an "as and when" basis. The respondent had no obligations to offer work but, if it did, the claimants had no obligations to accept it. In the decision, the Lord Chancellor said:

> "The industrial tribunal correctly concluded that their case "founders on the rock of absence of mutuality.""

17. In this case, the real question is mutuality of obligation – was there any persisting obligation on the respondent to offer the claimant work between assignments and, if there was, was the claimant obliged to accept that work.

18. Before making findings of fact, I mention briefly also the case of *AUTOCLENZ LTD (appellant) v. BELCHER and others (respondents)* - [2011] IRLR 820. In that case, the Supreme Court were considering the genuineness of a term in a contract. Lord Clarke said that "The question in every case is … what was the true agreement between the parties".

19. This means that I am required to consider not just the written terms of the agreement, but what the true agreement was that operated between the claimant and the respondent.

Findings of fact.

20. The claimant entered into a contract with the respondent on 26 September 2012. That is not disputed, and indeed I was shown a signed copy of the contract. The contract includes the following provisions:

> **Agreement for casual** work which says
>
> "this contract governs the work that you carry out from time to time for Securitas Events ("the Company") as a casual worker. This contract is not an employment contract and does not confer any employer rights on you (other than those to which workers are entitled)".

21. The next two clauses are as follows

> **You have no rights to be offered work**
>
> the company is under no obligation to provide work to you. It is entirely at the company's discretion whether to off you work, when, how often and for how long.
>
> **You have no obligation to accept work**
>
> it is your right to refuse to accept work offered to you by the company.

22. The claimant accepted that he signed this contract and that that was what it said.

23. The respondent produced a subsequent contract from 2017 which Mr Taylor said in his witness statement was an updated version. The claimant did not sign this contract. It includes identical terms to those set out above except that it refers to Securitas Security Services (UK) Ltd rather than

Securitas Events and uses the word “infer” rather than “confer” in respect of employment rights.

24. The claimant was unable to remember if he had received this contract. The claimant’s view was, however, that it was less important what the contract said and more important how he was actually treated.

25. The letter accompanying the 2017 contract said “if we have not received a signed copy of the enclosed agreement or heard any objections within 14 days of receipt of this letter, we shall assume that the agreement and the details contained are accepted by you, note to this effect will be placed on your file.”

26. I heard no evidence from the claimant as to any change of address or that the contract had gone astray in the post. I have no reason to believe that that 2017 contract was not sent. I therefore find the fact that the respondent did send an updated contract to claimant in 2017.

27. I do not know, and it is not necessary for me to find, however, whether the claimant received that contract. The terms, as far as relevant, are materially the same. The only difference relied on by the respondent was that, it said, that the 2017 contract provided that the respondent may remove a person’s name from its list of casual workers if they have not worked for six consecutive months as opposed to that period being three consecutive months in the 2012 contract. In fact, that was reversed, under the 2012 contract the respondent had the right to terminate the contract after six months with no work whereas in the 2017 contract respondent had the right to terminate the contract after three months with no work.

28. In any event, it is not necessary for me to resolve that, as it was agreed that the last work that the claimant did for the respondent was 24 December 2017 and the respondent wrote to the claimant on 29 June 2016 just over six months after his last work. Whether the 2012 or 2017 contract was in force, the respondent had therefore complied with its contractual obligations in respect of terminating the contract.

29. The issue really is whether the terms in the contract – whether that is the 2012 one or the 2017 one - reflected the operation of the arrangements between the claimant and the respondent.

30. I find that they did. Firstly, I was taken to the respondent’s work records for the claimant from 3 May 2014 up to 24 December 2017. The claimant agreed that they were in all likelihood accurate records of his work with the respondent. In particular, he agreed that there were large periods of time including for example from 23 March 2016 to 24 of August 2016 and 11 February 2017 to 19 August 2017 when the claimant did no work for the respondent.

31. The claimant was, understandably, unhappy that the respondent had not offered him work. This was a consistent part of the claimant’s dissatisfaction with the respondent. I observe, however, that a failure to provide work did not form part of the claimant’s claims of race discrimination.

32. Conversely, in August 2016 the claimant brought a grievance against Vijay Kumar complaining that he was harassing the claimant trying to get him to take on additional work. He said in his grievance "I'm on zero hour contract so he knows or should know I can work the hours and shifts I want to but he still keeps harassing [me]".

33. The claimant also pointed to text communications with the respondent about offering work. Particularly he referred to a text exchange with Colin Taylor on 8 March 2018. In that text Mr Taylor offered the claimant five days' work from 6am to 6pm. The claimant said that in conversation with Mr Taylor he had understood that the work had been from 7am to 7pm. The claimant said that he would have been able to do the 7-7 shifts but that the 6-6 shifts were impracticable for him. He said that as the assignment was some distance away he would have had to get up unreasonably early to get there and that this would impact on his rest period.

34. The claimant, I believe, pointed to this as evidence of the unreasonable behaviour of the respondent. Particularly, he said that Mr Taylor did not reply to him again. However, the evidence of the claimant was wholly consistent with the operation of the arrangements as set out in the contractual documentation whether of 2012 or 2017. It was clear that the respondent offered the claimant work from time to time, sometimes the claimant accepted that work and sometimes he didn't. He resisted pressure to work more hours than he wanted to, and he also chased the respondent for additional hours when he needed them. This is entirely consistent with the "casual worker" arrangements set out in the contractual documentation.

35. Mr Taylor also gave evidence about the allocation of work. He said that work was prioritised firstly to permanent employees, secondly to those on fixed hours and finally distributed amongst casual workers such as the claimant. He said there was no particular mechanism by which work was allocated but he did say candidly that those employees who turned down work were less likely to be offered work in future.

36. Finally, the claimant gave evidence that he was unhappy with what he perceived to be the decisions of the respondent not to give him permanent or long-term work. While I can well understand why the claimant was unhappy not to receive more regular work, unfortunately the fact that the claimant accepted that he needed to either apply for or be offered more permanent work served to support the respondent's position that this was in fact a casual arrangement.

37. The claimant gave evidence about his loyalty to the respondent, and he referred to the fact that he had stepped in at the last minute and undertaken onerous work including driving with colleagues to Scotland and London and undertaking work in Wales. He also said that he'd been given access to hire car and fuel card. I accept the claimant's evidence on these matters, in fact they were not challenged.

38. The claimant also gave evidence that once he had attended any assignment he was given, he was required to stay there until the next security guard attended. It is clear from the terms of the written agreement that the claimant was required to complete an assignment and if he cancelled an assignment at short notice, he was potentially subject to penalty clauses or deductions from his pay. I make no comment about the reasonableness or otherwise of these 'penalty clause' provisions.

39. The claimant also referred to occasions in October 2017 when the manager had attended on site to deal with health and safety issue at work. Although the detail of this incident was disputed, it was agreed that the manager had attended to respond to the claimant's request for assistance.

40. I find therefore that during the course of assignments the claimant was required to complete the assignments, and he was under the control and supervision of the respondent. This was not substantively disputed by the respondent.

41. Again, this is consistent with the arrangements set out in the written agreements.

Conclusion

42. Having regard to the legal provisions referred to earlier, and the findings of fact I have made, in my judgment the claimant was not, at the time he submitted his claim, an employee of the respondent. There was no mutuality of obligation persisting between assignments. The terms of the written contract are clear that there is no obligation on the respondent to offer the claimant work and likewise there was no obligation on the claimant to accept any work offered by the respondent. The evidence I heard from both parties confirmed that this was in fact the reality of the situation.

43. However, I also find that during each assignment the claimant was an employee of the respondent for the duration of that assignment. The claimant was wholly under the control and direction of the respondent for the duration of the assignment. He was required to attend at the time stated, he was required to stay on site for the duration of the assignment and it is clear that he was subject to supervision and control of the respondent during the assignment. Mr Taylor referred to the fact that the claimant was required to contact a control centre in the event of any issues so that the duty manager could respond. The claimant was taxed at source, and there was no suggestion at all that he was trading on his own account during the assignments. In every respect, he gave the appearance of being an employee for the duration of each assignment.

44. However, it is clear from the employment records which the claimant accepted as correct that the claimant did not have two years continuity of service. The claimant's last date of actually doing any work was 24 December 2017. He also worked on the 22nd and the 23rd December. Before that his previous date of work was the 7th December. As referred to above, there are additionally large periods in the preceding two years

when the claimant had not had any work for the respondent for a number of months. However, at the date of the last time the claimant worked he had less than one week's continuity of employment.

45. For these reasons, the claimant does not have sufficient continuity of employment to bring a claim for unfair dismissal. The claimant's claim of unfair dismissal must therefore be dismissed.

Time point

46. In the circumstances, it is not strictly necessary for me to deal with the question as to whether the claimant's claim of unfair dismissal is in time. However, in the event that I am wrong about claimant's employment status I also consider the claimant's claim from the dismissal would be out of time on the basis that claimant's contract was ended on 29 June 2018.

47. The relevant law is set out in section 111 Employment Rights Act 1996. It says as far as is relevant

> 111 Complaints to [employment tribunal]
>
> (1) A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.
>
> (2) [Subject to the following provisions of this section], 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

48. In *Marks & Spencer plc and Sabrina Williams-Ryan* (2005) it was held at paragraph 21 that

> *"it has been repeatedly held that when deciding whether it was reasonably practicable for an employee to make a complaint to an employment tribunal, regard should be had to what, if anything, the employee knew about the right complaints employment tribunal and of the time limit for making such complaint. Ignorance of either does not necessarily render it not reasonably practicable to bring a complaint in time. It is necessary to consider not merely what the employee knew, but what knowledge the employee should have had had he or she acted reasonably in all the circumstances."*

49. In *Cullinane v Balfour Beatty Engineering Services Ltd and anor* EAT 0537/10 Mr Justice Underhill said that the question of whether the period between expiry of the time limit and the eventual presentation of a claim is reasonable requires an objective consideration of the factors causing the delay and of what period should reasonably be allowed in those

circumstances for proceedings to be instituted. Crucially, this assessment must always be made against the general background of the primary time limit and the strong public interest in claims being brought promptly.

Facts

50. The claimant's contract was terminated on 29 June 2018 with immediate effect. He contacted ACAS to commence early conciliation on 24 November 2018 and submitted his claim on 10 December 2018. The face fits, the last date on which the claimant could bring a claim for unfair dismissal was 28 September 2018.

51. The claimant's case was that he considered that he needed to wait for the outcome of the internal appeals process before making his claims. He said that the HR Department were slow in responding and did not comply with their own time limits. He received the final outcome to his complaint in a letter dated 2 November 2018. He then contacted the citizens advice bureau and ACAS within a few days of that. The claimant says that he was not advised about the time limit for making a claim to an employment tribunal. He did then contact ACAS again for early conciliation on 24 November 2018, about three weeks after the date of the final complaint outcome.

52. That letter of 2 November 2018 was in response to a complaint the claimant made to the respondent's head office who he says were in Sweden and he received a response that on 17 September 2018. This was referred to Sarah Hayes who contacted the claimant on 19 September 2018 at 16:05, and the claimant then sent a response to Sarah Hayes on the same day at 18:02.

53. In the email to Sarah Hayes of 19 September 2018 amongst other things the claimant says "I seek £40,000 for the above terrible actions by the security staff they have to pay for their wrongful actions. I will take this matter to an industrial tribunal action if I do not get compensated".

54. The claimant said that he had difficulty composing this correspondence and dealing with the matter generally as a result of his dyslexia. I have not seen any detailed medical evidence about the claimant's dyslexia, but it was not disputed and I accept that the claimant does have dyslexia. The claimant says he was assisted in dealing with these matters by his sister.

55. However, it is clear that the claimant was able to respond quickly and in detail about his grievance/complaint. It is also equally clear that the claimant was by the very latest of 19 September 2018 aware of the possibility of taking further action against the respondent for the way he felt he had been treated. This is apparent from reference to an industrial tribunal and his claim for damages.

56. The claimant said that he held the belief that he could not bring a claim until he had exhausted internal proceedings on the basis of information he was given by friend.

57. In my judgement, it was reasonably practicable for the claimant to have brought this claim before the end of three months after his contract

termination, being 28 September 2018. The claimant may have actually believed that he needed to have exhausted internal procedures before bringing a claim, but that was not a reasonable belief. The claimant had demonstrated that he was able to obtain assistance and/or undertake internet research and engage in complex and detailed correspondence about his complaints.

58. He could reasonably have made enquiries of the citizens advice bureau, ACAS or the employment tribunal before the expiry of the three-month period. I do not need to make a finding as to what he was or was not advised by those organisations. The time limit is strict, and the reasonable practicability test is a strict one. The claimant cannot rely on the misadvice of an experienced specialist adviser to defeat the time limits, and it is the case that equally the claimant cannot rely on the inexpert opinion of an acquaintance. I have had no compelling evidence as to why the claimant could not have made his claim earlier. For those reasons, it was reasonably practicable for the claimant to submit his claim within three months and even if I'm wrong as to the claimant's employment status, the claimant's claim for unfair dismissal is struck out on the basis that it is out of time.

Race discrimination

59. Finally, I consider the claimant's claims of race discrimination. As referred to at the outset this related only to three allegations in September and October 2017.

60. The relevant legal provisions are those set out in section 123 Equality Act 2010. This provides as far as is relevant

123 Time limits

(1) [Subject to [sections 140A and [section] 140B],] 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.

61. In *Robertson v Bexley community Centre T/a leisure link* (2003) Lord Justice Auld said "it is also important to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

62. In *British Coal Corporation v Keeble and ors* 1997 IRLR 336, EAT it was held that the tribunal is required consider the following matters: the prejudice which each party would suffer as a result of the decision

reached, and to have regard to all the circumstances of the case, in particular:

i. the length of, and reasons for, the delay;

ii. the extent to which the cogency of the evidence is likely to be affected by the delay;

iii. the extent to which the party sued has cooperated with any requests for information;

iv. the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and

v. the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

63. In this case, the exact date of the last alleged discriminatory act is not known but at the very latest it was 31 October 2017. This means that the last date on which the claimant could bring his claim within the three-month time limit was 30 January 2018. The Claimant did not contact ACAS to start early conciliation until 24 November 2018 and did not submit his claim until 10 December 2018. There is therefore a substantial delay.

64. The claimant said that the reason he did not bring a claim earlier was because he considered that his ability to obtain work would be affected by this. The respondent drew attention to the fact that the claimant had continued to be offered work despite bringing grievances against both Colin Taylor and Vijay Kumar. However, by 29 June 2018 the claimant knew that his contract had been ended. In any event, by 19 September 2018 the claimant had very clearly set out his position to the respondent by saying that he wanted £40,000 in damages and that he would go to an industrial tribunal. Even if it were the case, however, that the claimant believed he would be subject to detriments for bringing a complaint about discrimination that no longer applied by 29 June 2018 and certainly not by 19 September 2018.

65. In respect of the delay in obtaining advice, the same facts apply as in respect of the unfair dismissal claim as referred to earlier. However, there is no evidence from the claimant as to what steps, if any, he took to obtain advice or information from the date of the alleged discrimination in October 2017. There is no suggestion either that he discussed claims for discrimination with the citizens advice bureau or ACAS when he did contact them in November 2018.

66. Similarly, in respect of the difficulties the claimant says he faced as a result of his dyslexia, it was clear that the claimant had access to support and was able to raise issues when he needed to. I refer again to the grievance of 19 September 2018. While this might explain a delay of a day or two, it does not explain the delay of 10 months.

67. In respect of the cogency of evidence, Mr Taylor was questioned by the claimant about the alleged instance in 2017. Mr Taylor said he had little to

no recollection of any of the matters referred to. Although, regrettably, it is not uncommon for there to be a considerable delay between alleged acts of discrimination and final tribunal hearing, in this case there is no contemporaneous evidence on which any of the witnesses may rely at all. The Claimant did not raise these issues earlier and Mr Taylor's evidence was that he had no recollection, effectively, of what the claimant was talking about.

68. In conclusion therefore the final alleged discriminatory act in respect of which the claimant seeks to claim was completed on or before 31 October 2017. The claim was then brought on 10 December 2018 which was over 10 months late. This was an excessive delay and the claimant has not demonstrated that there was a good reason for this delay.

69. Clearly there is prejudice to the claimant in not being able to bring his claim. This means that he would not be able to obtain redress for the discrimination he says he has suffered. However, the prejudice to the respondent in being required to meet the allegations at this late date when the claimant has never raised a complaint before outweighs the prejudice to the claimant in not being able to bring his claims. The respondent's evidence was, in reality, that it did not know what the claimant was talking about. This situation would be very unlikely to improve by the time of a final hearing and there is no additional evidence to support either party's case. It would not therefore be just and equitable to extend time. The claimant's claims for race discrimination are therefore also dismissed.

Employment Judge **Miller**

5 November 2019