Case No: 1402366/2019/P

EMPLOYMENT TRIBUNALS

Claimant: Mr. S Williams

Respondent: Defence Equipment and Support

PRELIMINARY HEARING

Heard at: **Bristol** **On:** **9 October 2020**

Before: Employment Judge Midgley

Representation
Claimant: In person (supported by Mr. P Williams, son)
Respondent: Mr. J Duffy, Counsel

JUDGMENT

1. The tribunal does not have jurisdiction to hear the claimant's claims.

2. The claimant's claims were presented outside the statutory time limit. It would not be just and equitable to extend time to permit them to proceed.

REASONS

1. By a claim form presented on 25 May 2019 the claimant, Mr. Williams, brought claims under the Equality Act for failure to make reasonable adjustments (section 20, 21) and harassment (section 26), and a claim for constructive unfair dismissal pursuant to s.98(4) ERA 1996. The respondent defended the claims.

2. The unfair dismissal claim was struck out by Judgment dated 11 June 2019 because the claimant lacked the continuity of service required under section 108 ERA 1996.

3. The claims have been considered at two preliminary hearings, each before Employment Judge Roper; the first on 4 December 2019, the second on 30 March 2020. At the last hearing, Employment Judge Roper permitted the claimant to amend his claim to include two acts of harassment which occurred on 16 January 2019, and listed a Preliminary Hearing to determine whether

the claimant's discrimination claims were presented within time and, if not, whether it would be just and equitable to extend the time limit pursuant to section 123(1) of the Equality Act 2010.

4. The claimant's claims therefore relate to events that occurred in the nine days between the commencement of his employment on 7 January 2019 and the last pleaded act of discrimination on 16 January 2019 (albeit for the purpose of the preliminary issue I took the most generous interpretation of the facts, taking the last day at work on 21 January 2019 as being the last date on which the s.20 claim might be founded).

5. Although it had no impact upon my decision in relation to the issue before me, I observe that the claimant's claims were weak on the face of the parties' respective pleaded cases.

Procedure, hearing and evidence

6. I had the benefit of the following: a written statement from the claimant, a bundle from the respondent of approximately a hundred pages consisting of tribunal documents and correspondence, and a bundle from the claimant of approximately 100 pages consisting of some contemporaneous documents which he relied upon in relation to the issue before me.

7. The claimant gave evidence under oath and answered questions from Mr. Duffy for the respondent and from me. I permitted the claimant to expand upon his evidence following those questions as he was unrepresented. The claimant appeared to me to be somewhat evasive in his answers to Mr. Duffy's questions, and the answers that he gave to me and Mr. Duffy were often contradictory, particularly in relation to when he knew of his right to bring claims for discrimination.

8. I heard oral submissions from Mr. Duffy and from the claimant himself.

9. Throughout the process of evidence and submissions the claimant was supported by his son, Mr. P Williams, and I am grateful to him for his support of his father.

10. Prior to commencing evidence, I clarified the dates which were relevant to the issue of jurisdiction with the claimant. The claimant accepted the following propositions which were relevant to my determination:

    10.1. Given that the last act about which the claimant complains can only have occurred on 21 January 2019 at the latest, any claim in respect of those matters should have been issued by 20 April 2019. Accordingly, the primary time-limit for the claimant's claims expired on 20 April 2019.

    10.2. The claimant contacted ACAS and obtained an early conciliation certificate on 24 May before issuing his claim on 25 May 2019.

    10.3. The claimant could not benefit from any extension of time attributable to the early conciliation process given that the primary time-limit had expired before he made contact with ACAS.

    10.4. The claimant's claims were therefore 36 days out of a time.

11. The claimant conceded, therefore, that the tribunal would lack jurisdiction to hear his claims unless I exercised my discretion to extend time in accordance with section 123 Equality Act 2010.

The material facts

12. I make the following findings of fact insofar as they are relevant to the issue before me on the balance of probabilities.

13. The claimant is an experienced electronics engineer and had previously worked for the respondent between 2004 and 2009 and, latterly, between 2014 and 2016. He was a member of the Institute of Engineers and Technicians and through that membership has access to a legal help line. He is also a member of Unite the Union.

14. In 2004, the claimant was diagnosed with an Acute Depressive Illness. The consequence of that condition is that he suffers from spells of severe anxiety and depression; in 2004 he was treated as an in-patient due to a severe psychiatric episode. He relies upon that condition as a disability for the purposes of section 6 and Schedule one of the Equality act 2010 for these proceedings.

15. The claimant commenced a further period of employment with the respondent on 7 January 2019 as a Technical Through Life Support Senior Administrator/Technical Special. He was employed part-time, contracted to perform 30 hours per week.

16. Prior to commencing employment, the claimant had completed the necessary pre-employment checks including an assessment by occupational health. The occupational health report identified amongst other matters that the claimant suffered from depression and anxiety, and that that condition amounted or was likely to amount to a disability for the purposes of the Equality Act 2010.

17. The claimant accepted in his evidence that at the point that he started his employment he was aware that he was likely to be regarded as a disabled person for the Equality Act, that it was unlawful to discriminate against someone because of their disability, including harassing them and failing to make reasonable adjustments, and that the appropriate forum for bringing a disability discrimination claim was the tribunal. He did not, however, know of the time limits that applied to that right, although he was aware in a general sense that there would be some form of limitation which applied to it.

18. Between the 11th and 16th January 2019 events occurred whilst the claimant was at work which he alleges amounted to harassment. They are detailed in the issues identified by Employment Judge Roper on 20 March 2020 (paragraph 10 in the Case Management Summary), but for present purposes it is sufficient to say that they consist largely of complaints about comments that a Mr. Wheatley made to the claimant and, separately the conduct of Mr. Thompson and Mr. Dave manifesting a generally unsympathetic and an unsupportive approach to the claimant's health, and failing to allow a reasonable opportunity for the claimant's health needs to be discussed at meetings which had not be scheduled for that purpose.

19. Separately the claimant alleges that throughout his employment the respondent applied a provision, criterion and/or practice ("PCP") by which employees were required to reply promptly to requests for information. That PCP, the claimant argues, placed him at a disadvantage because he suffered from depression and anxiety and needed more time in order to provide the information requested.

20. The claimant attended work on 18 January, but self-certified as sick on the 21 January 2019. The claimant obtained a Med 3 certificate from his GP covering the period the 22 January to 13 February 2019. The claimant accepted in his evidence that during that period, from approximately 29 January, he was able to make notes, make phone calls and generally conduct his day-to-day affairs.

21. On 31 January he contacted Unite the Union ("Unite") seeking advice as to whether he should resign or submit a grievance. He was advised not to hand in his notice until he had received advice. The claimant concluded that the respondent's conduct was so detrimental to his mental health, in particular because of what he regarded as a lack of an effective plan for supporting and managing his mental health whilst at work, that he decided that he must prioritise his health and resign from his employment, notwithstanding that advice he received to the contrary.

22. He then drafted his letter of resignation. In that letter the claimant refers his discontent with the respondent's failure to provide safe working conditions because of a failing to have regard to "a declared mental disability". The claimant accepted that that was a reference to a disability within the meaning of the Equality Act 2010.

23. Later that day the claimant received a call from the Regional Officer, Mr. McDowell, during which he was informed that he should raise his concerns in his letter of resignation, given his state of health was such that it was not appropriate to pursue a formal grievance. The claimant says that he understood from that conversation that Unite could not provide legal advice until any grievance had concluded. That is something of a non-sequitur, given that the claimant had been specifically advised that a grievance was inappropriate given his then fragile state of health. I note that the Regional Officer's note of the discussion makes no mention of such advice nor is it (or subsequent notes of the Claimant's discussions with Unite) consistent in any way with the Claimant's recollection of that discussion.

24. In any event, the claimant accepted in his evidence that he knew, irrespective of the advice that he received from Unite, that he was entitled to bring a claim to the tribunal without first concluding the grievance which he had issued.

25. The claimant attended the workplace on 14 February 2019 but was not required to undertake any work; the claimant was informed that he was entitled to a longer period of notice than he had believed. There is no claim before me in respect of any events that occurred on that day.

26. The claimant was told at the meeting that he would not be required to work his notice period and therefore could remain at home and be paid until the expiry of his notice on 28 February 2019.

27. Between the 15th and 21st February the claimant drafted a formal grievance and latterly, on the 8th, 13th and 14th of May he sought to gather evidence to support his grievance and, I find, any potential claim to the tribunal, seeking disclosure of various policies, procedures and JSPs.

28. On 22nd February 2019, the claimant attended his exit interview and handed his formal grievance to his employer. I was not provided with a copy of that grievance.

29. On 28 February 2019, the claimant's notice expired, and his employment terminated.

30. On 10 March, the claimant drafted a personal reference for a potential new starter at the respondent following a request from Michelle Harper of the respondent.

31. Tragically between the 11th and 14 March 2019 and subsequently the 16th and 17th of March 2019, the claimant attended to a close family member and his family in circumstances where the member was suffering from an inoperable brain tumor and was receiving end of life palliative care in his last days. The family member sadly died on 17 March 2019. The claimant attended his funeral on 9 April 2019.

32. Throughout February, March and April the claimant sought to expedite the process of his grievance and, due to his frustrations with the respondent's progress in that matter, by 24 April considered raising a second formal grievance in relation to the delay.

33. On 26 April the claimant telephoned the Health and Safety Executive raising concerns about health and safety matters at the respondent site. That event occurred only days after the primary time limit for his claims expired. He told me that he did so to "get all his ducks in a row" to be sure that he had a good claim before he was willing to issue proceedings.

34. Concurrently, in the period late March through to May 2019, the claimant sought alternative employment. He made applications on 19th March, 9th and 21st April, and attended interviews on 3rd April and 1st May 2019. Separately he attended several recruitment events and expositions in the area. The claimant produced a timeline which shows that he spent six days prior to the expiry of the time limit in such activities, and four after it expired and before he submitted his claim. The claimant accepted during cross examination that his focus at that time was on securing another job because he had bills to pay. Fortunately, he was successful in his application to RTP-UK Limited, receiving an offer of a role on 9 May 2019.

35. Meanwhile, on 8 May the claimant made further contact with Unite seeking representation at the formal grievance meeting that had been scheduled; he did not asked for advice in relation to any claim or the time limits applicable to it. It appears that the claimant received a telephone call from Unite on 14 May and made a further call to unite on 16 May; I find that that was to secure the attendance of a representative at the grievance hearing that was scheduled for 30 May 2019.

36. On 20 May the claimant spoke to Nina Franklin, the assigned 'Accredited Support Companion' for his grievance hearing. They discussed the claimant's grievance, and subsequently his desire to pursue a tribunal claim. During that latter discussion Mrs. Franklin informed the claimant that he would need to lodge any tribunal claim by 27 May 2019. It appears that that advice was given on the basis that it was 3 months from the date of the claimant's dismissal, rather than the last act of discrimination.

37. The claimant contacted ACAS and obtained the relevant certificate on 24 May before issuing his claim on 25 May 2019.

38. Within the claimant's bundle of documents are two redacted emails which were disclosed by Unite to the claimant in response to his Subject Access Request. The first is dated the 24 February 2019, the author and recipient of the email are redacted. The email consists of a disclaimer form requiring the recipient to confirm that they understand that it is their responsibility to ensure that time limits are adhered to and identifying that a complaint to the tribunal must be received within three months of the date of dismissal or the act complained of.

39. The second is an email dated 24 May, again the author and recipient's identities are redacted. Again, the email identifies the statutory time limit and records "if a claim is brought outside the normal time limit, the employment tribunal will usually refuse to hear it."

40. The respondent sought to suggest that the claimant was therefore aware of the time limits as early as the 24th February 2019. The claimant insists that the emails were not sent to him but believes that they were sent to Mrs. Franklin in preparation for or as a consequence of her discussion with him. I accept that evidence.

The law

41. S.123(1) EQA 2010 contains the primary time limit for claims brought pursuant to the Equality Act. It provides as follows: -

> proceedings on a complaint within section 120 may not be brought after the end of –
>
> (a) the period of three 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.
>
> (3) for the purposes of this section –
>
> (a) conduct extending over a period is to be treated as done at the end of the period.

42. While employment tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test in S.123, it does not necessarily follow that exercise of the discretion is a foregone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in Robertson v Bexley

Community Centre t/a Leisure Link [2003] IRLR 434, CA, that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EQA, 'there is no presumption that they should do so unless they can justify a 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 the discretion is the exception rather than the rule.' The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit.

43. These comments were endorsed in Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT and Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA. However, As Sedley LJ stated in Chief Constable of Lincolnshire Police v Caston at paragraphs 31 and 32: "there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. This has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing ET proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that the limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. Whether a claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact sound judgement, to be answered case-by-case by the tribunal of first instance which is empowered to answer it."

44. Before the Employment Tribunal will extend time under section 123(1)(b) it will expect a claimant to be able to explain firstly why the initial time period was not met and secondly why, after that initial time period expired, the claim was not brought earlier than it was (Per Langstaff J in Abertawe Bro Morgannwg University Local Health Board v Morgan).

45. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require exceptional circumstances: it requires that an extension of time should be just and equitable - Pathan v South London Islamic Centre EAT 0312/13.

46. In exercising its discretion to allow out-of-time claims to proceed, a tribunal may also have regard to the checklist contained in S.33 of the Limitation Act 1980 (as modified by the EAT in British Coal Corporation v Keeble and ors [1997] IRLR 336, EAT at para 8). S.33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular:
    (a) the length of and reasons for the delay;
    (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
    (c) the extent to which the party sued had co-operated with any requests for information;
    (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and

(e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action

47. Although, in the context of the 'just and equitable' formula, these factors will frequently serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (Southwark London Borough v Afolabi [2003] EWCA Civ 15, [2003] IRLR 220 at para 33, per Peter Gibson LJ).

48. In Department of Constitutional Affairs v Jones 2008 IRLR 128, CA, the Court of Appeal emphasised that these factors are a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case. No one factor is determinative of the question as to how the Tribunal ought to exercise its wide discretion in deciding whether or not to extend time. However, a claimant's failure to put forward any explanation for delay does not obviate the need to go on to consider the balance of prejudice. Nevertheless, there are two factors which are almost always relevant when considering the exercise of any discretion whether to extend time: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh) (see Afolabi above) .

49. It is always necessary for tribunals, when exercising their discretion, to identify the cause of the claimant's failure to bring the claim in time (Accurist Watches Ltd v Wadher UKEAT/0102/09, [2009] All ER (D) 189 (Apr)), but a tribunal will err if it focuses solely on whether the claimant ought to have submitted his or her claim in time, rather than weighing up the relative prejudice that extending time would cause to the respondent on the one hand and to the claimant on the other: (see Pathan v South London Islamic Centre EAT 0312/13 and also Szmidt v AC Produce Imports Ltd UKEAT 0291/14.)

50. Where a claimant asserts that he is ignorant of the right to bring a complaint the Tribunal must assess whether it was reasonable for him to have been ignorant, and to have remained so, throughout the period of the primary time limit (see Perth and Kinross Council v Townsley EATS 0010/10).

51. There is no general principle that it will be just and equitable to extend the time limit where the claimant was seeking redress through the employer's grievance procedure before embarking on legal proceedings. The general principle is that a delay caused by a claimant awaiting completion of an internal procedure *may* justify the extension of the time limit but it is only one factor to be considered in any particular case (see *Robinson v Post Office 2000 IRLR 804, EAT*, affirmed in Apelogun-Gabriels v Lambeth London Borough Council and anor [2002] ICR 713, CA).

Conclusions

52. In his witness statement, and in his evidence to me, the claimant articulated the following reasons for his failure to issue the claim in time:

52.1. he was ignorant of the time limit in section 123 EQA 2010;

52.2. his focus during the limitation period was upon:

52.2.1. expediting and concluding his formal grievance, so that he could obtain legal advice from Unite; and

52.2.2. supporting his family in a time of crisis, and

52.2.3. subsequently seeking alternative employment following his resignation.

52.3. Unite failed to advise him of the time limit until 20 May 2019.

53. I address each of those reasons in turn.

Ignorance of time limits.

54. The Claimant's ignorance was not reasonable. The claimant knew of his rights and was aware in a general sense that there was some form of limitation which applied to his ability to exercise those rights.

55. Despite that, and the fact that the claimant had easy and ready access to a number of sources of information from which he could have clarified those time limits (namely Unite, the legal helpline offered by the Institute of Engineers and Technicians helpline, the Citizens Advice Bureau and the internet itself), the claimant took no steps at all to investigate what the time limits were. He did not offer any plausible explanation for that failure, seeking to suggest that Unite failed to advise him of the time limit, notwithstanding that he did not inform them that he was considering bringing a claim until 20 May 2019.

Focusing upon expediting his grievance

56. A delay connected to the pursuit of an internal grievance procedure may provide grounds for a tribunal to exercise its discretion to extend time. However, here, throughout the period that the claimant was pursuing the grievance, he accepted that he knew that the grievance process itself was no bar to his ability to issue a claim in the tribunal. The claimant was using the grievance as a means of investigating his claim, to "get all his ducks in a row" in order to determine whether he had a good claim.

57. Ultimately, I concluded that the delay in presenting his claim which could be properly be attributed to the pursuit of his grievance was caused by the claimant's overarching desire to ascertain whether he had a strong or reasonable tribunal claim, not because the claimant believed that he could not pursue a claim in the tribunal until he had concluded the grievance process or because the claimant had any genuine belief that the grievance process would resolve the matters that were the subject of his claim, so as to avoid the need to issue it at all. The claimant had, after all, resigned his employment and determined that its continuance could only be detrimental to his health.

Cogency of evidence

58. The delay in presenting the claim will have almost no discernable effect upon the cogency of the evidence. The consequence of the claimant's grievance is

that largely all the factual matters which he relies upon in respect of his claims were drawn to the respondent's attention at the time, with the result that all the related documents should have been obtained and retained as part of the respondent's investigation. Furthermore, given that those against whom the allegations are made should have been spoken to during the grievance process, the witnesses' ability to recall the events accurately will be assisted by that contemporaneous record.

The extent to which the parties sued had cooperated with requests for information

59. The claimant knew of all the component elements of his claims; he was not dependent upon disclosure from the respondent to afford him knowledge of the claims which he now brings. In particular:

    59.1. Harassment - the claimant believed he had been subjected to unwanted conduct by his managers, and further believed that conduct related to his disability. Those are the component matters of a claim for harassment; the claimant did not require any documents for the respondent in order to conclude that he could pursue such a claim.

    59.2. Failure to make reasonable adjustments - the claimant knew that the respondent had been informed that he was a person with a disability, he knew also that the respondent was required as a matter of law to make reasonable adjustments in respect of his disability. He knew of the PCP that operated in the workplace, namely the requirement to respond and in a timeous or prompt fashion to requests for information, and he knew that he struggled with that PCP as a consequence of his disability. Finally, he knew that the solution to that issue was an adjustment by which he was given more time to respond. Those are the component elements of the claim for failure to make reasonable adjustments and, again, the claimant did not require any disclosure from the respondent to establish that knowledge.

60. There may have been delay in providing the claimant with documents which evidenced the *strength* of his claim, but that delay did not affect his belief in or understanding of the matters that were necessary for him to present the claims detailed above.

The promptness with which the claimant acted once he knew of the matters giving rise to his claim

61. The claimant's promptness must be judged against the knowledge above. Given the claimant knew of the facts which gave rise to his claims by 21 January 2019, he did not act promptly but rather delayed from 21 January until 25 May 2019 before presenting his claim, a period of over four months. That period covers the primary limitation date which expired on 20 January 2019.

62. Whilst I accept that the very human need for the claimant to support his family member in April could only be regarded as a reasonable explanation for the delay in respect of those days, I have to consider the claimant's actions across the entire period of the primary limitation period and the period thereafter until the claimant presented his claim on 25 May 2019.

63. The claimant used that time as I have detailed above, to pursue his grievance, with a focus on obtaining documentary evidence to establish its strength, and to secure other employment. It is worthy of note, however, that between 21 February 2019 and 8 May 2019 the claimant did not take any steps either to investigate or to draft his grievance, having spent 7 days previously to prepare the grievance and the grievance did not therefore cause or contribute in any way to that 11 week delay.

64. Similarly, whilst the claimant attended some events and made a number of employment applications, the process of identifying and applying for roles was not in itself a complete bar to the claimant's ability to present claim. The two could have occurred simultaneously.

65. The process of drafting the grievance and seeking employment occupied only 17 days of the 90 that were available to the claimant before the time limit expired.

66. The reason the claimant delayed was because he wanted to ensure that he had a good claim before he was willing to present it. Whilst such an approach may be sensible within the time limit, it cannot be an excuse for failing to present the claim within time. Time limits have to be complied with. Once a claim is presented orders for disclosure are made and a litigant may better understand the strength or weakness of his claim and either pursue it or withdraw it as he wishes. He cannot, however, ignore the time limit altogether.

Steps taken to obtain professional advice once the claimant knew of the possibility of taking action.

67. As I have indicated, the claimant had access to numerous sources of professional advice (Unite, the legal Hotline for the Institute of Engineers and Technicians, the Citizens Advice Bureau), and more generally information provided through ACAS and other sources on the Internet.

68. The claimant approached Unite looking for support for his grievance, but did not investigate with any of the available sources what the applicable time limits were for any claim, and by the time any advice was given in relation to the time limit, the primary time limit had expired. This is not a case therefore, where the claimant can argue that the reason that he missed the primary time-limit was because he had been given erroneous advice by his legal advisers. Mr. McDowell and subsequently Mrs. Franklin were asked to provide advice in relation to the claimant's resignation and, subsequently, his grievance and the grievance hearing, not primarily in relation to any legal claim.

Balance of prejudice

69. There is clearly prejudice to the claimant if I do not exercise my discretion to permit him to bring his claims. As indicated above, the pleaded claim (when viewed against the response) is not particularly strong, but he will lose his right to bring the claim altogether, irrespective of the merits of that claim, if I do not exercise my discretion to extend time. (I reiterate that the merits of the claims have played no part in my decision).

70. Conversely, the respondent's ability to respond to the claim is not significantly prejudiced, as it should have obtained the relevant documents and interviewed the relevant witnesses at the time. A delay of 36 days will not of itself materially compromise the witnesses' ability to recall events generally, or with accuracy, and certainly not in the circumstances where a grievance has been filed and investigated at the time.

71. However, the respondent would prejudiced if it were to have to defend a claim which has been presented outside the statutory time limit without any good reason for that failure.

72. How should I balance those two competing prejudices? I have concluded that the fundamental reason why the claimant did not issue his claimant time was firstly due to his desire for a third party to confirm whether he had a good claim before he was prepared to issue a claim, and secondly his unreasonable ignorance of the time limits that applied to his right to bring a claim.

73. Neither of those reasons is a good reason for missing the time limit, or critically for failing to take any steps to establish what the time-limit was. The other reasons advanced by the claimant for his failure to comply with the time-limit had a very limited part to play and were not the primary causes of his failure to present the claim within the limitation period. The claimant chose to focus on other things, that was his decision, but he must bear the consequence of it.

74. Therefore, balancing the fact that there is limited forensic prejudice to the respondent's ability to defend a claim if I permit the claims to proceed against the fact that there is prejudice in having to defend a claim that is presented out of time in circumstances where there is no good reason for the time-limit to have been missed and that time-limits should be complied with as the extension of time is the "exception and not the rule," I have concluded that it would not be appropriate in the circumstances of this case for me to exercise my discretion to permit the claimant to present his claims out of time.

75. The claims having been presented out of time, the tribunal does not have jurisdiction to hear them and the claims are therefore dismissed.

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Employment Judge Midgley

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Date 12 October 2020