



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Ahmed  
**Respondent:** Jaguar Land Rover Limited  
**Heard at:** Birmingham via CVP  
**On:** 3 December 2020 and in chambers on 20 January 2021  
**Before:** Employment Judge Flood  
**Appearances:**  
**For the Claimant:** In person  
**For the Respondent:** Mr Kelly (Counsel)

## JUDGMENT

1. The claimant's complaints of direct race discrimination were dismissed upon withdrawal
2. The claimant's complaints of race related harassment and in relation to a failure to make reasonable adjustments were presented after the expiry of the statutory time limit. It is not just and equitable to extend time to the date of presentation.
3. The claimant's remaining complaints of unfair dismissal and discrimination arising from disability will proceed to final hearing.

## REASONS

1. The claimant presented his claim form on 18 December 2019 following a period of early conciliation from 21 July to 21 August 2019. The claimant had been employed with the respondent from 12 August 2012 until dismissal with effect on 24 April 2019. Given these dates it has been identified that any complaint about something that happened before 22 April 2019 may not have been brought in time. The claimant's complaints of unfair dismissal and that such dismissal was

an act of discrimination arising from disability (section 15 Equality 2010) have been brought in time and will proceed to final hearing.

2. The claimant's complaints of direct race discrimination (section 13 Equality Act 2010); race related harassment (section 26 Equality Act 2010) and in respect of a failure to make reasonable adjustments (sections 20 & 21 Equality Act 2010) appear to relate to incidents or matters which arose before 22 April 2019 and so may have been presented out of time.
3. At the last preliminary hearing before Employment Judge Miller on 15 September 2020, the case was listed for a preliminary hearing **"To consider if the claim was submitted in time and if it was not whether there are any grounds on which time could be extended"**. The parties were ordered to exchange relevant documents and to prepare a joint file of documents to be used at the preliminary hearing. The claimant was also ordered to prepare a witness statement for the preliminary hearing by 17 November 2020. The file of documents has been prepared and the claimant prepared and served a witness statement on 27 November 2020. At paragraph 43 of this witness statement the claimant stated:

*" I have set out my account of the incidents which I considered to be based on race, it has to be accepted that my treatment base on race unlike disability does not form a continuum case. I therefore do not trouble the Tribunal with further consideration of the same and limit my claim to unfair dismissal, disability discrimination and harassment."*

He clarified today that this meant that he wished to withdraw his direct race discrimination claim, although was still apparently pursuing a claim for race related harassment in relation to the same acts that had been said to be direct race discrimination.

4. The claimant attended and gave evidence by way of his written witness statements and by responding to cross examination by Mr Kelly and to questions from the Tribunal. Both parties then made submissions. I adjourned the case for a reserved decision to be made. I send my sincere apologies to the parties for the delay in being able to consider this matter until now.

### **The Issues**

5. The claimant's claim was not made to the Tribunal within three months (plus early conciliation extension) of the following acts or omissions to which the complaints of race related harassment and a failure to make reasonable adjustments relate:

#### **Harassment related to race (Equality Act 2010 section 26)**

- 5.1 On 5 May 2016, while the claimant was speaking to Alistair Avery at the daily team assembly point. He was approached by Jerry Stroud, who rudely interrupted and started yelling at the claimant in a loud voice in front of other members of staff. He asked the claimant what he was doing away from his station. The claimant explained that his station was full, and he had been given permission by his team leader James to be away from the station which he could verify by speaking to James. Jerry Stroud ignored that fact and became aggressive, banging his fist on the cabinet

- and started shouting louder that he didn't care that the claimant had permission he just wanted him to go back.
- 5.2 On 9 October 2017, the claimant was reprimanded by Paul Priest for wearing the wrong trousers and told that he would be sent home. This was in the presence of a white colleague, Laura, who was also wearing non-standard trousers but who was not reprimanded.
  - 5.3 On 8 January 2018, Jim Oxenbold reprimanded the claimant for sitting down while his colleague went to refill his parts and he could not work. Jim Oxenbold then untruthfully reported to Richard Bainbridge that the claimant had been sitting on a box, watching a video on his phone with headphones on with the intention of the claimant being subject to disciplinary proceedings.
  - 5.4 In February or March 2018, Sean Bing was rude and aggressive to the claimant and untruthfully accused him of being 10 minutes late for work when it was only 7.03 and the claimant had attended on time.
  - 5.5 Around the middle of 2018, the claimant was sent home by Jim Oxenbold and Richard Bainbridge for wearing the wrong trousers. A colleague nearby, Benjy, who was black (not Asian) was also wearing non-standard trousers but was not sent home or reprimanded.

#### **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

- 5.6 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
    - 5.6.1 Of requiring the claimant to work in Body Shop 3 and be managed by Jim Oxenbold and/or Jerry Stroud from 2016 until January 17 2019
  - 5.7 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was subjected to discriminatory actions and/or bullying and/or harassment by Jim Oxenbold and/or Jerry Stroud thereby exacerbating his stress which also exacerbated his IBS and caused his sickness absences to increase?
6. That being so, the Tribunal must decide whether the claim was made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
    - 6.1 Why were the complaints not made to the Tribunal in time?
    - 6.2 In any event, is it just and equitable in all the circumstances to extend time?

#### **The relevant law**

7. **Section 123 of the EQA**, which specifies time limits for bringing employment discrimination claims, provides so far as relevant that:
  - "(1) ... proceedings on a complaint ... 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."

8. The language used ("*such other period as the employment tribunal thinks just and equitable*") gives the employment tribunal the widest possible discretion.
9. **Section 33(3) of the Limitation Act 1980** (power to extend time in personal injury actions) specified a number of factors that a court is required to consider when balancing the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, 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.
10. In **British Coal Corporation v Keeble [1997] IRLR 336**, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above 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] IRLR 220**).
11. The Court of Appeal in **Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA** made it clear that there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.
12. In **Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640** the Court of Appeal however stated that the "*such other period as the employment tribunal thinks just and equitable*" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "*factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent*". There is no requirement that the tribunal had to be satisfied that there was a good reason for the delay before it could conclude that it was just and equitable to extend time in the claimant's favour.
13. The case of **Dedman v British Building and Engineering Appliances Ltd [1974] 1 All ER 520, [1974] 1 WLR 171, [1973] IRLR 379** is in relation to the discretion of an Employment Tribunal when determining whether it was not reasonably practicable for a claim to have been presented in time.  
*"the tribunal should inquire into the circumstances and ask themselves whether the man or his advisers were at fault in allowing [the time limit] to pass by without presenting the complaint. If he was not at fault, nor his advisers – so that he had just cause or excuse for not presenting his complaint within [the time limit] – then it was "not practicable" for him to present it within that time."*
14. **Hawkins v Ball [1996] IRLR 258** -The obtaining of incorrect legal advice may be relevant to a decision on whether it is just and equitable in all the circumstances to extend the time limit

**The relevant facts**

15. In relation to the complaints set out above, given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 22 April 2019 is potentially out of time, so that the tribunal may not have jurisdiction
16. The last act of race related harassment that the claimant relies upon in his claim is alleged to have taken place in the claimant's contention "*around the middle of 2018*" (see List of Issues page 68, paragraph 5.2.5) and it is acknowledged that this was at the latest 15 September 2018 (see page 91 and reference to the incident shown highlighted in purple about "incorrect PPE"). Early conciliation would need to have been commenced (taking the later date) by 14 December 2018.
17. The claimant's complaint of failure to make reasonable adjustments contrary to sections 20 & 21 of the Equality Act 2010 relates to the alleged failure of the respondent to move the claimant from working in Body Shop 3 under the management of Jim Oxenbold and/or Jerry Stroud between March 2016 and 17 January 2019 (when the claimant was moved to work in Body Shop 2 as part of an organisational change – see page 92). Early conciliation would need to have been commenced (taking the later date) by 16 April 2019.
18. The claimant in fact commenced early conciliation on 21 July 2019 and presented his claim on 18 September 2019, so clearly on its face both the commencement of early conciliation and the presentation of these two complaints are well out of time.
19. The claimant gave evidence today on what attempts he had made to resolve the problems he had within the respondent which he felt were race related harassment in 2017 and 2018. He said he spoke to his union representatives at the time but they failed to assist him to resolve his concerns and felt that this had been a "waste of time". He acknowledged that he had raised a grievance on 5 October 2018 and attended a grievance meeting on 17 October 2018. He also attended a return to work dispute meeting on 3 December 2018 and a grievance feedback meeting on 5 December 2018. When asked in cross examination for the reason he did not bring a complaint at this time he said that he did not know how to go about it. He explained that he was hoping that the respondent would sort something out and would move him and that everything would be OK. He said that if he had known more about how to go about bringing a claim he would have done so at this time.
20. He told the Tribunal about a number of grievances he had raised whilst being employed at the respondent which he says were not dealt with and in some instances were lost by the respondent and the union representatives which caused delay in trying to get his situation resolved. He mentioned a grievance that he had first raised in 2016 but that the union misplaced it 2 or 3 times. He felt he did not get the support of the union. Before he decided to issue his claim, he had not obtained legal advice but he said he did speak to ACAS who told him to speak to his union. He said he was not the type to push things too much with management and he did have some good managers, mentioning a Mr Bainbridge. He agreed in cross examination that he should have made a claim in relation to the race related harassment much earlier and taken the process further at the time. He said that he did not want to make this more difficult at

work as he felt that the respondent's managers had ruined his life. He said he had just hoped for the best and that was his mistake.

21. The claimant was aware that the Employment Tribunal existed as a place for bringing a claim in 2019 but did not know how to pursue things. He said he thought it was necessary to go through the company procedure completely. He said that the union made it clear to him that he could not take legal advice outside the union and told him that they would look into matters for him but kept delaying it. He said that he was told that if he decided to get legal advice, the union would not support him. He said that the union took a year to get back to him as to whether they would support his claim to the Employment Tribunal and he did not get an answer until some time in 2020 that they would not be doing so after he had already brought his claim. When he then looked for a solicitor to advise him, he was unable to find one who would take his case on.
22. The claimant said he had been in a "dark place" before his return to work in April 2019 and that it was on the first day back at work after the shutdown on 24 April 2019 that he was dismissed

### **Conclusion**

23. The claimant submits, that the delay in issuing the discrimination claim was caused by the respondent failing to follow process. He says if it had not been for the respondent's actions he would not have had to take time off work. He contended that the respondent did not followed its own process and stick to the provisions of its own handbook. He therefore asks for an extension of time on just and equitable grounds.
24. Ms Kelly for the respondent submitted that I should consider the context of this claim as a whole in that the claimant already had a valid claim before the Tribunal for unfair dismissal and discrimination arising from disability. He submitted that this was the real focus of the claim namely the claimant's absence from work and how it was treated by the respondent.
25. As for the harassment claims, Mr Kelly submits that the claimant already acknowledges that the earlier acts which he had said were race discrimination were not part of a continuum and so the same must apply to these acts as they are said to be race related harassment. He submits that equally on the failure to make reasonable adjustments claim that the disadvantage relied upon was not continuing but was a number of discrete points and not an ongoing substantial disadvantage. He submits that the claimant's explanation being that he was not aware of how to bring a complaint in the Tribunal is not a sufficiently good reason for the Tribunal to consider exercising its just and equitable jurisdiction to extend time to allow a claim that in part had been presented nearly 9 months out of time. He submits that it is often the case that litigants in person may be unaware of their rights but that this should not be enough of itself for the time limits to be set aside as a matter of routine. He also points out that the claimant did in fact have some advice from his union throughout his employment. He says that any failings in the quality of support that the union provided to the claimant which may have delayed him bringing his claim should be a matter for the claimant by analogy under the principles set out in the Dedman case referred to above. Bad advice from a union he submits should be treated in the same way as bad advice from legal advisers and the consequences unfortunately have to fall on the claimant who can then pursue this issue directly with the union. On balance of prejudice he says that the nub of this claim will be litigated as part of

the unfair dismissal and discrimination arising from disability claim. The claimant will be able to articulate his complaint that his disability was exacerbated by the respondent's conduct in the remaining claims. He will get to ventilate these issues but just under a different heading and therefore suffers no prejudice. The respondent he says suffers a greater prejudice with having to deal with historic matters that took place several years earlier and would otherwise be time limited

26. I have considered the relevant factors set out above in the case law when exercising my discretion.
27. The length of the delay here in bringing a claim about the acts of race related harassment is substantial and the same can be said about the reasonable adjustments claim, being some two months late. The claimant did not act promptly in bringing his complaint despite having had apparently major issues at work for several years (as evidenced by the various grievances he says he has submitted).
28. The reason for the delay in issuing proceedings appears to relate to the claimant's lack of awareness about how to pursue his complaint further and his reliance on the advice of his trade union representatives that he had to pursue matters with them and/or that he came under pressure from them not to seek external legal advice. The claimant also suggests he was hoping that things would improve for him and that the respondent would transfer him away from the managers who he complains about.
29. I accept that the claimant may have been hoping for a successful outcome, but given the problems he described about grievances being lost and not pursued properly, it was a reasonable step for the claimant to try to protect his rights by seeking advice and issuing proceedings earlier. 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 starting 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 this case, although the claimant had tried to pursue the matter internally, his past experiences should have alerted him to the fact that he could not perhaps rely on this route to resolve matters.
30. I am aware also that the claimant has been unwell during this time and it is acknowledged by all that he is suffering from a disability and was at the relevant time. This cannot have been easy and undoubtedly had an impact. However, the claimant was involved in the grievance procedure, attending several meetings during this period so was managing to carry out very many steps he thought were necessary to pursue his complaints. His ill health does not appear to have prevented him trying to resolve issues at work through internal procedures.
31. I also note that the claimant was discussing the complaints he had with trade union representatives throughout. This has been a feature for several years and the claimant is clearly feeling very let down by the support or lack of support as he sees it. I do not accept the submission of Mr Kelly that receiving poor advice from trade union representatives (in the same way as receiving poor legal advice) is not something that in general the respondent should have to shoulder the burden of and by analogy with the Dedman case above, this should not be a factor that is considered in the claimant's favour when deciding whether it just

and equitable for claimants to bring complaints which are well out of time. The case law with regards to legal and other advice in the just and equitable jurisdiction is less prescriptive and indicates that this may be a relevant factor but will not always be. I understand that the claimant is disappointed that he was not in his view well advised. However the claimant has been having problems he says with union representation for a number of years and has clearly considered seeking alternative support at various points well before the time he would need to submit a claim. Having had so many problems, I might have expected the claimant to look for other avenues of redress much sooner than he has done. He clearly regrets that he has not done this himself.

32. On the balance of prejudice, the claimant will be prejudiced by not being able to pursue his race related harassment complaint as this brings an end to this claim but he already has a live claim for discrimination arising from disability which will allow him to ventilate many of the issues about the way the respondent treated him. The respondent is prejudiced by having to deal with claims raised some considerable time after the limitation period had expired relating to matters that happened almost 5 years ago. Both the race related harassment claim and (to an extent) the reasonable adjustments claim link back to alleged bullying at work the claimant says he was subject to dating back to May 2016. The cogency of the evidence about these historic matters is very likely to be an issue given that very much of this will rely on oral testimony and will not be documented. This is a very significant factor which will cause significant prejudice to both sides (but perhaps more so the respondent who will be required to produce evidence to refute these historic allegations).
33. It is clear from the case law that there must be some thing raised by the claimant which convinces me that it is just and equitable to extend time. Considering all the matters raised above, I am not able to conclude that this has been done. It is unfortunate that this means the claimant will now not be able to pursue these particular claims. However, time limits are an important element of litigation and go to the tribunal's jurisdiction. They are not simply procedural matters that can be disregarded lightly. Having considered all the factors above in particular the length of the delay and reasons for it and looking at the balance of prejudice, I conclude that the complaints of race related harassment and a failure to make reasonable adjustments have not been presented within "such other period as the employment tribunal thinks just and equitable" in this particular case and so those complaints are dismissed. The remaining complaints of unfair dismissal and discrimination arising from disability will proceed to final hearing

Employment Judge Flood  
20 January 2021