EMPLOYMENT TRIBUNALS
Preliminary Hearing

Claimant: Mr M Haque

Respondent: Royal Mail Group Ltd

HELD by CVP **ON: 18 January 2021**

BEFORE: Employment Judge Rogerson

REPRESENTATION:

Claimant: In person accompanied by a friend
Respondent: Miss K Faulkner, Solicitor

JUDGMENT

The claim was presented out of time and it was not just and equitable to extend time in accordance with section 123(b)Equality Act 2010.

REASONS

1. The issue at this preliminary hearing, was one of jurisdiction, in relation to the claim presented by the claimant outside the primary time limit and whether discretion should be exercised to extend time to the date of presentation. Section 123(b) Equality Act 2010 ('EA2010') applies and provides that proceedings can be brought by "*such other period as the employment tribunal thinks just and equitable*".
2. I heard some evidence from the claimant and saw documents from an electronic bundle produced by the respondent which the claimant had seen prior to the hearing. From the evidence I saw and heard I made the following findings of fact:
3. The claim form was presented by the claimant on 24 March 2020 alleging that a colleague NS had subjected him to discriminatory treatment on the grounds of his religion on 28 December 2019, 29 December 2019 and an unspecified date in 2019. The ACAS certificate names the respondent as NS and the claimant's workplace as the address of the respondent. The claimant says that he did not

have NS's personal address and believed that by naming NS as the respondent the claim was being brought against his employer as the respondent.

4. The claimant drafted the claim form and had on advice delayed making the claim while he tried to resolve matters internally with NS using the respondent's grievance process. He was assisted by his union representative KD and spoke to GP another union representative at the site. He said that GP advised him that if he completed an ET1 claim form he could name Mr A. Lee at the CWU union as his representative. The claimant was provided with Mr Lees email address so he could refer to the union as his representatives in these proceedings.

5. The claimant named Mr A. Lee as his representative and provided the CWU union contact address and Mr Lee's email address for the preferred method of communication with the Tribunal about his claim.

6. On 27 March 2020 the Employment Tribunal contacted the claimant using the contact details provided to inform him that his claim had been rejected because the named respondent on the ACAS certificate did not match the named respondent on the claim form (Leeds Mail Centre). The rejection letter was sent to the claimant's union representative, Mr Lee.

7. The claimant did not know his claim had been rejected until more than 6 months later, on 6 October 2020. He was waiting for further information about his claim to be sent to him by his union. This is the first employment tribunal claim he has made. He thought the delay was because of the COVID situation and lockdown. He was suffering with stress at that time. He has not provided any medical evidence but says he has been unfit for work for work related stress since August 2020. He has had other distressing personal factors affecting him. His wife suffered a miscarriage in October 2020 leaving him to care for his four children at this difficult time. His union failed to contact him despite the claimant leaving messages for them. He was informed by an individual called 'Scott' at the Union that his messages would be forwarded on and that somebody at the Union would get back to him. He waited until 28 September 2020 and then made direct contact with the Tribunal to request an update on his claim.

8. On 6 October 2020, he was informed by the Tribunal that his claim had been rejected on 27 March 2020 because the ACAS certificate had named a different respondent to the respondent on the claim form.

9. Two weeks later, on 20 October 2020, he obtained a certificate naming 'Royal Mail Group Ltd', his employer as the correct respondent. On 21 October 2020, upon reconsideration, his claim was accepted as of 21 October 2020, when the failure was treated as 'rectified'.

10. The claimant says and I agree that taking 14 days to correct the failure once he had knowledge of it was reasonable conduct on his part because of his personal circumstances at the time.

Submissions

11. Miss Faulkner provided written submissions, which she went through orally updating them in the light of the information given at this hearing. The claimant was given time to consider those submissions before responding to them. In summary she says that the claimant has made unreasonable presumptions to explain the delay and has not acted reasonably by not contacting the union or the ET earlier than he did to chase up the progress of his claim. If he had done that he could have rectified the error earlier than he did and minimised the period of delay. In

response to that submission point the claimant says he was chasing the union to find out what was happening. He left messages and expected those messages to be answered. He relies upon COVID and his assumption his claim would take longer having no idea how long claims usually take to progress. He submits it is not an unreasonable presumption for him to make in those circumstances when he believed his claim was being dealt with by his union on his behalf.

12. Miss Faulkner makes the point that if his Union are at fault then the claimant's remedy lies against them. If there has been some miscommunication between the claimant and his Union, and correspondence from the Tribunal has for whatever reason not been forwarded to the claimant, that is not a good reason to grant an extension of time on just and equitable grounds. The claimant says he has told the Union that his claim had been treated as presented out of time because of their failure. He says he had tried to contact them and had told them about this preliminary hearing so that they could help him argue his case. He was again told that someone from the union would be in touch and that his message would be passed on. He has had no written communications with his Union before or after this matter was listed for hearing. Unfortunately, the Union have not responded and have not provided any information to explain the delay and support any extension of time.

13. The difficulty for the claimant is that he explains a substantial part of the delay (6 months) by attributing the fault onto the Union. He did not contact the Tribunal for an update himself because he left it to the Union who were not returning his calls. He was only informed on 29 September 2020 that his claim had been rejected in March 2020.

14. I found it odd that the Union, having received the rejection letter in March 2020, did not write to the Tribunal to inform the Tribunal that they were not representing the claimant or to at least forward the rejection letter to the claimant at that stage so he could respond to it himself. I also agree with Ms Faulkner that if the if as the claimant says he was told by the Union representatives during the grievance process to name the Union as his representatives in this claim and he did that under instruction, the adviser may be at fault and the claimant may have a separate remedy against the Union. If the union had not been named as the claimant's representative, the claimant would have been informed of the rejection and would no doubt have acted in the way that he did in October 2020, by promptly taking the corrective action required.

15. Miss Faulkner reminds me that time limits should be strictly applied and the exercise of discretion should be the exception rather than the rule. She refers to the case of **Walls Meat Company Ltd v Khan [1978] IRLR 499** in which time limits were considered in the context of advisers who were at fault where it was held that ignorance of time limits is not just cause or excuse for delay unless it appears that the claimant or his advisors could not reasonably be expected to have been aware of them. If the claimant or his advisors could reasonably have been expected to be aware of what they were required to do to present the claim in time against the correct respondent and failed to do that or correct any defect, the fault lies with the claimant or his adviser. The CWU Union can be expected to have knowledge of the time limits and the Tribunal process, which means that unfortunately, the claimant must take the consequences of their alleged inaction and alleged communication failure. If the claimant is prejudiced by not having time to present his claim extended his remedy must lie against the union, if they are in fact at fault.

16. I agreed with that submission on the basis the claimant does appear to be saying the union representatives were at fault for the delay by failing to advise him about submitting the claim against the correct respondent and providing the claimant with a copy of the rejection letter in good time. Presumably even during COVID, the CWU union would have had a system in place for checking whether any correspondence had been received and dealing with it for returning any calls made by the claimant which required action. I also agreed that the period of delay of 6 months is a significant period. I was referred to the recent case decided in the Court of Appeal of **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23** in which the Court of Appeal reminds Tribunals that the best approach for considering the exercise of discretion under section 123(b) EA 2010 is to assess all the factors in the particular case which the Tribunal considers relevant to decide whether it is just and equitable to extend time including "the length of and reasons for the delay" noting that no specific factors are listed in the statutory provision which gives a broad discretion.

17. I asked Miss Faulkner to explain what prejudice would be caused to the respondent if an extension of time was granted to 22 October 2020. She tells me that the cogency of evidence will be affected by the passage of time in a case like this dependent on the oral evidence. The claim as presented is not sufficiently particularised to identify the type of discrimination alleged or the facts that would support that complaint once identified. For one of the matters referred to the claimant could not recall the date of the alleged act. The claimant agrees that his would need further information to be provided and he drafted the claim himself not knowing what information was required. He says that if time is not extended there is greater injustice to him because others might be treated unfairly and the respondent will not be held to account for what they have done to him. He says that treatment has had a great impact on his life and on his family. I agreed with Miss Faulkner the long delay will impact the cogency of the evidence more substantially than a shorter delay particularly as the claim as presented is unclear and further information will be required to identify the actual complaints that are brought. Recalling alleged events from Christmas 2019 at a hearing unlikely to take place before Christmas 2021, is not an insubstantial period of delay and greater prejudice is caused to the respondent if an extension of time is granted.

18. I also took account of the length of the delay and the reasons for it. In waiting to present a claim until the end of the primary '3' month time limit a claimant runs the risk of leaving it too late to rectify any defects in the claim as presented. The claimant was being advised in the internal process by his union. The claimant/his advisers can reasonably be expected to be aware of what is required to done to present a claim in time in sufficient detail against the correct respondent and have failed to do that. The claimant says the fault lies with his advisers who have not provided any information to support him or to represent him at this hearing. I agree with Miss Faulkner that if the claimant's advisers are at fault and responsible for the delay, the clamant may have a remedy elsewhere. I agree that is not a good reason to grant an extension of time on just and equitable grounds. I can only decide the issue on the information that I have at this hearing. Enforcement of the primary '3' month time limit is important. I reminded myself that the exercise of discretion is the exception rather than the rule. Weighing up all the factors, and the arguments advanced by both sides, while I have great sympathy for the claimant I preferred and accept the submissions made on behalf of the respondent. I am not persuaded that it is just and equitable to extend time from March 2020 to 22

October 2020, when the claim was accepted. The claim is presented out of time and is therefore dismissed.

Employment Judge Rogerson
1 March 2021.