THE EMPLOYMENT TRIBUNALS

Claimant: **Mr Suresh Theivendram**

Respondent: **Tesco Stores Limited**

Heard at: **East London Hearing Centre**

On: **Monday 23 March 2020**

Before: **Employment Judge A Ross**

Representation

Claimant: Mr G Iyengar (Friend and relative)

Respondent: Mr J Cook (Counsel)

JUDGMENT

1. The Claim is struck out.

REASONS

1. As a result of the Covid 19 pandemic, this Preliminary Hearing (Open) was converted to a telephone hearing, conducted in public in Tribunal 1, with the phone on speaker phone throughout. The parties attended by telephone. The Claimant was represented by his brother-in-law, but he was also present on the line in another location; at some points, he contributed to the discussion.

2. Mr. Iyengar stated that he had not been able to send the Claimant's bundle to the Tribunal by email; but that he had produced hard copies of the bundle which he had hoped to bring to the hearing. He sought another hearing. He confirmed that he did have the Respondent's bundle prepared for this hearing.

3. I explained that the Claimant would need to apply for an adjournment, which Mr. Iyengar duly did. The grounds were as follows:

3.1. The Claimant had prepared for each point in the Grounds of Resistance.

3.2. The first Claim (3201795/18) had only been for the race discrimination element of the Claim; but the Claimant had thought that it included unfair dismissal.

3.3. The Claimant had been working for the Respondent for 15 years; it was unfair that he had been asked not to attend work until his race discrimination claim had been heard.

4. I questioned why it was just to adjourn, because this hearing was not to consider the merits of the complaints (if the Tribunal had power to hear them) nor why any documents were required to make the above arguments; and, as far as I could tell, the Respondent's bundle contained the relevant documents.

5. The application was opposed. Mr. Cook made the point that some of the Claimant's arguments were set out in the "Schedule of Issues" prepared on behalf of the Claimant and contained in the Respondent's bundle; and, in any event, the hearing was to determine questions of jurisdiction, not the merits of the alleged complaints.

6. I concluded that it would further the overriding objective if the Preliminary Hearing were to proceed for the following reasons:

6.1. It would not be unfair to either party if the Preliminary Hearing were to proceed. The Respondent's bundle contained the relevant documents. The Claimant's Schedule of Issues was in this bundle, and it set out the Claimant's submissions. The Claimant had not identified any additional documents that it was necessary for the Tribunal to see.

6.2. Generally, the overriding objective was furthered by avoiding delay.

6.3. This Preliminary Hearing involved questions of jurisdiction. Although it was necessary to find the precedent (or jurisdictional) facts, this was not a case of contested oral evidence nor was a hearing to determine the merits of the complaints.

6.4. The Covid 19 pandemic had produced an unprecedented situation, likely to continue for a few months at least, which is why the hearing had been converted to a telephone hearing. Adjourning this hearing would only produce unnecessary delay and expense.

7. The hearing proceeded by the Respondent outlining its submissions in respect of each issue. Mr. Cook accepted that the unfair dismissal complaint was not subject to the *res judicata* principle, because it had not been part of the first Claim.

8. Mr. Iyengar responded in respect of each issue in turn. He put forward the Claimant's explanation for these complaints of unfair dismissal and race discrimination being presented outside the primary time limits of 3 months. Mr. Cook confirmed that he did not need to cross-examine the Claimant; so the Claimant's factual account of events on the reason for the delay went effectively unchallenged. In essence, the

Claimant had a fair hearing where his representative (and himself) were able to put their case.

The Facts

9. The Claimant was employed by the Respondent as a store assistant from 2003 until his summary dismissal on 9.9.18.

10. By a first Claim presented on 19.8.18 (3201795/18), the Claimant complained of:

10.1. Direct race discrimination; and

10.2. Race discrimination by harassment.

11. After the first Claim was issued, a Preliminary Hearing took place on 30.10.18. I have read the Preliminary Hearing Summary drafted shortly after that hearing. By that date, the Claimant had been dismissed and he explained that he intended to bring an unfair dismissal complaint. Employment Judge Warren advised him that he had a 3 month time limit to bring a complaint of unfair dismissal and that the deadline for such a complaint was 8 December 2018. This was repeated in the Summary which was sent out to the parties with the orders after the hearing.

12. The Claimant failed to comply with orders of the Tribunal. At a Preliminary Hearing on 1.5.2019, the first Claim was struck out. I have read a copy of the Judgment striking out the first Claim.

13. By this second Claim, which was not presented until 16.10.19, the Claimant brought complaints of:

13.1. Unfair dismissal;

13.2. Direct race discrimination;

13.3. Race discrimination by harassment;

13.4. Claim for a redundancy payment.

14. The allegations within both Claim forms are basically the same, save that by the date of the first Claim, the Claimant had not been dismissed. The second Claim includes a Claim for a redundancy payment. I will return to the content of the Claim forms below.

15. In respect of the Claim for the redundancy payment in the second Claim, there are no particulars to support such a complaint. The Claimant states that he was unfairly dismissed (see Box 8.2) but does not state that he was made redundant and the gist of the unfair dismissal allegation has nothing to do with redundancy eg. "*when I queried about it they refused bluntly and had no reason to refuse but dismissed me from the job when I questioned why not*".

Application to strike out

16. The hearing was listed to determine whether the Tribunal had jurisdiction to consider the Claim, because, on their face, the complaints had been presented out of time.

17. In addition, the Tribunal listed as a preliminary issue whether the complaints should be struck out because they had been raised and determined in the first Claim.

18. The Respondent had prepared a list of issues which I found to be an accurate summary of the issues before me at this hearing.

The Law

The power to strike out

19. Rule 37(1)(a) contains a power to strike out where all or part of a claim or response has no reasonable prospect of success.

20. In general, the grounds for striking out a pleading under rule 37(1)(a) include anything that might be deemed to be an abuse of the process of the tribunals. The term 'abuse of process' is not to be narrowly construed, and, in particular, the circumstances constituting such an abuse are not limited to claims that are 'sham and not honest and not bona fide': Ashmore v British Coal Corpn [1990] ICR 485, CA). According to Stuart-Smith LJ in *Ashmore*:

> "A litigant has a right to have his claim litigated, provided it is not frivolous, vexatious or an abuse of the process. What may constitute such conduct must depend on all the circumstances of the case; the categories are not closed and considerations of public policy and the interests of justice may be very material."

21. As a general principle, discrimination cases should not be struck out except in the very clearest circumstances: see Anyanwu v South Bank Students' Union [2001] IRLR 305, HL, a race discrimination case.

22. As the EAT observed in Chandhok v Tirkey [2015] ICR 527, however, there are occasions when such a claim can properly be struck out. The examples given included where claims have been brought repetitively concerning the same essential circumstances that a further claim is an abuse.

Cause of action estoppel and abuse of process

23. I recognise that this is a potentially complex area of law; but I do not consider that, because the Claimant is represented by a lay person, I would be doing justice by not setting out the law in this area. It seems to me that justice requires transparency so that the parties can understand why they won or lost.

24. Put simply, an estoppel is a type of defence to any form of legal claim. It is a bar to that claim continuing.

25. The law does not allow the same complaint (known as a “cause of action”) to be argued in a second case between the same parties when it was determined in the

first claim. This is known as cause of action estoppel. It is a defence to a second claim based on the same complaints as the first claim.

26. In Virgin Atlantic v Zodiac Seats [2014] AC 160, the Supreme Court, approving earlier case law, held as follows (at paragraphs 22-26):

> 26.1. Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action. This prevents a direct challenge to the outcome, even in changed circumstances and with material not available before. If the position were otherwise, this would be contrary to the core policy against the re-litigation of identical claims.
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> 26.2. Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised.
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> 26.3. Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised.
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> 26.4. *Res judicata* (such as cause of action estoppel) is a rule of substantive law, while abuse of process is a concept which informs the exercise of the court's procedural powers. They are distinct although overlapping legal principles with the common underlying purpose of limiting abusive and duplicative litigation.
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> 26.5. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. This is known as the principle in *Henderson v Henderson*.
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> 26.6. *Henderson v Henderson* abuse of process, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole.

27. It does not follow that, because a second claim raises some issues which the first did not or could not, that the cause of action is different in the two claims. Although there may be some new ground in the second claim which did not exist in the first claim, where fundamentally the cause of action was the same, there is the defence of

cause of action estoppel: see, for example, British Association for Shooting and Conservation v Cokayne, [2008] I.C.R. 185 at paragraph 25.

What amounts to the determination of a Claim?

28. Rule 1(3)(b) of the Tribunal Rules of Procedure 2013 includes:

> *a "judgment", being a decision, made at any stage of the proceedings … which finally determines—*
>
> *(i)a claim, or part of a claim, as regards liability, ….; or*
>
> *(ii)any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue).*

Extension of time: Unfair dismissal, Section 111 ERA;

29. The relevant statutory provisions are within section 111 ERA 1996 which I incorporate into this judgment.

30. In respect of unfair dismissal, the primary limitation period runs from the effective date of termination.

31. The burden is on the Claimant to show that it was not reasonably practicable to present the Claim in time. Reasonably practicable does not mean "reasonable" nor "physically possible". It means "reasonably feasible": Palmer v Southend on Sea BC [1984] ICR 372.

32. In Palmer, May LJ explained that the test was an issue of fact for the Tribunal and gave examples of facts that may be relevant in certain cases: see p.385B-F. This concludes:

> "*Any list of possible relevant considerations, however, cannot be exhaustive and, as we have stressed, at the end of the day the matter is one of fact for the industrial tribunal taking all the circumstances of the given case into account*."

*The question of reasonable practicabili*ty

33. The law is well-summarised in Northamptonshire CC v Entwhistle [2010] IRLR and Lowri Beck Services Limited v Brophy [2019] EWCA Civ. In particular:

> (1) Section 111(2)(b) should be given 'a liberal construction in favour of the employee'. This was first established in *Dedman*. There have been some changes to the legislation since but this principle has remained: see paragraph 20 in the judgment of Lord Phillips MR in *Williams-Ryan*, at p.565; see more recently Lowri Beck Services Ltd v Brophy;
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> (2) In accordance with that approach it has consistently been held to be not reasonably practicable for an employee to present a claim within the primary time limit if he was, reasonably, in ignorance of that time limit: see paragraph 21 Williams-Ryan and, in particular, the passage from the

judgment of Brandon LJ in Walls there quoted, at p.565 (followed in Lowri Beck Services v Brophy).

(3) In Dedman the Court of Appeal appeared to hold categorically that an applicant could not claim to be in reasonable ignorance of the time limit if he had consulted a skilled adviser, even if that adviser had failed to advise him correctly.

(4) Subject to the Dedman point, the trend of the authorities is to emphasise that the question of reasonable practicability is one of fact for the tribunal and falls to be decided by close attention to the particular circumstances of the particular case: see, for example, the judgment of May LJ in Palmer at p.125.

Jurisdiction: Time limits in discrimination cases

34. Section 123 EQA 2010 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."

35. The principles to be applied in the application of section 123 EQA 2010 are as follows:

35.1. The Tribunal's discretion to extend time under the "just and equitable" test is the widest possible discretion: Abertawe Bro Morgannwg University Local Health Board v Morgan, paragraph 17.

35.2. Unlike section 33 Limitation Act 1980, section 123(1) EA 2010 does not specify any list of factors to which the Tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a Tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corporation v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the Tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see *Southwark London Borough Council v Afolabi [2003] EWCA Civ 15; [2003] ICR 800* , paragraph 33.

35.3. There is no justification for reading into the statutory language any requirement that the Tribunal must be satisfied that there was a good reason for the delay, nor that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which

the tribunal must have regard. If a claimant gives no direct evidence about why she did not bring her claims sooner a Tribunal is not obliged to infer that there was no acceptable reason for the delay, or even that if there was no acceptable reason that would inevitably mean that time should not be extended: Abertawe Bro Morgannwg University Local Health Board v Morgan at paragraph 25.

35.4. Factors which are almost always relevant to consider when exercising any discretion whether to extend time are:

(a) the length of, and reasons for, the delay and

(b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

See Abertawe Bro Morgannwg University Local Health Board v Morgan at paragraph 19.

36. I remind myself that the exercise of the power to extend time is the exception, not the rule: see Robertson v Bexley Community Centre [2003] IRLR 434.

Submissions

37. The Respondent's submissions went through each of the issues identified in the list of issues prepared by the Respondent. Mr. Iyengar made submissions for the Claimant but, given that, as he pointed out, he was not a lawyer, these ranged across a number of issues. In particular, Mr. Iyengar sought to get around the Judgment striking out the first Claim, by stating that the Claimant had limited English language skills and did not understand the case management directions made by EJ Warren; and this had led to the Judgment striking out the first Claim on 1 May 2019; and that he had sought to appeal this decision, but that the appeal had been presented 1 day out of time. I explained that this Judgment had determined the first Claim; it could not be challenged, or stepped around, in these proceedings.

38. For the avoidance of doubt, I took all the submissions of the parties into account.

Conclusions

39. Applying the above legal principles to the relevant facts, I reached the following conclusions.

A. Unfair dismissal

A1. Was the claim form submitted more than 3 months after the effective date of termination ("the EDT")?

40. It is common ground that the EDT was 9 September 2018: see section 5.1 of the ET1 Claim form.

41. Subject to any extension due to the Early Conciliation provisions, the primary time limit expired on 8 December 2018.

42. The date on which the ACAS Certificate was obtained was 21 November 2018.

43. Therefore, the effect of s.207(4) ERA was that the limitation period was extended to 21 December 2018.

44. The Claim was received on 16 October 2019.

A2. Was it reasonably practicable for the claim to have been submitted within the statutory time limit (as extended)?

45. Mr. Iyengar argued that the Claimant had understood that the first Claim included both unfair dismissal and direct race discrimination. He argued that his limited skills in the English language meant that he did not understand what Employment Judge Warren had said at the Preliminary Hearing in October 2018 (where he was unrepresented), even though the Claimant had nodded his head to confirm his understanding.

46. Taking all the relevant submissions into account, I concluded that it was reasonably practicable for the Claimant to have submitted the unfair dismissal complaint within the 3 month time limit. My reasons are as follows:

46.1. The Claimant was, at all material times, aware of the existence of the unfair dismissal jurisdiction of the Employment Tribunal. He had included such a complaint in his first Claim (relating to a dismissal in 2014, which was followed by his reinstatement).

46.2. At paragraph 6 of the Preliminary Hearing summary, having recorded that he dismissed the unfair dismissal complaint in the first Claim upon withdrawal, EJ Warren recorded that the Claimant intended to bring an unfair dismissal complaint following his dismissal on 9 September 2018. EJ Warren records as follows:

"*I explained to him that he should issue a new claim, that he should work on the basis that there is a three month time limit which will expire on 8 December 2018 and in the meantime he should notify ACAS*."

46.3. After that hearing, on 21 November 2018, the Claimant notified ACAS of his intention to submit a Claim. Having already submitted the first Claim, the Claimant knew that the next step was that a Claim had to be issued.

46.4. Mr. Iyengar stated that the Claimant and himself did not know of the three month time limit. But Employment Judge Warren told the Claimant of the time limit; and the Claimant then received a copy of the Preliminary Hearing Order and Summary which stated what it was and advised the Claimant to present the Claim before 8 December 2019. If the Claimant was ignorant of the time limit, despite what was said to him by Employment Judge Warren, this ignorance was not reasonable

in those circumstances, particularly where he had a relative such as Mr. Iyengar whom he could ask to read the Preliminary Hearing Summary to him if he did not understand what had been said at the hearing.

46.5. In any event, Mr. Iyengar accepted that the Claimant had a basic understanding of English, that he can read dates, and that he had spent 15 years working with the Respondent. Furthermore, it is apparent from the Preliminary Hearing Summary of 30 October 2018 that the Claimant did understand key things that were said to him. For example, he understood the point made by EJ Warren about his unfair dismissal complaint in the first Claim being substantially out of time, and which he agreed to withdraw; and, secondly, the Claimant is recorded as confirming to the Tribunal that the hearing had "*covered everything*" and that he understood that he cannot rely on further allegations at the final hearing. Therefore, if the Claimant did not understand what was said to him, despite understanding that important points were being made to him, it was incumbent on him to have the Preliminary Hearing Summary explained to him. He would have received that Summary on or about 21 November 2018, which was the date of promulgation.

46.6. The Claimant had not discharged the burden of explaining that it was not reasonably practicable to present the unfair dismissal complaint in time. From what I read and heard, it was feasible for the Claimant to have presented this unfair dismissal complaint in time. Indeed, he had obtained the ACAS Certificate shortly after the Preliminary Hearing on 30 October 2018.

A3. If not reasonably practicable to present in time, was the Claim presented within such further period as was reasonable in the circumstances?

47. In any event, even if I am wrong about the above, I found that the complaint of unfair dismissal was not presented within such further period as was reasonable in the circumstances.

48. Mr. Iyengar represented the Claimant at the Preliminary Hearing before Employment Judge Barrowclough on 1 May 2019, at which the Employment Judge explained that the first Claim did not contain a complaint of unfair dismissal relating to the dismissal on 9 September 2018. Despite pointing this out, no claim for unfair dismissal was filed for a further 5.5 months.

49. In my judgment, this was a period which was not reasonable in the circumstances. This is because the issue of time limits had been raised by EJ Warren already in the first Claim, and it is difficult to understand how Mr. Iyengar represented the Claimant without seeing the earlier Preliminary Hearing Summary of 30 October 2018, whether before 1 May 2019 or on 1 May 2019. Moreover, the Grounds of Response (at paragraph 36) of the Respondent in that first Claim refer to the existence of a time limit for presenting an unfair dismissal complaint.

50. Against that background, the Claimant or his representative should have investigated after that hearing whether there was a time limit for bringing the unfair dismissal claim, and whether it had expired, if they were in any doubt about the existence or length of the time limit.

51. Mr. Iyengar argued that the Claimant was awaiting the appeal decision in respect of the striking out order made on 1 May 2019. The appeal was rejected because it was filed out of time. I do not accept that it was reasonable to await the appeal decision – given the above points at paragraph 49. However, in any event, Mr.Iyengar believed that the rejection of the appeal had been received towards the end of September 2018. I decided that, in the circumstances, it was not reasonable to wait around a further 2 weeks to present this second Claim, after receipt of the decision that the appeal would not be accepted.

B. Race discrimination

B1. Should the Claimant's race discrimination claim be struck out for cause of action estoppel and/or abuse of process?

52. I concluded that the complaints of race discrimination should be struck out. In my judgment, there is a cause of action estoppel. It is not that I lack sympathy for the Claimant, but rather that the law has created an absolute bar to the Tribunal hearing these complaints, because they have been raised before. In the alternative, and in any event, it would be an abuse of process to permit these complaints continue. My reasoning is as follows:

52.1. Section 8.2 of the second Claim contains four complaints of alleged direct race discrimination which are the same as four race discrimination complaints within the first Claim. These four race discrimination complaints are identified at the Preliminary Hearing on 30 October 2018, listed at numbers 1-4. The Claimant confirmed that this list was correct and complete when asked by Employment Judge Warren. The factual matrix relied upon in both claims for those four complaints is practically identical.

52.2. It does not matter that the wording in this second Claim is not exactly the same as in the first Claim. For example, the Claimant alleges that these four complaints are only an "off shoot" of the unfair dismissal complaint, although Mr. Iyengar did not withdraw them as complaints of race discrimination. In my judgment, if they are now alleged to be part and parcel of the unfair dismissal factual matrix (which I found difficult to follow as an argument anyway because the treatment happened some months before the dismissal), this makes no difference. I decided that striking out of the first Claim was analogous to the dismissal of the claim on withdrawal in British Association for Shooting and Conservation v Cokayne, [2008] I.C.R. 185.

52.3. The first Claim was determined by the Judgment of 1 May 2019 striking out the first Claim. On my reading of the Tribunal Rules, and the authorities referred to above, it does not matter that these four

complaints of race discrimination were not determined on their merits in the first Claim: see especially Rule 1(3)(b)(ii) above.

52.4. Cause of action estoppel presents an absolute bar to these complaints proceeding.

52.5. In any event, if there was no cause of action estoppel, these complaints are struck out for abuse of process. To the extent that they were not advanced in the first Claim, they could have been; there was no impediment to the Claimant in doing so. The purpose of the *Henderson v Henderson* principle is to produce finality in litigation and to avoid the same party being required to defend the same case twice.

B2. Whether the complaints of race discrimination were presented in time? If not, whether they were presented within such time as was just and equitable?

53. Although not strictly necessary, given my conclusions under B1, I have decided to give my conclusions to these issues.

54. The race discrimination complaints were not presented in time. I repeat the facts and matters set out in A1 above.

55. I have taken into account the guidance in the case-law set out above and I am conscious of the breadth of the discretion permitted to the Employment Tribunal by section 123(1) EQA. However, I have decided that it would not be just and equitable to extend time in this case. My reasons are as follows:

55.1. The Claimant has not explained a good reason for the delay in presenting the Claim. On the contrary, on the facts that I have set out above, there was no good reason for the delay after the Preliminary Hearing on 30 October 2018, or, at the latest, after receipt of the Preliminary Hearing Summary on or about 21 November 2018 (when the Claimant had a further month to present the Claim in time).

55.2. The absence of good reason is not fatal to the exercise of my discretion. However, another key factor is whether there would be prejudice to the Respondent in granting the extension of time. In this case, the events in question which led to the four complaints of race discrimination in the second Claim are alleged to have occurred in or about May 2018. This claim will be heard (assuming the Covid 19 pandemic is not continuing) in February 2021. By that stage, the events in issue will have occurred almost three years earlier. The treatment alleged is likely to turn on oral evidence, of what happened and what was said or done by various people. It is likely (if not inevitable) that the reliability of evidence of that nature will be adversely affected by such a substantial delay.

55.3. Thirdly, the length of the extension required is almost 10 months. A substantial extension is required. The Claimant has not demonstrated why this extension should be granted; he has not demonstrated why

this case should be excused from the statutory rule. On the contrary, I concluded that this was a case where the statutory time limit should be maintained, because the Claimant had had the chance to pursue these same complaints in the earlier Claim, but he failed to comply with orders and that claim was struck out.

C. Redundancy payment

56. The claim for a redundancy payment has been presented significantly out of time. For all the reasons set out above, I would have refused to extend time for this complaint to be presented.

57. Moreover, save for the box being ticked at 8.2 Claim form, the Claim pleads not that he was made redundant but that he was unfairly dismissed. The allegation has nothing to do with redundancy. I concluded that the claim for a redundancy payment had no reasonable prospect of success. In those circumstances, it would be futile to grant the necessary extension of time.

58. I concluded, also, that it would be an abuse of process to permit a claim for a redundancy payment to proceed in the second claim, on the facts in this case, where no redundancy situation has been explained.

Summary

59. For all the above reasons, this Claim is struck out.

60. At the end of the Preliminary Hearing, I did propose an alternative way forward that the parties might wish to consider. Given the current crisis, and the need of large retailers to recruit staff, it may be that the Respondent would entertain an application for employment from the Claimant. This would, of course, require the parties to draw a line under the past, and to move forward. Such matters are beyond the control of the Employment Tribunal.

Employment Judge Ross
Date: 10 April 2020