EMPLOYMENT TRIBUNALS

Claimant: Mrs K Wyatt
Respondent: Barchester Health Care

PRELIMINARY HEARING

Heard at: Bristol **On:** 21 June 2021
Before: Employment Judge Midgley
Representation
Claimant: In person.
Respondent: Mr P Singh, solicitor

JUDGMENT having been sent to the parties on 01 July 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT

1. The claim of unpaid wages is dismissed on its withdrawal by the claimant.

2. The claim of unfair dismissal is dismissed because the claimant lacks the requisite two years' employment to bring the claim.

3. The claims of unpaid annual leave, failure to make reasonable adjustments and discrimination arising from disability are dismissed because they were presented out of time and the Tribunal does not have jurisdiction to hear them.

REASONS

Claims and Parties

1. By a claim form presented on 17 July 2020 (case number 1403792/2020), the claimant brought claims of disability discrimination and unpaid annual leave ("the First Claim") against her former employer. On 26 August 2020 the claimant issued a further claim 1404484/2020 ("the Second Claim") in which she brought claims of unfair dismissal, disability discrimination and non-payment of annual leave.

2. The First Claim was rejected on 30 July 2020 because the claimant had failed to comply with the requirement in rule 10 (1)(c) of the Tribunal Rules to provide an Early Conciliation Certificate ("ECC") in respect of the matters that she included within the claim.

3. The Second Claim was rejected on 9 September 2020 for the same reason.

4. On 23 September 2020 the claimant provided an ECC. Early conciliation had begun on 8 September and a certificate had been issued on the 23 September 2020.

5. The submission of the ECC was treated as an application for reconsideration in respect of the two decisions to reject the claims and the claimant was notified that First Claim and the Second Claim had been accepted on 11 November 2020, as the omission that had caused them to be rejected, in accordance with Rule 13.

6. The date of the claims' presentation was therefore treated as 23 September 2020. The respondent was permitted to file a response before 6 January 2021 of the claims have been accepted in November.

7. Within the grounds of resistance, respondent raised the preliminary jurisdictional point that the claims have been submitted at time as the claimant's employment ended on the 25th April 2020, but the claims were not presented until 23 September 2020. In the event, for reasons detailed below, the correct Effective Date of Termination was 27 April 2020. Nevertheless, the claims were presented outside the primary limitation period of three months in section 123 of the Equality Act (in respect of the discrimination claims) and section 23 of the Employment Rights Act 1996 (in respect of the unpaid annual leave claim).

8. On 19 February 2021 EJ Livesey listed the claims for a preliminary hearing to determine whether they have been submitted out of time, and if so whether time should be extended in accordance with section 123 EQA 2010 23 ERA 1996 to permit them to proceed. The claimant was directed to provide a witness statement explaining the delay in issuing a claim which she was directed to send to the Tribunal and the respondent 14 days before the hearing.

9. On 17 March 2021 the preliminary hearing was listed to take place on 21 June 2021

10. The claimant did not send her witness statement and, in consequence on 16 April 2021 the claimant was directed to provided and comply with J Livesey's Order.

11. On 14 June 2021 the case was converted to a Remote hearing by CVP.

12. On 18 June 2021 the claimant applied for the hearing to be vacated on the grounds that she had not received paperwork relating to the claim. The respondent objected to that application and on 18 June I dismissed the application for the reasons set out in the tribunal's letter of that date. The claimant was again directed to provide a witness statement, if possible, addressing the issues that would need to be considered in relation to the limitation arguments.

Procedure, Hearing and Evidence

13. The hearing proceeded remotely using the CVP platform. The claimant struggled connect to the hearing, and I therefore directed that she should be permitted to join by telephone only. The claimant had provided a single page document answering the questions in the Order of 18 June which the claimant

had been asked to address in her witness statement. The email was therefore treated as her witness statement for these proceedings with the consent of both parties.

14. During the hearing the claimant withdrew her claim for wages as she accepted that she had received her notice pay and all other wages, except her holiday pay, and it will be dismissed upon its withdrawal. The claimant continues to pursue claims for unpaid annual leave in respect of the accrued days of annual leave in the two months of her employment and for disability discrimination the details of which I clarified with her at the start of the hearing, and which consisted a claim of failure to make reasonable adjustments and a claim of discrimination arising from disability in respect of her dismissal. The last date on which the claimant alleged that either of those claims occurred was 20 April 2020.

15. The Claimant then gave evidence by affirmation and answered questions from me and subsequently from Mr Singh for the respondent. She was an honest, credible, and candid witness.

16. The parties each made closing arguments which I considered before giving my Judgment.

Factual Background

17. The claimant, Mrs Wyatt, was employed by the respondent from 20 February 2020 until her termination on notice that was given on 20 April 2020, with a termination date of 25 April 2020.

18. Shortly after her termination, the claimant researched on the internet what her rights were to bring a claim in respect of what she believed to be claims for unpaid wages, unpaid annual leave and in relation to her dismissal which she believed was unfair and discriminatory. She discovered that any claim had to be presented to the Tribunal within three months and a day as she believed it, although the correct limitation periods is three months less a day. She made That enquiry was very close to the termination sometime towards the end of April.

19. Shortly before she believed the deadline expired, on or about 27 July, she approached ACAS for advice. At that time ACAS was only providing advice by email given the consequence of the pandemic and the need for staff to work from home. The claimant was told that the time limit to bring a claim was three months from the last act and that she would need to go through the process of early conciliation before she could present her claim to the Tribunal.

20. She therefore presented the First Claim on 17 July. The claimant became confused as to whether, when she presented the claim to the Tribunal, she would be starting early conciliation or whether she in fact had to contact ACAS to begin the early conciliation process

21. The First Claim was rejected by Employment Judge Bax on 9 September 2020 on the grounds that the claimant had not provided a copy of the ECC (as detailed above in the ‘Claim’ section). It was only when the claim was rejected that the claimant realised that she had failed to follow the correct

course. She acted as promptly as she could thereafter to rectify her error and obtain an ECC. The claimant therefore began a period of early conciliation on 8 September 2020 and a certificate was issued on 23 September 2020. The claim was therefore accepted on 11 November, with the date of presentation being the 23 September 2020 when the claimant rectified the error.

22. The claimant issued the Second Claim on 26 August 2020. The claims in the Second Claim were for all intents and purposes identical to those brought in the earlier proceedings, although in the Second Claim the claimant had ticked the box for unfair dismissal, which she had not done in the First Claim.

23. The Second Claim was rejected by Employment Judge Livesey but was accepted on or about 11 November 2020 when it was joined with the proceedings the First Claim and the ACAS certificate in respect of that claim was seen. It was also therefore presented for the purposes of limitation on 23 September 2020.

24. The other pertinent matters which are relevant for consideration that I make are not directly related to the chronology are as follows:

25. Firstly, in relation to the claim for failure to make reasonable adjustments. The claim is in respect of the PCP requirement provision, criterion or practice that the respondent applied to the workforce that placed the claimant at a disadvantage. That policy was the policy that employees should fulfil their contractual hours. The claimant says she was placed at a disadvantage by that policy because a consequence of her chemotherapy treatment for cancer was that she suffered from increased fatigue and found it difficult to work the long shifts. She says that a reasonable adjustment would have been to reduce her hours or to give her longer breaks to acclimatise to that fatigue. However, she accepts that she did not inform anyone within the respondent of the fatigue that she was suffering or, perhaps more pertinently, that the cause of that fatigue was her cancer treatment and that she required the adjustment that I have just described.

26. Secondly, in so far as the claim for discrimination arising from disability is concerned, in relation to the three factors for which she was dismissed namely poor attendance, causing an injury to a service user whilst assisting them and the falsification of timesheets, the claimant raises the following arguments.

27. First, she says in relation to attendance that the fatigue caused by her cancer played some part in issues with attendance, although she very candidly accepts that a significant cause of her late attendance was the absence of buses due to COVID but nonetheless the fatigue played a part. Secondly, she says the chemotherapy treatment damaged the nerves in her hands, and in consequence she has trouble with activities that require a high degree of manual dexterity. Lastly, she says in relation to the completion of records for the service users, again, the chemotherapy treatment has caused various cognitive impairments one of which is that she can be forgetful at times.

28. Critically, however, the claimant accepts that she did not make the respondent aware of all of the following matters. Firstly, that she suffered those disadvantages. Secondly, that those disadvantages were caused by the cancer treatment and thirdly that she had as a consequence of those

matters performed the actions that were the subject of the decision to terminate her employment at the end of her probationary period on 20 April. Whilst the claimant says that she did make the respondent aware of fatigue and/or of her difficulties with cognitive function she very fairly and candidly accepts that she did not raise those at the time of her dismissal or connect them to the cancer treatment and therefore her disability.

The Relevant Law

Discrimination claims

29. Section 123 of the Equality Act contains the primary time limit for claims brought pursuant to the Equality Act. It provides as follows.

> (1) 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 proceedings relate, or
>
> (b) such other period if the Employment Tribunal thinks just and equitable.
>
> (3) for the purposes of this section conduct extending over a period is to be treated as done at the end of the period.

Conduct extending over a period

30. An 'act extending over a period' (also known as a 'continuing act') may arise not solely from a policy, rule, scheme, regime or practice but also from 'an ongoing situation or continuing state of affairs' (Hendricks v The Commissioner of Police for the Metropolis [2003] IRLR 96, CA, paras 51-52 per Mummery LJ, approved by the Court of Appeal in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548, CA).

31. In Coutts & Co plc v Cure [2005] ICR 1098, EAT, the Employment Appeal Tribunal (HHJ McMullen QC presiding), setting out categories into which the factual circumstances of alleged discrimination may fall, found (albeit obiter) that there are two types of situation in which alleged discrimination may constitute an 'act extending over a period':

> 31.1. where there is a discriminatory rule or policy, by reference to which decisions are made from time to time; and
>
> 31.2. where there have been a series of discriminatory acts, whether or not set against a background of a discriminatory policy.

32. In the former case, an act will be regarded as extending over a period, and so treated as done at the end of that period, if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant (Barclays Bank plc v Kapur [1989] IRLR 387).

33. In the latter case, the main issue for the Tribunal tends to be whether it is possible to identify some fact or feature linking the series of acts such that they may properly be regarded as amounting to a single continuing state of

affairs rather than a series of unconnected or isolated acts (Hendricks). A single person being responsible for discriminatory acts is a relevant factor in deciding whether an act has extended over a period: Aziz v FDA [2010] EWCA Civ 304, CA.

34. Therefore, whether the acts complained of are linked so as to amount to a "continuing act" is essentially a question of fact for the tribunal to determine.

35. In cases where the act complained of by the claimant is not the mere existence of a policy but rather the application of that policy to the claimant, the Tribunal must consider the following question in relation to when that policy ceased to be applied to the claimant: "when did the continuing discriminatory state of affairs, to which the policy gave rise, come to an end?" (Fairlead Maritime Ltd v Parsoya UKEAT/0275/15/DA, HHJ Eady QC).

The just and equitable discretion

36. 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 at para 25, 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.

37. 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: "In particular, 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."

38. 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).

39. 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.

40. In exercising their discretion to allow out-of-time claims to proceed, tribunals 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.

41. 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.

42. In Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] ICR D5, CA. the Court of Appeal observed that it was not helpful for the Keeble factors to be taken as the starting point for tribunals' approach to 'just and equitable' extensions, as they regularly are. Rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may occur where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-derived language. The best approach for a tribunal in considering the exercise of the discretion is to assess all the factors in the particular case that it considers relevant, including in particular – as Mr Justice Holland noted in Keeble – the length of, and the reasons for, the delay.

43. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the claimant ought to have submitted his or her claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent on the one hand and to the claimant on the other: Pathan v South London Islamic Centre EAT 0312/13 and also Szmidt v AC Produce Imports Ltd UKEAT 0291/14.

44. 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)). In Wadher Underhill J stated that, whilst it is always good practice, in any case where findings of fact need to be made for the purpose of a discretionary

decision, for the parties to adduce evidence in the form of a witness statement, with the possibility of cross-examination where appropriate, it was not an absolute requirement of the rules that evidence should be adduced in this form.

45. A tribunal is entitled to have regard to any material before it which enables it to form a proper conclusion on the fact in question, including an explanation for the failure to present a claim in time, and such material may include statements in pleadings or correspondence, medical reports or certificates, or the inferences to be drawn from undisputed facts or contemporary documents.

46. A delay caused by a claimant invoking an internal grievance or disciplinary appeal procedure prior to commencing proceedings is just one factor to be taken into account by a tribunal when considering whether to extend time: Robinson v Post Office [2000] IRLR 804, EAT, approved by the Court of Appeal in Apelogun-Gabriels v London Borough of Lambeth [2002] ICR 713. As the EAT said in Robinson (para. 25, per Lindsay P): "as the law stands an employee who awaits the outcome of an internal appeal and delays the launching of an [ET1] must realise that he is running a real danger."

Unpaid annual leave claims

47. Section 23 ERA 1996 provides as follows

(1) A worker may present a complaint to an employment tribunal

(a) That his employer made a deduction from his wages in contravention of section 13.

(2) Subject to subsection (4) an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the end of the period of three months beginning with

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

48. When a claimant seeks to excuse late presentation of his or her ET1 claim form on the ground that it was not reasonably practicable to present the claim within the time limit, the test to be applied is simply to ask: "had the man just

cause or excuse for not presenting his complaint within the prescribed time?" (see Wall's Meat Co v Khan [1978] IRLR 499 per Lord Denning, quoting himself in Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53, CA).

49. Four general rules apply to that test:

    49.1. S.111(2) ERA 1996 (and its equivalents in other applicable legislation) should be given a 'liberal construction in favour of the employee' (Dedman).

    49.2. what is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. An appeal will not be successful unless the tribunal has misdirected itself in law or has reached a conclusion that no reasonable tribunal could have reached. As Lord Justice Shaw put it in Wall's Meat Co Ltd v Khan [1979] ICR 52, CA: 'The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive'

    49.3. the tribunal must have regard to the entire period of the time limit (Wolverhampton University v Elbeltagi [2007] All ER (D) 303 EAT);

    49.4. the onus of proving that presentation in time was not reasonably practicable rests on the claimant. 'That imposes a duty upon him to show precisely why it was that he did not present his complaint' — Porter v Bandridge Ltd [1978] ICR 943, CA. Accordingly, if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal will find that it was reasonably practicable — Sterling v United Learning Trust EAT 0439/14.

50. In Palmer and anor v Southend-on-Sea Borough Council [1984] ICR 372, CA, the Court of Appeal conducted a general review of the authorities and concluded that 'reasonably practicable' does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'. Lady Smith in Asda Stores Ltd v Kauser EAT0165/07 explained it in the following words: 'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.

51. Subsequently in London Underground Ltd v Noel [1999] IRLR 621, Judge LJ stated at paragraph 24 "The power to disapply the statutory period is therefore very restricted. In particular it is not available to be exercised, for example, "in all the circumstances", nor when it is "just and reasonable", nor even where the Tribunal "considers that there is a good reason" for doing so." As Browne Wilkinson J (as he then was) observed: "The statutory test remains one of practicability … the statutory test is not satisfied just because it was reasonable not to do what could be done" (Bodha v Hampshire Area Health Authority [1982] ICR 200 at p 204).

52. To this end the factors the Tribunal should consider, as identified in Palmer are: (1) the substantial cause of the claimant's failure to comply with the time limit; (2) whether there was any physical impediment preventing compliance, such as illness, or a postal strike; (3) whether, and if so when, the claimant knew of his rights; (4) whether the employer had misrepresented any relevant matter to the employee; and (5) whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

53. The objective consideration requires that tribunals should have regard to all the circumstances of a case, including what the claimant did; what he or she knew, or reasonably ought to have known, about time limits; and why it was that the further delay occurred (see Nolan v Balfour Beatty Engineering Services EAT 0109/11)

Ignorance of Rights

54. The question of whether or not it was reasonably practicable for a claimant to present his claim in time, in circumstances where it is argued that they were ignorant of their rights to claim requires the Tribunal to be satisfied, both as to the truth of that assertion and that the ignorance was reasonable on an objective inquiry; see Porter v Bandridge Ltd [1978] ICR 943, CA; Avon County Council v Haywood-Hicks [1978] ICR 646 EAT and Riley v Tesco Stores Limited [1980] ICR 323 .

Discussion and Conclusions

55. I turn then to my conclusions in relation to those issues.

Unpaid annual leave

56. I deal firstly with the claim for unpaid annual leave under the Employment Rights Act.

57. The effective date of termination was the 27 April 2020, as a consequence of the requirement in s.86 ERA 1996 for the claimant to have been given 1 weeks' notice of termination. Mr Singh conceded that the 27 April 2020 should be treated as the EDT. The claimant therefore had to present the claim by 26 July 2020. She presented the claim in a form in which it could be accepted on 23 September, approximately 2 months out of time. She did not approach ACAS for the purposes of early conciliation until 8 September 2020 and therefore can benefit from any extension of time provided for by s.207B ERA 1996.

58. The test is whether it was reasonably feasible for the claimant to have presented a properly constituted claim within time. At the point at which the claim was presented in July 2020 without an ECC the claimant, by her own admission, knew not only that she needed to present the claim within three months but secondly that she needed to have completed early conciliation before issuing the claim.

59. The claimant became confused as to whether she needed to notify ACAS to begin the early conciliation period or whether that was a necessary

consequence of issuing the claim itself. She certainly was aware of the process that needed to be completed and it was open to her without any difficulty to verify which of the two was the correct step. Unfortunately, that is not a step that she took; she did not seek any advice or seek to confirm with any third party whether early conciliation was triggered by the issue of the claim or whether it was triggered by approaching ACAS. Generally, where ignorance is concerned the Tribunal has to assess whether that ignorance was of itself reasonable.

60. Here the claimant's ignorance was not reasonable. I bear in mind that it is likely that a degree of confusion may have been caused or contributed to either by fatigue or by the impaired cognitive function as a consequence of the claimant's disability, nevertheless the confusion could have been easily rectified and the claimant's disability did not prevent her from making the necessary enquiry. The authorities are clear that the test has to be applied over the entire period that is open to a claimant to present a claim i.e. over the three month period and I am not satisfied on balance that the impairment had the effect the claimant was not able to make that enquiry reasonably within the three month period and even if she was confused there was opportunity to remedy before the limitation period expired.

61. In my judgment, therefore, it was reasonably feasible for the claim to have been presented in time and therefore the claimant has not established that it was not reasonably practicable to present the claim by the end of the limitation period.

62. The consequence is that the claim in respect of unpaid annual leave is presented out of time and the Tribunal does not have jurisdiction to hear it.

Disability discrimination

63. I turn then to the claims under the Equality Act. Here the test is different. It is whether it would be just and equitable to extend time and I have to look at the factors that I have identified and generally the interests of justice.

64. The same factors arise in terms of the claimant's knowledge and her actions and the reasons for the delay as I have addressed in respect of the claim under the Employment Rights Act. Here also I bear in mind the respondent is likely to have an almost unassailable defence to any claim because it did not know of the disadvantage caused by the claimant's disability whether in relation to the Section 20 claim or in relation to the Section 15 claims at the time at which it made the decision not to continue the claimant's employment. That defence flows from the claimant's candid admissions in relation to the claims of discrimination that she had not informed the respondent of the link between her difficulties with the PCPs and her disability.

65. I have to consider why the claimant presented the claim out of time, predominantly I find that is due to what would be described in law as unreasonable ignorance as described above. Irrespective of the difficulties of the pandemic and the complications connected to the claimant's disability, a thirty second check via the internet is likely to have resolved the claimant's confusion as to the need to obtain an ACAS conciliation certificate before issuing the claim.

66. Secondly, I have to consider the promptness which the claimant acted once she knew of her rights. The claimant did act promptly from the moment when the need for the ACAS certificate was issued.

67. I also have to consider the balance of prejudice and the nature of the advice that the claimant received. There is limited prejudice to the respondent could by the delay; I weigh that against the unreasonable ignorance in law that led to the claims being presented out of time the relative weakness of those claims even were they to proceed. Mr Singh argues that the prejudice to the respondent is having to defend a relatively weak claim that was presented outside time in circumstances where the onus is for the claimant to present the claims within time and to demonstrate that it would be just and equitable to extend time. That is a valid argument.

68. For all of those reasons my conclusion is that it would not be just and equitable to extend time in respect of this case. Therefore, the Tribunal does not have jurisdiction to hear the claims under the Equality Act whether for failure to make reasonable adjustments or the discrimination arising from disability. The consequence of all those matters is that all of the claims will be dismissed.

69. I am sympathetic towards the claimant as I understand how it is that this situation arose, but it is for a claimant to demonstrate in accordance with the legal tests that it was not reasonably practicable to present a claim within the time limit and/or that it would be just and equitable to extend time where a claim is present out of time. On this occasion the claimant has not been able to do so.

Employment Judge Midgley
Date: 30 June 2021

Reasons sent to the Parties: 01 July 2021

FOR THE TRIBUNAL OFFICE