EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
Mr O Aghedosa	**AND**	**Urbaser Limited**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol (By VHS) ON 4 March 2021

EMPLOYMENT JUDGE J Bax

Representation

For the Claimant: **Mr O Aghedosa (in person)**
For the Respondent: **Mr D Leach (counsel**

JUDGMENT

1. The claim of unfair dismissal was presented out of time, and it was reasonably practicable for the Claimant to have presented it in time. The Tribunal did not have jurisdiction to hear the claim and it is struck out.

2. The claims of discrimination on the grounds of race were presented out of time and it was not just and equitable to extend time. The Tribunal did not have jurisdiction to hear the claims and they were struck out.

REASONS

1. This is the Judgment following a Preliminary Hearing to determine whether or not the claimant's claims of unfair dismissal and discrimination on the grounds of race were presented in time and if not whether time should be extended. The Claimant sought written reasons on 29 April 2021, however I was not notified of this until 30 July 2021. The Tribunal apologises for the delay.

Background

1. The Claimant was dismissed from his employment on 10 January 2020.

2. The Claimant notified ACAS of the dispute on 2 July 2020 and the certificate was issued on 20 July 2020. The claim was presented on 25 July 2020.

3. The Claimant sets out in the claim form that he was employed by the Respondent between 19 August 2019 and 10 January 2020 as a pre-process engineer. The Claimant identifies as a male of African background. During the Claimant's first shift there was an argument between the night shift supervisor, also of African background, and Mr Constantin (Romanian background), a shift team leader standing in for the Claimant's team leader. The argument related to the way that Mr Constantin was treating new employees. On 22 September 2019, Mr Constantin stood in for the Claimant's team leader and had a further argument with the supervisor, in relation to asking the Claimant and others to work in an unsafe condition. The Claimant was then transferred to Mr Constantin's team and a colleague told him that the purpose was to frustrate him and force him to resign. The Claimant's probationary period was extended on the basis of two work delays cited by Mr Constantin. On 29 November 2019, the Claimant attended a contract review meeting, both team leaders had said that the Claimant did not have engineering principles and he was invited to sign an extension to his probationary period; the claimant opted for 1 month. On 10 January 2020 the Claimant was told that his employment was terminated with retrospective effect. The last alleged act of discrimination was the dismissal.

4. The Respondent asserted in the response that the claims were presented out of time.

5. On 21 December 2020, Employment Judge Cadney directed that the claim was listed for a preliminary hearing to determine whether the claim of unfair dismissal had been presented in time. The Claimant was also asked to confirm whether he was bringing a claim of discrimination and if so what the protected characteristic was.

6. The Claimant provided a witness statement. The statement provided further details about the incidents at work, including that on 22 September 2019 Mr Constantin had said that the night supervisor, being African, was trying to protect them, especially the Claimant. On 12 November 2019, Mr Valentin reviewed his contract and conceded the Claimant's explanations to Mr Constantin's complaints, but still said he wanted to extend his probationary period. The Claimant then spoke to Mr Javier, operations manager, and said that ethnic minority workers were being victimised and made to work in unsafe conditions without necessary PPE.

7. At the start of the hearing, it was discussed that the preliminary hearing had only been listed to consider whether the unfair dismissal claim had been brought in time. It was unclear when the hearing was listed, whether the Claimant was bringing a claim of race discrimination. The Claimant confirmed that he was bringing such a claim and he was asked whether he would be happy to deal with the time limit issue in relation to the race discrimination, and if not he should say so that it could be relisted so that he had proper notice. After taking some to consider, the Claimant confirmed that he was happy to proceed and that the evidence would be the same.

8. The Claimant confirmed that the alleged acts of race discrimination were allegations of direct discrimination spanning from 1 September 2019 to his dismissal.

The evidence

9. I heard evidence from the Claimant. I was also provided with a bundle of documents consisting of 80 pages. Any refence in square brackets within these reasons is a reference to a page in the bundle.

The facts

10. I find the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

11. The Claimant was dismissed on 10 January 2020 and appealed against the decision. After his dismissal the Claimant spoke to a friend. The friend made him aware of discrimination and health and safety issues, which the Claimant included in his letter of appeal.

12. The appeal was heard on 17 February 2020. After 3 weeks, the Claimant received a telephone call and was told that a decision had not been taken and a copy would be sent in the post.

13. The Claimant did not make any further enquiries as to his rights at this time because he was confident that he would be reinstated.

14. On 6 March 2020 the Claimant was sent an e-mail from HR [p69], to which the appeal outcome was attached. The Claimant acknowledged it and said he needed to receive legal advice. The Claimant's appeal was unsuccessful. The Claimant said that the Respodent did not inform him that he could take the claim to court. He did not suggest that the Respondent misled him in relation to legal proceedings.

15. In February 2020, the Claimant's family had gone to Italy and returned in early March 2020. He had remained at home. His 2 year old daughter has asthma and had a cough at that time. When the national lockdown, due to the covid-19 pandemic, started at the end of March the Claimant was unable to go out.

16. In mid to late March 2020, the Claimant spoke to his friend again, who told him that what had occurred sounded like unfair dismissal.

17. In mid-April 2020, the Claimant spoke to his friend again. The friend told the Claimant about the Employment Tribunal and that he needed to go to ACAS before he could bring a claim. The Claimant knew he could bring a claim of unfair dismissal in the Tribunal at that time.

18. The Claimant tried to telephone ACAS on one occasion, but the telephone call was not answered. The Claimant assumed that everywhere was closed due to the national lockdown.

19. The Claimant did not investigate online as to what he should do. He did not have wifi at home in February, but it was installed at some point in March 2020. At this time the Claimant had a smart phone, and he could have accessed the internet through his mobile phone network.

20. In June 2020, when the lockdown was relaxed, the Claimant tried to contact ACAS again. He spoke to someone and was told that he could go online. The Claimant then entered early conciliation.

21. The Respondent included in the bundle redundancy notices for the following witnesses: Mr Cyprian Dziubyna was given notice on 26 January 2021, with a last day of service of 3 February 2021. Mr Valentin Avtudov was given notice on 1 February 2021, with a last day of service on 3 March 2021 and Mr Constantin Gavrila was given notice on 3 February 2021, with a last day of service on 3 March 2021. These were all key individuals referred to in the claim.

Submissions

22. The Respondent submitted that by mid-April the Claimant knew of his ability to bring a claim and it would have been reasonable for him to have presented it by the middle of the month. The only explanation provided was that the Claimant had assumed no one was working and it was unreasonable not to make any enquires.

23. The Respondent also submitted that the lack of witnesses is a powerful factor when it comes to assessing prejudice, but I also needed to take into account the explanation and the credibility of why the claim was not

presented in time and why it was said that the Claimant had not acted promptly when he was aware of the cause of action.

24. The Claimant submitted that when the lockdown happened, he thought nobody was working and he had not been advised of his rights to bring a claim by the Respondent.

The Law

25. Section 111(2) of the Employment Rights Act 1996 ("ERA") provides that an Employment Tribunal shall not consider a complaint of unfair dismissal unless it is presented before the end of the period of three months beginning with the effective date of termination, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

26. There is also a claim alleging discrimination on the grounds of a protected characteristic under the provisions of the Equality Act 2010 ("the EqA"). The Claimant complains that the Respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges direct discrimination, indirect discrimination, harassment; and victimisation. The protected characteristic relied upon is Race.

27. Section 120 of the EqA confers jurisdiction on claims to Employment Tribunals, and section 123(1) of the EqA provides that the proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of three months starting with the date of the act to which the complaint relates, or (b) such other period as the Employment Tribunal thinks just and equitable. Under section 123(3)(a) of the EqA conduct extending over a period is to be treated as done at the end of that period.

28. With effect from 6 May 2014 a prospective Claimant must obtain an early conciliation certificate from ACAS, or have a valid exemption, before issuing Employment Tribunal proceedings.

29. The relevant law relating to early conciliation ("EC") and EC certificates, and the jurisdiction of the Employment Tribunals to hear relevant proceedings, is as follows. Section 18 of the Employment Tribunals Act 1996 ("the ETA") defines "relevant proceedings" for these purposes. This includes in Subsection 18(1)(b) Employment Tribunal proceedings for unfair dismissal under section 111 of the Employment Rights Act 1996 and for the discrimination at work provisions under section 120 of the Equality Act 2010].

30. Section 207B of the ERA provides: (1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision"). But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A. (2) In this section - (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section. (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted. (4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period. (5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

31. There is a similar provision in s. 140B of the EqA.

32. Where the EC process applies, the limitation date should always be extended first by S.207B(3) or its equivalent, and then extended further under S.207B(4) or its equivalent where the date as extended by S.207B(3) or its equivalent is within one month of the date when the claimant receives (or is deemed to receive) the EC certificate to present the claim (Luton Borough Council v Haque [2018] ICR 1388, EAT. In other words, it is necessary to first work out the primary limitation period and then add the EC period. Is that date before or after 1 month after day B (issue of certificate). If it is before the limitation date is one month after day B, if it is afterwards it is that date.

In relation the presentation of the unfair dismissal claim

33. The question of whether or not it was reasonably practicable for the Claimant to have presented his claim in time is to be considered having regard to the following authorities. In Wall's Meat Co v Khan [1978] IRLR 499, Lord Denning, (quoting himself in Dedman v British Building and Engineering Appliances [1974] 1 All ER 520) stated "it is simply to ask this question: has the man just cause or excuse for not presenting his complaint within the prescribed time?" The burden of proof is on the Claimant, see Porter v Bandridge Ltd [1978] IRLR 271 CA. In addition, the Tribunal must

have regard to the entire period of the time limit (Wolverhampton University v Elbeltagi [2007] All E R (D) 303 EAT).

34. In Palmer and Saunders v Southend-on-Sea BC [1984] IRLR 119, the headnote suggests: "As the authorities also make clear, the answer to that question is pre-eminently an issue of fact for the Industrial Tribunal taking all the circumstances of the given case into account, and it is seldom that an appeal from its decision will lie. Dependent upon the circumstances of the particular case, in determining whether or not it was reasonably practicable to present the complaint in time, an Industrial Tribunal may wish to consider the substantial cause of the employee's failure to comply with the statutory time limit; whether he had been physically prevented from complying with the limitation period, for instance by illness or a postal strike, or something similar. It may be relevant for the Tribunal to investigate whether, at the time of dismissal, and if not when thereafter, the employee knew that he had the right to complain of unfair dismissal; in some cases the Tribunal may have to consider whether there was any misrepresentation about any relevant matter by the employer to the employee. It will frequently be necessary for the Tribunal to know whether the employee was being advised at any material time and, if so, by whom; the extent of the advisor's knowledge of the facts of the employee's case; and of the nature of any advice which they may have given him. It will probably be relevant in most cases for the Industrial Tribunal to ask itself whether there was any substantial failure on the part of the employee or his adviser which led to the failure to comply with the time limit. The Industrial Tribunal may also wish to consider the manner in which and the reason for which the employee was dismissed, including the extent to which, if at all, the employer's conciliatory appeals machinery had been used. Contrary to the argument advanced on behalf of the appellants in the present case and the obiter dictum of Kilner Brown J in Crown Agents for Overseas Governments and Administrations v Lawal [1978] IRLR542, however, the mere fact that an employee was pursuing an appeal through the internal machinery does not mean that it was not reasonably practicable for the unfair dismissal application to be made in time. The views expressed by the EAT in Bodha v Hampshire Area Health Authority [1982] ICR 200 at p 204, on this point, were preferred to those expressed in Lawal"

35. The Tribunal should consider: (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.

36. The EAT in Bodha v Hampshire Area Health Authority [1982] ICR 200 said, "*There may be cases where the special facts (additional to the bare fact that there is an internal appeal pending) may persuade an Industrial Tribunal, as a question of fact, that it was not reasonably practicable to complain to the Industrial Tribunal within the time limit. But we do not think that the mere fact of a pending appeal by itself is sufficient to justify a finding of fact that it was not 'reasonably practicable' to present a complaint to the Industrial Tribunal."*

37. A Claimant's complete ignorance of his or her right to claim may make it not reasonably practicable to present a claim in time, but the Claimant's ignorance must itself be reasonable. As Lord Scarman commented in Dedman v British Building and Engineering Appliances Ltd [1974] 1 All ER 520*, CA*:

"*…does total ignorance of his rights inevitably mean that it is impracticable for him to present his complaint in time? In my opinion, no. It would be necessary to pay regard to his circumstances and the course of events. What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? Should there prove to be an acceptable explanation of his continuing ignorance of the existence of his rights, it would not be appropriate to disregard it, relying on the maxim "ignorance of the law is no excuse." The word "practicable" is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance. But what, if, as here, a complainant knows he has rights, but does not know that there is a time limit? Ordinarily, I would not expect him to be able to rely on such ignorance as making it impracticable to present his complaint in time. Unless he can show a specific and acceptable explanation for not acting within four weeks, he will be out of court.*"

38. Where ignorance of the time limits is claimed, the question is whether that ignorance was reasonable. In John Lewis Partnership v Charman UKEAT/0079/11, it was accepted that it would not be reasonable if the Claimant ought reasonably to have made inquiries about how to bring an Employment Tribunal claim, which would have inevitably put them on notice of time limits. The question comes down to whether the Claimant should have made such inquiries immediately following his dismissal.

39. In addition, in Palmer and Saunders v Southend-on-Sea BC, and following its general review of the authorities, the Court of Appeal (per May LJ) 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".

40. 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).

41. Underhill P as he then was considered the period after the expiry of the primary time limit in Cullinane v Balfour Beattie Engineering Services Ltd UKEAT/0537/10 (in the context of the time limit under section 139 of the Trade Union & Labour Relations (Consolidation) Act 1992, which is the same test as in section 111 of the Act) at paragraph 16: "*The question at "stage 2" is what period - that is, between the expiry of the primary time limit and the eventual presentation of the claim - is reasonable. That is not the same as asking whether the claimant acted reasonably; still less is it equivalent to the question whether it would be just and equitable to extend time. It requires an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted - having regard, certainly, to the strong public interest in claims in this field being brought promptly, and against a background where the primary time limit is three months*."

In relation to the presentation of discrimination claims

42. It is clear from the following comments of Auld LJ in Robertson v Bexley Community Service IRLR 434 CA that there is no presumption that a tribunal should exercise its discretion to extend time, and the onus is on the Claimant in this regard: "It is also important to note that time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify 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 discretion is the exception rather than the rule". These comments have been supported in Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT and Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA. 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*.

43. Per Langstaff J in Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0305/13 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.

44. 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.”

45. In exercising its discretion, tribunals may 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*). 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 and in particular ,
    a. the length of and the 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 has cooperated with any requests for information
    d. the promptness with which the claimant acted once he knew the facts giving rise to the cause of action.
    e. the steps taken by the claimant to obtain appropriate professional advice.

46. 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. In Adedeji v University Hospitals Birmigham NHS Foundation Trust [2021] EWCA Civ 23, the Court of Appeal did not regard it as healthy to use the checklist as a starting point and that rigid adherence

to a checklist can lead to a mechanistic approach to what is meant to a very broad general discretion. The best approach is to assess all factors in the particular case which it considers relevant to whether it is just and equitable to extend time including, in particular, the length of and reasons for the delay. If the Tribunal checks those factors against the list in Keeble, it is well and good, but it was not recommended as taking it as the framework for its thinking.

47. In terms of prejudice, I was referred to Miller v Ministry of Justice UKEAT0003/15, in which it was observed that there were two types of prejudice including forensic prejudice a Respondent may suffer if the limitation period is extended by many months or years, caused by fading memories, loss of documents and losing touch with witnesses. It was further said that "*if there is forensic prejudice to a Respondent, that will be "crucially relevant" in the exercise of discretion, telling against an extension of time. It may well be decisive."*

48. The Court of Appeal in Apelogun-Gabriels v London Borough of Lambeth [2001] EWCA Civ 1853, held, approving Robinson v Post Office [2000] IRLR 804, that delaying commencing proceedings while awaiting the outcome of domestic proceedings is only one factor to be taken into account. The EAT in Robinson had held that there was not a proposition of broad applicability such that when there is an unexhausted internal procedure that delay to await its outcome necessarily furnishes an acceptable reason for delaying to present the claim.

49. 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.

50. 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

Conclusions

Unfair dismissal claim

When should the claim have been presented?

51. The Claimant was dismissed on 10 January 2020. Therefore, the claim should have been presented by 9 April 2020, subject to pausing by reason

of early conciliation via ACAS. The Claimant notified ACAS on 2 July 2020, which post-dated the primary limitation date and he does not get the benefit of any extension of time for the early conciliation period. The ACAS certificate was issued on 20 July 2020. The claim was presented on 25 July 2020 and was therefore presented 15 weeks 2 days out of time.

Why did the Claimant not present the claim in time and why was it presented when it was?

52. The Claimant had spoken to a friend who made him aware of discrimination and health and safety issues in January and he was told in March 2020 that what had happened sounded like unfair dismissal. In mid-April 2020 the Claimant's friend told him about the Employment Tribunal and that he needed to contact ACAS. I accepted that it was not until this conversation that the Claimant was aware that he could bring a claim of unfair dismissal in the Employment Tribunal.

Was there any physical impediment preventing compliance?

53. ACAS should have been informed about the dispute by 9 April 2020. The reason why the Claimant did not present his claim in time was that he did not know that he could bring a claim in the Tribunal until that time. There was no other physical reason as to why the Claimant could not present his claim in time. The Claimant's daughter was unwell; however, the Claimant did not adduce evidence as to why he was physically prevented from doing so on this basis.

Whether, and if so when, the Claimant knew of his rights?

54. The Claimant had been told that it sounded like he had been unfairly dismissed in March 2020; he did not research into what he should do at that stage. The Claimant had access to the internet via his smart phone and computer at home before the time to present his claim expired. There was nothing stopping the Claimant from undertaking his own research into what he should do. This was not a case of total ignorance. The Claimant is an intelligent man, and it would have been reasonably feasible for him to undertake research online into unfair dismissal and what he should do. Although there was a national lockdown, the resources would still have been available online. The Clamiant did not take that opportunity. The Claimant's daughter was unwell, but that did not reasonably prevent the Claimant from making his own enquiries. The Claimant unreasonably did not make any further enquires and had he done so he would have been aware that he needed to present his claim within the time limits and contacted ACAS before doing so.

Whether R misrepresented any relevant matter to C?

55. The Respondent is not under a duty to tell the Claimant that he could bring a claim and it did not misrepresent any matter to him.

Whether the claimant had been advised by anyone, and the nature of any advice given?

56. The Claimant receiceved advice from a friend on three occasions as set out above.

Was it reasonably practicable to present the claim in time?

57. The Claimant was unaware that he could bring a claim in the employment Tribunal until April 2020, however he was told of the concept of unfair dismissal after receiving the appeal outcome letter in March. It was reasonably feasible for the Claimant to have made enquiries on the internet about unfair dismissal in March 2020 and if he had done he would have been aware of the Employment Tribunal and the time limits. The Claimant took no steps to research the matter once he had been made aware of the potential claim. The Claimant relied on waiting for the appeal outcome, however, however taking into account that he had received the outcome just over a month before the time limit expired and spoken to his friend in the interim, that did not prevent him from presenting the claim in time.

58. The Claimant could not provide any adequate explanation as to why he did not make enquiries online, after being made aware that it sounded like he had been unfairly dismissed, and his failure to do so was unreasonable. It was therefore reasonably feasible for the Claimant to make such enquires and also for him to have presented his claim in time. It was therefore reasonably practicable for the CLaiamnt to have presented his claim in time

If it was not reasonably practicable to present the claim in time, was it presented within a reasonable period thereafter?

59. Even if I am wrong about whether it was reasonably practicable for the claim to be presented in time, the Claimant was told about the Emplopyment Tribunal and the need to contact ACAS in April 2020. The Claimant telephoned ACAS and did not receive a reply and assumed that everywhere was closed due to the Covid 19 lockdown. However, it was widely known that not all businesses were closed. He did not make any enquries via the internet as to what he should do. If the Claimant had undertaken a Google search he would have been able to find information as to what he should do. The Claimant acted unreasonably by not making any enquiries until he telephoned ACAS again after the lockdown had been relaxed. Even if it was not reasonably practicable to present the claim in time, it was reasonably feasible for the Claimant to research what he should do online, once his

friend had told him about the Employment Tribunal and ACAS. A reasonable period to have presented the claim/contacted ACAS would have ended by the end of April.

60. Accordingly, time is not extended, and the claim was presented out of time, and it is struck out for lack of jurisdiction.

Race Discrimination claim

When should the claim have been presented?

61. The last alleged act of discrimination was the Claimant's dismissal on 10 January 2020; therefore, the claim should have been presented by 9 April 2020, subject to pausing by reason of early conciliation via ACAS. The Claimant notified ACAS on 2 July 2020, which post-dated the primary limitation date and he does not get the benefit of any extension of time for the early conciliation period. The certificate was issued on 25 July 2020. The claim was presented on 25 July 2020 and was therefore presented 15 weeks 2 days out of time.

Was it just and equitable to extend time?

62. If time is not extended the Claimant will be unable to bring his claim and he would be prevented from the possibility of seeking redress. The Respondent relied on three of its key witnesses no longer working for the Respondent. I accepted that a significant factor to consider is whether evidence has ceased to be available. In the present case there was no evidence adduced that the witnesses would not co-operate, although I accepted that their departure would make the Respondent's task in defending the claim more difficult. It is also relevant that all the witnesses worked for the Respondent when the claim was presented, and that this particular prejudice did not exist at that time. Any party might lose touch with a witness during the course of claim after proceedings had been presented. This on its own, is therefore not determinative.

63. The length of the delay is a little over 3 months, however it is relevant that that until mid-April 2020, the Claimant was not aware of the Employment Tribunal and that he needed to contact ACAS. He was however aware of the concepts of discrimination and unfair dismissal before the time limits expired. It was significant that, notwithstanding he spoke to his friend on three occasions about the situation with the Respondent, he did not make any enquiries online as to what he should do.

64. I accepted that the lockdown caused many people problems, however the Claimant simply assumed, after ACAS did not answer the telephone on one occasion, that no-body was working. He did not make any enquiries online.

The Claimant had access to the internet via his computer and smart phone, and it was, for the reasons already stated in relation to unfair dismissal, unreasonable for him not to make any enquiries as to what he should do by that means.

65. It was further unreasonable for the Claimant to have assumed that no-body was working, without checking with the Tribunal and ACAS websites, particularly as it was common knowledge that not all business were in fact closed.

66. The Clamiant was aware of the facts of his claims by mid-March and that he could bring them in the Employment Tribunal by mid-April 2020. His explanation that he made an assumption, without seeking to check the position, that no one was working was unreasonable.

67. Time limits are to be exercised strictly in employment tribunals and it is for the Claimant to show that it is just and equitable to extend time.

68. The Respondent's witnesses having been made redundant was a factor, but it was not significant as I needed to consider the prejudice at the time the claim was presented. Even if the claim was presented in time it is likely that the Respondent would be in the same position.

69. The Claimant had been taking advice, had chosen not to make enquiries online and made an unreasonable assumption. If the application is allowed, the Respondent would be deprived of the limitation defence. If it is not allowed the Claimant cannot bring his claim. The Respondent also has evidential problems, which have now arisen. Taking into account the need to apply time limits strictly and that the Clamiant was aware of his rights by April 2020, that he unreasonably failed to investigate what he should do and unreasonably assumed no one would be working, after balancing all of the factors, the Claimant did not establish that it was just and equitable to extend time.

70. The Tribunal does not have jurisdiction to hear the claim and it is struck out.

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Employment Judge J Bax
Dated: 30 July 2021
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