



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Chowdhury

**Respondents:** (1) London Borough of Newham  
(2) The Riverside Group Limited  
(3) London Borough of Hillingdon

**Heard at:** East London Hearing Centre

**On:** 4<sup>th</sup> February 2022

**Before:** Employment Judge Reid

## Representation

**Claimant:** in person

**1<sup>st</sup> Respondent:** Mr Moher (One Source)

**2<sup>nd</sup> Respondent:** Mr Dhorajiwala, Counsel

**3<sup>rd</sup> Respondent:** Mr Farhat, Solicitor

***This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform . A face to face hearing was not held because the relevant matters could be determined in a remote hearing. The Claimant was unable to connect on the CVP platform so joined via telephone only.***

## JUDGMENT (Reserved)

The judgment of the Tribunal is that:-

### First Respondent and Third Respondent

1. The Claimant's claim against the First Respondent and against the Third Respondent was a claim for (ordinary) unfair dismissal. He did not have the required two years continuous employment under s108(1) Employment Rights Act 1996 at either the First Respondent or at the Third Respondent to bring such a claim against each of them. The Claimant's claim against the First Respondent and against the Third Respondent is therefore dismissed.

Second Respondent

2. The Second Respondent's correct name is as set out above.
3. The Second Respondent's response is accepted. Oral reasons were given at the hearing.
4. The Claimant's claim for unfair dismissal against the Second Respondent is dismissed because the Claimant did not have the required two years continuous employment under s108(1) Employment Rights Act 1996 to bring such a claim.
5. The Tribunal does not have jurisdiction (ie the power) to decide a negligence claim.
6. The Claimant's claim for unlawful deduction of wages regarding his final salary payment was presented within the required time limit in s23(2) Employment Rights Act 1996 (as extended under s207B Employment Rights Act 1996) and this claim therefore proceeds – see attached Orders.
7. The Claimant's claim for accrued holiday pay was presented (as a wages claim) within the required time limit in s23(2) Employment Rights Act 1996 (as extended under s207B Employment Rights Act 1996) and was presented (as a working time claim) within the required time limit in Regulation 30(2)(a) Working Time Regulations 1998 (as extended under Regulation 30B) and this claim therefore proceeds – see attached Orders.
8. The Claimant's claims under the Equality Act 2010 (religion and belief) were presented outside the time limit under s123(1)(a) Equality Act 2010. The Tribunal does not extend time under s123(1)(b) Equality Act 2010 and accordingly the discrimination claim is dismissed.
9. The Claimant's claim for breach of contract is dismissed. He does not make a claim for notice pay and his claims about his final salary payment and his accrued holiday proceed as claims for unlawful deduction from wages and in relation to holiday pay, also as a working time claim – see above.

**Mr Chowdhury – please see paragraphs 40-42 at the end of the Reasons for a summary of what this means for you.**

## REASONS

Background and claim

1 The Claimant presented his claim form on 2nd September 2021, making a claim against three different past unconnected employers. The oldest employer was the London Borough of Newham (the First Respondent) for whom the Claimant had worked between 27th May 2019 and 4th December 2019. His next employer was the London Borough of Hillingdon, the Third Respondent, for whom the Claimant had worked between 24th

February 2020 to 20th January 2021. His most recent employer was the Riverside Group Limited, the Second Respondent, for whom the Claimant had worked between 2nd February 2021 to 20th May 2021. There was no connection between any of these employers.

2 The notice of hearing dated 11th November 2021 identified that the issues for this preliminary hearing (open) were firstly the time limit point in relation to each respondent and secondly a possible strike out of his claim under Rule 37. There was also an outstanding application dated 1<sup>st</sup> December 2021 (varied on 15th December 2021) by the Second Respondent for an extension of time to file its response to the claim.

3 Because there was no connection between the three respondents and because the time periods being considered for each was different, I dealt with the hearing in three stages, starting with the oldest employer the First Respondent, next the middle employer the Third Respondent, and finally the most recent employer the Second Respondent. The hearing started at 10.00 am and finished at 3pm. Due to technical issues which could not be resolved the Claimant joined by telephone only.

4 I was provided with a 171 page electronic bundle and a skeleton argument and authorities by the Second Respondent. The Claimant set out in an email dated 1st February 2022 the reasons why he had delayed making his claims. In this email he set out in a general paragraph at the beginning some reasons and then set out in relation to the Third and First Respondents specific reasons in relation to those respondents. He accepted at this hearing that he had insufficient service to bring an ordinary unfair dismissal claim against any of the respondents as he had been employed for less than two years at each respondent.

5 I heard oral evidence from the Claimant in relation to each respondent and submissions on both sides in relation to each respondent. In the first section of the hearing in relation to the First Respondent, the Claimant gave oral evidence about two matters, namely firstly the date he had first contacted a firm of solicitors to get legal advice and secondly the date he had found out about time limits for employment tribunal claims by going online on the ACAS website; these dates were January 2021 ( though the Claimant was not sure who he spoke to, whether the person was a solicitor or not and said he was not sure if they had mentioned time limits) and April 2021 when he contacted ACAS. In the interests of fairness to the Second and Third Respondents I provided them with these answers the Claimant had given in the first part of the hearing, because they had not been present.

6 The Claimant was not represented and I explained the issues to him. I explained that if a claim is brought out of time and an extension is not allowed the Tribunal does not have jurisdiction (ie the power) to hear a claim. Given the nature of the claims the Claimant had made, the two relevant extension tests were potentially the ‘not reasonably practicable test’ and the “ just and equitable test” which I explained to him.

7 The Claimant did not benefit from an ACAS extension for his claims against the First and Third Respondents because he contacted ACAS in relation to the First Respondent on 24th August 2021 and in relation to the Third Respondent on 25th August 2021, both of which dates were after the primary time limit for his claims against these respondents had expired. In relation to the Second Respondent, the Claimant had contacted ACAS on 24th August 2021. In relation to his claims against the Second Respondent for

outstanding wages and outstanding accrued holiday pay (relating to his final pay on 31st May 2021 or 15<sup>th</sup> June 2021), he did however benefit from an ACAS extension and it was accepted in submissions that these claims were in time (although without merit). It was the Second Respondent's case however that the rest of his claims were out of time or he could not bring them.

8 I spent time with the Claimant in relation to each of the claims clarifying the claims he had in fact made on his claim form. I explained to him that I had to deal with the claim as presented not as the claim as he now wished he had written it; he had identified new heads of claim in his email dated 1st February 2022 which had not been present on the claim form.

9 The Claimant claimed in relation to the Second Respondent that he had had medical/health reasons for not bringing his claim in time, namely a knee fracture which had caused him significant mobility issues from June 2021. In relation to all three respondents he said he had had mental health issues affecting his ability to deal with putting in a claim. He did not produce any medical evidence to support the degree of restrictions claimed (or any medical evidence at all).

10 The Third Respondent reserved its position in relation to a costs application.

#### Findings of fact

##### The First Respondent (Newham)

11 The Claimant was employed by the First Respondent from 27th May 2019 to 4th December 2019 (page 94) when he was dismissed for confrontational behaviour towards a colleague JA (page 108). He contacted ACAS in relation to this employment on 25th August 2021 and a certificate was issued on 26th August 2021 (page 17). He had not contacted ACAS within the primary time limit of three months (ie on or before 3<sup>rd</sup> March 2020) and therefore did not benefit from an ACAS extension.

12 I find that the only claim against the First Respondent in the Claimant's claim form was a claim for unfair dismissal. The Claimant sought in his email dated 1<sup>st</sup> February 2022 to also refer to potential claims of age discrimination and discrimination on the grounds of religion or belief. In response to Q8.1 (page 9) he had ticked the boxes for claims for unfair dismissal, discrimination on the grounds of religion or belief, holiday pay and included a reference to indirect religious discrimination. However, when he set the facts about what he was claiming about in relation to the First Respondent (page 15) he was describing a claim for unfair dismissal arising out of an incident with a colleague, in relation to which the Claimant challenged the evidence used to dismiss him. On his claim form he did not mention being treated differently due to being the oldest in the team or being treated differently by the First Respondent due to his religious belief when employed by the First Respondent, as set out in his email for this hearing. I find that the answers given on Q8.1 related to the most recent employment with the Second Respondent (see also findings below in relation to the Second Respondent). The Claimant's claim on his claim form against the Second Respondent was a claim for unfair dismissal and, as he accepted at the hearing, he did not have enough service to bring an unfair dismissal claim. There no facts asserted in his claim form which could be construed as referring to a situation where that two year rule does not apply and the dismissal is automatically unfair. The Tribunal therefore does not have

jurisdiction to hear the claim because it is an unfair dismissal claim only.

13 The Claimant said he had thought that he had to have two years employment to bring an employment tribunal claim. He was right about that as regards an (ordinary) unfair dismissal claim and that is the only claim he brought against the First Respondent in this claim form.

14 Even if the Claimant's claim against the First Respondent had also included a claim for discrimination (which I have found it did not) I would have decided that it was not just and equitable to extend time because firstly based on his oral evidence he was not mentally incapable due to stress as claimed (page 15) to get his claim in on time: he was aware of the existence of employment tribunals in December 2019, he was able to apply for and obtain his next job with the Third Respondent via indeed.com (so able to use the internet and look things up), his next job was a supervisory one in charge of surveillance for which he would have to be mentally alert and there was no medical evidence supporting any mental or cognitive condition (and the Claimant did not claim he had had any treatment for one). Secondly the lapse of time between the events at the First Respondent and the presentation of the claim would have had a significant impact on the Claimant's ability and that of the other witnesses to recall things, evident from the fact that the Claimant could not recall at this hearing whether he had appealed this dismissal; the cogency of the evidence would be significantly impaired. There would be significant prejudice to the First Respondent if it had to defend such a claim which would outweigh the prejudice to the Claimant in not being able to proceed with it.

#### The Third Respondent (Hillingdon)

15 The Claimant was employed by the Third Respondent from 23rd February 2020 (page 150) to 20<sup>th</sup> January 2021 when he resigned. He contacted ACAS in relation to this employment on 24th August 2021 and a certificate was issued on 25th August 2021 (page 19). He had not contacted ACAS within the primary time limit of three months (ie on or before 19<sup>th</sup> April 2021) and therefore did not benefit from an ACAS extension.

16 The facts the Claimant was describing in relation to the Third Respondent (page 15) was having resigned because of the way he was treated during a disciplinary process, again in relation to the evidence used in that process. On his claim form he did not mention the matters he referred to in his email dated 1st February 2021 namely indirect discrimination regarding prayer breaks or direct or indirect discrimination when he was dismissed. I find that the answers given on Q8.1 related to the most recent employment with the Second Respondent (see also findings below in relation to the Second Respondent). The Claimant's claim on this claim form against the Third Respondent was a claim for unfair (constructive) dismissal and, as he accepted at the hearing, he did not have enough service to bring an unfair dismissal claim. There were no facts in his claim form which could be construed as referring to a situation where that two year rule does not apply and the dismissal is automatically unfair. The Tribunal therefore does not have jurisdiction to hear the claim because it is an unfair dismissal claim only.

17 The Claimant said he had thought that he had to have two years employment to bring an employment tribunal claim. He was right about that as regards an (ordinary) unfair (constructive) dismissal claim and that is the only claim he brought against the Third

Respondent in this claim form.

18 Even if the Claimant's claim against the Third Respondent had also included a claim for discrimination (which I have found it did not) I would have decided that it was not just and equitable to extend time because firstly based on his oral evidence he was not mentally incapable due to stress as claimed (page 15) to get his claim in on time: he was aware of the existence of employment tribunals in December 2019 (from his previous dismissal at the First Respondent), he took advice from Landau Law initially in January 2021 and knew about time limits from the ACAS website in April 2021 and there was no medical evidence supporting any mental or cognitive condition (and the Claimant did not claim he had had any treatment for such a condition). Secondly the lapse of time between the events at the Third Respondent and the presentation of the claim would have had an impact on the Claimant's ability and that of the other witnesses to recall things; the cogency of the evidence would be impaired. There would be significant prejudice to the Third Respondent if it had to defend such a claim which would outweigh the prejudice to the Claimant in not being able to proceed with it.

#### The Second Respondent (Riverside)

19 The Claimant did not bring a claim for notice pay against the Second Respondent. He had been paid 4 weeks in lieu of notice (pages 9-10).

20 When I explained what a victimisation claim under the Equality Act 2010 was to the Claimant he said he had not done a 'protected act' (ie made an Equality Act 2010 claim in the Tribunal or made an allegation of discrimination before the adverse treatment complained of) and I therefore find that his claim form does not include a victimisation claim because there is accepted to be no previous protected act, consistent with no protected act and no detriment as a result being identified in the emails on pages 136 and 137 (which he sent after he was dismissed to the Second Respondent and to Landau Law and the Second Respondent respectively). The Claimant had understood victimisation as meaning generally unfair treatment and not the specific meaning it has in the Equality Act 2010.

21 The Claimant was employed by the Second Respondent from 2nd February 2021 to 20th May 2021 (page 109) when he was dismissed for poor performance (page 117, notification of dismissal date 20<sup>th</sup> May 2021). He contacted ACAS in relation to this employment on 24th August 2021 and a certificate was issued on 25th August 2021 (page 18). He had not contacted ACAS within the primary time limit of three months (ie on or before 19<sup>th</sup> August 2021) and therefore did not benefit from an ACAS extension for the claims arising on or before the date he was notified of the termination (ie the claims for religion/belief discrimination during his employment and up to and including his dismissal notification).

22 However in relation to the claims for unpaid wages and holiday pay (which the Claimant clarified at the hearing as referring to his final salary payment and accrued holiday payment being incorrect, though unable to say by how many days he was underpaid holiday), the time limit was 30<sup>th</sup> August 2021 (based on a final payslip date of 31<sup>st</sup> May 2021). (Although the Second Respondent's response also refers to the final payment being made on 15<sup>th</sup> June 2021 (page 71) that is a later date.) By contacting ACAS on 24<sup>th</sup> August 2021 the Claimant was doing so before the end of the primary time limit; as it was now less

than a month to when the primary time limit would expire (whether that was 30<sup>th</sup> August 2021 or 14<sup>th</sup> September 2021), the Claimant got the benefit of a one month extension from that ACAS certificate and these two claims were in time when presented on 2<sup>nd</sup> September 2021.

23 I find there was a clear delineation in the Claimant's claim form between what he was claiming against the Second Respondent and what he was claiming against the First and Third Respondents. Firstly, although the answers to Q8.1 on the claim form might be construed as referring to all three respondents the facts set out against the First and Third Respondents were only facts asserted in relation to a possible unfair dismissal claim – see findings of fact above. Secondly, in Q8.2 he first of all went through the issues with the Second Respondent on page 10 before, at the final paragraph turning expressly to the other respondents and setting out what had happened in relation to each of them in turn (continuing on page 15). The final paragraph on page 15 then reverted to why he had brought the claim late (referring to a knee fracture in June (which at the hearing he confirmed was June 2021), by which he was explaining why his claim against the Second Respondent was late. He then also referred more generally to stress, panic attacks insomnia and anxiety caused by all three respondents, as his explanation for the late claims. I therefore find that the answers to Q8.1 on the claim form only relate to the Second Respondent, save for the reference to a claim for unfair dismissal in which respect the Claimant went on to set out the facts on page 15 as regards the First Respondent and the Third Respondent.

#### Extension of time – religion/belief discrimination

24 The Claimant said firstly that he was late in bringing his discrimination claim against the Second Respondent because he had fractured his knee in June 2021; his oral evidence was that he was not kept in overnight when he went to hospital but was then 'bedbound' for a month and then able to get around inside, being able to then go outside from September 2021. Whilst I accept that he had a fracture and that was painful and difficult, taking into account the absence of any medical evidence supporting an assertion that his fracture was so incapacitating throughout June and July 2021, I find that he was able to physically deal with the presentation of an online form before the fracture and then from at the latest a month after the fracture when he was able to move around indoors again. I have to consider the whole period of the time limit.

25 Secondly the Claimant said that mentally the fracture had affected him further, compounding the stress/anxiety caused by his previous two employers, the First and Third Respondents. The Claimant has not produced any evidence of a mental health problem affecting the ability to bring a claim. He was mentally able on 3<sup>rd</sup> June 2021 (page 136) and again on 7<sup>th</sup> June 2021 (page 137) to set out what he thought his claims were, even if after that temporarily derailed by dealing with the knee fracture for a month.

26 The Claimant first took legal advice about employment law from a firm of solicitors (Landau Law) in January 2021 (though at this point not in relation to the Second Respondent). He therefore knew who to go back to in relation to problems arising with the Second Respondent and I go back to them. I find based on his oral evidence that in early June 2021 when he sent the emails (pages 136-137) that he had a general idea of the claims he wanted to bring against the Second Respondent so was aware of his rights. The Claimant said that he had not sought specific further advice about the Second Respondent at this time but was in effect relying on advice he had received about his previous

employment but his email (page 136) specifically referred to the solicitor's advice about outstanding holiday pay which is a clear reference to the Second Respondent. I therefore find that the Claimant had obtained advice about the Second Respondent when he sent this email, consistent with copying in Landau Law in the next email (page 137). I therefore find that in early June 2021 the Claimant knew broadly speaking what the claims he wanted to bring were. I also find that it is unlikely he would not also have been advised by Landau Law at this time about Tribunal time limits, though in fact he already knew about them in April 2021.

27 I find based on his oral evidence in any event that the Claimant knew about Tribunal time limits in April 2021 from the ACAS website when researching matters as regards the First Respondent.

### Relevant law

#### Unfair dismissal

28 To bring a claim for 'ordinary' unfair dismissal (whether that is an actual dismissal or a constructive dismissal) an employee must have at least two years continuous employment ending with the effective date of termination (Employment Rights Act 1996, s108(1)).

#### ACAS extension of time limits for claim for unlawful deductions from wages or accrued holiday pay

29 A time limit for an unlawful deductions claim is extended by a period of ACAS conciliation – s207B(3) Employment Rights Act 1996. For a claim for accrued holiday pay it is extended under Regulation 30B Working Time Regulations 1998.

30 If the extended date is less than a month after the date the certificate is issued the Claimant has a month from the date of issue of the certificate – s207B(4) Employment Rights Act 1996/ Regulation 30B(3) Working Time Regulations 1998.

#### Time limits for claims of discrimination

31 The primary time limit for complaints of discrimination is three months from the date of the act complained of (s123(1)(a) Equality Act 2010). Where there is conduct extending over a period (a continuing act), the time limit runs from the end of that period. A failure to deal with a situation can constitute a continuing act (*Littlewoods Organisation v Traynor* [1993] IRLR 154). A continuing act is an ongoing situation or state of affairs and can include allowing an ongoing discriminatory culture which tolerates discriminatory acts (*Hendricks v Commissioner of Police for the Metropolis* [2003] IRLR 96).

32 Time does not start to run from when the worker/employee becomes aware of the act (or failure to act).

33 If a claim is presented out of time the Tribunal can extend time for bringing it if it finds that in all the circumstances it is just and equitable to do so (s123(1)(b)). Time limits



are usually exercised strictly in employment cases and that there is no presumption for exercising the Tribunal's discretion in a claimant's favour; an extension would be the exception rather than the rule (*Robertson v Bexley Community Centre* [2003] IRLR 434). The Tribunal must weigh up all the circumstances and reach a just conclusion whilst bearing in mind that it is for a Claimant to establish the Tribunal's jurisdiction (*Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327).

34 The Tribunal may take into account as potentially relevant factors the factors set out in s33(5) Limitation Act 1980, namely (a) the length of and reasons for the delay (b) the effect of the delay on the cogency of the evidence (c) the conduct of the parties including the provision of information and whether they acted promptly once aware of relevant information and (d) steps taken to obtain advice. These are not however a checklist (*Adedeji v University Hospitals Birmingham NHS Foundation Trust*. [2021] EWCA Civ 23, considering the factors set out in *British Coal v Keeble* [1997] IRLR 336) and the discretion is a broad one. The relative prejudice to the parties is also a factor (*Pathan v South London Islamic Centre*, UKEAT 0312/13, para 17)

35 I was also directed to various authorities in the Second Respondent's skeleton argument and authorities bundle.

### Reasons

#### First and Third Respondents

36 Taking into account the above findings of fact the Claimant's claim for unfair dismissal against the First Respondent and for unfair (constructive) dismissal against the Third Respondent cannot proceed because the Tribunal does not have jurisdiction to hear them. These claims are therefore dismissed.

#### Second Respondent

37 The Claimant's claims for unpaid wages (final salary payment) and accrued holiday pay continue as presented in time – see separate Orders. The final payslip was not very helpful as it did not clearly set out what the Claimant was being paid for what and the Second Respondent said the Claimant would have been paid (not was paid) for his accrued holiday (para 4.13). For this reason and because the Second Respondent has the relevant records the Second Respondent is to provide an explanation and the relevant documents to the Claimant before he provides his schedule of loss, rather than the other way round.

38 Taking into account the above findings of fact I conclude that it is not just and equitable to extend time for the Claimant's discrimination claim against the Second Respondent. The Claimant had legal advice at an early stage in early June 2021 and was already aware of Tribunal time limits at the beginning of the time limit. The health reasons he gives for being unable to present this claim on time were not substantiated with medical evidence of a physical or mental health condition being so incapacitating that he was unable to present his claim on time. I have considered the relative prejudice to each party including that not extending time means that the Claimant will be unable to pursue his discrimination claim and it is important that discrimination claims are heard. As the events related in his claim are between February and May 2021 I do not consider that memories fading affecting

the cogency of evidence are a major factor though they are still a factor. However weighing it up I conclude that it is not just and equitable for me to extend time for the Claimant's discrimination claim because he had advice at an early stage and was aware of Tribunal time limits at the beginning of the period of the time limit; this was not a situation where he did not have advice and was then unwell throughout the period and unable to get advice and act on it. I have accepted that he was derailed by the knee fracture but only to the extent of a month and there was still time before that injury and after the initial period following the injury to contact ACAS and get his claim in on time in the light of the fact that he already knew there was a time limit and knew about ACAS' role.

39 The following paragraphs are included to assist the Claimant as he is not legally represented and do not form part of the judgment.

40 Mr Chowdhury – your claims against Newham and Hillingdon will not go any further. This is because what you wrote on your claim form about them only amounted to a claim for unfair dismissal and not also a claim for discrimination. As you had worked there for less than two years you cannot bring a claim for unfair dismissal against them (or against the Second Respondent either).

41 Your discrimination claim against Riverside (which you did include in your claim form) will not go any further because I have decided that it was late and that time should not be extended.

42 However your claims about your final salary payment and accrued holiday will continue because I have decided that you made those claims in time; they were in time because those payments were due on a later date (after you were dismissed) meaning that the time limit was different for those two claims. That does not mean you will win these claims it just means that these two claims will continue and will need to be decided. You should read the attached Orders which tells you (and the Second Respondent) what to do about these claims. It is important that you identify what exactly you are claiming ie the amount, how you calculate it and why you say the Second Respondent has got it wrong.

**Employment Judge Reid  
Dated: 10 February 2022**