EMPLOYMENT TRIBUNALS
at an Open Preliminary Hearing

Claimant: Mrs E Gita

Respondents: 1. Mr Farhad Tailor
2. V12 Sports & Classics Ltd

Heard at: Midlands (East) Region by Cloud Video Platform
On: Thursday 24 March 2022
Reserved to: 1 April 2022
Before: Employment Judge P Britton (sitting alone)

Representation
Claimant: In person
Assisted by Natalie Johnson-Stanley acting as a McKenzie Friend
The Claimant was assisted by an approved interpreter in Romanian, namely Mrs Marabela Bob

Respondents: Mr J Lewis, QC**,** instructed by Brunel Solicitors

RESERVED JUDGMENT

1. The claims for unfair dismissal, non-payment of wages (including the national minimum wage) and non-payment of holiday pay all having been brought pursuant to the relevant provisions of the Employment Rights Act 1996 are dismissed as being out of time, it having been reasonably practicable to have presented them within time.

2. The remaining claim for dismissal because of the taking of maternity leave pursuant to Section 18 of the Equality Act 2010 is dismissed, it having been presented out of time and it not being just and equitable to extend time.

3. For the avoidance of doubt, this means that all claims brought under one or other of the three claim numbers are dismissed in their entirety.

RESERVED REASONS

1. I refer first to the record of the Closed Telephone Preliminary Hearing that I heard on 2 December 2021 and which was signed off by this Judge on 9

December 2021. For reasons which are set out therein and against a somewhat complicated procedural history, suffice it to say that it is clear that all the claims were presented out of time.

2. Subsequent to my hearing, on 10 January 2022 Employment Judge Ayre consolidated claims numbers 2601707/2021 and 1303438/2021. My enquiries have established that the remaining case which had been presented in Midlands (West), namely 1303437/2021, was perceived by Midlands (West) to be a duplication of 1303438/2021 but the file has been transferred to this tribunal. For the avoidance of doubt, it is hereby consolidated by this Judge.

3. As to these three claims, encapsulated they arise out of the employment of Mrs Gita by either Mr Tailor or the Second Respondent and in the capacity as a nanny for Mr Tailor and his wife and which commenced in 2013. The employment clearly ended with the issuing of the P45 to the Claimant latest 31 January 2021.

4. All three claims were presented on behalf of the Claimant, whether it be to the Midlands (East) tribunal, which is the 260 suffix number, or to the Midlands (West), which are the two 130 suffix case numbers, on the same day, namely 9 August 2021. All were presented with the same ACAS early conciliation certificate. It ran only between 6 and 8 July 2021.

5. Stopping there, all the claims that I have denoted in my Judgment brought pursuant to the provisions of the Employment Rights Act 1996 (the ERA) had to be presented within 3 months of the last act complained of, which was clearly the dismissal of the Claimant on 31 January 2021. Thus, the primary time limit for presenting those claims to one or other of the tribunals was 30 April 2021.

6. The provision by which time is extended for the purposes of ACAS early conciliation and which is to be found for the purposes of the ERA at s.207B only rides to the rescue in terms of extending time if ACAS early conciliation started before the end of the primary time limit and in this case, as is now obvious, this is not the case.

7. As it is, following the issue of the ACAS early conciliation certificate, the Claimant did not present these claims to the tribunals until 9 August 2021. As the ACAS conciliation of extension of time provision cannot assist, it thus follows that this was over 3 months out of time.

8. That means that those claims can only be allowed to proceed if I find on the evidence before me today, and with the burden of proof being upon the Claimant, that it was not reasonably practicable to bring those claims within that primary 3 month time limit and if so, whether the claims were brought within such further period as the tribunal considers reasonable.

9. That brings me on to the claim brought pursuant to the provisions of the Equality Act 2010 (EqA) and which is based upon the premise that the Claimant was unlawfully discriminated against by reason of being dismissed because of her having given birth to her third son on 21 December 2020 and having

commenced maternity leave on 18 December 2020. I do not need to recite the reasons given by the Claimant for this being a discriminatory based dismissed other than to summarise it by stating that the Claimant alleges that she was so dismissed because the employer, and for that read in particular Mr and Mrs Tailor, did not want the inconvenience of a nanny with a young child and also one who was breast feeding. So, the claim is therefore brought pursuant to s.18 of the EqA 2010.

10. The same primary time limit of 3 months within which to bring the claim applies. The same trigger date must apply, namely the date of termination of this employment, it being 31 January 2021.

11. There is an identical provision whereby time can be extended for ACAS early conciliation in the EqA. But, equally, it does not come into play unless ACAS early conciliation commenced before the end of the primary time limit. The ACAS certificate is the same as that which was produced for the purposes of the ERA based claims. Thus, for the same reasons, it means that the EqA claim is also over 3 months out of time. Thus, the tribunal cannot entertain that claim unless the tribunal find that time should be extended to allow it to be brought within "*such other period as the employment tribunal thinks just and equitable*" - S.123(1) EqA.

12. For the purposes of my decision making, I am grateful for the thorough and accurate skeleton submissions of Mr Lewis and as to the jurisprudence to be followed in determination of these issues. There is a distinction between the principles applicable to a just and equitable extension and those applicable to the reasonable practicability test. Second he has provided an accurate and helpful chronology of material events in the scenario.

13. I am going to deal with the latter first.

The ERA claims and was it reasonably practicable to bring the claims within time

14. Before I make my findings of fact, suffice it to say that the seminal dicta is that of Brandon LJ in ***Walls Meat Company Ltd v Khan [1979] ICR 52 (CA)***. Put it at its simplest, was there some impediment operating on the mind, or for that read also the physical abilities of a Claimant, so as to mean that it was not reasonably practicable to bring the claim within the time limit and that it was brought within a reasonable period thereafter.

15. I remind myself that the time limits are there to be observed strictly. I am very familiar with dealing with time issues under the reasonable practicability test and summarised exploring, in terms of the evidence and explanation of the Claimant, as to what impediments so as to make it not reasonably feasible to bring the claim within time might have been operating. I summarise those engaged in this case might be for example a language barrier as the Claimant is a Romanian; an inability to find out about how to bring a claim, being as she will argue in this case being in an exploited position tantamount to "*slavery*"; whether on the other hand she was able to obtain assistance and if so who from and in that context whether there is evidence that whether it be her or those who

were assisting her knew of her rights to come to tribunal and also were aware of the time limits or could reasonably have been expected to know about them and therefore present the claim either within time or, which also becomes important in this case, within a reasonable period thereafter.

16. I will take these matters short having heard the sworn evidence of the Claimant and of Ms Natalie Johnson-Stanley. The Claimant initially in the run up to her taking maternity leave had already begun to explore what her entitlement might or might not be to statutory maternity pay. Thus, she had engaged the services of an accountant practicing in the UK, but who is Romanian, starting circa 2 December 2020, as to which see the documentation in the primary bundle before me. The accountant is Christina Contabla, who practices from an address in Roehampton in south-west London. It is quite obvious from the documentation before me that there was extensive use made of Christina; and without going into the ins and outs of whether or not the Claimant's claim for non-payment of the minimum wage has merit or otherwise, suffice it to say that the Claimant was able through Christina to become registered as self-employed on 9 January 2021; on the face of it be possibly entitled to a tax rebate thence obtaining a gateway passport in terms of HMRC and then become registered self-employed on 18 March and in due course it seems gain entitlement to statutory maternity pay or a maternity allowance.

17. The point being as emphasised by Mr Lewis that here was a first professional port of call that the Claimant was using, and indeed able to instruct, and which engaged looking into matters relating to tax affairs and with the interface to whether or not the Claimant was getting her statutory maternity pay.

18. The second limb then comes in in that by the end of that period latest, the Claimant had also been in touch with a friend, which is Elena Dragon, who I gather is a mature student in the United Kingdom but also Romanian. From what I can gather from the evidence today, Elena Dragon also had a friend in Mrs Natalie Johnson-Stanley.

19. Stopping there, in accordance with my Orders at the last hearing, I had ordered that a detailed statement be provided by the Claimant setting out the reasons why the claims were brought late. And in the detailed summary of my case management hearing which I published, it can be seen that I had endeavoured to make very clear indeed to Mrs Johnson-Stanley and the Claimant what I required, obviously focussing on the reasons for the delay. The Claimant had made a first attempt at explaining why her claims were out of time when she presented them, to which I shall come in due course.

20. She then provided a statement in that respect in November 2021 which did not deal with the out of time issues. Then on 13 January 2022 following my orders the Claimant presented a document entitled: "*Application for consideration of claims made out of time*" which essentially again just gave the chronology. Further information could be gleaned so to speak from the replies which were given to the Respondent's Solicitors them having requested in essence further and better particulars. Those replies are dated 10 March 2022 and commence

at Bp[1]107.

21. Finally, having received the statement of the First Respondent, Mr Farhad Tailor in accordance with my directions, which was dated 18 February 2022, a detailed rebuttal was presented to the tribunal on behalf of the Claimant dated 16 March 2022 which again more addresses the factual issues although to some extent does endeavour to explain why it was not reasonably practicable to present the claims before they were and additionally or in the alternative as to why it would be just and equitable in any event to extend time when it comes to the EqA based claim.

22. So, I have those documents before me but, more important, a correspondence trail which I shall soon come to.

23. Before I do, I should make plain that first Mrs Johnson-Stanley gave evidence before me under affirmation and was cross-examined. I then heard from the Claimant, again under affirmation with the assistance of the interpreter. She was interposed because otherwise we would run out of the time which the interpreter was able to afford the tribunal as she had to go at 4 pm.

24. At the end of the case, and after the interpreter had left, the Claimant asked to make an address, which I allowed her to do, which was really focussed again on the merits and why therefore it would be just and equitable to allow her EqA claim to proceed. She did not address the issue of why it was not practicably practicable to bring the ERA based claims. Suffice it to say that of course I appreciate that Mrs Gita may not have the fluency in English of a UK born person, but she has lived here since 2013 and in fact her English was really quite good. I had already learned from the statement, to which I have now referred, that she has over the years developed a degree of ability in writing in the English language.

25. It is perhaps by now obvious that I heard closing submissions from Mr Lewis and then on behalf of the Claimant from Mrs Johnson-Stanley.

26. Stopping there, she is a very intelligent woman with a long career in social services in one shape or form. Since circa October 2021, she has worked for Women's Aid as a marginalised community worker. Prior thereto she had some 23 years working as a probation officer and before that she worked in a local authority in Hampshire in a social work role with the Romany community and other ethnic minorities. She has a BA (Honours) in applied health and social care and has recently completed a public health MA. It is therefore perhaps no small wonder that she is well versed in the championing of the rights of minorities. She says that she did not previously have any knowledge of employment law but suffice to say for reasons that I shall now come to, I am wholly satisfied that she did in fact well acquaint herself with the same and knew well before the presentation of these claims to the tribunal that the Claimant had the right so to do and she was clearly on notice of time limits for reasons which I shall come to.

[1] Bp=bundle page.

27. The following are therefore my findings of fact on the issue of whether or not it was reasonably practicable to bring the ERA based claims to tribunal. Those findings as to why the claims were not brought within time really also apply to the EqA based claim although I then of course must decide whether it is just and equitable to extend time.

28. The following is a summary and I cross-reference as I do to the helpful chronology prepared by Mr Lewis, which is in the bundle before me.

29. In terms of the material events and against a background as alleged by the Claimant of breaches of her employment rights whether it be by way of failure to pay the national minimum wage or being exploited in terms of being required to work an excessive number of hours and not being paid for the same. or not being permitted to take annual leave or, if so, not being paid for it, suffice it to say that all of those issues are heavily contested as is evident from the bundle. It is not therefore a case where there is stark evidence of exploitation and in circumstances where an individual is unable to find out what their rights are until very late in the day because of being so disadvantaged. I am not going to go into it in any further detail than that today because those are matters of course usually to be dealt with by the tribunal at the main hearing.

30. All that needs to be said is that as I have already stated, first of all the Claimant embarked via her accountant on an enquiry into what her entitlement was to statutory maternity pay; as a consequence, says the Claimant, she learned that she had been underpaid in the ways that I have now gone to and this was in the context of finding out that from the point of view of the HMRC she was not registered in terms of PAYE or national insurance, hence having no entitlement. That is why the accountant went down the route of registering the Claimant as self-employed. Again, I am not going to address it further.

31. What is self-evident is the Claimant knew that to be the case, ie the potential for claims on the wages and holiday pay front, by latest March 2021. Second of course she had been dismissed on 31 January and in the context thereof whether it be through the accountant in London or the Romanian friend Ms Dragon, into the picture to assist her came Natalie Johnson-Stanley, Ms Dragon being a mutual acquaintance. Albeit Mrs Johnson-Stanley might be based in Shropshire and the Claimant in Hinckley, Leicestershire, I am not sure where Ms Dragon lived, they were able to closely liaise. As a consequence on behalf of the Claimant Mrs Johnson-Stanley wrote to the Respondent what I would describe as a letter before action on 1 April 2021 - see BP 212-213.

32. The first paragraph started with:

> "*I am writing to you in relation to my previous employment and the concerns I have regarding the termination of my contract. I have been to seek some* ***legal advice***[2] *and a number of issues have come to light which I need to bring to your attention. I am asking for an explanation in relation to these*

[2] My emphasis.

concerning issues which will be outlined below.

…"

33. The outlined in five numbered paragraphs were:

    1. The claim relating to not receiving statutory maternity pay and the non-payment of national insurance for at least 7 years.
    2. Confusion over the employment contract, in that it described her as being a valeter/ driving staff when her role was as nanny.

34. Stopping there, her husband Illy was employed by the Respondent as a valeter/driving staff. in such a capacity.

35. Reverting to the letter, challenged was the stated contractual pay as she had never received anything like that. In the third paragraph she dealt with the underpayments on the national minimum wage going back some years. In the fourth the issue about holiday pay and then we come to paragraph 5:

    "*5. Finally, I have been advised I was unfairly dismissed due to not agreeing to return to work 2 weeks following the birth of my son due to breastfeeding, and then receiving my P45 3 weeks later*".

36. The letter ended:

    "*I would like you to reconsider your decision regarding my Maternity pay as I am legally entitled to it as I worked for you as a full time Nanny/House Keeper for 7 years. I also expect an explanation in relation to all the points outlined above.*

    If I do not receive a response from you within 14 days I will be taking the matter further and ***seeking legal advice to commence court proceedings****[3]"*.

37. On 7 April, Mr Omar Rashid of the HR Department of the Second Respondent replied on behalf of the two Respondents. Essentially, the allegations were refuted, albeit he was inviting the Claimant to meet with him to see if they could informally discuss matters. In the letter he concluded:

    "*Finally, the Company refutes that you were dismissed due to breastfeeding of your son or in any relation to your pregnancy.*"

38. So, that could not have been clearer. The Claimant resisted the overtures to informally discuss matters, wanting everything in writing; and so a second letter was sent by Mrs Johnson-Stanley on behalf of the Claimant to the Respondent dated 14 April 2021. This detailed letter[4] repeated matters, with some additional detail. It restated the claims being brought and finally and in the last paragraph

[3] Again my emphasis.

[4] Bp 216-17

stated:

> "*I have been advised that this is the final letter I will send and if I do not receive a satisfactory response in 7 days* ***I will make an application to the Court***[5] *to have the matter listed*."

39. A second letter was sent to the Respondent by Mrs Johnson-Stanley on the same day headed: "*WITHOUT PREJUDICE*", which has clearly been waived in this case as the documents are within the bundle and indeed the documents separately sent in on behalf of the Claimant. In passing made plain to me by her is that all these letters were written with the agreement of the Claimant. Again, the points were reiterated. At the fourth paragraph was a clear inference that although the Claimant may not have been aware of her rights in the past, she was now; indeed that is self-evident from again setting out references to not only breach of the "National Minimum Wage " but now factoring also "*Breach of statutory rights - I am legally entitled to it.*"

40. .Mrs Johnson-Stanley confirmed before me that that was a reference to the statutory right award entitlement if an unfair dismissal claim succeeds. In the next paragraph and referring to the non-payment of maternity pay issue:

> "*Mrs Taylor also agreed that I would be paid maternity leave, and in my contract, it states I will be paid*" was added: "*Nonpayment being a breach of contract*"

41. Now factored in at the fifth paragraph on the second page of this letter inter alia was:

> "*I felt they treated me like a slave and now will not pay what I am due*".

42. Reference was then made to what is a very significant sum being claimed on these fronts at over £117,000 and inter alia:

> "*I feel exploited and now* ***due to the advice received***[6]*, I am asking for what I am due. I see Mr. Taylor is a very popular man and well alive to the modern slavery issue as his statement shows on his website*".

43. The letter went on to say how the Claimant was: "*advised*", that she would be entitled to the interest rate of 8% per annum and a figure was given for that. She repeated the claims for unfair dismissal and discrimination and put a global figure at that stage on those two heads of claims of £25,000, totalising over £233,000, and reiterated that she was entitled to the same and asked for an answer within 14 days, which she did not get.

44. What then happened is that on 17 May 2021 a further letter/e-mail headed: "*WITHOUT PREJUDICE*" was written on behalf of the Claimant by Mrs Natalie Johnson-Stanley and sent to the Respondent it is at Bp 222-224.. Again

[5] My emphasis.
[6] My emphasis

obviously privilege has been waived. This communication is in many ways a cut and paste of the preceding letters/ e-mails to which I have referred. But now made plain was also that:

> "*I have also been advised in relation to a claim for discrimination. My sacking was as a result of me being pregnant … this is when the problems occurred.*"

45. Having therefore again restated the overall global compensation sought, reiterated was that she wished to have a reply within 7 days. This time round, the Respondent replied via its legal adviser, namely Lawdata Ltd. This was on 7 June 2021 (Bp226. Having refuted the claims, the final two paragraphs are vital for the purposes of my adjudication - they are as follows:

> "*Our client entirely rejects your claim for unfair dismissal and/or discrimination in relation to your pregnancy. We should also note that your employment ended well over three months before you raised these concerns and as such we believe that the* ***time limit for making such claims to an Employment Tribunal has long since expired***[7]*.*
>
> *We would respectfully suggest that you seek independent legal advice before considering any formal proceedings. Our client must naturally reserve the right to draw the attention of any Court of Tribunal to this correspondence on the subject of costs should the need arise*"

46. I have established with Mrs Johnson-Stanley during her evidence, and it can actually be found in the bundle, that the Claimant via Mrs Johnson-Stanley first approached ACAS via its helpline on 29 June 2021 and she was sent by ACAS details of relevant documents that might assist her in bringing claims, as to which see the Claimant's documents starting at PDF page 77. Also links through to the Government websites where further information can be found. In that respect, Mr Lewis took Mrs Johnson-Stanley to that documentation and that the reference to time limits and the need to bring claims within them is set out in bold, albeit it is said that it may be that if a claim is brought out of time that a Judge might, if he or she found exceptional circumstances, extend time.

47. Having therefore made contact with ACAS on 29 June, there was a very short period of ACAS early conciliation between 6 and 8 July 2021 but the claims were not brought immediately thereafter to tribunal; they were not presented until 9 August 2021.

48. As to the presentation of the claims, and which Mrs Natalie Johnson-Stanley did in her capacity of "McKenzie friend", the Claimant was obviously alive to that the claims were outside the time limit because when presenting each of the claims at paragraph 15 of the ET1 document, and the same is present on all three so I will use as an example that for first of the Birmingham claims at Bp14:

> "*Due to English being my second language I wasn't aware of my rights*

[7] My emphasis

> *and that I was being paid under the minimum wage. It came to light when I went to claim Maternity Pay and I was told to seek legal advice. At the time I had just had a baby and the Covid-19 restrictions I was unable to get the advice straightaway and this is why it has taken some time to get the claim in*".

49. A Response having been filed to the claims and in which the out of time point was pleaded, a further explanation was given in the letter t (Bp 228) to the tribunal , again written on behalf of the Claimant by Mrs Johnson-Stanley, on 8 October 2021. Thus, in challenging the Respondent seeking strike out of the claims as being out of time, the explanation given was:

> "1. *Issues not coming to light until I made an application for statutory maternity allowance through an accountant (who confirmed no NI or tax contributions had been paid for my employment period).*
>
> 2. *Covid restrictions, lockdown and accessing professional advice.*
>
> 3. *Language barrier as English is my second language*

and, in parenthesis, having explained how she went to the accountant and found out about the underpayment issue, and the problems with HMRC, that:

> "*I sought further advice and was told that I may have a case due to the way I had been treated and discrimination received.*
>
> *I am not financially able to employ a solicitor and I have liaised with ACAS and Mrs Johnson-Stanley who have assisted me with the Application process to the Employment Tribunal. Mrs Johnson-Stanley is not a Solicitor but assists me with the letters I receive regarding matters, with the help of a Solicitor …*"

50. But what is self-evident from the evidence that I have received today, and there are some issues of credibility which I will touch upon in terms of Mrs Johnson-Stanley and the Claimant, is the following.

51. That there is clear-cut repeated reference in the letters/e-mails to which I have now referred to having taken legal advice. Mrs Johnson-Stanley said under cross-examination that this was an error, it should have said accountant. That simply does not make sense in the context of the history of matters to which I have now referred and the distinguishing references between the accountant and the use of Mrs Johnson-Stanley. To turn it around another way, what was established before me is that Ms Dragon seems to have contacted the CAB on behalf of the Claimant and as a result of that Mrs Johnson-Stanley had then made her own researches, which does not surprise me given her academic skills and also experience in matters such as relating to discrimination of the disadvantaged. As a consequence, she had therefore early on, ie by latest end of March 2021, been researching matters and got herself access to law books and been online to the many ports of call. As a consequence of that research and the input of Ms Dragon and via her the advice from the CAB, she had

learned of course about employment rights and therefore in raising that there would be recourse to the courts if satisfaction was not received, she had in mind the tribunal. Those letters have the clearest possible construct on them in terms of sufficient knowledge to know what claims are being framed, the quantification of the same and what they are predicated upon.

52. That leaves me with whether the Claimant via Mrs Johnson-Stanley, and indeed Ms Dragon, also had knowledge of the time limits. It is obvious from what Mrs Johnson-Stanley said under cross-examination that she did know about the time limits but thought that as they were still assembling the case or hoping to get redress from the Respondent, that this would therefore be an exceptional circumstance, apropos extension of time, so as to mean that the tribunal would per se extend the time limit. She did not accept really that this was a high risk strategy when that question was fairly put to her by Mr Lewis.

53. That then brings me to even if there might have been some confusion about the time limits, although I am not convinced, and in terms of being able to rely on exceptional circumstance, how does the Claimant get round the clearest possible statement of how time was engaged and that the claims were now out of time as per the Claimant's Solicitors' letter of 7 June 2021. The answer to that one via Mrs Johnson-Stanley is that they then went to ACAS. But she did not explain why they did not do that for two weeks. Furthermore they of course waited to present these claims to tribunal from 8 July 2021, being the expiry date of the ACAS certificate, until 9 August 2021, ie just over a month. There was nothing in the statement of Mrs Gita or indeed the rebuttable documentation to which I have referred penned by Mrs Johnson-Stanley dealing with that at all.

54. Only late in the day and when making submissions, did Mrs Johnson-Stanley seek to argue that this was because she herself had personal difficulties that took a priority so to speak, hence the delay. This of course ought to have been put in a witness statement; it is fundamental, or it should have been raised in what was a full cross-examination where Mrs Johnson-Stanley had every opportunity to explain the reasons for the delay.

Conclusion

55. To turn it around another way, I am not persuaded by the Claimant and Mrs Johnson-Stanley, and it really flows from the correspondence to which I have referred and taking into account the undoubted skills of Mrs Johnson-Stanley, and that also that the Claimant had recourse to the accountant and Ms Dragon, that this claim could not have been brought within the first 3 month period anyway. What it therefore means is that I have concluded that it was reasonably practicable to bring the Employment Rights Act 1996 claims within the 3 month time limit and therefore they are all dismissed for want of jurisdiction them being out of time.

The just and equitable test and the Equality Act based claim

56. First, I repeat my findings of fact so far. They are material because it follows that I find that the Claimant could have brought the EqA claim within the 3 month

time limit and in that respect in looking at the just and equitable test, I take it short. I am guided in that respect by the accurate summarisation of the jurisprudence by Mr Lewis commencing in his skeleton submissions at paragraph 8 on page 6 thus apropos ***Adedeji v University Hospitals Birmingham [2021] EWCA Civ 23*** at 37, the tribunal should: "*assess all the factors in a particular case which it considers relevant to whether it is just and equitable to extend time.*" The burden is of course is again on the Claimant.

57. Again, there is a public interest in the enforcement of time limits and the starting point that they should be imposed strictly. And that then brings me on to paragraph 8.3 of the submissions and the reference to ***Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194 CA*** (cited in ***Adedeji*** at 38:

> *"… factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).*"

58. Moving on, is this a case where the Claimant was unaware of her rights? The answer to that question is no for the reasons I have already given and, insofar as it might relate to knowledge of the time limits, it is my conclusion that given all the research that Mrs Johnson-Stanley had done and that she was aware of the time limits but thought that might be able to get round any problem in that respect by invoking the Judge's discretion in terms of the exceptional reasons, but I repeat that this is a high risk strategy and does not escape the clear cut emphasis in bold in such as the Government information on presenting employment tribunal claims previously referred to. It follows that I am not at all persuaded by the Claimant that the claim could have been brought within time as I have already stated. I have already made plain that I do not accept the very late explanation of Mrs Johnson-**S**tanley because why could Ms Dragon not put it in if that was the case or the accountant or in any event this matter should have taken priority given strict applicability of time limits.

59. So as to the reasons for the delay bearing in mind the fact that the claim was presented some three and half months of time, this in itself would weigh against it being just and equitable to extend time.

60. So the remaining issue to weigh in the balance is prejudice. Obviously on the one hand is the prejudice to the Claimant of being stood out from the justice seat. On the other hand there is the prejudice to the Respondent in having to defend a claim which could and therefore should have been presented within time. What struck me in this particular case is first that somewhat belatedly the Claimant raised only in the statement in support of her case to the tribunal in November 2021 and at paragraph 5 as follows:

> "*I became pregnant in April 2020 and when I told Mrs Tailor, she asked me if I was going to have an abortion which I found very strange, … Mrs Tailor made it clear my child would be a problem for her family when he*

> *was born i.e., if we need to go on holiday or anywhere who would look after our children and house as I would have my own child to care for*."

61. That point was never raised, as is perhaps self-evident now, in the previous letters before action or indeed in the narrative of the claims. Thus, what was being alleged is by November 2021 some 18 months after the alleged event, why not raise such an important accusation previously, particularly having made reference to "*slavery*" in the letters before action commencing in April 2021?

62. Another credibility point in that respect relates to the notification of pregnancy and thus taking maternity leave by way of the form known as MATB1. In the first letter before action, no reference was made to it or that it having been handed into Mrs Tailor at the material time that maternity pay was thereafter wrongfully withheld when maternity leave commenced. In reply to the letter of Mr Rashid dated 7 April 2021 stating that the Claimant had not provided the MAT B1 form, the reply in letter of 14 April was:

> "*In relation to the Mat B1 form I was never asked for this and was not aware of such a form*."

63. When dealing with matters with the Inland Revenue, HMRC recorded in dealing with matters that the Claimant had not submitted her MAT B1 form to the employer (Bp221). Similarly, no mention was made of this point in the final letter in the series on 17 May 2021. It was not in the particularisation to any of the three claims on presentation, as to which see as an example Bp18-19. It was only raised at paragraph 2(b) of the" application for consideration of claims made out of time" on 13 January 2022. The allegation now was that the Claimant handed the MATB1 form to Mrs Taylor when she received it. So, again, this means that the Respondent will be facing a specific allegation bearing in mind that the Claimant was issued with the MAT B1 on 20 October 2020, only made very late some sixteen months at least after the alleged event. Mr Lewis emphasis that this creates a real risk of prejudice to the Respondent for obvious reasons in terms of faded recollection and being able to remember clearly what might have happened at the material time.

64. Furthermore, prejudice is not simply confined to forensic issues, ie where evidence might by now be lost, but also can include the loss of the shield of a limitation defence, ie the 3 month limit rule. Again, I revert to the skeleton submissions of Mr Lewis and paragraph 8.4 and his reference to ***Miller & others v The Ministry of Justice & others [UKEAT/003/15/LA] 15 March 2016*** and the reference therein to ***DCA v Jones [2017] IRLR 138 CA***:

> "***DCA and Jones*** *also makes clear (at paragraph 44) that the prejudice to a Respondent of losing a limitation defence is "customarily relevant" to the exercise of this discretion. It is obvious that if there is forensic prejudice to a Respondent, that will be "crucially relevant" in the exercise*

> *of the discretion, telling against an extension of time. It may well be decisive. But … the converse does not follow. In other words, if there is no forensic prejudice to the Respondent, that is (a) not decisive in favour of an extension, and (b) depending on the ET's assessment of the facts, may well not be relevant at all. It will very much depend on the way in which the ET sees the facts; and the facts are for the ET.*"

65. At 8.6 to similar effect in ***Adedeji*** and the court noted at (32) that:

> *"… the fact that the grant of an extension will have the effect of requiring investigation of events which took place a long time previously may be relevant to the tribunal's assessment even if there is no reason to suppose that the evidence may be less cogent than if the claim had been brought in time*."

66. I could fall back in terms of the balancing exercise as to where the prejudice lies on the merits viz ***Lupetti v Wrens Old House Ltd [1984] ICR 348*** and Mr Lewis has set out some significant forensic issues which may very well go to the credibility of the Claimant and of course I have touched upon two already.

67. However, I am not going to do that because I do not need to. If I allow this case to go ahead and where there was no good reason why this claim could not have been presented in time, the Respondent is faced with having to deal with matters going back several years. This is because the final chapter in events as pleaded cannot be seen in isolation because, as Mr Lewis points out, as the Claimant is alleging "*modern slavery*" going back in terms of pleading events for some years, this cannot be dealt with simply in terms of the latter stage of events because the inference that she seeks to draw in terms of such things as non-payment of national minimum wage, exploiting her in terms of hours does need to be addressed and the counter evidence deployed which will of course put the Respondent to considerable expense assuming that is that it can cover all the bases so to speak.

Conclusion

68. It follows that I have concluded that it is not in the circumstances just and equitable to extend time. Accordingly, I therefore dismiss the EqA based pregnancy/maternity discrimination claim as being out of time.

Outcome

69. It follows that both the ERA and the EqA claims are dismissed for want of jurisdiction them being out of time.

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Employment Judge P Britton

Date: 12 April 2022

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