Case Number: 3207370/2021

RM

EMPLOYMENT TRIBUNALS

Claimant: Mr E Obano-Airhiavbere

Respondent: Amazon UK Services Limited

Heard at: East London Hearing Centre

On: Friday 27 May 2022

Before: Employment Judge Hallen

Representation

Claimant: Mr N. Ehigie-Obano- Claimant's cousin

Respondent: Ms O. Dobbie- Counsel

RESERVED JUDGMENT

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 judgment of the Tribunal is that: -

1. **The Claimant presented his claim of unfair dismissal after the time limit imposed by Section 111 of the Employment Rights Act 1996 had expired and the Tribunal has no jurisdiction to hear that complaint.**

2. **The Claimant presented his claim for direct race discrimination pursuant to sections 13 after the time limit imposed by Section 123 of the Equality Act 2010 had expired and the Tribunal has no jurisdiction to hear this complaint.**

3. **This Claim Form is accordingly struck out.**

REASONS

Background and Issues

1. This matter came before me having been listed for a preliminary hearing on the issue of jurisdiction on 13 April 2022 by the Tribunal on written notice. This listing followed an application made by the Respondent on the same date that the Claim Form in respect of the Claimant's claims of unfair dismissal and direct race discrimination had been presented outside the primary time limits for presentation of claims. Accordingly, the Tribunal listed the claim to consider whether the claims were out of time and if so whether the Claimant can persuade the Tribunal that time should be extended under the relevant tests; and if not struck out on time points, whether the race discrimination claim should be struck out as having no reasonable prospect of success; and If not struck out, whether a deposit should be ordered on the basis that the race discrimination claim has little reasonable prospects of success.

2. The substantive hearing was listed by Regional Employment Judge Taylor at the East London Hearing Centre for 2 days on 6 and 7 October 2022 if the Tribunal had jurisdiction to hear the claims. As the Claimant's claims are hereby struck out that hearing is vacated.

3. At the hearing before me, the Claimant was represented by his cousin. The Claimant's representative confirmed that the Claimant has been in Nigeria since September and was still in that country. He had tried to connect to the remote hearing today but had been unsuccessful. He also confirmed that no prior application had been made to the Tribunal with regard to him giving evidence from abroad. I bought to his attention the Presidential Guidance on witnesses giving evidence outside the jurisdiction and in particular paragraph 13 which required the Claimant or his representative to follow certain steps of that guidance prior to today's hearing. In particular where a party wished to give oral evidence by video or telephone from abroad, that party or their representative must notify the Employment Tribunal office of the case number, confirmation that the party wished to rely on evidence from the person located abroad, the date of the hearing and state from the territory the person would be giving oral evidence.

4. The Claimant's representative confirmed that no such notification had been made prior to the hearing to the Tribunal office. The Respondent's counsel confirmed that in the absence of evidence from the Claimant, the matter could be dealt with by way of oral submissions based upon the Respondent's and Claimant's respective bundles of documents and the skeleton argument produced and provided to the Claimant in advance of the hearing. I confirmed to the Claimant's representative that he had the option of either asking for a postponement to allow the Claimant either to give evidence within the jurisdiction or seek permission to give evidence outside the jurisdiction by following the Presidential Guidance or alternatively to deal with the matter by way of oral representations today. I gave the representative 45 minutes to contact the Claimant to take his instructions as to what he wished his representative to do. After the short adjournment (which I used to read the respective bundles of documents and the Respondent's skeleton argument), the Claimant's representative confirmed that he had spoken to the Claimant who had instructed him to proceed with the hearing by way of oral submissions and he was content not to attend the hearing to give any evidence. I satisfied myself that the Claimant's representative had

all the necessary documents he needed in both bundles for him to be able to make the appropriate oral submissions. The Claimant's representative confirmed that he was also so satisfied and wished to proceed with the application without any further delay or request for postponement of the hearing.

5. Produced for me at the preliminary hearing, was the Respondent's bundle made up of 85 pages and the Claimants bundle made up of 25 pages. I also had the Respondent's skeleton argument. After the submissions, I reserved my judgement.

Facts

6. The Claimant was employed by the Respondent from 20 July 2015 until his summary dismissal on 15 July 2021 for gross misconduct.

7. Under the Respondent's disciplinary policy, gross misconduct was defined to include "wilful dishonesty or theft" and "deliberate mishandling of Amazon's products and equipment".

8. On 20 May 2021, the Claimant was suspended by DW (Loss Prevention Manager) on suspicion of attempted theft by mishandling an Amazon product (a can of Diet Coke).

9. The Claimant's race discrimination claim is predicated on the way DW did "not afford me any respect" because of the colour of his skin. Further, that DW should have given him the "benefit of the doubt" about his mishandling of the item due to the Claimant's status as a Supervisor and as agreed by the Claimant in the Agreed List of Issues. At the hearing, the Claimant's representative re-iterated that this was the Claimant's only claim for direct race discrimination.

10. DW conducted an interview with the Claimant on 26 May 2021 and had no further involvement in the process. As such, the primary time limit in respect of the race discrimination claim began to run on 26 May 2021 at the latest and expired on 25 August 2021 at the latest.

11. There was an investigatory interview on 28 June 2021 chaired by JR. The disciplinary hearing was chaired by JE on 15 July 2021. At the end of that hearing on 15 July 2021, the Claimant accepted that he was told verbally that his employment would terminate that day for gross misconduct. Time began to run that day in respect of the Claimant's claim for unfair dismissal and expired on 14 October 2021.

12. The Claimant was provided with written confirmation of the outcome of the disciplinary hearing on 19 July 2021, which re-iterated that 15 July 2021 was his last day of service.

13. The Respondent's disciplinary policy states: *' Please note that if you are appealing against your dismissal, the date on which your dismissal takes effect will not be delayed pending the outcome of an appeal. However, if your appeal is successful, you will be reinstated…'.* The Respondent's disciplinary procedures made it clear that the effective date of termination was the date of the gross misconduct dismissal. If an appeal against dismissal was successful, the dismissal would be rescinded.

14. The Claimant's appeal was chaired by BW on 13 August and 3 September 2021. On 13 August (when both claims were still in time), the Claimant queried why he had been issued with a P45 and was informed that it was standard process where employment had been terminated and that if the appeal was successful, the termination will be reversed. This was a re-iteration of the position set out in the disciplinary policy stated above. As the Claimant had been provided with the policy prior to the appeal, he was aware of this fact.

15. On 3 September 2021 (when the primary time limit for the unfair dismissal claim was still running) the Respondent informed the Claimant orally that his appeal had been unsuccessful. Written notification of that decision was sent to the Claimant on 17 September 2021. In the notes of the hearing the Claimant told the Respondent that he would see the company in the Employment Tribunal. At this time, the Claimant was aware of his rights to pursue a claim in the Tribunal as indicated by his statement to the Respondent and in time with regard to his claim for unfair dismissal.

16. The Claimant commenced ACAS Early Conciliation on 2 November 2021. By this date, the primary time limits in respect of each claim had expired. (As the ACAS EC process had not been commenced prior to the expiry of the primary time limit, this time limit was not extended by the time spent in the EC process). The time limit for unfair dismissal had expired on 14 October and the time limit for the direct race discrimination claim relating to DW conduct had expired on 25 August 2021. The Claimant's Claim Form was presented on 30 November 2021. Accordingly, the claim for race discrimination was out of time by approximately 13.5 weeks, and the unfair dismissal claim was out of time by approximately 6.5 weeks.

17. The sole reason advanced by the Claimant for not presenting the claim sooner (or commencing ACAS Early Conciliation sooner) was that the appeal process was ongoing until 17 September and that the claim process "could not start until thereafter" in the Claimant's representatives letter dated 24 April 2022 responding the Respondent's application of 13 April 2022. At the hearing, it was submitted in addition, that the Claimant had suffered from stress and panic issues and this was the reason for the late submission of the Claim Form. However, no medical evidence was produced to support this assertion. In addition, it was asserted that the Claimant never wanted to bring these claims to the Tribunal but only did so as the case could not be settled via the offices of ACAS.

The Law

The Statute

18. The material parts of the Section 111 of the Employment Rights Act 1996 are as follows: 111 Complaints to employment tribunal.

> (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
>
> (2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—
>
> (a) before the end of the period of three months beginning with the effective date of termination, or (b) 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…

A two-stage test

19. Where a claim is presented outside the period of 3 months it is necessary to ask firstly whether it was not reasonably practicable to present the claim in time and, only if it was not, go on to consider whether it was presented in a reasonable time thereafter. The two questions should not be conflated. There is no general discretion to extend time and the burden of proof rests squarely on the Claimant to establish that both limbs of the test are satisfied.

The meaning of "reasonably practicable"

20. The expression "reasonably practicable" does not mean that the employee can simply say that his/her actions were reasonable and escape the time limit. On the other hand, an employee does not have to do everything possible to bring the claim. In Palmer and Saunders v Southend-On-Sea Borough Council [1984] IRLR 119 it was said that reasonably practicable should be treated as meaning "reasonably feasible".

21. **Schultz v Esso Petroleum Ltd [1999] IRLR 488** is authority for the proposition that whenever a question arises as to whether a particular step or action was reasonably practicable or feasible, the injection of the qualification of reasonableness requires the answer to be given against the background of the surrounding circumstances and the aim to be achieved.

"Reasonable ignorance".

22. The question of whether it is open to an employee ignorant of her rights to rely upon that ignorance as a reason why it was not reasonably practicable to present a claim in time has been the subject of a number of decisions of the higher courts. **In Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379** Scarman LJ said the following: *"Does the fact that a complainant knows he has rights under the Act inevitably mean that it is practicable for him in the circumstances to present his complaint within the time limit? Clearly no: he may be prevented by illness or absence, or by some physical obstacle, or by some untoward and unexpected turn of events. Contrariwise, 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 time."*

23. In **Wall's Meat Co Ltd v Khan [1978] IRLR 499** Brandon LJ dealt with the issue of ignorance of rights as follows: *"The impediment may be physical, for instance the illness of*

the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable."

24. In those and in subsequent cases it has been held that the question of whether bringing proceedings in time was not reasonably practicable turns, not on what was known to the employee, but upon what the employee ought to have known **Porter v Bandridge Ltd [1978] ICR 943, Avon County Council v Haywood-Hicks [1978] IRLR 118**. A further proposition can also be gleaned from those authorities. Where an employee is aware that a right to bring a claim exists it will be considerably harder to show that they ought not have taken steps to ascertain the time limit within which such claims should be presented.

Causation and "reasonable practicable".

25. In **Palmer v Southend-On-Sea Borough Council [1984] IRLR 119** following a review of the earlier authorities including Dedman and Wall's Meat May LJ concluded that the question of whether a step was or was not reasonably practicable would include the advice given, or available, but that was a material consideration which would have to be taken into account along with all of the other circumstances.

26. In **Northamptonshire County Council v Entwhistle [2010] IRLR 740** after an extensive review of the authorities the then President of the EAT said that the question posed under Section 111(2) of the Employment Rights Act 1996 "is not one of causation as such". In that case an earlier error by the employer has led to a negligent assumption by the Solicitor retained by the Claimant. The EAT overturned the decision of the Employment Judge that it was not reasonably practicable to bring the claim in time.

A reasonable period thereafter

27. The question of whether an employee has presented their claim within a reasonable time of the original time limit is a question to be determined objectively by the employment tribunal taking into account all material matters see **Westward Circuits Ltd v Read [1973] ICR 301, NIRC**.

28. In **Cullinane v Balfour Beatty Engineering Services Ltd UKEAT/0537/10** the then president of the EAT said: *"Ms Hart pointed out that the question which arises under the second stage in s 139(1)(b) is couched simply in terms of what further period the tribunal would regard as "reasonable", and not, like the question under the first stage, in terms of reasonable practicability. She submitted that it followed that the "Dedman principle" – namely that for the purpose of the test of reasonable practicability an employee is affixed with the conduct of his advisers (see, for the most recent review of the case law, Entwhistle v Northamptonshire County Council (2010) UKEAT/0540/09/ZT, [2010] IRLR 740) – does not fall to be applied. She pointed out that that principle is a consequence of the ultimate test being one of practicability (not even, be it noted, when the test was first formulated, reasonable practicability), and that the consideration of what further period was "reasonable" did not require so strict an approach. She made it clear that she was not saying that the fact that a Claimant had been let down by his advisers was decisive of the question of reasonableness at the second stage, but she submitted that it must be a relevant*

consideration. [16] I accept the validity of the formal distinction advanced by Ms Hart, but I do not believe that it makes any real difference in practice as regards the question of the relevance of the culpability of the Claimant's legal advisers. 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. If a period is, on that basis, objectively unreasonable, I do not see how the fact that the delay was caused by the Claimant's advisers rather than by himself can make any difference to that conclusion."

29. What I take from these authorities is that, in assessing whether proceedings have been brought within a reasonable period after the expiry of the original time limit, it is necessary to have regard to all relevant matters including, where appropriate, the factors that made it not reasonably practicable to present the claim in time. Whether they remained operative may be an important matter.

30. The pausing of time for ACAS EC under s.207B(3) ERA will apply in all cases where the primary time limit has not already expired. However, if the time limit has expired by Day A (the date they commence ACAS EC) section 207B(3) ERA cannot logically apply because it specifically states: 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.

31. Further and in any event, if a claim is already out of time by Day A, there is no one-month extension of time under s.207B(4) ERA. Following Pearce v Bank of America Merrill Lynch and ors EAT 0067/19: "Although time may be extended to allow for ACAS EC (see Section 48(4A)(a) and Section 207B of the ERA), as the ET observes, this would only be possible where the reference to ACAS takes place during the primary limitation period."

32. The existence of a contractual appeal procedure does not alter the Effective Date of Termination. If an employee is summarily dismissed and his or her appeal succeeds, he or she will be reinstated with retrospective effect. If, however, the appeal fails, the dismissal takes effect from the original date of dismissal: **West Midlands Co-operative Society Ltd v Tipton 1986 ICR 192, HL**. The only exception to this will be where there is an express or implied contractual provision to the contrary.

33. At paragraphs 36-37 in **Pearce v Bank of America Merrill Lynch and ors EAT 0067/19**, HHJ Eady noted that the reason why the ET had found that the claimant had failed to present his claim in time was due to a mistaken belief that the one-month extension of time under s.207B ERA applied (when in fact the primary time limit had expired before ACAS EC had commenced). She dismissed the claimant's appeal, thereby endorsing the ET's finding that in such circumstances (even though the ET had found the claimant unable to present his claim within the primary time limit) he had not presented it within a reasonable period thereafter. In short, the erroneous belief that the claimant had the one-month extension from Day B did not merit an extension of time.

Discrimination.

34. s.123 EqA 2010 sets out the following: 123 Time limits (1) Subject to section proceedings on a complaint within section 120 may not be brought after the end of— (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable.

35. Section 33(3) of the Limitation Act 1980 (power to extend time in personal injury actions) specified a number of factors that a court is required to consider when balancing the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay;(c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

36. In **British Coal Corporation v Keeble [1997] IRLR 336**, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion'(**Southwark London Borough v Afolabi [2003] IRLR 220).**

37. The Court of Appeal in **Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA** made it clear that there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.

38. In **Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640** the Court of Appeal however stated that the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b)whether the delay has prejudiced the respondent". There is no requirement that the tribunal had to be satisfied that there was a good reason for the delay before it could conclude that it was just and equitable to extend time in the claimant's favour.

39. The Claimant did not argue that the discrimination he was subjected to took place over a period. His complaint was specifically limited to the actions of DW (Loss Prevention Manager) who had no involvement in the process past 26 May 2021. Accordingly, s.123(3) EqA did not apply.

Conclusion and Findings

Unfair Dismissal

40. In relation to the test in section 111 ERA as cited above, the question for me to determine at stage one was where a claim was presented outside the period of 3 months, I

had to ask whether it was not reasonably practicable to present the claim in time and, only if it was not, go on to consider whether it was presented in a reasonable time thereafter. The two questions should not be conflated. Although I have every sympathy for the Claimant and his stress and panic attacks that were raised by his representative in his submissions, it is my view that it was reasonably practicable for the Claimant to have lodged his Claim Form with the Tribunal within the primary three month time limit that is no later than 14 October 2021.

41. In the Claimant's representative's response to the Respondent's application, the sole reason cited for the late submission of the Claim Form was the fact that the Claimant's appeal against dismissal was ongoing until 17 September 2021 and that was the reason why the Employment Tribunal process could not start until thereafter. However, I am satisfied that the Claimant was aware that the effective date of dismissal was 15 July 2021 which was the date of his summary dismissal without notice. He was told of this at the disciplinary hearing on that date, and this was reiterated in the dismissal outcome letter which was sent to him on 19 July 2021 which again specified that his last day of service was 15 July 2021. Therefore, there was no question that he had been dismissed on this date and he could not plausibly believe that his employment was continuing until the appeal had been determined. Furthermore, at his appeal hearing on 13 August 2021, it was made clear to him when he asked why he had been sent his P45 form as the appeal process was still continuing, the Respondent confirmed that it was standard practice to send out the form when there was a termination of employment and if the appeal was successful the decision to dismiss would be reversed. At this date, the Claimant was clearly aware that he had been dismissed on 15 July 2021 and that the appeal process did not delay his dismissal. In addition, he had already been provided with the Respondent's disciplinary procedure which reiterated the following: *"Please note that if you are appealing against your dismissal, the date on which your dismissal takes effect will not be delayed pending the outcome of an appeal. However, if your appeal is successful, you will be reinstated…'.*

42. I find that the Claimant was aware that his date of dismissal was 15 July 2021 and it could not reasonably be argued that because the appeal process was ongoing that the termination of his employment had been delayed pending the outcome of the appeal. It seemed to me that the Claimant as a supervisor in the Respondent's organisation not holding a junior position was aware at the date of his appeal on 13 August 2021 that the time limit for Tribunal complaints was running at that time. Had he acted swiftly following the appeal on 13 August (which was later reconvened on 3 September 2021), he would still have been within time for both his unfair dismissal claim and his race discrimination claims. It was not argued before me that the Claimant was not aware of his rights to pursue a claim in the Tribunal. Indeed, at the reconvened hearing on 3 September, he clearly knew about the right to make a claim to an employment tribunal which was exhibited by his statement to the Respondent at the end of the appeal meeting where he said, '*I will meet you at the tribunal*'.

43. I find that the Claimant was clearly proficient with computers as he accessed the reconvened appeal hearing on 3 September 2021 online and although acting in person, was aware of his rights to make a claim in the Employment Tribunal for unfair dismissal and discrimination. He was aware off these rights and his obligation to contact ACAS and given the amount of information that is and was available online with regard to Tribunal claims, he ought reasonably to have been aware of the time limits to make such claim. I find that this Claimant because of the awareness that he exhibited at the time of his appeals against

dismissal could reasonably practicably have been in a position to have issued his claim for unfair dismissal in time.

44. In relation to the additional points raised by his representative at the hearing, that due to his stress and panic attacks, he could not issue his claim any earlier, the Claimant did not present any independent medical evidence to the Tribunal to verify such a submission. Furthermore, such a submission that he was debilitated by his stress and panic attacks ran contrary to his actual involvement at the two appeal hearings on 13 August and 3 September both of which he attended himself and at both of which he presented his grounds in a lucid and coherent manner. At the second reconvened appeal hearing on 3 September, he confirmed that he would take the matter to an Employment Tribunal. It should be noted that as of 3 September when the Respondent notified him orally that his appeal had been dismissed, he was still in time at least with regard to his claim for unfair dismissal.

45. Given my above findings, I conclude that it was reasonably practicable for the Claimant to have filed his Claim Form within the primary time limit by no later than 14 October 2021. As stated above the fact that the Claimant obtained the Early Conciliation Certificate from ACAS after the expiry of the primary time limit, this time limit was not extended at all pursuant to section 207B(4) ERA.

46. Although strictly speaking I do not need to deal with Step 2 of the process as set out above in the Law section of this judgment, I will briefly do so. There was a delay between the date of the ACAS pre claim conciliation certificate on 3 November 2021 and the issuing of the Claim Form at the Tribunal on 30 November 2021, a delay of 27 days. No satisfactory response was given to me at the hearing for this delay. It was stated that the Claimant wished to resolve his claim via ACAS settlement, but this did not explain the delay as the ACAS pre claims process had started on 2 November and ended on 3 November 2021. As a consequence, I could not see that the desire to have the case settled by ACAS was any good reason for the delay in making the claim after the certificate was obtained. This delay was a further 27 days. As I say above, there was no satisfactory explanation for this delay. Therefore, I am also not satisfied that the Claim Form was presented within a reasonable time of the original time limit expiring.

Direct Race Discrimination claim

47. With regard to the Claimant's direct discrimination claim, I find that it was presented 13.5 weeks out of time. The Claimant's race discrimination claim was predicated on the way DW did "not afford me any respect" because of the colour of his skin. Further, it was argued that DW should have given him the "benefit of the doubt" about his mishandling of the item due to the Claimant's status as a Supervisor. At the hearing, the Claimant's representative re-iterated that this was the Claimant's only claim for direct race discrimination. DW conducted an interview with the Claimant on 26 May 2021 and had no further involvement in the process thereafter. As such, the primary time limit in respect of the race discrimination claim began to run on 26 May 2021 at the latest and expired on 25 August 2021 at the latest.

48. The Claimant's claim for direct race discrimination was presented over three months from DW's last involvement in the process. Therefore it was considerably out of time. The arguments used by the Claimant's representative for the late submission of the discrimination claim mirror the arguments raised by him in respect of the claim for unfair dismissal. As I have made findings already with regard to the Claimant's awareness of the effective date of dismissal being 15 July 2021, and the fact that the appeal process did not

extend the effective date of termination, I do not need to repeat my findings above. It was stated that I should exercise my discretion to extend time with regard to the Claimant's stress and panic attacks. However, as I have said above, the Claimant presented no independent medical evidence to confirm that his conditions impacted upon how and why he delayed making the claim. However, looking at the evidence of the Claimant's involvement in the appeal process I have reviewed the notes of the meetings produced by the Claimant in his bundle. In respect of the appeal hearing which took place on 13 August and which was reconvened on 3 September, I find that the Claimant's conditions did not impact upon him in any noticeable manner in respect of the way he presented his own appeal against dismissal. He attended the appeals by himself and attended the reconvened hearing remotely because he was in Nigeria at the time. Therefore, he was able to participate with lucidity and clarity at both appeal hearings and his medical condition did not appear to impact upon him in any way that I could see from my review of the notes. Furthermore, at the appeal hearing on 3 September, he was aware of his rights to pursue a Tribunal claim. Therefore, although I sympathise with the Claimant's medical condition, I could not see how that could delay his claim in respect of race discrimination. Indeed, I noted that at the time of his first appeal on 13 August against dismissal, he was within time for both the unfair dismissal and race discrimination claim.

49. I find that it would not be just and equitable to extend time to consider the Claimant's Equality Act complaint for the following reasons: (a) For the reasons set out at length above, there was no physical or mental impediment preventing the Claimant from bringing a timeous discrimination claim concerning his alleged treatment by DW. He was at all material times aware, or ought reasonably to have been aware, of the relevant facts giving rise to his putative claim of race discrimination but he failed to act on them. He was aware at the date of the reconvened appeal hearing on 3 September when he said '*I will meet you at the tribunal'* that he had claims that he could pursue in the Tribunal. At this time, his claim for unfair dismissal was still in time and his claim for race discrimination was only 10 days out of time. I did not hear anything in the Claimant's representative's submissions that explained the Claimant's delay in lodging the Claim From until 30 November 2021 over and above the Claimant's desire to settle the case and not to institute these proceedings. Whilst this was a worthy objective, it was not a reasonable explanation for the delay. Furthermore, the fact that the ACAS pre claims conciliation process was commenced after the primary time limit had expired, the Claimant's involvement in that process did not extend the time limit at all (as specified in the Law section of this judgment). (b) The length of the delay (13.5 weeks) and the reasons the Claimant stated in aid for that delay were, in the circumstances, entirely unsatisfactory and not at all compelling. The Claimant was aware, or reasonably ought to have been aware, of the facts giving rise to the causes of action he relied upon by 14 August or by the latest 3 September 2021 if not earlier and yet took no action whatsoever to enforce the rights he believed he had until 30 November which was itself nearly 4 weeks after he obtained the ACAS certificate. He demonstrated by his attendance remotely at the reconvened appeal hearing on 3 September that he had computer proficiency and was aware of his right to make a Tribunal complaint by this date at the latest. It was not beyond his competency to have issued his Claim Form at least by this date.

50. In conclusion, the Claimant's claims for unfair dismissal and direct race discrimination were presented out of time and the Tribunal has no jurisdiction to hear them. Accordingly, the claims must be struck out.

Employment Judge Hallen

30 May 2022