



EMPLOYMENT TRIBUNALS

Claimant: Mr A Mehmood

Respondent: Secretary of State for Justice

Heard at: Liverpool (in private; by telephone)

On: 14 June 2022

Before: Employment Judge Buzzard (sitting alone)

REPRESENTATION:

Claimant: In Person

Respondent: Mr A Williams (Counsel)

STRIKE OUT JUDGMENT having been sent to the parties on 6 July 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues

1. The claimant has made a substantial number of allegations against a significant number of managers and colleagues. All his claims are of discrimination or victimisation.
2. Over three days of case management the allegations the claimant makes have been the subject of comprehensive discussion. Arising from this discussion a final list of the allegations he has made was compiled.
3. The three days of case management were split over several months. The claimant was notified in advance of the final day that the respondent intended to make a number

of applications to have some of the allegations made by the claimant either struck out or made subject to a deposit order. This judgment arises from those applications.

4. The respondent's applications were based on the following issues:
 - 4.1. Where the allegation in question was not raised within the normal time limit for the allegation, is there any reasonable prospect of showing that it was part of a continuing act such that it was raised in time?
 - 4.2. Regardless of time limit issues, does the individual allegation have any reasonable prospect of success?

Relevant Law

5. The Relevant Law relating to Strike Out

- 5.1. The power to strike out all or part of a claim is contained in Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

37 Striking out

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds

(a) that it is scandalous or vexatious or has no reasonable prospect of success...

- 5.2. In this case the respondent either argued that the allegation had no reasonable prospect of success or that the claimant had no reasonable prospect of establishing it was part of a continuing act and thus presented in time.
- 5.3. The power to strike out is discretionary and is to be applied in a two-stage test. **HM Prison Service v Dolby [2003] IRLR 694, EAT**. At the first stage the tribunal must find that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim or response.
- 5.4. In the Court of Appeal, Underhill LJ in **Ahir v British Airways plc [2017] EWCA Civ 1392**, said

" where there is on the face of it a straightforward and well documented explanation for what occurred, a case cannot be allowed to proceed on

the basis of a mere assertion that that explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so. The employment judge cannot be criticised for deciding the application to strike out on the basis of the actual case being advanced."

- 5.5. *E v X, L and Z* UKEAT/0079/20 (10 December 2020, unreported) the EAT considered the striking out of a claim in the context of an argument that the conduct complained of constituted '*conduct extending over a period*'. The judgment of Ellenbogen J gave detailed guidance on considering a strike out application where some of the matters complained of may be out of time. If a tribunal considers (properly) at a preliminary hearing that there is no reasonable prospect of establishing at trial that a particular incident, a complaint about which would, by itself, be out of time, formed part of such conduct together with other incidents, such as to make it in time, that complaint may be struck out.
- 5.6. In **Hawkins v Atex Group Ltd [2012] IRLR 807** the EAT upheld the decision of an employment judge to strike out a discrimination complaint. The then President of the EAT Underhill J, said:

'Judges should not be shy of making robust decisions in a case where there is realistically only one possible outcome even if the issue is formally one of fact'.

6. The Relevant Law relating to time limits

- 6.1. Under the Equality Act 2010 the time limits are established by s123 which states:
- (1) *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.*
-
- (2) *For the purposes of this section—*
- (a) *conduct extending over a period is to be treated as done at the end of the period;*

- (b) *failure to do something is to be treated as occurring when the person in question decided on it.*
- (3) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something —*
 - (a) *when P does an act inconsistent with doing it, or*
 - (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

7. *What is a continuing act or omission?*

7.1. It is clear from the legislation that a continuing act under the Equality Act 2010 exists where there is conduct, or an act, *'extending over a period'*. How then is it determined if a series of events amount to conduct, or an act, *'extending over a period'*?

7.2. In the case of **Aziz v FDA** [2010] EWCA Civ 304 Lord Justice Jackson summarised and approved the approach of Hooper LJ in **Lyfar v Brighton and Sussex University Hospitals Trust** [2006] EWCA Civ 1548. Following this authority, the test to apply at a preliminary hearing stage is to consider whether the claimant has established a prima facie case. Were the complaints capable of being part of an act extending over a period? In the words of Lord Justice Jackson:

'Another way of formulating the test to be applied at the Pre-Hearing Review is this: the claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs.'

7.3. Further, in **Hendricks v Commissioner of Police for the Metropolis** [2003] IRLR 96 CA Lord Justice Mummery when considering if acts are continuing stated:

"The burden is on [the claimant] to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of 'an act extending over a period'."

and

“the question is whether that is ‘an act extending over a period’, as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed”

- 7.4. Accordingly, the burden falls to the claimant to establish a prima facie case that any acts are linked to one another and form a continuing state of affairs.
- 7.5. In **Aziz v FDA** Lord Justice Mummery gives guidance on whether a change of persons involved in the alleged acts prevents them being connected. It is clear from this guidance that the fact that different persons are accused of the individual acts is not conclusive evidence that they are not connected, but it is a relevant factor to consider. Accordingly, different persons applying the same policy are likely to be participating in a continuing act whereas different persons acting on their own initiative, albeit in similar ways, may not be.

8. *When is it Just and Equitable to Extend Time?*

- 8.1. When, as here, a claim is presented outside the normal time limit for presenting a claim, the Tribunal has the power and discretion to extend time if it is found to be ‘*just and equitable*’ to do so.
- 8.2. There is guidance on the exercise of this discretion. In **Roberston v Bexley Community Centre (trading as Leisure Link)** CA 11 March 2003 the Court of Appeal stated:

‘It is of also importance to note that time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of discretion is the exception rather than the rule.’

- 8.3. The guidance of the EAT in **British Coal v Keeble** [1997] IRLR 336 is also of relevance to the exercise of this discretion. This guidance suggests that factors to be considered when considering extending time should include (but are not limited to):
- 8.3.1. The length of, and the reasons for, the claimant’s delay.
- 8.3.2. The extent to which the cogency of the evidence is likely to be affected by the delay.

- 8.3.3. The extent to which the respondent had co-operated with any requests for information.
- 8.3.4. The promptness with which the Claimant acted once she knew of the facts giving rise to the cause of action.
- 8.3.5. The steps taken by the Claimant to obtain appropriate professional advice once she knew of the possibility of taking legal action.

Claims History

4. The Claimant's Three Tribunal claims

- 4.1. The claimant in this case has made three distinct claims to the Tribunal against his employer. For ease, the relevant dates of these claims are as follows:

- 4.1.1. *Claim 1: (2413460/2020)*

This claim was presented on 25 August 2020, following ACAS conciliation from 9 July 2020 to 24 July 2020. Based on these dates, the claim was presented more than one month after the end of ACAS early conciliation, meaning that any allegation of discrimination that occurred prior to 10 May 2020 would have been presented out of time.

- 4.1.2. *Claim 2: (2402756/21)*

This claim was presented on 5 April 2020, following ACAS conciliation from 28 March 2021 to 30 March 2021 (there may be some minor error in these dates because the claimant commenced more than one overlapping ACAS conciliation around this time). Based on these dates, any allegation of discrimination that occurred prior to 28 December 2020 would have been presented out of time.

- 4.1.3. *Claim 3: (2415177/2021)*

This claim was presented on 31 December 2021, following ACAS conciliation from 23 November 2021 to 16 December 2021. Based on these dates, any allegation of discrimination that occurred prior to 23 August 2020 would have been presented out of time.

Discussion of The Individual Allegations Struck Out

[The numbering of the Allegations referred to below reflect the numbering in the Annex that was discussed at this hearing. The Annex attached to the note produced after this hearing has fresh numbering, the allegations having been sorted into chronological order for use at the final hearing of this matter, and any allegations struck out at this hearing having been removed.]

5. Allegations 1.1 – 1.3

5.1. These allegations are summarised as:

May 19 The Claimant's line manager, Mr R Favie, told the claimant that his DIRF complaint had to be pursued as a grievance

From 28 May 19 The Respondent failed to respond to the claimant's grievance raised on 28 May 2019, which was sent to Mr R Favie by email. (grievance 1)

From 29 June 19 The Respondent failed to respond to the claimant's grievance of 29 June 2019 until March 2020. This was sent by email to Mr R Favie. (grievance 2)

5.2. These are the only allegations against Mr R Favie. They were raised as part of claim 1. They are all allegations of direct race and direct religious discrimination.

5.3. *Were the claims about these allegations presented within the normal 3-month time limit?*

5.3.1. The first allegation was a positive act that occurred in May 2019.

5.3.2. The second two allegations are failures to act, specifically a failure to respond to grievances. Under the Equality Act 2010 a failure to act is deemed to have occurred on "*on the expiry of the period in which P might reasonably have been expected to*" respond to the claimant's grievances. There is no suggestion from any party that this would have been more than a matter of a few weeks. Any allegation prior to April 2020 would be out of time for claim 1. This means that the claims arising from these allegations were presented well over 6 months out of time, even allowing a generous time for when the respondent should have been expected to respond to the grievances.

- 5.3.3. The claimant argued that these claims were in time, on the basis that another member of staff was alleged to have been treated differently on 6 May 2020. This different treatment did not involve Mr Favie. The claimant was unable to provide any sensible suggestion of how the treatment of another member of staff could change whether the actions (or inaction) of Mr Favie months earlier was ‘*because of*’ the claimant’s race and /or his religion.
- 5.3.4. Accordingly, the claimant has no reasonable prospect of establishing that the claims arising from these allegations were presented within the normal 3-month time limit.
- 5.4. *Is there a reasonable prospect of showing these allegations were part of a continuing act?*
- 5.4.1. The respondent submitted that the alleged acts of Mr Favie could not in any logical or sensible way be argued to have been continued by other persons such that there was a continuing act. This was on the basis that the acts were particular to Mr Favie and that he is not alleged to have been involved with any alleged discrimination after these allegations.
- 5.4.2. The claimant was invited to explain the basis upon which he would argue that the actions of Mr Favie were part of a continuing act that continued to a later date.
- 5.4.3. The claimant identified a single argument for this point. In summary the claimant stated that all the allegations occurred in the workplace, and that of itself meant that they must be a continuing state of affairs or an ongoing act. The claimant provided no credible comment in response to the submission of the respondent.
- 5.4.4. The fact that all the acts occurred in the course of the claimant’s employment is not a helpful guide to determine whether they were part of a continuing act. That they were all in the workplace is nearly always the case in claims of this nature, regardless of whether there is a continuing act.
- 5.4.5. The claimant relied on this argument at numerous points in the hearing, and for ease it is referred to elsewhere in these reasons as the “*Single Employer*” argument. For the avoidance of any doubt, this argument was found to have no merit in relation to any of the allegations discussed at this hearing.

5.4.6. Nothing referred to by the claimant suggested that he had any reasonable prospect of discharging the burden of showing that these allegations and later allegations were part of an *'an act extending over a period'*, as distinct from *'a succession of unconnected or isolated specific acts'*, even if some of those acts were not dissimilar in nature.

5.4.7. Accordingly, the claimant has no reasonable prospect of arguing that these allegations formed part of a continuing act beyond Mr Favie's involvement to around July 2019.

5.5. *Would it be just and equitable to extend time for these allegations?*

5.5.1. The respondent submitted that these are the only allegations that involved or related to Mr Favie, and they were presented many months out of time. The respondent argued that extending time would mean that the respondent had to deal with allegations against Mr Favie and inevitably calling him as a witness.

5.5.2. The respondent noted that the claimant continues to have multiple and extensive claims of discrimination which are proceeding to hearing, having been presented in time. On this basis it was argued that the prejudice to the claimant of not extending time for this claim would be limited. The respondent further submitted that this allegation appears to have limited prospects of success on its merits. The claimant has not been able to provide a logical basis upon which he will argue the acts and omissions of Mr Favie were *'because of'* his race or religion.

5.5.3. In the circumstances, requiring the respondent to defend these out of time allegations creates a greater prejudice to the respondent than not allowing the claimant to add them to his already numerous discrimination claims would cause to the claimant. The apparent lack of merit in the claimant's assertion that these allegations were acts of discrimination even if they occurred as alleged is a relevant, but not decisive, factor in this decision.

5.5.4. For these reasons, it would not be just and equitable to extend time to allow these allegations to proceed.

5.6. *Conclusion:*

The claimant's allegations of discrimination relating to the acts and omissions of Mr Favie are all struck out on the basis that they are out of time and the claimant has no reasonable prospect of establishing they formed part of a continuing act of discrimination; and balancing the prejudice to both parties, strike out of these allegations is the just and equitable outcome.

6. Allegation 1.4A

6.1. This allegation is summarised as

10 March 20 The Claimant claims that the respondent said a second grievance meeting would be needed after a first meeting of 10 March 2020 (*grievances 1,2 & 4*). *This was Governor Robinson.*

6.2. This is the only allegation against Governor Robinson. It was raised as part of claim 1. It is an allegation of direct race and direct religious discrimination.

6.3. *Was the claim about this allegation presented within the normal 3-month time limit?*

6.3.1. The allegation was a positive act that occurred on or around 10 March 2020. These dates are not in dispute.

6.3.2. Accordingly, the claim arising from this allegation was not presented within the normal 3-month time limit.

6.4. *Is there a reasonable prospect of showing this allegation was part of a continuing act?*

6.4.1. The respondent submitted that the alleged acts of Governor Robinson could not in any logical or sensible way be argued to have been continued by other persons such that there was a continuing act. This was on the basis that the act was a one-off act particular to Governor Robinson who is not alleged to have been involved with any alleged discrimination after this point.

6.4.2. The claimant was invited to explain the basis upon which he would argue that this act by Governor Robinson was part of a continuing act that continued to a later date. The claimant was only able to refer to the *Single Employer* argument discussed in relation to allegations 1.1-1.3 above.

6.4.3. Nothing referred to by the claimant suggested that he had any reasonable prospect of discharging the burden of showing that this allegation and later

allegations were part of an *'an act extending over a period'*, as distinct from it being an *'isolated specific act'*.

6.4.4. Accordingly, the claimant has no reasonable prospect of arguing that this allegation formed part of a continuing act beyond Governor Robinson's involvement in the action around 10 March 2020.

6.5. *Would it be just and equitable to extend time for this allegation?*

6.5.1. The respondent submitted that this allegation, even if allowed to proceed out of time would have little, if any, prospect of success. The act complained of was seeking to have a second grievance meeting in relation to three ongoing grievances, rather than a single meeting. The claimant was unable to provide any credible explanation of how he will argue that this was *'because of'* his race or his religion.

6.5.2. The respondent submitted that this is the only allegation that involves or relates to Governor Robinson, and that it was presented around 2 months out of time. The respondent argued that extending time would mean that the respondent had to deal with this sole allegation against Governor Robinson, inevitably requiring them to call him as a witness.

6.5.3. The respondent noted that the claimant continues to have multiple and extensive claims of discrimination which are proceeding to hearing, having been presented in time. On this basis it was argued that the prejudice to the claimant of not extending time for this claim would be limited.

6.5.4. The claimant explained that the reason that he did not put his claim about this allegation in earlier was that matters had been *'dragging on'* for some time around this point. This allegation, however, is of a specific act one off act, namely asserting that a further meeting would be needed.

6.5.5. In the circumstances, requiring the respondent to defend this out of time allegation creates a greater prejudice to the respondent than not allowing the claimant to add it to his already numerous discrimination claims would cause to the claimant. The apparent lack of merit in the claimant's assertion that this allegation was an act of discrimination even if it occurred as alleged is a relevant, but not decisive, factor in this decision.

6.5.6. For these reasons, it would not be just and equitable to extend time to allow this allegation to proceed.

6.6. *Conclusion:*

The claimant's allegation of discrimination relating to this sole act of Governor Robinson is struck out on the basis that it is out of time and the claimant has no reasonable prospect of establishing it formed part of a continuing act of discrimination; and balancing the prejudice to both parties strike out of this allegation is the just and equitable outcome.

7. Allegations 1.12A and 1.13

7.1. These allegations are summarised as:

18 August 2020 The Claimant will say it took more than 10 days (23/7-18/8) to send him the outcome of his grievances of 8/6 and 10/6 (grievances 8 & 9) – This was Governor Fisher.

After July 2020 The Claimant alleges that an inaccurate note was made in a grievance meeting (grievances 8 & 9) and that Governor Fisher who conducted the meeting refused to amend the outcome of the grievance to reflect what the claimant asserts was said in the meeting. In the past the Respondent has agreed to change such notes. [Only the refusal to correct the notes is alleged to be discrimination]

7.2. These are the only allegations against Governor Fisher. They were raised as part of claim 1. They are all allegations of direct race and direct religious discrimination.

7.3. The respondent does not dispute that the claim arising from these allegations was presented in time.

7.4. *Is there a factual basis asserted upon which the claimant could show (or ask the Tribunal to infer) this was less favourable treatment because of the claimant's race or religion?*

7.4.1. The respondent submits that the claimant has not suggested any connection between the events and his race and/or religion in his pleadings. The respondent further submits that there is no logical connection that could be inferred.

- 7.4.2. The claimant was given every opportunity to respond to this submission. The claimant was unable to provide any credible explanation of the basis upon which he will argue these events were *'because of'* his race and/or his religion. The claimant sought to suggest that the reason for the delay may be an attempt to frustrate his ability to make an Employment Tribunal claim regarding the grievances in question. If that were the case (which the respondent would deny) that is not *because of* the claimant's race and/or religion.
- 7.4.3. The claimant himself, in relation to second of these allegations states that he has been treated more favourably on this very issue in the past. This, of itself, suggests that the reason that changes were not agreed on this occasion was not in fact *because of* the claimant's race or religion.
- 7.4.4. Taking into account the pleadings and the submissions at this hearing, the claimant is found to have no reasonable prospect of succeeding in a claim of direct discrimination arising from these allegations. This is on the basis that there is no reasonable prospect that the claimant will establish that this treatment (even if found to have occurred as alleged) was done to him *because of* his race or religion.
- 7.5. *Conclusion*

The claimant's allegations of discrimination relating to the acts and omissions of Governor Fisher are struck out on the basis that there is no reasonable prospect of the claims succeeding; and balancing the prejudice to both parties strike out of these allegations is the just and equitable outcome.

8. Allegation 1.19

- 8.1. This allegation is summarised as

19 December 19 The Claimant alleges he was not relieved from duty on this date until 45 minutes after an attack during which urine was thrown on him – the Claimant says that Debbie Oliver should have arranged the relief more quickly.

- 8.2. This is the only allegation against Debbie Oliver. It was raised as part of claim 2. It is an allegation of direct race and direct religious discrimination.
- 8.3. *Was the claim about this allegation presented within the normal 3-month time limit?*

- 8.3.1. The allegation relates to events before 28 December 2020, so were not raised within the normal time limit. There is no dispute about the date that the act about which this allegation is based occurred, namely 19 December 2019.
- 8.3.2. Based on this undisputed date the claim arising from this allegation was presented more than a year late.
- 8.4. *Is there a reasonable prospect of showing the allegation was part of a continuing act?*
- 8.4.1. The respondent submitted that the alleged act of Debbie Oliver could not in any logical or sensible way be argued to have been continued by other persons such that there was a continuing act. This was on the basis that the act was a one-off act particular to Debbie Oliver who is not alleged to have been involved with any alleged discrimination after this point.
- 8.4.2. The claimant was invited to explain the basis upon which he would argue that this act by Debbie Oliver was part of a continuing act that continued to a later date. The claimant was only able to refer to the *Single Employer* argument discussed in relation to allegations 1.1-1.3 above.
- 8.4.3. Nothing referred to by the claimant suggested that he had any reasonable prospect of discharging the burden of showing that this allegation and later allegations were part of an *'an act extending over a period'*, as distinct from it being an *'isolated specific act'*.
- 8.4.4. Accordingly, the claimant has no reasonable prospect of arguing that this allegation formed part of a continuing act beyond Debbie Oliver's involvement in the actions on 19 December 2019.
- 8.5. *Would it be just and equitable to extend time for this allegation?*
- 8.5.1. The claimant was not able to provide any reason why this had not been included in his first claim. The date of the allegation is some months before the claimant's first claim. It is noted that even if included in the claimant's first claim, the allegation would have been out of time by several months.
- 8.5.2. The respondent submitted that this is the only allegation that involves or relates to Debbie Oliver, and that it was presented over a year out of time. The respondent argued that extending time would mean that the respondent

had to deal with this sole allegation against Debbie Oliver, inevitably requiring them to call her as a witness. It relates to an event that does not appear to be likely to be memorable to anyone other than the claimant, especially given it was not presented as a claim until over a year after the events.

- 8.5.3. In the circumstances, requiring the respondent to defend this out of time allegation creates a greater prejudice to the respondent than not allowing the claimant to add it to his already numerous discrimination claims would cause to the claimant. For this reason, it would not be just and equitable to extend time to allow the claim arising from this allegation to proceed.

8.6. Conclusion:

The claimant's allegation of discrimination relating to this sole act of Debbie Oliver is struck out on the basis that it is out of time and the claimant has no reasonable prospect of establishing it formed part of a continuing act of discrimination; and balancing the prejudice to both parties strike out of this allegation is the just and equitable outcome.

9. Allegation 1.20

- 9.1. This allegation is summarised as

10 November 20 The Claimant alleges he was not provided with the correct level of support after an assault – The Claimant will say that he got no support at all. The claimant says this was whomever was “Oscar 1”, which could be CM Barryman.

- 9.2. The claimant at this hearing confirmed that the allegation was in fact about CM Barryman. This is the first time this had been confirmed, rather being identified as a possibility.

- 9.3. This is the only allegation against CM Barryman. It was raised as part of claim 2. It is an allegation of direct race and direct religious discrimination.

- 9.4. *Was the claim about this allegation presented within the normal 3-month time limit?*

- 9.4.1. This is an allegation of a failure to provide support. Under the Equality Act 2010 a failure to act is deemed to have occurred on “*on the expiry of the period in which P might reasonably have been expected to*” have provided

support. There is no suggestion from any party that the failure to provide support was in the days following the incident on 10 November 2020. Any allegation prior to 28 December 2020 would be out of time for claim 2.

- 9.4.2. There does not appear to be any reasonable prospect of the claimant showing that the claim arising from this allegation was presented within the normal time limit for presenting claims.
- 9.5. *Is there a reasonable prospect of showing the allegation was part of a continuing act?*
- 9.5.1. The respondent submitted that the alleged failure of CM Barryman to provide proper support could not in any logical or sensible way be argued to have been continued by other persons such that there was a continuing act. This was on the basis that the failure was particular to CM Barryman, who is not alleged to have been involved with any alleged discrimination after this point.
 - 9.5.2. The claimant was invited to explain the basis upon which he would argue that this failure by CM Barryman was part of a continuing act that continued to a later date. The claimant was only able to refer to the *Single Employer* argument discussed in relation to allegations 1.1-1.3 above.
 - 9.5.3. Nothing referred to by the claimant suggested that he had any reasonable prospect of discharging the burden of showing that this allegation and later allegations were part of an *'an act extending over a period'*, as distinct from it being an *'isolated specific'* failure.
 - 9.5.4. Accordingly, the claimant has no reasonable prospect of arguing that this allegation formed part of a continuing act beyond CM Barryman's alleged failure to provide support after an incident on 10 November 2020.
- 9.6. *Would it be just and equitable to extend time for this allegation?*
- 9.6.1. The claimant explained that following the assault (the assault that he complains he was given insufficient support after) he had broken ribs and was struggling with his recovery from that injury. In addition, he stated that he was dealing with a lot of issues. For these reasons the claimant argued it would be just and equitable to extend time for this allegation to be allowed to proceed.

- 9.6.2. It is noted that the claimant was submitting grievances about matters during February 2021, the time he now says he was recovering from broken ribs and dealing with a lot of issues. This is over a month prior to contacting ACAS regarding this allegation. None of these facts is in dispute.
- 9.6.3. It is further noted that the claimant by this point had already commenced one ET claim against the respondent. As a result of this he must have been aware of the process for commencing a claim, or at least commencing ACAS conciliation.
- 9.6.4. The respondent submitted that this is the only allegation that involves or relates to CM Barryman, and that it was presented over a month out of time. The respondent argued that extending time would mean that the respondent had to deal with this sole allegation against CM Barryman, inevitably requiring them to call him as a witness.
- 9.6.5. The respondent noted that the claimant continues to have multiple and extensive claims of discrimination which are proceeding to hearing, having been presented in time. On this basis it was argued that the prejudice to the claimant of not extending time for this claim would be limited.
- 9.6.6. In the circumstances, requiring the respondent to defend this out of time allegation creates a greater prejudice to the respondent than not allowing the claimant to add it to his already numerous discrimination claims would cause to the claimant. For this reason, it would not be just and equitable to extend time to allow the claim arising from this allegation to proceed.

9.7. *Conclusion:*

The claimant's claim arising from an allegation of discrimination relating to this alleged omission by CM Barryman is struck out on the basis that it is out of time and the claimant has no reasonable prospect of establishing it formed part of a continuing act of discrimination; and balancing the prejudice to both parties strike out this allegation is the just and equitable outcome.

10. Allegation 1.27

10.1. This allegation is summarised as

8 October 20 CM Brown did not allow the Claimant to leave work early. The issue appears to be about whether the Claimant was "*roll dependent*", and

whether this should have determined whether he could leave work early.

10.2. This is the only allegation against CM Brown. It was raised as part of claim 2. It is an allegation of direct race and direct religious discrimination.

10.3. *Was the claim about this allegation presented within the normal 3-month time limit?*

10.3.1. The allegation was a positive act that occurred on or around 8 October 2020. This date is not in dispute.

10.3.2. Accordingly, the claim arising from this allegation was not presented within the normal 3-month time limit. It was presented around 2.5 months out of time.

10.4. *Is there a reasonable prospect of showing this allegation was part of a continuing act?*

10.4.1. The respondent submitted that the alleged act of CM Brown could not in any logical or sensible way be argued to have been continued by other persons such that there was a continuing act. This was on the basis that the act was a one-off act particular to CM Brown who is not alleged to have been involved with any alleged discrimination after this point.

10.4.2. The claimant was invited to explain the basis upon which he would argue that this act by CM Brown was part of a continuing act that continued to a later date. The claimant was only able to refer to the *Single Employer* argument discussed in relation to allegations 1.1-1.3 above.

10.4.3. Nothing referred to by the claimant suggested that he had any reasonable prospect of discharging the burden of showing that this allegation and later allegations were part of an '*an act extending over a period*', as distinct from it being an '*isolated specific act*'.

10.4.4. Accordingly, the claimant has no reasonable prospect of arguing that this allegation formed part of a continuing act beyond CM Brown's involvement in the action around 8 October 2020.

10.5. *Would it be just and equitable to extend time for this allegation?*

10.5.1. The claimant stated that he had not submitted his claim in time because of general delays in dealing with his multiple complaints and grievances lodged with the respondent. The claimant had by this point already submitted other complaints to the Tribunal, so was aware of the process. The claimant further explained that the reason that he did not put his claim about this allegation in earlier was that matters had been '*dragging on*' for some time around this point. This allegation, however, is of a specific act one off act, namely not letting the claimant leave work early.

10.5.2. The respondent submitted that this is the only allegation that involves or relates to CM Brown, and that it was presented over 2 months out of time. The respondent argued that extending time would mean that the respondent had to deal with this sole allegation against CM Brown, inevitably requiring them to call him as a witness. The allegation arises from events that are not, as described by the claimant, likely to be memorable to anyone other than the claimant.

10.5.3. The respondent noted that the claimant continues to have multiple and extensive claims of discrimination which are proceeding to hearing, having been presented in time. On this basis it was argued that the prejudice to the claimant of not extending time for this claim would be limited.

10.5.4. In the circumstances, requiring the respondent to defend this out of time allegation creates a greater prejudice to the respondent than not allowing the claimant to add it to his already numerous discrimination claims would cause to the claimant. For this reason, it would not be just and equitable to extend time to allow the claim arising from this allegation to proceed.

10.6. *Conclusion:*

The claimant's allegation of discrimination relating to this sole act of CM Brown is struck out on the basis that it is out of time and the claimant has no reasonable prospect of establishing it formed part of a continuing act of discrimination; and balancing the prejudice to both parties strike out of the claim arising from this allegation is the just and equitable outcome.

11. Allegation 1.28

11.1. This allegation is summarised as

12 October 20 The Claimant was not allowed by SO Derbyshire to leave work early having started his shift early. This claimant will assert this is the

normal approach. [This does not appear to relate to whether the claimant was “*roll dependent*”]

11.2. This is the only allegation against SO Derbyshire. It was raised as part of claim 2. It is an allegation of direct race and direct religious discrimination.

11.3. *Was the claim about this allegation presented within the normal 3-month time limit?*

11.3.1. The allegation was a positive act that occurred on or around 12 October 2020. This date is not in dispute.

11.3.2. Accordingly, the claim arising from this allegation was not presented within the normal 3-month time limit. It was presented around 2.5 months out of time.

11.4. *Is there a reasonable prospect of showing this allegation was part of a continuing act?*

11.4.1. The respondent submitted that the alleged acts of SO Derbyshire could not in any logical or sensible way be argued to have been continued by other persons such that there was a continuing act. This was on the basis that the act was a one-off act particular to SO Derbyshire who is not alleged to have been involved with any alleged discrimination after this point.

11.4.2. The claimant was invited to explain the basis upon which he would argue that this act by SO Derbyshire was part of a continuing act that continued to a later date. The claimant was only able to refer to the *Single Employer* argument discussed in relation to allegations 1.1-1.3 above.

11.4.3. Nothing referred to by the claimant suggested that he had any reasonable prospect of discharging the burden of showing that this allegation and later allegations were part of an ‘*an act extending over a period*’, as distinct from it being an ‘*isolated specific act*’.

11.4.4. Accordingly, the claimant has no reasonable prospect of arguing that this allegation formed part of a continuing act beyond SO Derbyshire’s involvement in the action around 8 October 2020.

11.5. *Would it be just and equitable to extend time for this allegation?*

11.5.1. The claimant stated that he had not submitted his claim in time because of general delays in dealing with his multiple complaints and grievances lodged with the respondent. The claimant had, by this point, already submitted other complaints to the Tribunal, so was aware of the process. The claimant further explained that the reason that he did not put his claim about this allegation in earlier was that matters had been '*dragging on*' for some time around this point. This allegation, however, is of a specific act one off act, namely not letting the claimant leave work early.

11.5.2. The respondent submitted that this is the only allegation that involves or relates to SO Derbyshire, and that it was presented over 2 months out of time. The respondent argued that extending time would mean that the respondent had to deal with this sole allegation against SO Derbyshire, inevitably requiring them to call them as a witness. The allegation arises from events that are not, as described by the claimant, likely to be memorable to anyone other than the claimant.

11.5.3. The respondent noted that the claimant continues to have multiple and extensive claims of discrimination which are proceeding to hearing, having been presented in time. On this basis it was argued that the prejudice to the claimant of not extending time for this claim would be limited.

11.5.4. In the circumstances, requiring the respondent to defend this out of time allegation creates a greater prejudice to the respondent than not allowing the claimant to add it to his already numerous discrimination claims would cause to the claimant. For this reason, it would not be just and equitable to extend time to allow the claim arising from this allegation to proceed.

11.6. *Conclusion:*

The claimant's allegation of discrimination relating to this sole act of SO Derbyshire is struck out on the basis that it is out of time and the claimant has no reasonable prospect of establishing it formed part of a continuing act of discrimination; and balancing the prejudice to both parties strike out of the claim arising from this allegation is the just and equitable outcome.

12. Allegations 1.38, 1.39 and 1.41

12.1. These allegations are summarised as:

17 May 21 The Claimant was abused and challenged inappropriately by gate staff. OSG Saunders said the claimant was being a "*dick head*"

again” – it might be because he had made complaints against gate staff (different OSG) [this was not a grievance]

17 May 21 SO Jones put his hand on the claimant’s shoulder and said they wanted him to leave the premises.

17 May 21 OSG England challenged the claimant saying that if he is told to stop before entering the gate house he should stop before entering the gate house. This was at the start of the claimant’s shift as he was collecting his keys as were around 30 other staff.

12.2. These are the only allegations raised regarding these three officers respectively. They were raised as part of claim 3. They are allegations of direct race and direct religious discrimination.

12.3. *Were the claims about these allegations presented within the normal 3-month time limit?*

12.3.1. The allegations all relate to events that occurred on 17 May 2021. There is no dispute about this date. Accordingly, the claims relating to these allegations were presented over three months outside the normal 3-month time limit.

12.4. *Is there a reasonable prospect of showing these allegations were part of a continuing act?*

12.4.1. The claimant accepted that these allegations did not form part of an act that continued after 17 May 2021, save that he referred the *Single Employer* argument discussed in relation to allegations 1.1-1.3 above.

12.4.2. Nothing referred to by the claimant suggested that he had any reasonable prospect of discharging the burden of showing that these allegations and later allegations were part of an ‘*an act extending over a period*’, as distinct from it being an ‘*isolated specific acts*’.

12.4.3. Accordingly, the claimant has no reasonable prospect of arguing that these allegations formed part of a continuing act beyond 17 May 2021.

12.5. *Would it be just and equitable to extend time for this allegation?*

12.5.1. The claimant stated that he had not submitted his claim arising from these allegations in time because of general delays in dealing with his multiple complaints and grievances lodged with the respondent. The claimant had by

this point already submitted other complaints to the Tribunal, so was aware of the process. The claimant further explained that the reason that he did submit his claim about this allegation earlier was that matters had been '*dragging on*' for some time by this point. These allegations, however, relate to specific events all on the same date.

12.5.2. The respondent submitted that these are the only allegations that involve or relate to the named individuals, and that the claims arising from them were presented over 3 months out of time. The respondent argued that extending time would mean that the respondent inevitably had to call all three named individuals as witnesses.

12.5.3. The respondent noted that the claimant continues to have multiple and extensive claims of discrimination which are proceeding to hearing, having been presented in time. On this basis it was argued that the prejudice to the claimant of not extending time for this claim would be limited.

12.5.4. In the circumstances, requiring the respondent to defend the claims arising from these out of time allegations creates a greater prejudice to the respondent than not allowing the claimant to add them to his already numerous discrimination claims would cause to the claimant. For this reason, it would not be just and equitable to extend time to allow these allegations to proceed.

12.6. *Conclusion:*

The claimant's claims arising from allegations of discrimination relating to the events of 17 May 2021 involving OSG Saunders, SO Jones and OSG England are struck out on the basis that they are out of time and the claimant has no reasonable prospect of establishing they formed part of a continuing act of discrimination; and balancing the prejudice to both parties strike out of these claims is the just and equitable outcome.

Case Numbers:
2402756/2021
2415177/2021
2413460/2020

REASONS SENT TO THE PARTIES ON
21 September 2022

FOR THE TRIBUNAL OFFICE