Case Number: 3306506/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Venkanah	v	Ballymore Development Management Limited

Heard at: Watford, in person **On**: 15 August 2022

Before: Employment Judge Hyams, sitting alone

Representation:

For the claimant: In person
For the respondent: Mr G Lomas, representative

JUDGMENT

1. The claimant's claims for unpaid wages and of unfair dismissal within the meaning of section 103A of the Employment Rights Act 1996 are outside the jurisdiction of the employment tribunal. That is because those claims were made outside the primary time limit period of three months (which was not in the circumstances extended as applicable by any period of early conciliation) and it was reasonably practicable to make them within that period.

2. The claimant's claims of discrimination because of age and disability are also outside the tribunal's jurisdiction. That is because (1) they too were made outside that primary time limit period and (2) it is not just and equitable to extend time under section 123(1)(b) of the Equality Act 2010.

REASONS

The claims made in these proceedings and the purpose of the hearing of 15 August 2022

1 In these proceedings, the claimant claimed that he was dismissed unfairly and that he was discriminated against because of his age and disability. He also claimed unpaid holiday pay, arrears of pay, and "other payments". The claim of

unfair dismissal was made under section 103A of the Employment Rights Act 1996 ("ERA 1996") and not section 98 of that Act.

2 The claim form was presented (online) on 30 April 2021. The parties agreed that the claimant's employment with the respondent ended on 22 June 2020 when he was dismissed with immediate effect. The respondent's reason for dismissing the claimant was stated to be gross misconduct. The claimant was employed by the respondent until 1 May 2020, when his employment was transferred to another company in the group of which the respondent formed a part. That other company was West Hampstead Square LLP. Nothing turned on the identity of the claimant's employer and whether the respondent was the proper respondent, because Mr Lomas appeared on behalf of both the respondent and West Hampstead Square LLP and resisted the claim on behalf of both of them. Only if the claim were able to proceed was it going to be necessary to decide whether to substitute as the respondent West Hampstead Square LLP. For the sake of simplicity, I refer below to the claimant's employer at the time of his dismissal simply as "the respondent".

3 As can be seen from what I say in the preceding paragraph above, the claim was made considerably out of time. The claimant had obtained an early conciliation certificate on 31 March 2021, having notified ACAS for early conciliation purposes on 17 February 2021. Accordingly the early conciliation period did not stop time running and the claim was made 10 months and 8 days after the claimant was dismissed: 7 months and 8 days out of time.

4 There was a preliminary hearing on 8 March 2022. It was conducted by Employment Judge ("EJ") Reindorf. The claimant appeared at that hearing in person. EJ Reindorf's record of the hearing was dated 11 March 2022 and was sent to the parties on 23 March 2022. EJ Reindorf's record of the hearing stated that the hearing was listed to determine:

> "a. whether the Claimant's claims were presented within the relevant statutory time limits and if not whether time should be extended for presentation of the claims; and
>
> b. whether West Hampstead Square LLP should be joined as a Respondent to the claim and / or Ballymore Asset Management Ltd removed."

5 For the reasons given in the record of that hearing, EJ Reindorf was unable to determine those issues and she relisted the hearing to take place on 15 August 2022 in person at Watford, for a day. I conducted that hearing.

6 I heard oral evidence from the claimant about the reasons why he did not make his claim in time. I also heard from the claimant's mother, Mrs Luxmi Ali, about how he was (i.e. his mental state) in the period after he was dismissed.

The law relating to the time limits

The relevant statutory provisions

7 The claims of unfair dismissal and for unpaid wages were subject to the requirement that they be brought within the period of three months from the ending of the claimant's dismissal as extended by any period of early conciliation which satisfied the requirements of section 207B of the ERA 1996, unless it was not reasonably practicable to make the claim within that period of three months (if applicable, extended under section 207B) and it was made within a reasonable period of time after the ending of that period. That was the result of (respectively) sections 111(2) and 23(4) of the ERA 1996.

8 The claim of discrimination against the claimant because of disability and/or age needed to be made within the period of three months from the claimed discriminatory act, extended as applicable by any period of early conciliation satisfying the requirements of section 140B of the Equality Act 2010 ("EqA 2010"), unless it was just and equitable to extend time for the making of the claim. That was the result of section 123(1) of that Act.

The case law concerning those provisions

9 There is now much case law concerning the application of those two tests.

The case law concerning the reasonable practicability test

10 I referred myself to the case law referred to in paragraphs PI[190-]-[275] of *Harvey on Industrial Relations and Employment Law* ("*Harvey*") concerning the first of those two tests. That passage starts in this way:

> "[190] The starting point is that Parliament has set down a primary time limit which, in the ordinary course of events, it is reasonably practicable for would-be litigants to meet. Thus, to state the obvious, in any assessment of whether it was not reasonably practicable to meet the primary time limit the first question is why that time limit was missed. The burden of proof is on the employee to show a reason or reasons which rendered it not reasonably practicable to meet the limitation period (see for example *Consignia plc v Sealy* [2002] EWCA Civ 878, [2002] IRLR 624 at [23]). In many cases the claimant will advance a number of overlapping reasons for the delay and a tribunal will need to assess these and make a factual determination as to which matter or matters advanced were an operative reason for the lateness.
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> [190.01] In *London International College v Sen* the EAT [i.e. the Employment Appeal Tribunal] ([1992] IRLR 292, Knox J) and the Court of Appeal ([1993] IRLR 333) agreed that the determination of the effective cause of a claimant's failure to present a claim in time is a classic

> question of fact for the first instance tribunal, and Sir Thomas Bingham MR endorsed the approach of the Court of Appeal in *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119, [1984] ICR 372, CA (at [35]) that the correct enquiry is into 'what was the substantial cause of the employee's failure to comply'. The focus will then be on whether, in light of the substantial cause, it was not reasonably practicable to meet the time limit.
>
> [190.02] In *Northamptonshire County Council v Entwhistle* [2010] IRLR 741 the EAT stated that the test is 'not one of causation as such, but of whether it was reasonably practicable for the claimant, at the material time, to present his claim within the time limit'. Thus although a misleading letter from the employer was a 'but for' cause of the failure to meet the limitation deadline, the relevant cause was the claimant's solicitor's negligent failure to spot the error in the employer's letter. The chronology leading to a missed deadline must be analysed carefully, including to consider whether any factor that might have made it not reasonably practicable to lodge the claim in time has been superseded by a reason that does not qualify, or vice versa. For example, a litigant whose ignorance of a time limit was not reasonable may still qualify for an extension of time if that reason for missing the deadline was in fact secondary to a serious illness which would have made it not reasonably practicable, even had they known of the deadline, to lodge the claim in time. Facts like these led the EAT in *Ebay (UK) Ltd v Buzzeo* UKEAT/0159/13 (5 September 2013, unreported) to overturn the lower decision in part because the tribunal had failed to consider with sufficient care a possible supervening cause of the missed deadline, namely illness on the part of the claimant, and whether it was this rather than faulty advice that had led to the primary time limit being missed.
>
> [190.03] Having determined as a matter of fact the substantial cause of the claimant's failure to comply with the primary time limit, the question is whether notwithstanding that reason or reasons, a timeous presentation of the claim was reasonably practicable. The word 'reasonably' was added by the EPA 1975, although by that time the courts had already applied to the word 'practicable' an interpretation which was more favourable for the employee than the strict literal sense of practicability (see *Dedman v British Building and Engineering Appliances Ltd* [1974] 1 All ER 520, [1974] ICR 53, CA). As a result, the legislative amendment to add the word 'reasonably' did not result in any fundamental shift in the way the test was interpreted (see *Wall's Meat Co Ltd v Khan* [1978] IRLR 499, [1979] ICR 52, CA; and *Marks & Spencer plc v Williams-Ryan* [2005] EWCA Civ 470, [2005] IRLR 562, at [20])."

11 I specifically referred the parties during the hearing to the next paragraph in *Harvey*, which was this:

"'The Court of Appeal in *Schultz v Esso Petroleum Ltd* [1999] IRLR 488 identified that when asking whether it is reasonably practicable to lodge a claim within three months the overall limitation period is to be considered but 'attention will in the ordinary way focus upon the closing rather than the early stages'. Thus the fact that there is no impediment to lodging a claim within the first part of the limitation period may not lead to a finding that it was reasonably practicable to lodge the claim in time, if it became not reasonably practicable to lodge it in the later stages of the three months. As such, tribunals should consider carefully any change in the claimant's circumstances throughout that primary limitation period, and at which point of the limitation period those changes occurred. In *Schultz* the claimant had been dismissed for long-term absence due to depression. It was held that the claimant had been physically capable of giving instructions to his solicitor for the first seven weeks of the three-month period but was too ill to do so for the last six weeks. The Court of Appeal, overturning the decisions of the tribunal and the EAT that it had been reasonably practicable to present his claim in time, noted that by relying on what was physically possible during the first seven weeks, the lower courts had failed to have regard to the comments of May LJ about reasonable feasibility in *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119, [1984] ICR 372, CA. Moreover, the tribunal failed to consider the surrounding circumstances and the end to be achieved in the particular context of the case. Potter LJ stated:

> ''In a case of this kind, the surrounding circumstances will always include whether or not, as here, the claimant was hoping to avoid litigation by pursuing alternative remedies. In that context, the end to be achieved is not so much the immediate issue of proceedings as issue of proceedings with some time to spare before the end of the limitation period.''

It was therefore not correct to give a period of disabling illness similar weight irrespective of the part of the limitation period in which it fell."

The justice and equity test

12 In relation to the question whether it is just and equitable to extend time, *Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327 contains, in the headnote, a helpful comment of Sedley LJ:

> "There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. That has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing employment tribunal proceedings, and Auld LJ is not to be read as having said in *Robertson* [i.e. *Robertson v Bexley Community Centre*

> [2003] IRLR 434] that it either had or should. He was drawing attention to the fact that limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. Whether a claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact and judgment, to be answered case by case by the tribunal of first instance which is empowered to answer it."

13 *British Coal Corporation v Keeble* [1997] IRLR 336 has in the past been understood as being to the effect that the factors relevant when applying section 33 of the Limitation Act 1980 are to be applied in determining whether it is just and equitable to permit a claim to be made outside the primary time limit of three months (extended, if it is commenced before that period of three months ends, by any period of what is now called "early conciliation", i.e. by reason of section 140B of the EqA 2010).

14 However, in paragraph 37 of his judgment in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 27, [2021] ICR D5, with which Moylan and Newey LJJ agreed, Underhill LJ said this:

> 'The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes [in ([1995] UKEAT 413/94]) "the length of, and the reasons for, the delay". If it checks those factors against the list in [*British Coal Corporation v Keeble* [1997] UKEAT 496/98, [1997] IRLR 336], well and good; but I would not recommend taking it as the framework for its thinking.'

15 It is clear that there has to be an evidential foundation for a decision that it is just and equitable to extend time.

16 In paragraph G[279.03] of *Harvey*, this is said:

> "When considering whether to grant an extension of time under the 'just and equitable' principles, the fault of the claimant is a relevant factor to be taken into account, as it is under s 33 of the Limitation Act 1980 *(Virdi v Comr of Police of the Metropolis* [2007] IRLR 24, EAT)."

17 In paragraph 40 of his judgment in *Wells Cathedral School Ltd v Souter* (20 July 2021, unreported; EA- 2020-000801-JOJ), His Honour Judge ("HHJ") Auerbach referred to the "public policy in those who may be on the receiving end of litigation benefitting, so far as possible, from the certainty and finality which the enforcement of time limits potentially gives them."

18 In *Kumari v Greater Manchester Mental Health NHS Foundation Trust* [2022] EAT 132, the EAT (presided over by HHJ Auerbach) said this (as recorded in the summary provided at the start of the case's official transcript):

> "The potential merits of a proposed complaint, which is not plainly so weak that it would fall to be struck out, are not necessarily an irrelevant consideration when deciding whether it is just and equitable to extend time, or whether to grant an application to amend. However, if the tribunal weighs in the balance against the claimant its assessment of the merits formed at a preliminary hearing, that assessment must have been properly reached by reference to identifiable factors that are apparent at the preliminary hearing, and taking proper account, particularly where the claim is one of discrimination, of the fact that the tribunal does not have all the evidence before it, and is not conducting the trial."

The documentary and oral evidence before me

The claimant's knowledge of the right to make a claim to this tribunal and the situation between his dismissal and 30 April 2021 when he presented his claim

19 On 28 July 2020, the claimant sent an email to Mr Aki Spyrou of the respondent. The email was at pages 88-91 of the hearing bundle. (Any reference below to a page is to a page of that bundle.) The email started with these two paragraphs.

> "With regard to your previous email, I would like to submit my appeal in writing. As mentioned before I am suffering from severe anxiety and depression, due to the pressure I encountered during my time at Ballymore.
>
> My doctor has strongly advised me to avoid any type of additional stress for the sake of my well-being. I have had an in-depth conversation with an ACAS representative regarding the circumstances and Ballymore's decision to dismiss me. It has been brought to my attention that Ballymore has failed me as an employee on several accounts. I will now list below the reasons as to why I am appealing against Ballymore's decision."

20 The claimant was asked in cross-examination whether he had been told about time limits by the ACAS representative to whom he had by 28 July 2020 spoken in depth. My notes of the cross-examination (tidied up for present purposes) included this passage.

> "Q: Did they inform you about time limits that were in place to pursue a complaint?
> A: No; not at that first call. I contacted them again. It was in another phone call.

Q: Shortly afterwards?
A: No; probably a few weeks after.

Q: And in this second call a few weeks later did they tell you about time limits?
A: I think they did yes and about early conciliation and the method I need to go down."

21 However, after the cross-examination had ended, when I asked the claimant about the conversations which he had with any member of the staff of ACAS before 28 July 2020, he said that he could not remember whether ACAS had told him that there was a time limit for making a claim to an employment tribunal. He did say, however, that he had an in-depth conversation with the ACAS representative and that he had seen what were the functions of ACAS when he had looked at their website in order to obtain their contact details.

22 The claimant was assisted by his sister to write the email to Mr Spyrou of 28 July 2020 at pages 88-91. She was at the time employed by Rolls Royce in its Human Resources ("HR") department. She is a graduate, but, Mrs Ali told me, she (the claimant's sister) has (or at least at the time had) no formal HR qualifications. It was the claimant's evidence that she did not tell him about the existence of time limits for making a claim to an employment tribunal in respect of a dismissal from one's employment.

23 The claimant acknowledged, however, that on 28 July 2020 when he sent the email at pages 88-91, he was aware of the right to make a claim of unfair dismissal.

24 Mrs Ali's evidence was that the claimant's mental health did not fluctuate, and was consistently bad throughout the period from his dismissal until April 2021 when he made his claim.

The circumstances in which the claimant was dismissed

25 The claimant's contract of employment was at pages 69-74. His job title was "Night Concierge". In paragraph 11 of the grounds of resistance, this was said:

> "By letter, the Claimant was invited to a disciplinary hearing that took place on 11th June 2020. The purpose of the disciplinary hearing was to consider the four allegations referred to above and should the allegations be proven it would be considered gross misconduct and his position may be terminated. During the course of the disciplinary hearing the Claimant admitted to the following:
>
> 11.1 He entered the staff room at 22:42pm on 29th April until 05:17am on 30th April and had not carried out any safety building inspections.

11.2 During the period referred to above he did not monitor CCTV footage during which time an intruder/burglar broke in.

11.3 He could not remember if he did any building rounds on 21st, 22nd and 23rd April but accepted that he had falsified the handover document.

11.4 When asked what he was doing in the staff room for 4.5 hours on 15th April 2020 he replied that must have been asleep and could not remember doing any building checks but accepted he had put the wrong information on handover sheet.

11.5 He accepted the allegation that on 21st, 22nd, 23rd and 30th April 2020 he falsified company documents and records by completing control sheet and handover documents to state he had carried out fire and health and safety check patrols."

26 I asked the claimant when he was giving evidence whether he accepted the accuracy of that paragraph. He said that he did.

27 The claim of age and disability discrimination and the claim of unfair dismissal was based on the following passage in box 8.2 (which was most of the content of that box; I set out the passage verbatim):

> "Whistleblowing- due to disclosing information regarding the maladministration of the site I worked at in a disciplinary meeting that I enclosed evidence that wasn't recorded on minutes or evidenced effectively
>
> Discrimination of my age and whistleblowing - Training not adequate Training that was spoke to Jiwan and Peter and Aki about the health and safety of other people. They failed to act upon anything I would say as I am a youngest individual in my team and didn't want to acknowledge my safety. No SIA Training either even though was consulted with criminals face to face and no one to help. Life was at risk.
>
> Discrimation on ADHD and dyxpraxia on how they conducted me leaving promises after interrigation also on outcome the have denied having any knowledge of me having emittigating circumstances even though they were aware of my grandma having cancer aki was informed.
>
> They already knew I had stomach issues for lateness and illness but during a stress traumatic situation no compassion was given or support.
>
> Whistleblowing after an incident on the failure to follow risk after several claims towards the mangers of the building being risky with one person working after the police couldn't control and our staff and residence safety

is at risk. I conducted a meeting after Directors meeting happened over being TUPE.

Whistleblowing after acas initial appointment told me that I should of never been working.medical assessments should of been done around 4 in 2years I haven't received one.

Whistle blowing all staff sleep whilst on duty however it is not a normal occurance for myself being overworked mental state effected by many personal circumstances. This was clearly a detriment of whistle blowing."

28 When I asked the claimant about those things, he said (as recorded by me in my notes and tidied up for present purposes) these things.

28.1 The claim of discrimination is mainly to do with age; I was the youngest there. I used to get laughed at; it was never discussed how important the issue was when it was quite severe. That issue was of health and safety; I said that we cannot run the place on one man; when the place has emergencies and the place is unmanned. Plus with walkie talkies, there is no point having one if no one is on the receiving end.

28.2 In the daytime Ballymore relied on security staff, but if there was a fire or a flood they used agency staff and that did sometimes help but they were not main members of the staff.

28.3 I had a member of the security staff let an intruder into my place. The intruder had a chain saw and he was threatening me with it. There were many incidents where I have not felt safe.

The claimant's mental health conditions

29 The claimant said in box 8.2 of the claim form that he was "Diagnosed with PTSD in late December down to the way my company has treated me effecting my life." When I asked him how that diagnosis was made, and by whom, he said that it was diagnosed by Ms Tola Fashina, a CBT (i.e. cognitive behavioural therapy) specialist at "Talk together Bromley", which was part of Bromley Healthcare, which was a National Health Service body. That diagnosis was recorded in a letter dated 3 May 2022 of which there was a copy at pages 56-57. The diagnosis was made by Ms Fashina as described by her in this way (on page 56):

"I had an appointment with Mr Venkanah for their first CBT appointment and I am writing to you with a summary of the outcome of this appointment.

<u>Presenting Problem</u>

> At first treatment session, Mr Venkanah's stated their main problem is symptoms of stress and Post Traumatic Stress Disorder (PTSD). Their PHQ9 score was 19, indicating moderately severe symptoms of low mood and their GAD7 score was 17, indicating severe symptoms of anxiety. Mr Venkanah also scored 64 on the PTSD checklist indicating symptoms of PTSD."

30 The date of the claimant's "first CBT appointment" was not stated in that letter. As indicated above, I heard no oral evidence from Ms Fashina. I also had before me no evidence about the ability of a CBT therapist reliably to diagnose PTSD.

31 At pages 58-61 there was a letter from the claimant's general medical practitioner dated 7 June 2021, in which there was this line at the bottom of page 59:

> "***Significant Past***
>
Date	**Problem**	**Associated Text**	**Date Ended**
29-Dec-2020	Post-traumatic stress disorder		05-May-2021"

32 I concluded from those things that the claimant was diagnosed with PTSD by Ms Fashina on 29 December 2020.

The circumstances of the respondent

33 Mr Lomas told me that neither the person who made the decision that the claimant's dismissal should be proposed nor the person who heard and determined the claimant's appeal against his dismissal were now employed by the respondent. The person who made the decision that the claimant was to be dismissed was, however, still in the respondent's employment.

34 However, the person who had rejected the claimant's appeal against his dismissal, Mr Spyrou, had responded to the claimant's reasons for appealing in considerable detail in the email dated 21 August 2020 at pages 79-82.

My conclusion on the question of whether the claim was in time

My factual conclusions on material matters

35 The evidence of the claimant's mother that the claimant's mental health was uniformly bad throughout the period from his dismissal until 30 April 2021, when he presented the claim form, showed that despite the state of his mental health, he was able in practice to (a) contact and discuss with ACAS the details of his claim and (b) with the assistance of his sister write the detailed letter of appeal at pages 88-91.

36 I concluded that the claimant knew by the time of writing that letter of time limits for making claims to an employment tribunal. That was because of the

claimant's initial evidence on that, given in cross-examination, as recorded by me in paragraph 20 above.

The claims of unpaid wages and unfair dismissal

37 I concluded that in the above circumstances, it was reasonably practicable for the claimant to present his claims of unpaid wages and unfair dismissal within the primary time limit of (in this case) three months.

38 The claimant was able to contact ACAS again on 17 February 2021, to start the period of early conciliation for the purpose of obtaining the necessary early conciliation certificate. Given that the time limit for making a claim had by then long since expired, it was necessary for him to act with alacrity. He could then have obtained an early conciliation certificate and issued a claim online that day. The fact that he waited a further ten weeks before doing so meant that in my judgment he did not act within a reasonable period of time even from 17 February 2021. Even if I had been able to take into account the fact that the ACAS certificate was issued on 31 March 2021, I would have said that it was not reasonable to wait a further four weeks before presenting the claim, even in the circumstance that the claimant was suffering from the mental health difficulties described in paragraph 29 above. That was in part because of the evidence of the claimant's mother to which I refer in paragraph 24 above that the claimant's mental state was the same throughout the period from 22 June 2020 to 30 April 2021. It was also because the claimant could (whether on his own or with assistance, for example from his sister) have simply made a claim in brief terms online and fleshed it out subsequently.

39 The claims of unpaid wages and unfair dismissal were therefore made out of time and were accordingly outside the tribunal's jurisdiction.

The claims of discrimination contrary to the Equality Act 2010

40 Here, I doubted that the delay in making the claim would result in any real prejudice to the respondent, given the detail in the email from Mr Spyrou of 21 August 2020 to which I refer in paragraph 34 above.

41 Having asked myself what was the real reason for the claimant's delay in making his claim to the employment tribunal, I concluded that the claim was weak and that the claimant delayed in making it solely because he knew that it was weak.

42 I say that the claim was weak principally because it was a core requirement of the claimant's job that he was awake and alert at night, and he failed to meet that requirement on at least several occasions. That was because he was (see paragraph 25 above) employed as a "Night Concierge", and he was on several occasions asleep on the job. In addition, he had, as he accepted, made untrue statements about what he had done when at work. It was in those circumstances singularly unlikely that he was treated less favourably than a

person of a different age would have been treated. It was also similarly unlikely that he would have been treated any differently if he had not had a mental health condition.

43 In addition, I rather doubted that it would be regarded as a disproportionate means of achieving the legitimate aim of having an awake employee present at premises to dismiss that employee if the employee could not remain awake because of a mental health condition. In addition, no mental health condition could justify the kind of dishonesty that was inherent in the falsification of records. The claim for reasonable adjustments was in substance subject to the same weaknesses.

44 Another factor was that the claim of age discrimination as described in the claim from and explained to me as described in paragraph 28.1 above was on the surface weak. The claims of unfair dismissal for "whistleblowing" and discrimination because of age overlapped as the claim of age discrimination as explained to me was about the allegations which were said to be protected disclosures; the allegation was that the disclosures were not taken seriously because of the claimant's age. That was to my mind unlikely.

45 While I accepted that the email from Mr Spyrou to which I refer in paragraph 34 above was not proved by oral evidence, the claimant did accept that he had received it, and its content was not at all supportive of the proposition that the claimant had been discriminated against because of his age in any way. In addition, the claim of age discrimination was even more out of time than the claim in relation to the claimant's dismissal.

46 In those circumstances, I concluded that the claim of age discrimination was at least on the surface a weak claim.

47 I regarded the weaknesses of the claims as being of peripheral relevance in themselves, but of considerable importance in deciding what was the real reason for the claimant's delay in presenting his claim to the tribunal.

48 In all of the above circumstances, I concluded that it was not just and equitable to extend time for making any of the claimant's claims of discrimination contrary to the EqA 2010. They were accordingly made out of time and were therefore also outside the jurisdiction of the tribunal.

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Employment Judge Hyams

Date: 17 October 2022

Sent to the parties on:21/10/2022

N Gotecha

For Secretary of the Tribunals