EMPLOYMENT TRIBUNALS

Claimant: **Mrs M Russell**

Respondent: **EE Limited**

HELD at Newcastle by CVP **ON: 28 July 2022**

BEFORE: **Employment Judge Langridge**

REPRESENTATION:

Claimant: In person (with assistance from Ms J Shaftoe, CWU)
Respondent: Ms L Cope, Solicitor

JUDGMENT having been sent to the parties on 5 August 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

Introduction

1. This Preliminary Hearing was listed to deal with the question whether the claimant's claims were brought in time, and if not, whether there was a proper basis on which to extend the statutory time limits. The claimant represented herself and provided a brief witness statement summarising her evidence. She also gave evidence orally. The few documents which were relevant to the issues were included in a bundle prepared by the respondent. Mostly those comprised short emails and text messages showing numerous unsuccessful attempts between the claimant and her union officials, or ACAS, to make contact to discuss her potential claims.

2. In her witness statement the claimant set out an outline chronology of events, starting with her decision to resign due to unhappiness with her job with the respondent. She then set out the dates when she had sought to make progress with her claim by trying to make contact with her union and with ACAS. Those dates are identified in the findings of fact below. In essence, the reasons relied on by the claimant for the delay in presenting her claims were her working patterns, the Christmas holidays, and then delays due to Covid.

Issues & relevant law

3. The claimant's claim form (ET1) was submitted on 18 February 2022 and comprised three complaints. She claimed constructive unfair dismissal and unpaid holiday pay, both of which were brought under the Employment Rights Act 1996 ('ERA 1996'). The third claim was said to be disability discrimination under the Equality Act 2010 ('EqA 2010'). Although the exact nature of that claim was not clearly set out, it related to a request by the claimant for a more flexible working pattern, to accommodate her disability of IBS. The claimant claimed that she had made a formal request in July 2020, which was refused by the respondent on the grounds of business needs. The claimant summarised her claims by saying:

   > "I would like to claim unfair constructive dismissal and I also feel I was discriminated because of my disability. The way I was being treated was making me ill."

4. The respondent challenged whether the Tribunal has jurisdiction to hear the claims on the grounds that they were brought outside the statutory time limits. In 2018 an agreed change was made to the claimant's shift patterns, to help manage her IBS. The informal request she made in July 2020 related partly to the claimant's disability and partly to her desire to spend more time with her grandchildren at weekends. At a discussion about this in October 2020, the claimant was told she needed to provide medical evidence to take the request forward, and when no such evidence was provided, the respondent assumed it was no longer an issue. No further formal request was made after that.

5. For all three claims the statutory time limit for presenting an ET1 to the Tribunal is three months, whether under the ERA 1996 or the EqA 2010. In the case of the unfair dismissal claim and the holiday pay claim, the primary three month time limit is calculated from the date the claimant's employment terminated. In the case of the disability discrimination claim, time starts to run from the date of the alleged act of discrimination.

6. Part II of the ERA 1996 applies to the holiday pay claim, as an allegation of an unlawful deduction from wages. Section 23 gives workers the right to present a complaint to an employment tribunal, and goes on to state [emphasis added]:

   (2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) *in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made […]*

(4) Where the employment tribunal is satisfied that it was ***not reasonably practicable*** *for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*

7. Similar provisions are set out in section 111 ERA 1996 which applies to unfair dismissal claims [emphasis again added]:

(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.*

8. The EqA 2010 applies a three month time limit for bringing a discrimination claim, though the rules on extensions of time are different. Section 123 states [emphasis added]:

(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****.*

(3) 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.

9. Put simply, all the claimant's claims have to be brought within a three month period (as extended by virtue of the rules applying to ACAS early conciliation). The

Tribunal has no jurisdiction to hear any of the claims after that deadline, unless it is persuaded that there are good reasons to extend the time in accordance with the above statutory provisions. The '*just and equitable'* test for the discrimination claim is therefore less strict than the *'reasonably practicable'* test for the two claims under the ERA 1996. In the present case, early conciliation began when the claimant contacted ACAS in early November 2021. This was comfortably within the primary 3 month time limit for all claims. Once the ACAS certificate was issued on 13 January 2022, the revised time limit expired on 13 February 2022, a calendar month later.

10. Case law has provided guidance to Tribunals on the approach to be taken when exercising their discretion in cases like this.

11. The test of reasonable practicability is one of fact and not of law, as confirmed by the Court of Appeal in Lowri Beck Services v Brophy [2019] EWCA Civ 2490. The Court identified some general principles, as follows:

    a. The test should be given a liberal interpretation in favour of the employee;

    b. The statutory language is not to be taken as referring only to physical impracticability;

    c. If an employee misses the time limit because they are ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is not, then it will have been reasonably practicable for them to bring the claim in time; but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made.

    d. if the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee

12. Another relevant factor is whether or not a claimant is aware of the facts giving rise to the claim. Once they have discovered them, they are expected to present the claim as soon as reasonably practicable.

13. The just and equitable test is guided by the principles in Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 (CA). This confirms that Tribunals have a wide discretion, though the exercise of that discretion is the exception rather than the rule. One factor to be taken into account is whether a fair trial will still be possible if time is extended. This should take into consideration how the evidence might be affected on the facts of the particular case.

14. Tribunals are expected to have regard to the balance of prejudice between the parties. The time limits are set strictly so as to allow both parties to engage fairly with the issues and the evidence. Account should therefore be taken of a blend of factors. These include the length of the delay, the reasons for it, and how promptly the claimant acted once she knew of the facts giving rise to the claim. As with the claims under the ERA 1996, the question whether professional advice was sought or obtained is relevant, as is the potential for the evidence in the case to be impacted by the delay.

15. Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23 provided that rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion. "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… "the length of, and the reasons for, the delay".

16. The prospective merits of the claim may be a relevant factor to be considered. If this is weighed in the balance at a preliminary hearing, rather than after hearing all the evidence, then the decision in Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132 says:

    a. that assessment must have been properly reached by reference to identifiable factors that are apparent at the preliminary hearing, and taking proper account of the fact that the tribunal does not have all the evidence before it and is not conducting the trial, and

    b. the claimant should be given a fair opportunity to put their case at the preliminary hearing before the tribunal reaches its decision

17. The above is an overview of the key principles to be weighed in the balance, though ultimately the decision to extend time will depend on the facts of the case.

Findings of fact

18. The claimant began working for the respondent on 5 June 2016 as a telesales advisor, and latterly was working part-time on a 24 hour week flexible shift pattern. In 2018 she agreed with her then manager that she could adapt her working pattern to help her manage her disability of IBS. In early 2020 she experienced a flare-up with her condition and made an informal request to change her hours again. This was refused and so on 7 July 2020 the claimant made a formal flexible working request. This was prompted partly by a wish to change her start and finish times, and partly by a desire to reduce weekend working so she could spend more time with her grandchildren. The respondent was unable to agree to this request and turned it down on the grounds that it did not meet its business needs.

19. The claimant did not provide any medical evidence to support her request for flexibility, and during 2020 she was in any case working from home due to the impact of the pandemic. This remained the case until the summer of 2021 when the claimant's family circumstances changed suddenly. Working from home had helped her manage the IBS for the time being, although it was intended to be a temporary arrangement and there was inevitably going to be a conversation in the future about whether it could continue.

20. Circumstances changed when the claimant found herself needing to look after her granddaughter at short notice. As a result, in August 2021 the claimant made a further flexible working request informally to her manager. This was refused for business needs and also because a request had been made the previous year. This further request for flexible working – or rather the decision to turn it down – was the last time that the respondent made such a decision. The claimant did not at that time seek any advice about challenging the decision, and she neither raised a grievance nor brought a claim to the Tribunal. Her explanation is that she "felt down" and could not see the point of fighting her employer about it. She also said her son had advised that if she did not want to take it further, she should look for another job. The claimant took that advice and after obtaining another job she gave notice to the respondent to terminate her employment effective on 8

September 2021. In her very brief resignation email the claimant gave no reasons for resigning and said,

"I would just like to take the time to thank you for my time at EE".

21. The claimant started her new job at the Citizens Advice Bureau a few days later, on 13 September. During her first month she was very focused on the work and was also undertaking training on a full-time basis before reverting to part-time hours. On an unspecified date in October, the claimant contacted ACAS for advice and was advised to follow an internal grievance even though she had by then left the respondent. There was some correspondence between the claimant and her union about a grievance, and some text messages between them at the end of October show there was an intention to bring an unfair dismissal claim. No mention was made of a discrimination claim.

22. On 1 November the claimant messaged her union representative confirming her intention to bring a claim. Throughout the period that the claimant was in touch with her union, she had difficulties obtaining a continuous line of contact. The context was a post-Covid world of workplaces being under a great deal of pressure and staff sicknesses affecting everybody including the union.

23. On 3 November 2021 a personal problem arose with a family crisis affecting the claimant. This led to her taking sick leave from 10 November for around six or seven weeks, but before that, on 4 November, the claimant received an email from her union, providing her with a link to the ACAS website. The email referred explicitly reference to the three month time limit for bringing a claim. The date itself was not calculated but the method of calculation was stated to be three months from the date of the employment ending, minus a day. That was the primary time limit before factoring in the extension of time that would arise by pursuing early conciliation with ACAS.

24. The claimant accepted in her evidence at this Preliminary Hearing that the information from the union was clear and that she was aware of the principle even though she did not know the actual date of the deadline. She did not take any steps to check that date, and said that was a mistake on her part. Nor did the claimant follow the link provided to the ACAS website for general advice and information about how to bring a claim.

25. On 8 November 2021, just before going off sick, the claimant was able to prepare a formal written grievance. She drafted and typed this herself, with some input from her son over the phone. She was able to progress this even in the midst of her personal issues. During that time the claimant was also able to make some progress with the respondent about the handling of her grievance. She had contact with the investigating officer about this in mid-November and on 18 November she emailed further information to the investigator. Around a week later, on 25 November, the claimant spoke to the investigator and was told that although the respondent would investigate her concerns, she would not be given an outcome because she was no longer employed. It was therefore clear to the claimant by 25 November that there was nothing further to be achieved from that internal process.

26. In early December the claimant was in contact with ACAS trying to arrange a phone call but this proved difficult with a certain element of 'telephone tag' plaguing the timetable. On 3 December the formal early conciliation process was initiated by the claimant. When asked about the passage of time in the weeks

leading up to 3 December, the claimant said she had not gone to ACAS sooner because of her personal problems and because her mental health was not good as a result.

27. In the first two weeks of December there were several attempts by the claimant, the ACAS conciliator and the union to make contact. These were not generally successful, though there were some text exchanges with the union, who were broadly aware of the position. In an exchange of text messages on 14 December the claimant mentioned having a deadline of 17 December to provide some information to ACAS. On 16 December the claimant chased the union for a reply and on the same day she notified ACAS about the dispute, receiving an automated acknowledgement to this effect by return. On 17 December ACAS emailed the claimant asking her to wait for a call. They tried unsuccessfully to speak to her on 21 December, and the claimant in turn tried and failed to reach ACAS between then and 24 December.

28. The Christmas holidays followed, to which the claimant attributes further delay. On 5 January 2022 the claimant emailed ACAS to say she had Covid and had lost her voice so was unable to speak until the following week. Unfortunately this did not happen because as far as ACAS were concerned the time to be allocated to the early conciliation process had run out. ACAS therefore issued the early conciliation certificate on 13 January and the claimant received this on 14 January. She understood that this brought the conciliation process to an end.

29. Once the early conciliation certificate was issued the claimant had one calendar month, until 13 February 2022, to submit her claim to the Tribunal. There was a period of inactivity during that month, with very few steps being taken to progress the claim. The limited evidence showed that the claimant was trying and failing to reached her union representatives by phone on January 19, 24 and 25. On 31 January the claimant tried again to make phone contact and emailed the union to ask for a call outside her working hours. Due to other commitments, the union was having difficulty reaching the claimant at times when she was free. Nothing then happened until the claimant sent a text message to the union on 9 February asking, “did you hear back from Jo regarding the timescale for my Tribunal”.

30. On 13 February 2022 the extended time limit for all three claims expired.

31. On 17 February the claimant left a message with the union office. She then asked the union to submit the claim form on her behalf. The supporting statement attached to the form ET1 was tidied up and submitted to the Tribunal on 18 February. No representative was named on the form.

32. The claimant said in evidence that she needed help to complete the form because unlike the grievance, which she had been able to draft herself, this was a legal document and she wanted to do it properly. When asked how that had contributed to the timeline, the claimant replied that she should have checked the date but did not. In response to questions from the Tribunal about the reasons for the delay, the claimant initially said that she was focused at the time on getting the union to help fill in the form ET1 on her behalf. When pressed, she recalled that she had in fact been sent a link to a form ET1, probably by the union, and she then completed the form herself. The claimant filled in the boxes in the pro forma part and wrote a supporting statement, but said that when she tried to submit this, it bounced back. The claimant was unable to explain why this happened. It was not dealt with in her witness statement, but emerged only in oral evidence. No

supporting evidence, such as a screenshot or error message, was produced to show what happened or when.

Conclusions

33. The above findings of fact reflect the evidence apparent from the few documents provided for the Preliminary Hearing. As noted, the claimant's witness statement was very limited in its scope and gave little substance to explain the delay in bringing her claims, beyond setting out the chronology of events.

34. The lack of substance to the claimant's evidence gave me some concern, in that it was for her to persuade me to extend time either because it was 'not reasonably practicable' or it was 'just and equitable' to allow the claims in late. Most of what the claimant had to say in support of her position was elicited through my questions to her during oral evidence. More than once, the claimant candidly volunteered that the mistake in not checking the date was hers. Neither the witness statement nor the documents referred to a failed attempt to submit an ET1 online, nor was the claimant's sickness absence in November/December 2021 mentioned.

35. I shall now set out conclusions for the three claims in accordance with their respective statutory rules.

Unfair dismissal & holiday pay

36. It is apt to treat the claims for unfair dismissal and holiday pay together, because the time limit issues are identical for both claims under the Employment Rights Act 1996.

37. For the holiday pay claim, the three month time limit began on the date beginning with the date of the deduction (or non-payment) from the claimant's wages. The claimant's right to be paid for holidays accrued but not taken crystallised on her effective date of termination, 8 September 2021, and the date when the alleged deduction was made was the claimant's final pay at the end of that month.

38. The three month time limit for an unfair dismissal claim also began on 8 September 2021, the effective date of termination.

39. The chronology of events makes clear that both these claims were brought outside the statutory time limit. The primary time limit from 8 September 2021 was 7 December 2021, and after factoring in the early conciliation period, this was extended to 13 February 2022. That was the last date the claims could have been brought.

40. In both cases, the question then is whether or not it was *'reasonably practicable'* for the claimant to have brought the claims within the time limit. If the evidence shows it was not, then the claims may be considered if they were *'presented within such further period as the tribunal considers reasonable'.*

41. My conclusion is that it was reasonably practicable for the claimant to have submitted these claims between 8 September 2021 and 13 February 2022, a period of over five months, and so there is no jurisdiction to hear either the unfair dismissal claim or the holiday pay claim.

42. Factors I have taken into account include the claimant's knowledge of the facts forming the basis of her allegations, and her access to skilled advice through her union. The claimant did have a spell of sickness absence, but this was not until two months had already elapsed since she left the respondent's employment. The sickness did not prevent her from drafting a grievance and communicating with the respondent about it. Otherwise, it was a case of the claimant being busy with her new job, combined with difficulties in reaching her various union representatives on the phone. Those difficulties appear to have been mutual, with the claimant's availability to speak being limited by her new job.

43. Pursuing an internal grievance is not generally a good reason to delay bringing a Tribunal claim, given the strict time limits which apply. In this case, those steps had in any event reached a conclusion (so far as the claimant was concerned) by 25 November 2021. The claimant still had around 10 weeks to bring her claims but did not meet that deadline.

44. No evidence was provided to show that it was not reasonably practicable for the claimant to have brought these claims within the time limit. She had the knowledge and skills to draft the claim, she knew in early November 2021 how to calculate the primary time limit, and she knew she could have checked the exact deadline. Neither her health nor her personal circumstances operated as a barrier to completing a form ET1 and submitting it to the Tribunal by 13 February 2022.

45. Having found that it was reasonably practicable for the claimant to have brought these claims in time, it is not necessary for me to deal with the question whether the claim was presented within a reasonable period after the time limit expired.

46. Even though it is not formally part of my decision, I would add that even if I had allowed these two claims to go forward, I note some difficulties with both of them. Firstly, the claimant has no information to support her assertion that the holiday pay was incorrectly calculated by the respondent. I appreciate that she did not understand the information provided by her employer at the point when she left, but for any holiday pay claim to have proceeded, it would have to be based on evidence that a mistake was made rather than on conjecture.

47. As for the unfair dismissal claim, I note the claimant's evidence that she was unhappy in her job and disliked working the respondent's shift patterns. This was partly because she had found it difficult to manage her IBS, but this issue had been alleviated once she began working from home from the summer of 2020. Her other reason for wanting to change her working pattern was to support her family and see more of her grandchildren at the weekends. She was advised by her family to look for a new job which was more manageable, and did so. The most recent refusal to agree a flexible working request was triggered by the family crisis in the summer of 2021. While the claimant's wish to change her hours in those circumstances was understandable, it would not necessarily form a proper basis on which to claim constructive unfair dismissal. This is because the law requires a claimant to show not simply that her employer had behaved unreasonably, but that it had committed a fundamental breach of the employment contract.

Disability discrimination

48. Turning now to the disability discrimination claim, the three month time limit began on the date of the alleged act of discrimination, namely the date when the

respondent made its decision not to modify the claimant's working pattern to accommodate her disability. In 2018 an adjustment was made to the claimant's hours to accommodate her IBS. On 7 July 2020 a formal flexible request was made and refused, following an informal request made earlier that year. Due to the pandemic the claimant was then working from home for the remainder of 2020 and 2021. This had the practical effect of enabling her to manage her disability while the arrangement continued, and no further disability-related adjustment was required for the time being.

49. The last flexible working request was made informally in August 2021. This was not related to the claimant's disability but prompted by a family crisis which meant the claimant needed to provide care for a grandchild. The respondent's decision to turn down that request was made in August 2021. This was the last time that any such decision was made, and it amounted to the last act of discrimination which could form the basis of such a claim. The claimant did not renew the request and no ongoing steps were being taken to consider it.

50. Even if it could be said that the respondent's ongoing failure to agree a change of hours continued until the termination date, relying on section 123(3) EqA 2010, then the time limit would run from 8 September 2021. On either basis, the submission of the claim form on 18 February 2021 meant that the disability discrimination claim was out of time.

51. The question for this claim is whether it should be accepted on the grounds that it would be '*just and equitable'* to do so under section 123 of the Equality Act. The law makes it clear that I have a broad discretion here and there are a number of factors I may take into account on the evidence. These include the length of the delay and the reasons for it, how quickly the claimant acted in knowledge of the deadline, and the balance of prejudice between the parties. I note in this context that there would be a heavy reliance on oral evidence in relation to informal decision-making arising from the August 2021 refusal to allow flexible working. That is the act about which the claimant complains, but it was not until 8 November 2021 when the grievance was submitted that the respondent had any knowledge that it may need to defend a potential claim. By then, three months had already elapsed.

52. The claimant relies on multiple factors to explain the delay, as noted earlier. In the first place, she did not contemplate bringing a claim under the Equality Act at the time when her flexible working request was turned down. Instead, she took advice from her family and chose to move to a job which better suited her wish for flexibility. From mid-September 2021 the claimant was focusing on her new job and working full-time during her initial month of training. That accounts for the period up to the middle of October. From at least 4 November 2021 the claimant had clear information from her union about the three month time limit. She was in a position to know that 7 December 2021 was the primary time limit, but took no steps to calculate or note the date. The claimant accepted quite fairly that this was her mistake, but she also took no other steps to find out what the deadline was. She was directed to a link to the ACAS website, but did not follow this or look at any other online resources, nor even did she ask her manager at the CAB with whom she had had an informal discussion about the case.

53. After the 4 November email from the union, in the knowledge of the primary deadline, the claimant drafted and submitted a grievance. This came after the advice from ACAS in late October to take this step. By 25 November, the claimant knew that the grievance outcome was not going to be provided to her, and she did not therefore need to wait for anything else to happen. Even if it were the case that the following of an internal grievance procedure were part of the explanation for the delay, that is not in law a good reason in itself to press the pause button on bringing a claim.

54. Around a week after hearing that she would not receive an outcome to the grievance, the claimant initiated early conciliation with ACAS on 3 December. There followed a period of weeks with unsuccessful attempts to make contact by telephone and email between the claimant and her union, as well as ACAS. That accounted for some (but not all) of the time between late November and the end of early conciliation on 13 January 2022. The claimant otherwise did not give her claim any priority while she adjusted to the new job and during the Christmas holiday period.

55. By the new year time became critical, because there was nothing to be done after the ACAS certificate was issued on 13 January than to draft and submit an ET1 by 13 February. The claimant, in spite of her evidence that she attempted to do this online and failed, seems not to have understood the urgency of meeting the 13 February deadline. While she cannot be criticised in principle for continuing to seek her union's support, she cannot fairly sit back for weeks and wait for that contact to succeed without regard for the legal time limit. In her evidence the claimant could provide no clear explanation for why the situation was allowed to drag on into February without any attempt to identify or comply with the final deadline. The claim was submitted five days beyond that.

56. Overall, there was a very long delay of over three months between the claimant being advised about the initial deadline on 4 November, and issuing the claim on 18 February. The total period during which the claimant was contemplating a claim exceeded five months, with very little being done to pursue it.

57. Weighing up all of the facts of the case, including those referred to in the first part of these conclusions, I do not consider it just and equitable to allow the discrimination claim to proceed. The length of the delay was considerable, as the cause of action arose in August 2021, or by 8 September at the latest. Much of the delay occurred after the claimant knew about the deadline. The balance of prejudice is such that the respondent would have to rely on oral evidence about its informal discussions and decision-making from a year ago. The fact that this is the single key issue in the discrimination claim, and not merely part of the background, means there is likely to be significant prejudice to the respondent if the claim were allowed to go forward.

58. Finally, it is relevant to say something about the merits of the disability discrimination claim. Although I have not heard full evidence about the substance of it, I feel able to express a view based on the claimant's own evidence today, which is sufficient to cast doubt on significant aspects of the case.

59. Even if I had allowed the discrimination claim to go forward, there are some apparent difficulties with the claimant's argument. It seems to be a claim about a failure to make reasonable adjustments under sections 20-21 of the Equality Act 2010, though that is not clear from the claim form. On the claimant's presentation

of the case it relates purely to the question about her working pattern and the decision made in August 2021. At that time, according to the claimant's own evidence, she had no intention of taking the issue forward, either through a grievance or a Tribunal claim. She took no advice about the possibility of making a claim while still employed, but instead changed jobs. Even after later contacting the union about a Tribunal claim, the claimant referred only to constructive dismissal in her messages, and not disability discrimination.

60. One explanation for those omissions may be that the refusal to adjust her hours in August 2021 was not about the claimant's IBS but rather her family's childcare needs. At that time, the claimant had been working from home for over a year, and this arrangement was meeting her needs in managing her disability. That was not a permanent arrangement and the issue might have resurfaced had the claimant not left her employment. However, at the time when the decision was made, nothing on the face of it suggests it was a disability-related adjustment.

Employment Judge Langridge

17 November 2022

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