



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Mohammed Ali

**v (1) BNP Paribas Real Estate Advisory &
Property Management UK Limited
(2) Ward Security Limited
(3) Ms. Alessandra Demurtas**

Heard at: London Central (CVP)

On: 7 December 2022

Before: Tribunal Judge RE Peer acting as an Employment Judge

Representation

For the Claimant: Mr Okey Ngwuocha of Carl Martin Solicitors

For the First Respondent: (1) Ms Marianne Tutin of Counsel

For the Second Respondent: (2) Ms Chloe Pereira of Outset Limited

For the Third Respondent: (3) Ms Sara Ibrahim of Counsel

JUDGMENT

Employment Tribunal Procedure Rules 2013

- (1) The claimant's claims against the first respondent are struck out on the basis that they have no reasonable prospect of success due to lack of the necessary relationship between the first respondent and the claimant to bring such claims before the tribunal – rule 37.
- (2) The claimant's claims against the third respondent are struck out on the basis that they have no reasonable prospect of success due to lack of the necessary relationship between the third respondent and the claimant to bring such claims before the tribunal– rule 37.
- (3) The claimant's claims against the second respondent are struck out on the basis that they have no reasonable prospect of success due to lack of legal basis to bring such claims before the tribunal – rule 37.
- (4) The claimant's application to amend his claims is refused and discretion is not exercised to permit the amendments sought.

- (5) The claimant's claims are out of time and discretion is not exercised to extend time such that the tribunal has no jurisdiction to hear them and they are dismissed.

REASONS

CLAIMS AND ISSUES

1. The claimant is Mr Mohammed Ali. The claimant's claim as set out in his ET1 indicates claims of discrimination on grounds of race and religion or belief. The claimant told me that he was Muslim and that his race was British Bengali. He contends that he has been subjected to discrimination by the respondents due to his race and religion.
2. The claimant has presented two claims which have been consolidated. On 9 June 2022, the claimant presented a claim (2203833/2022) naming the third respondent. On 11 June 2022 the claimant presented a claim (2203859/2022) naming the first and second respondents.
3. On 12 August 2022, Employment Judge (EJ) Heath made case management orders in respect of the claim against the first and second respondents.
4. On 7 September 2022, a case management hearing took place in respect of the claim against the third respondent before EJ Burns. EJ Burns made case management orders in respect of the claim against the third respondent and also consolidated all the claims.
5. On 26 September 2022, Regional Employment Judge Wade directed that the case be listed for a one day hearing with the directions made by EJ Heath and EJ Burns to apply with any discrepancies to be ironed out.
6. Accordingly, before me there are a number of applications and preliminary issues as follows:
 - the first respondent's application under Rule 37 to strike out the claimant's claims on the basis that they have no reasonable prospect of success, in that the respondent contends that there is no relationship between the parties such as to give rise to liability under Part 5 Chapter 1 of the Equality Act 2010
 - the second respondent's application under Rule 37 to strike out the claimant's claims on the basis that they have no reasonable prospect of success, in that there is no legal basis for the claims
 - the third respondents' application under Rule 37 to strike out the claimant's claims on the basis that they have no reasonable prospect of success
 - in the alternative, whether the tribunal ought to make a deposit order against the claimant for an amount not exceeding £1,000 per claim as a condition for permitting him to continue with any claim against the third respondent.

EJ Burns ordered the claimant to disclose evidence of his personal financial position and explain in his witness statement if he was unable to pay funds.

- the preliminary issue as to whether the claimant's claims are brought out of time such that the tribunal has no jurisdiction to hear them
 - the claimant's application to amend his claim.
7. The hearing was also to list a final hearing if the claims were not struck out or otherwise dismissed and make appropriate orders for the further case management of the claims.

THE HEARING

8. The hearing was a remote hearing. The form of remote hearing was fully remote by Cloud Video Platform. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The parties agreed in advance to the hearing being held as a remote hearing. The hearing proceeded effectively as a remote hearing and no party raised any objection.
9. The tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net.
10. There was a bundle of 279 pages. The bundle contained a copy of a witness statement from the third respondent. I also had available to me a copy of a witness statement from the claimant dated 14 November 2022. I had a copy of the claimant's application to amend his claim dated 30 November 2022 before me. I also had a skeleton argument from each respondent before me.
11. At the start of the hearing, the claimant shared the application to amend with the third respondent and the third respondent provided the claimant with a copy of third respondent's skeleton argument.
12. I read the evidence in the bundle to which I was referred and refer to the page numbers of key documents that I relied upon when reaching my decision below.
13. I heard submissions from each party in respect of all the applications before me and the issue of limitation and reserved my judgment. Notwithstanding the order in which matters are addressed below, I gave consideration to all matters before reaching my decisions on the applications before me.

FACTUAL BACKGROUND AND FINDINGS

14. The parties will note that not all the matters that they told me about are recorded below. That is because I have limited them to points that are relevant to the issues for determination. I take account that in deciding whether or not to strike out claims, the claimant's position is to be taken at its highest rather than settling disputes of fact if any.

Claimant's employment status

15. The second respondent provides security services including manned guarding, CCTV security systems, concierge and reception services to other businesses.
16. The claimant commenced employment with the second respondent on 18 February 2019 and remains employed by the second respondent as a security officer. The claimant works at client sites as notified by the second respondent.
17. The terms and conditions of the claimant's employment with the second respondent (74-92) include provision as to the claimant's place of work as follows:

"to be 'field based' within the London Region. You are required to attend various locations within the UK to undertake the business of the Company which includes attendance at the Head Office location from time to time. You will not be required to work outside the UK.

The Employee may be required to work in such other place or region in which the Company or Subsidiary or Holding Company operates which the Company may reasonably require for the proper performance and exercise of the Employee's duties. The company reserves the right to require you to:

work in a different department or location on a temporary or permanent basis for business reasons and/or at the client request; or

transfer to another place of work within the UK, upon reasonable prior notice; or

remain at home on paid leave at any time and, in particular, during any period of notice, whether given by you or the Company.

Such variations will be at the Company's discretion. However, full consideration will be given to your own personal circumstances at such times.

Unless by mutual consent and agreement, any permanent change to your place of work will be notified to you in writing with reasonable notice before the change is implemented."

18. There are also terms and conditions as to pay and hours of work, reference to employees being subject to the second respondent's grievance and disciplinary procedures. A schedule sets out the requirement for the employee to hold a valid Security Industry Authority (SIA) Licence to be able to work and that responsibility for renewal rests with the employee.

19. The claimant communicated about pay with the second respondent.
20. The claimant is an employee of the second respondent. The claimant is not an employee of the first respondent.
21. The first respondent is a real estate property advisory and property management company. The first respondent managed a site at Old Broad Street (OBS), London on behalf of its client which was the owner of OBS.
22. The claimant was assigned by the second respondent to work at the OBS site. The second respondent has a contract for the provision of security and associated services with the owner of OBS (234-257). The contract documentation in the bundle refers to a contract commencement date of 1 January 2022 although the documentation was signed on 21 June 2022 by the second respondent and an agent for the owner of OBS. The assignment or supply of the claimant to work at the OBS site was in furtherance of the contract between the second respondent and its client the owner of the OBS site for the provision of security and associated services. The first respondent is not a party to the contract between the second respondent and the owner of the OBS site.
23. There is no evidence of any direct contractual relationship between the claimant and the first respondent.
24. The third respondent is an employee of the first respondent.

Chronology

25. The claimant says that on 13 August 2021, the third respondent said “We don’t do food for your type of people” at a meeting where there was a discussion about holidays. The claimant says that at or around the end of November 2021, the third respondent was organising a Christmas drinks event and when the claimant said he would not attend said ‘When you guys are there you drink anyway’. The claimant says that when he was giving an update on radios at a meeting in January 2022, the third respondent said, “I don’t understand what you are saying, I don’t speak Bengali.” The claimant says that these are instances of direct discrimination on grounds of race and religion or belief.
26. The claimant says he raised this with the third respondent on 11 February 2022.
27. On 14 February 2022, the third respondent emailed the second respondent to request that the claimant be removed from the OBS site.
28. On 15 February 2022, the second respondent confirmed to the claimant that he had been removed from the OBS site further to a client request. The second respondent notified the claimant that they were seeking an alternative site for him and enclosed a list of current vacancies.

29. On 16 February 2022, the second respondent held an investigation meeting with the claimant. The meeting was paused at the claimant's request for him to make a brief call. The notes of the meeting (171) record that when the meeting resumed, the claimant said "It is a bit obvious that I am getting legal advice. In touch with my solicitors."
30. On 18 February 2022, the claimant commenced a period of sick leave. The fit note sets out that the claimant was not fit for work for a period of three weeks due to stress at work.
31. In an email dated 18 February 2022 from the claimant to the second respondent, the claimant set out that he would like to put a grievance forward for racial discrimination at work regarding the third respondent. The email concludes by stating 'the outcome that I would like is to take is a legal route please.'
32. On 1 March 2022, the investigation was paused in light of the claimant's sick leave.
33. On 1 March 2022, the claimant emailed the second respondent setting out that he had heard matters were being talked about at the OBS site concluding "I have been advised by my union rep to bring this to your attention immediately as I am still currently an employee of Ward."
34. A fit note dated 9 March 2022 sets out that the claimant was not fit for work for a period of four weeks due work related stress.
35. On 14 March 2022, the claimant was placed on unpaid suspension on the basis that his SIA licence had expired on 5 March 2022.
36. On 25 April 2022, the second respondent confirmed to the claimant that the investigation was to investigate allegations of unprofessional conduct towards a client and removal from site at client request. The second respondent notified the claimant that no further action would be taken in relation to the allegation about unprofessional conduct.
37. A fit note dated 26 April 2022 covers the period to 31 July 2022 and sets out that the claimant may be fit for work taking account of the advice including a phased return to work, altered hours, amended duties and workplace adaptations.
38. The claimant communicated with the second respondent by email during this period.
39. A screenshot of messages between the claimant and the second respondent stated to be from 13 May 2022 includes a message from the claimant which states 'I shall return to my investigation outcome documents and liaise with my legal team.'
40. The ordinary three month time limit in relation to events occurring on 14 February 2022 expired on 13 May 2022.

41. On 15 May 2022, the claimant raised a grievance as to lack of support from the second respondent further to his suspension from the OBS site.
42. On 8 June 2022, ACAS was notified in respect of the first and third respondent and issued certificates on 9 June 2022.
43. On 9 June 2022, the claimant issued his claim against the third respondent.
44. On 9 June 2022, ACAS was notified in respect of the second respondent and issued a certificate on 10 June 2022.
45. A grievance hearing was held on 10 June 2022.
46. On 11 June 2022, the claimant issued his claims against the first and second respondents.
47. Section 8.2 of the claimant's claim form includes the stated background and details of his claim. The claimant's claim form sets out that "Ward Security is my employer. Below is the reason for my claim:" The claimant then sets out five allegations as follows: "failure of duty of care towards me; continuously chasing outcomes; no clear outcome of investigation; breaching their own grievance & investigation policy (not responding within given time); I wasn't formally informed if the investigation was closed or not instead i received a text message via WhatsApp." The claimant then records on the claim form: "I was not racially discriminated by Ward Security."
48. The claimant's claim form refers to the third respondent as an employee of the first respondent and the person who managed the building he worked at and again sets out "Below is the reason for my claim" followed by six allegations: "Racial discrimination on several occasion; unfair treatment; unfair dismissal from site; Also dismissed due to challenging health and safety protocols at work; mocking my religion and faith; mocking my ethnicity."
49. Section 8.2 concludes with an acknowledgement that ACAS was informed late and sets out that the reason was "due to the racial discrimination that led to deterioration of my health, this has impacted me emotionally physically and impacted my mental health severely this has led me to fall ill caused me anxiety, stress and insomnia. I have been having regular consultation with my GP who has prescribed me higher dose of medication."
50. A grievance outcome was issued on 28 July 2022 which acknowledged communication could have been better but did not accept there had been a failure of duty of care towards the claimant.
51. Responses were filed on 29 July 2022.
52. On 9 August 2022, the claimant was assigned to a site known as Bloom Building.

53. On 12 September 2022, a preliminary hearing was held before EJ Heath in relation to the claims brought against the first and second respondent. At the hearing, the claimant confirmed to the tribunal that he was not alleging that the second respondent discriminated against him because of his religion or belief. He was not alleging that any breach of policy by the second respondent was because of his race or religion or belief. He also told the tribunal that he was not claiming that he was a whistleblower.
54. The claimant was told by EJ Heath that 'some form of legal assistance might benefit him'. EJ Heath also told the claimant that how the claimant had clarified his claims would be set out *'and that I would give him the opportunity to write in to comment or to ask to change the way they are put. I told the claimant that what he would not be able to do is to make new claims which did not appear in his claim form. If he wishes to introduce new claims he would have to make an application to amend his claim, and the respondents would have the opportunity to object to such an application.'*
55. EJ Heath also set out in the record of the preliminary hearing that there would be an open preliminary hearing *'and largely for the claimant's benefit, the hearing will consider whether his claims are ones which he can properly run as a matter of law. Can he bring discrimination claims against the first respondent, which says that it was not his employer, but a third party? Can he bring claims against his employer for breaching its grievance procedure when he says that its actions are not discriminatory in any way, and he is not a whistleblower? It will also consider whether he put his claims in on time, and will if the claims are not in time, it will focus on his reason for not putting his claim in earlier. I will not say more, as it is not for me to advise the claimant on how to run his case. He may find it of considerable benefit to take legal advice on these issues.'*
56. The claimant did not write in to comment or to ask to change the way his claims are put in relation to the record of the preliminary hearing in which EJ Heath set out how the claimant had clarified his claims.
57. The claimant did however make an application to amend his claim in writing with the benefit of legal assistance. On 30 November 2022, the claimant made an application to amend his claim.
58. The application to amend sets out that as a litigant in person the claimant would have had difficulties and that it was 'a material misconception' to consider that the claimant had not been subject to discriminatory treatment by the second respondent, his employer. The claim was filed in time as it related not just to primary conduct of the first and third respondent and their instruction to the second respondent causing contraventions but also the conduct of the second respondent extending over a period of time.
59. The application set out five matters in relation to the second respondent's conduct as: decision to remove the claimant on 14 February 2022 in response to his complaint about the discriminatory conduct of the third respondent following the instruction of the first and third respondents; the commencement of the disciplinary investigation on 16 February 2022 in

relation to the allegation of 'unprofessional conduct' towards a client on 11 February 2022; delay in resolving the claimant's grievance up to and after notification to ACAS; the decision to place the claimant on paid suspension on 14 February 2022 and the decision to place the claimant on unpaid suspension and refusal to reimburse SIA licence expenses on 14 March 2022.

60. The claimant proposed a substitute section 8.2 setting out the comments said to have been made by the third respondent as discriminatory and then listing acts of the second respondent referring to the second respondent as being 'subject to the will of the first respondent'.

LAW

61. The Equality Act 2010 ("the Act") sets out protected characteristics including race and religion or belief together with types of prohibited conduct including direct and indirect discrimination. Part 5 (Work) of the Act sets out what applies at work. In particular, who is liable for any prohibited conduct such as discrimination at work.
62. An employer must not discriminate against an employee as to terms of employment, access to promotion and training and other benefits and services or by dismissing or subjecting the employee to any other detriment (section 39 of the Act). Employment includes 'employment under a contract of employment, a contract of apprenticeship or a contract personally to do work' (section 83(2) of the Act).
63. A principal may not discriminate against a contract worker (section 41 of the Act). The Act sets out specific definitions of a 'principal' and a 'contract worker' as follows:
- (6) A "principal" is a person who makes work available for an individual who is-*
 - (a) employed by another person, and*
 - (b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).*
 - (7) "Contract work" is work such as is mentioned in subsection (5).*
 - (8) A "contract worker" is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).*
64. A person (A) must not instruct, cause or induce another person (B) to do anything to a third person which is a contravention of Part 5 (section 111 of the Act). However, this only applies if A is in a position to commit a basic contravention in relation to B.
65. An employment tribunal has jurisdiction to determine complaints about a contravention of Part 5 or a contravention of sections 108, 111 and 112 of the Act that relates to Part 5 (section 120 of the Act). Any such complaints may not be brought after the end of the period of 3 months starting with the date of the act or omission or the end of a course of conduct to which the

complaint relates, or such other period as the employment tribunal thinks just and equitable (section 123 of the Act).

66. These time limits are subject to extensions for early conciliation set out in the Act at section 207B and the Order at article 8B. These provide that the day a claimant contacts ACAS (Day A) and the day the certificate is received (Day B) are not counted. Further, if the ordinary 3 month time limit would but for extension expire during the period beginning with Day A and one month after Day B, the time limit is extended to expire at the end of that period. The tribunal is required to treat the time limit as expiring at the end of any extension.
67. Where complaints are not brought within the 3 month period, a tribunal has discretion to extend time if it is just and equitable. The exercise of discretion by the tribunal to extend time is the exception rather than the rule and the onus is on a claimant to convince a tribunal that it is just and equitable to extend time, **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA.**
68. Where a tribunal is considering whether to exercise its discretion to extend time, the prejudice that will be suffered by either party is considered. There are a range of factors that can assist a tribunal in considering whether to exercise its discretion. In **British Coal Corporation v Keeble 1997 IRLR 336** the factors mentioned in section 33 of the Limitation Act 1980 were considered by the EAT to be of assistance including: the length and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the respondent co-operates with any requests for information; the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and the steps take by the claimant to obtain professional advice before he knew of the possibility of taking action.
69. There is no checklist however and the tribunal must consider what is just and equitable in the circumstances of the case, has a wide discretion and must not approach matters in a mechanistic fashion, **Department of Constitutional Affairs v Jones 2008 IRLR 128, CA; Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA; Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR D5, CA.**
70. In **Department of Constitutional Affairs v Jones 2008 IRLR 128** the Court of Appeal explained that if the reason for delay is illness that is a relevant factor for the tribunal to weigh in the balance but there is no general principle that an individual with health problems (including mental health problems) is generally entitled to delay in the bringing of a claim.
71. Rule 37 of the Procedure Rules gives the tribunal the power to strike out a claim or a response in whole or part at any stage of the proceedings on any of the grounds set out at rule 37 including that it has no reasonable prospect of success but the power must be exercised in accordance with reason,

relevance, principle and justice, **Williams v Real Care Agency Ltd 2012 ICR D27, EAT**. Reasons for any strike out must be given.

72. In **Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL** the House of Lords emphasised that discrimination claims should not be struck out save in the most obvious cases as they are generally fact-sensitive and require full examination to make a proper determination.
73. In **Unite the Union v Nailard 2019 ICR 28, CA**, the Court of Appeal confirmed the decision in **Conteh v Parking Partners Ltd 2011 ICR 341, EAT**, that there was no provision in the Equality Act 2010 that made an employer liable for failing to protect employees from third-party harassment save that an employer may be liable if any inaction or failure to safeguard the employee from an intimidating, hostile, degrading, humiliating or offensive environment was of itself proscribed.

ANALYSIS AND CONCLUSIONS

74. I turn now to the application of the law to the facts and pleadings in this case. Notwithstanding the order in which my conclusions are set out, I considered all the applications before me and the submissions made in response to each application before reaching my decision. The separate decisions are necessary in order to decide the applications and provide certainty of outcome for the parties in the event that one or other of my decisions are overturned.
75. The claimant's originating claims essentially complain that he was subjected to instances of direct discrimination by the third respondent culminating in a request to remove him from the OBS site on 14 February 2022. As the claimant acknowledges in his claim form, ACAS was approached late and the claims are brought outside the three month time limit and as such can only proceed if it is just and equitable to extend time. The claimant also confronts the complexity of the legal framework set out in the Equality Act 2010 which confines what claims can be brought and against who or which person such claims can be brought. In all the circumstances, the claimant faces certain constraints on the bringing of many of his claims which are a reflection of the statutory scheme adopted by Parliament rather than an outcome of choice for the tribunal. I appreciate this may be difficult for the claimant to digest.
76. The claimant acknowledges that he is an employee of the second respondent. In light of the employment status of the claimant as an employee of the second respondent and given that he cannot show he is a contract worker in accordance with the statutory definition, I have concluded that there is no relationship between the claimant and the first respondent which gives rise to liability. The claimant cannot therefore bring claims against the first respondent and as such there are clearly no reasonable prospects of the claims the claimant seeks to bring against the first respondent succeeding. In so far as the claimant brings claims against the first respondent, I strike them out.

77. In addition, as there is no relationship between the claimant and the third respondent which gives rise to liability, the claimant cannot bring claims against the third respondent and as such there are clearly no reasonable prospects of the claims the claimant seeks to bring against the third respondent succeeding. In so far as the claimant brings claims against the third respondent, I strike them out.
78. As I explain below having considered all the circumstances, I do not exercise discretion to extend time for the bringing of the claims and as such the tribunal has no jurisdiction to hear them and they fall to be dismissed irrespective of the conclusions I set out above in respect of the claims as against the first and third respondents.
79. As set out in his claim form and as clarified with EJ Heath on 12 September 2022, the claimant's claims do not include claims against his employer, the second respondent, which amount to potential breaches which the tribunal has jurisdiction to consider. The claimant now seeks to amend his claim and I therefore turn to consider the application to amend. In so doing, I also take account of the applicable time limits.
80. The claimant did not present a claim of discrimination against the second respondent by way of his claim form but explicitly set out that the second respondent had not engaged in racial discrimination and confirmed to the tribunal that the second respondent had not engaged in discrimination on grounds of race and religion or belief. In other words, as recently as 12 September 2022, the claimant was telling the tribunal that the second respondent had not treated him in any way linked to his race and religion or belief at all.
81. I do not accept the submission that this is because the claimant was a litigant in person and/or did not understand the nature of discrimination as framed by the Equality Act 2010. The claimant was given opportunity to clarify what he was really complaining about and in simple terms stated that whilst he complained about certain acts of the second respondent, these acts were not said to be done because of his race and/or religion or belief. This was not silence in the claim form or before the tribunal that required amplification nor ambiguity that required articulation as a formal legal cause of action. The amendments sought are not a clarification of what was pleaded rather they are a direct contradiction of the statements made in the claim form. The factual matrix may remain such that it might be contended this is relabelling. However, the real nature of the amendment is the introduction of a cause of action against the second respondent, a cause of action previously expressly disavowed, being that of discrimination on grounds of race and religion or belief. I consider this is more than a minor amendment and thus take account of the substantial nature of the amendment sought.
82. The claimant also appears to introduce a further cause of action under section 111. Even if it were to be deemed that this whilst being a cause of action not previously canvassed was merely attributing a cause of action to existing pleaded facts concerning the same persons, this does not assist the

claimant at all in my view. In light of the relationships in place, I have concluded that any claim based on section 111 is not legally possible as the first respondent and the second respondent are not in a relationship where the first respondent could engage in a basic contravention in respect of the second respondent. For completeness, the third respondent was not in a position whereby the second respondent could engage in a basic contravention in respect of her or indeed vice versa.

83. As set out above, the Equality Act 2010 sets out who can claim against who and for what. The first and second respondent are entirely separate legal entities and as such the second respondent company could not bring a claim of discrimination at work against the first respondent company. If that 'basic contravention' is not possible, section 111(7) of the Act provides that the first respondent cannot be held liable for inducing, instructing or causing the second respondent to act in any particular way.
84. The submissions made by the claimant before me were directed at suggesting there was an overarching control being exercised by the first respondent over the second respondent and additionally a continuing course of conduct being exercised jointly by all the respondents such that everything was brought in time. The respondents are separate persons. In discrimination claims, reference to a discriminatory course of conduct does not cover acts perpetrated by different persons who are not linked by any employment and/or contractual relationship. I have therefore concluded that it is not possible to treat actions by each of the respondents as forming a single course of conduct in the manner suggested by the claimant.
85. In circumstances where time limits are in issue it may be necessary to distinguish between acts with continuing consequences and a continuing course of discriminatory conduct for the purpose of deciding preliminary issues as to limitation.
86. I have considered the allegations in the application to amend raised against the second respondent at their highest and as they are put in the application. The claimant says there is delay in resolving his grievance raised on 18 February 2022 alleging racial discrimination by the third respondent. Otherwise, the application to amend prepared by the claimant's legal representatives, refers to 'decisions' or 'commence'.
87. As of 30 November 2022, all allegations save possibly as to the alleged continuing failure to resolve the first grievance are outside the primary three month time limit and considerably so. The second respondent refers to a grievance outcome on 28 July 2022. The decision to remove the claimant, place him on paid suspension and commence the disciplinary investigation all present as discrete acts and/or to the extent they are to be treated as linked they all represent decisions or acts taken in February 2022. This is the case even if the consequence of a decision to, for example, commence an investigation is that the investigation continued. The decision to place the claimant on unpaid suspension on 14 March 2022 and refusal to reimburse the claimant for SIA licence expenses is a discrete act and is further

unrelated to the previous decisions and is not predicated upon those previous decisions at all.

88. Accordingly, with the possible exception of the delay in resolving the first grievance, all the allegations raised in the application to amend are brought outside the primary three month time limit and considerably so.
89. The claimant was clearly aware of time limits as he acknowledged in his claim form that ACAS had been approached late.
90. The case law tells us it is for a claimant to convince the tribunal that it is just and equitable to extend time. The claimant appears to rely on illness coupled with having acted as a litigant in person in respect of any delay related to the original claims and the claims included in the application to amend. The claimant does not rely on facts unknown to him until recently or remarkably different from those relied upon in his original claims in respect of his amended claims.
91. It is clear that during the initial three month period the claimant was on sick leave although from 26 April 2022 he was indicated to be fit for work with some adjustments. There was no evidence before me that indicated the claimant was not capable of presenting his claims to the employment tribunal within the primary three month time limit or indeed at any point before he approached ACAS late on 8 and 9 June. The bare fact that he was on sick leave including for the stated reason of stress at work is insufficient to demonstrate to the tribunal that he was not capable of bringing his claims in time.
92. In any event during this period the claimant was able to communicate with the second respondent, indicated that he was in receipt of legal advice and assistance and referred to trade union assistance. The claimant was actively taking steps in respect of internal matters. The claimant did not raise before me that he was taking these steps as an alternative to bringing a legal claim. I would of course be required to take any such statement into account as a factor when considering all the circumstances as to whether to exercise discretion to extend time. Any such statement would not likely be determinative in any event as to whether or not it is just and equitable to extend time.
93. The claimant has not clearly articulated nor provided full or detailed evidence as to why he has delayed in bringing the amended claim. The stated reason that his pleadings were due to him being a litigant in person is no explanation as to the failure to file his claims on time particularly in light of the legal and trade union assistance that he refers to accessing.
94. The presentation of the originating claim form itself on 9 and 11 June 2022 is a strong indicator that there is no basis for the claimant not to have filed the claims he now seeks to bring earlier than 30 November 2022. The claimant then had the opportunity to clarify his claims before the tribunal on 12 September 2022 and could have set out the basis of the claims set out in the application to amend at that juncture. The record of the case

management hearing before EJ Heath makes it clear that care was taken to elicit from the claimant what he was or indeed was not complaining about and to record the discussion. The claimant had a further opportunity thereafter to contest how the claims were clarified in the record of the preliminary hearing and he did not take that opportunity.

95. There was no cogent evidence available to me to demonstrate that the claimant was not capable of acting prior to his application to amend to bring the claims he seeks to bring by way of that application due to illness. The claimant was assigned to work at a site on 9 August 2022. The claimant has offered no real explanation as to the steps taken after the case management hearing on 12 September 2022 which he was clearly sufficiently well enough to attend before bringing his amended claims. The amended claims do not refer to any new facts.
96. The contact with ACAS and the filing of his originating claim shows the claimant was aware of his rights to claim discrimination and the claim process. His claim form refers to having union representation. He brought his claim against the second respondent and as such cannot be taken to have not recognised or have any good reason to have delayed in bringing the amended claims against the second respondent. The claimant was fully aware that the second respondent was his employer.
97. The claimant presents a proposed amendment as a substitute for section 8.2 of his claim form which differs slightly from the application covering letter and does not set out clearly the pleaded causes of action in terms of the type of discrimination alleged against the second respondent. The claimant has therefore still not clearly articulated what type of discrimination under the Equality Act 2010 is alleged against the second respondent. It is important that any amendment is clear such that a respondent understands the case it is required to meet. The claimant sets out the comments of the third respondent as discriminatory but there is no liability for third party harassment under the Equality Act 2010. By the time the claimant raised his grievance about the conduct of the third respondent, the second respondent had removed the claimant from the site and taking account of relevant case law I find that there can be no real merits in any such claim. Otherwise, the claimant's proposed amendments refer to the second respondent's actions as subject to the will of the first respondent and I have set out my conclusions about any claim based on section 111 of the Act above.
98. As set out above, even taking the alleged acts of the second respondent as pleaded acts of direct discrimination on grounds of race and religion or belief contrary to what the claimant said until 30 November 2022, the allegations raised are significantly out of time with no real explanation or evidence as to why this is the case.
99. I have considered the balance of injustice as between the claimant and the respondent. The claimant has had several opportunities to clarify the claims he is bringing and now has legal representation. In terms of prejudice to the second respondent if the application to amend is allowed, the prejudice is in some respects limited given the amendment sought presents as relying on

the same essential factual matrix and a bundle of likely most of the relevant documents was available at the hearing before me albeit tailored to the applications and preliminary issues before me. The respondent is entitled to know what case it is asked to meet in order that it may ascertain what specific witness and documentary evidence needs to be furnished for the tribunal to properly hear the matter substantively. Moreover, as set out above, the claim the second respondent is asked to meet remains imprecisely pleaded, lacking in merit, and late.

100. I considered the principles in ***Selkent Bus Co Ltd v Moore*** 1996 ICR 836, EAT. I have considered all the circumstances of the case and the balance of prejudice. I have also taken account of the fact that in allowing the application to amend I would be exercising discretion to extend time for the bringing of virtually all the complaints and the claimant has advanced no cogent evidence or satisfactory explanation for the delay. I have decided not to allow the claimant's application to amend.
101. For completeness, and for the reasons set out above, in terms of the claim as originally pleaded not only does it disclose no cause of action as against the second respondent, but it is also in any event out of time such that the tribunal has no jurisdiction to hear it.
102. The claimant has not explained in any detail precisely what prevented him from bringing his claims before the tribunal within the relevant time limits and I have decided it would not be just and equitable to extend time in the circumstances.
103. The claimant's claims were therefore presented out of time so that the tribunal has no jurisdiction to consider them and they are hereby dismissed in their entirety.

**Tribunal Judge Peer acting as an Employment
Judge:
30/12/2022**

Sent to the parties on:

..30/12/2022.....

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For the Tribunals Office