Case Number: 2305733/2021
2300962/2022

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**

BETWEEN:

Mr A Amuni **Claimant**

AND

Guys and St Thomas's NHS Trust **First Respondent**
Central and North West London NHS Trust **Second Respondent**
University of West London **Third Respondent**

ON: **17 November 2022**

Appearances:

For the Claimant: **In person**

For the First Respondent: **Ms C Ibbotson, Counsel**
For the Third Respondent: **Ms Goodman, Counsel**

Judgment

1. The Claimant's claims of unfair dismissal, age, race and sex discrimination and breach of contract were brought outside the statutory time limits in s111 Employment Rights Act 1996 ('ERA') and Article 7 Employment Tribunals Extension of Jurisdiction Order 1994 respectively, when it would have been reasonably practicable for him to have brought those claims in time.
2. The Claimant's claims of, age, race and sex and sexual orientation discrimination were brought outside the statutory time limit in123(1)(a) Equality Act 2010 there it would not be just and equitable to extend the time limit.
3. Accordingly, the Tribunal does not have jurisdiction to hear the Claimant's claims, all of which are hereby dismissed.

Reasons

Introduction and background to the hearing

1. The claimant was a Student Nurse who completed a placement with the first respondent from 27 July 2020 to 30 September 2020, and was engaged by them as an Aspirant Nurse from 26 October 2020 to 31 December 2020.

2. By a claim form presented on 3 December 2021 the Claimant presented claims of unfair dismissal, age, race and sex discrimination and a claim for notice pay against all three respondents ('Claim1'). The claim set out no particulars whatsoever of the complaints.

3. Early conciliation in respect of the first respondent had begun on 29 November 2021 and the early conciliation certificate was issued on 1 December 2021.The claims against the second and third respondents were rejected as there was no ACAS early conciliation certificate for either of them.

4. The Tribunal wrote to the Claimant on 15 December 2021 noting that he did not have two years' service at the time of his dismissal and it was therefore considering striking out his claim of unfair dismissal on the basis that it did not have jurisdiction to hear it.

5. The claim form in Claim 1 was then served on the first respondent, which defended the claim and made applications for the following issues to be determined as preliminary matters:

    a. whether the claimant's discrimination claims should be struck out on the basis that they have no reasonable prospect of success, pursuant to Rule 37(1)(a) of the Employment Tribunals Rules of Procedure ("the ET Rules");
    b. subject to further particulars being provided, whether any of the claimant's discrimination claims should be dismissed on the basis that they are out of time;
    c. if the claimant's unfair dismissal claim has not already been struck out pursuant to the Tribunal's strike out warning of 15 December 2021, whether it should be dismissed on the basis that the Tribunal does not have jurisdiction to hear it because the claimant has insufficient length of service; and
    d. in the alternative, whether the claimant should be ordered to pay deposits in order to continue his pursuit of his claims against the first respondent on the basis that they have little reasonable prospect of success, pursuant to Rule 39 of the ET Rules.

6. On 14 March 2022 the Claimant again commenced early conciliation, this time against all three respondents. The early conciliation certificates were issued the same day and on the same day the claimant presented a claim ('Claim 2') against the first respondent and the third respondent (which was named twice). The claims were of breach of contract, unfair dismissal, age, race, sex, and sexual orientation

discrimination and sexual harassment and various claims that fall outside the Tribunal's jurisdiction (negligence and breach of statutory duty). Again, the claim form contained no details of the claim.

7. Claim 2 was served on the first and third respondents on 29 March 2022.

8. The first and third respondents defended Claim 2. As Claim 2 has never been served on the second respondent it has not responded to the claim.

9. On or around 9 April 2022 the Claimant applied to amend Claim 2 by substituting the name of the second respondent where the third respondent had been named twice. He also sought to add a claim relating to protected disclosures, which had not been mentioned before. The amended claim form was accompanied by a lengthy set of what appeared to be legal submissions.

10. On 11 April 2022, the Claimant submitted what he described as particulars of his claim. This was an extremely lengthy document consisting of some 270 pages and containing extensive submissions on what the Claimant said was the relevant statutory and case law. He also said that he intended to argue that he did not need two years' service to bring a claim for unfair dismissal because he was asserting that he had been dismissed for asserting a statutory right under ss86, 87, 97 and 103A ERA.

11. He sent two further set of lengthy legal submissions on 14 and 19 April 2022, in support of his argument that the two-year service requirements ought to be disapplied in his case and his application for the claim to be amended to add the second respondent. The document sent on 14 April also contained submissions relating to his application for an extension of time for starting his claims.

12. The first respondent applied on 28 April 2022 for the two claims to be consolidated. It also objected to the Claimant's amendment application and asked that it be considered at the preliminary hearing.

13. The file was considered by EJ Wright on 22 May 2022. She ordered that today's preliminary be listed to deal with the questions of the Tribunal's jurisdiction and whether any claims should be struck out as having no reasonable prosect of success.

14. The Claimant presented his own case at the hearing. Neither of the respondents' representatives wished to cross examine him and I asked questions in order to clarify what he wished to say. There was a bundle of documents to which I refer by page number as necessary in the reasons below.

The issues for the hearing

15. The issues the first respondent had asked me to consider at the preliminary hearing are those set out above at paragraph 3 and the Claimant's amendment application.

16. The third respondent also asked me to consider striking out the claims as having no reasonable prospect of success or on the jurisdictional ground that the claims have been brought outside the relevant statutory time limits. It also applied to be removed as a party from the proceedings on the basis that it had never actually employed the claimant. Ms Goodman also submitted that the tribunal would have no jurisdiction to deal with a claim arising under Part VI of the Equality Act, which relates to education, even if such a claim arose on the facts.

17. As the hearing had been listed for only three hours and it remained unclear what exactly the Claimant's claims were, making an evaluation of their merits difficult, I decided to focus first on the jurisdictional question of whether they had been brought in time. In the event I did not need to go further than that because it appeared to me that they had not been and there were no grounds for a time extension.

The law

18. As my decision was reached on the basis that all of the Claimant's claims brought out of time, I set out only the law relating to the relevant statutory time limits and the associated case law.

19. The law on time limits in unfair dismissal cases is set out in s111 ERA as follows:

> **111 Complaints to employment tribunal.**
>
> **(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.**
>
> **(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—**
>
> **(a) before the end of the period of three months beginning with the effective date of termination, or**
>
> **(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.**

20. The same test of reasonable practicability applies to a claim of breach of contract (Article 7 Employment Tribunals Extension of Jurisdiction Order 1994).

21. The law on time limits in discrimination cases is set out in s123 Equality Act as follows:

> **123 Time limits**
>
> **(1) Subject to sections 140A and 140B 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.**

Submissions

22. For the first respondent Ms Ibbotson submitted that the claim appeared to about events that took place during a placement that the Claimant undertook with the first respondent between 30th July 2020 and 30th September 2020. The first respondent accepts that the Claimant then worked for it from the 26th of October 2020 to the 31st of December 2020. At best therefore the Claimant had three months from the 31st of December 2020 to bring all of his claims. However, he delayed significantly, the first claim being eight months late and the second claim being over 11 months late. She submitted that the Claimant appears to be saying that the reason that he was unable to submit his claim earlier was the symptoms that were listed at page 231 of his particulars of claim which included insomnia and flashbacks which he says were caused by sexual harassment that he experienced during the course of the placement. However, he had submitted no medical evidence in support of his submission that he was unable by virtue of these symptoms to present a claim at an earlier date. She submitted that these symptoms could not reasonably have prevented the claimant from presenting a claim especially over such a long period and it was very unlikely that they were so bad that he would not have been able to present it at an earlier time. She reiterated the lack of medical evidence in support of the Claimant's submissions and observed that the Claimant had been evasive when questioned about this. There were no letters whatsoever from any medical practitioners amongst the extensive paperwork that he submitted for the hearing. She queried why the Claimant was suddenly able to explain to contact ACAS when he did. Again there was no explanation for this sudden change in circumstance.

23. When considering the test under section 123 Equality Act I would be obliged to consider to the prejudice to both parties if time were extended or not. She pointed out that at this stage the first respondent still does not know what the claims are about. There will be a very significant delay between the events about which the claimant appears to be complaining and the trial itself. There is likely to be significant prejudice to the respondent occasioned by the fact that so much time has elapsed and that witnesses would have difficulty recalling the events or might even have left its employment. She submitted that the Claimant had failed to establish that there was a good enough reason for the substantial delay in presenting the claims and the lack of evidence in support of his arguments, coupled with the probable prejudice to the first respondent, should lead me to decide that it was not just and equitable to extend the time limit in this case.

24. For the third respondent Ms Goodman also submitted that it remains unclear what exactly the claimant is claiming. Although it was not entirely clear when time started to run it in her submission it could not be later than 30 September 2020. The only claim against the third respondent had been presented in March 2022. The Claimant had, she submitted, wholly failed to explain why it would not have been reasonably practicable for him to submit his claim earlier or why it would be just and equitable to extend the time limit for the purposes of the discrimination claims. Time limits should be applied strictly she submitted and in any event the claimant had initially brought a claim against the third respondent in December 2021 albeit

the claim was rejected for lack of an ACAS early conciliation certificate. But it could not be said that the Claimant could not have brought the claim earlier but is because in fact he had attempted to do so. She reminded me in respect of the discrimination claim that I should bear in mind the factors set out in *British Coal Corporation v Keeble and ors 1997 IRLR 336*. She also urged me to consider whether, if time were extended, it would be possible for a fair trial to take place.

25. The Claimant's endeavoured at the hearing to make detailed and lengthy legal submissions. It was not possible to hear all that he wanted to say in the available time, but the gist of his arguments was, as I understood it, that either the time limit for submitting a claim did not apply when the claim was one of automatic unfair dismissal (which was a clear misunderstanding of the law on his part), or that time ought to be extended because of circumstances that he summarised as follows. I have extracted this information from page 92-93 of the bundle with my emphasis:

'On 14 March 2022, "the Plaintiff" brought it to the attention of the ET Montague Court, particularly in the submission of this 'Claim'. And prior to submitting this 'Claim', <u>it has since become obvious that the unforeseen impacts of the unsolicited conduct(s) related to sex and/or sexual harassment</u> inflicted upon him by Mark Stuart Bowyer ("MSB") of the GSTT, and in an arranged agreement with other staff members, the emotional setbacks have increasingly tormented him on a daily basis. It has caused him continuous degrading and humiliating experience as he walks through the sickening episode flashbacks, and as he stands defenceless in the face of the law in the nonstop hostile environments, as "MSB" executed audacious sexual harassment conducts. Please, see evidence in items 266. X. (A to E) of the Particulars of Claim presented to ET Montague Court. And details will be made available during full trial. Further, "the Plaintiff" hereby declared that the unwanted sexual related conduct(s) have since caused repeated short-time difficulties. and as declared below:
(a) Anxiety;
(b) Insomnia (inferred as sleeplessness) have continued to cause him daytime fatigue and reduced energy levels and difficulty to concentrate;
(c) Unusual aches;
(d) Unusual high blood pressure;
(e) Experienced shame and embarrassment that as he stands defenceless because of the UK law, seemingly designed to protect these persons ("the accused")
(f) Threats by the "UWL" and "GSTT" to fail and/or derail "the Plaintiff's' career;
(g) Non-stop coping strategies to suppress the appalling emotions arising from the flashbacks have been applied to date.

7. As is explained in the legal factsheets, the Court may exercise its discretions to disapply the limitation period in a Claim concerning the offences under section 33 Limitation Act 1980, if it is equitable or unbiased to do so, and having regard to the detriment caused to "the Plaintiff" if barred from bringing his 'Claim' as these offences were not plain fallacies, whereas the Abusers are shielded from facing justice and to continually enjoy their freedom due to the supposed out of time assertion. As a result, the legal luminaries have since exercised some form of reasonableness to weigh up the preponderance of evidentiary burden and circumstances surrounding miscarriage of justice that must have arisen. Hence, the birth of s. 33 LA 1980, becomes an 'Order' to disapply the said limitation, dependent on the primary evidence and as may be just.

8. Besides, the position(s) of the Court is to adopt the correct approach by assessing the overall evidence and the effects of any delay on the cogency of the evidence. You could tell from the efforts of the Defence counsel pushing to strike out this 'Claim', and this is because it is not realistic to push aside or ignore findings and conclusions arrived at, following a full trial because there is no denial that these offences had not occurred. Also, it is how such findings and conclusions are scrutinised and treated in the Court's limitation analysis that

shows due diligence procedures were executed. It is deeply disturbing that the administrative officers of the ET Montague Court, took detrimental position(s) intended to forestall possible hearing, and to issue "STRIKE OUT WARNING", and without a sitting Judge(s) declaring the basis of their analysis under section 33 LA 1980, and specifically the cogency of law or statute and evidence relied upon, including detriment decisions arising from, as opposed to basing the examination of this 'Claim' upon their findings as to the merits of the 'Claim'. Guilty smirk sends shockwaves down the spines of the accused in the even of full trial sessions, which have since propel the defence counsel to strike out 'Claim'.

9. "The Plaintiff did not present the unwanted conduct(s) of sexual harassment(s) or sex related conduct(s) to his employer while in employment because he struggles during the period to cope with psychological shocks and the ceaseless hostile environments. And as he starts to connect the dots, processing how he has been groomed up to that moment of the make—belief IT or computer session at another location of the GSTT, "75 York Road" around 4:31 pm arrival, Thursday 24/0912020. The trajectory of the grooming will establish the grounds in full trial that they are part of behaviours occurring over short space of time and for the purposes of s. 123, ss. 3 Equality Act 2010. To that end, the ET Court can exercise the legitimate jurisdictions to extend time to bring this 'Claim' for sexual harassment, by such period as it sees equitable and just under s. 123, ss. (1)(b) Equality Act 2010. As appears, "the Plaintiff" is not saddled with onerous obligations to satisfy any requirements because he suffered from the harassments and it still remains with him to date. '

A. Case in Focus -— 01
In Laing Ltd -vs- Essa [2004], the complainant in race discrimination 'Claim' did not have to show that the harm or loss suffered was rationally conceivable, he needs to state the actualities of events as he experienced the unsolicited sexual harassments. Notably, the relationship between the cause and effect has not been broken to date. And this cannot be quantified, not by any imagination.

B. Case in Focus — 02

In FZO -vs- Haringey London Borough Council [2020] England and Wales Court of Appeal ("EWCA") Civ 180, the Court of Appeal are typically known to provide the general guidance as to the assessment of evidential bias, and when to make a determination alongside the substantive or applicable issues at the end of an ongoing trial;
The Plaintiff had sought damages for personal injuries arising from the sexual assaults suffered in the hands of first defendant schoolteacher between 1980 and 1988. The second defendant was the local authority responsible for the school and the first defendant's employer;
Upon arrival at the school, the Plaintiff had been raped by another man. The Plaintiff confided in the first defendant about the rape. The first defendant told him that the incident meant that he was gay and that, if it became known. he would be thrown out of his family home. To that end, the first defendant groomed and manipulated the Plaintiff into sexual activity with him which included anal rape almost from the start;
And when he was 16-years old around 1982, the Plaintiff quit the school, albeit he returned again for shorter period in 1983/1984. He alleged that the first defendant continually abused him until 1988 when he was 21 years old. He then had ongoing contact with the teacher until 2011 when, after years of experiencing anxiety and psychological problems, he suffered a breakdown. In 2014, the first defendant pleaded guilty to counts of indecent assault and buggery when the Plaintiff was aged between 13 and 15 years. He also admitted to raping the Plaintiff when he was under 16. The Plaintiff began the instant proceedings in 2016 which was between 25 and 30 years after the expiry of the applicable limitation period for each assault….

C. Why the above Case(s) in Focus Matters in this 'Claim'?
i) The detailed primary evidence of actualities of this 'Claim' entered 14 March 2022 are incontrovertible, which necessitates full trial;
ii) is the assertion of Quid Pro Quo Sexual Harassment of the Plaintiff in the "Case in Focus

02" applicable to "the Plaintiff" in this 'Claim'? stating that,

". .. The first defendant told him that the incident meant that he was gay and that, if it became known. he would be thrown out of his family home. To that end, the first defendant groomed and manipulated the Plaintiff into sexual activity with him, which included anal rape almost from the start".
iii) Notably, the detailed primary evidence presented 14 March 2022, in the Particulars-of-Claim to the ET Court, are available for presentation in a full trial. And it shows that the Defendants have engaged in criminal and/or fraudulent acts, which emboldened the furtherance of the sexual related conduct(s) and/or sexual harassment(s) audaciously inflicted on him by "M83" and in an arranged agreement with "JH", "KB" and "CH" of "GSTT";
iv) Had these unwanted sexual related conducts succeeded (i.e., accepted by "the Plaintiff'), it is highly probable that "the Plaintiff" would have been injected with drugs, as the abuser have access to highly potent medicines in the Trust;
v) It is highly probable that it would have caused "the Plaintiffs" death, and treated "unknown cause of death" in the mysterious world;
vi) Hence, "the Plaintiff' in this 'Claim' trigger section 33 Limitation Act 1980, for the Right to a full trial, and to unravel the primary evidence at his disposal; and
vii) "The Plaintiff' have the good-faith grounds that the sexual harassment and other tortious acts would not have happened without the approval of the executives of "the 1", 2"" & 3"" Defendants".

26. What these rather convoluted submissions seemed to me to indicate was that four months after the Claimant had submitted Claim 1 and one month after he had submitted Claim 2 he decided (for a reason that is not clear) to set out in writing why he had not submitted his claim at an earlier date. The reason for the delay appears to be that he was (as he alleges) subjected to sexual harassment or assault during the course of his placement with the first respondent and he was unable to bring the claim at an earlier date by reason of the resulting upset and trauma. He cites in support of this, a case dealing with an entirely different situation in which a young person who was sexually abused at school while still a minor, was permitted to bring proceedings many years after the event. In my judgment the circumstances of that case were simply not comparable to those of the Claimant and the attempted reliance on that case was misconceived. Nevertheless, as the Claimant is not a lawyer and does not appear to have had legal assistance in preparing his claims, I considered the Claimant's submissions on their own merits.

Conclusions

27. In relation to his unfair dismissal case, I will assume for the purposes of this decision only that the Claimant has a claim that does not require him to have two years' service, such as a claim under s103A ERA 1996. The relevant test for extending time is still however whether it would have been reasonably practicable for him to present his claims in time and if not, whether he presented it within such further period as was reasonable. This is a strict test and gives the Tribunal relatively little discretion. The same principle applies to the breach of contract claim.

28. As against the first respondent, the latest possible date on which the Claimant should have initiated early conciliation was 30 March 2021. It may in fact have been earlier, if time ran from the end of the placement rather than the period of

employment by the first respondent, but I will assume that it is the later date. In fact, the Claimant presented the claim eight months later. The reason put forward, as set out above, was that the Claimant was suffering the after-effects of being sexually harassed (as he alleges) during the placement ran between July 2020 and 30 September 2020. He describes the symptoms at paragraph 266 X A to E of his very extensive particulars of claim and I have set out at paragraph 25 above what he said.

29. The explanation put forward by the Claimant does not in my judgment provide an adequate explanation for his decision to wait until November 2021 to approach ACAS with his complaints. There are several reasons for this:

    a. The explanation seems to me to contain a considerable amount of after the event justification. In the passages I have underlined it seems to me that the Claimant has looked for an explanation <u>after</u> realising that he commenced his claims out of time.
    b. The Claimant has taken it upon himself to research the law in considerable detail, but does not seem to have taken legal advice. Instead, he has spent a great deal of time and effort but not always reached the right conclusions – particularly on the question of whether a time limit applies at all. I therefore do not think that this is a case in which the Claimant could be said to have been ignorant of the fact that he had rights – he researched his rights and misunderstood the position. In my judgment that by itself falls very short of an adequate explanation of why it was not reasonably feasible – applying the test *in Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA* for him to have presented his claims in time. Furthermore, whilst the breach of contract claim was referred to from the outset, the whistleblowing claim was not mentioned at all until April 2022, when the Claimant sought to amend his claim. There is no explanation whatsoever for this delay in presenting the details of the whistleblowing claim.
    c. In any event that is not his own explanation for the delay. His explanation is that he was upset and traumatised by something that happened to him during his placement. But here too his explanation is not persuasive. His submissions do not explain in sufficient detail how exactly the symptoms he describes affected his ability to take the steps needed to commence a claim. His most detailed submissions are that he suffered from anxiety, insomnia that caused him daytime fatigue, reduced energy levels and difficulty concentrating, unusual aches and unusual high blood pressure. But his evidence is not specific about the period over which he was affected, or exactly how the symptoms interfered with his ability to take the steps necessary to commence a claim in time. Nor is the evidence backed up with any medical evidence. Medical evidence is not essential in all cases, but in the absence of a sufficiently detailed description of how the impediments the Claimant relies on actually affected him over an eight month period, and the breadth of the symptoms he describes, the absence of medical evidence is significant. Looking at his evidence in the round, what he says is in effect no more than an assertion that after the alleged sexual harassment of which he complains he suffered certain ill effects. It is not in itself surprising, that a person who has been subjected to an assault might be traumatised by it,

but without a more detailed and specific explanation of how these symptoms interfered consistently over an eight-month period with his ability to commence proceedings, they do not amount to a sufficient explanation for me to conclude that it was not reasonably practicable for him to present his claim within the statutory time limit. The onus is on the Claimant to explain why he could not bring his claim in time (*Porter v Bandridge Ltd 1978 ICR 943, CA*) and in my judgment he has fallen short of doing that.

30. As against the third respondent, all the same points apply. In addition, I accept Ms Goodman's submission that if the Claimant was able to present a claim in December 2021, it was certainly reasonably practicable for him to have initiated early conciliation against the third respondent earlier than March 2022. In fact, the Claimant made an error in not initiating early conciliation against the third respondent when he first brought a claim in December 2021, but he was informed of this on 15 December 2021, so could have rectified the error sooner than he did. I am satisfied that as it was possible for the Claimant attempt, albeit unsuccessfully, for the Claimant to bring his unfair dismissal claim against third respondent in December 2021, it was clearly reasonably practicable for him to have brought it before March 2022.

31. As regards the Claimant's discrimination claims, the test applicable in deciding whether to extend the time limit gives the Tribunal more latitude to extend time. The authorities make it clear however that a Claimant cannot assume that an extension will be granted and that an extension of time is the exception rather than the rule (*Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*). The factors that the Tribunal may take into account have been set out in *Keeble (*the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular: the length of, 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 party sued has cooperated with any requests for information; the promptness with which the Claimant acted once aware of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action), but I have also considered the guidance in *Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR D5, CA* on the correct approach to the *Keeble* factors - they may be wholly or partly relevant, but should not automatically be used as a checklist in every case.

32. Nevertheless, I have considered carefully the length of the delay in this case and the reasons for it - two of the factors set out in *Keeble*. The delay in approaching ACAS in relation to Claim 1 was at least eight months (no extension is available in relation to the ACAS process because ACAS was approached outside the primary time limit – this is also true of Claim 2). This was a significant delay for which in my judgment a cogent explanation is needed. As regards Claim 2 the delay was even longer – the claim was not presented until March 2022, making it eleven months out of time. A delay of, in the case of the first respondent eight months and third respondent, 11.5 months, would inevitably have a material impact on the cogency of the evidence.

33. As for the promptness with which the Claimant took advice, the Claimant does not seem to have take legal advice, but has instead put a great deal of effort into his own interpretation of the applicable legal principles. That has led him to create complex, difficult and unwieldy submissions, very late in the day, that are extremely difficult for the respondents to engage with. All these factors are prejudicial to the respondents and weigh against granting an extension of time.

34. As regards the reason for the delay, I return to the points I have made in relation to the test of reasonable practicability. Although the Claimant has asserted that he suffered ill effects after what he said happened to him during the course of his employment, he has not explained why those ill effects interfered with his ability to present his claims to the Tribunal in time. Assertions do not equate to explanations and because an extension of time has to take into consideration what is just and equitable to both parties in the dispute, it is important to have a detailed and clear understanding of why the factors relied on by the Claimant impeded his ability to present his claims within the statutory time limit. That detailed and clear understanding is missing in this case – there is merely a set of generalised assertions.

35. It is necessary for me to consider the balance of prejudice in arriving at an overall conclusion and in doing so I have also taken into account the fact that neither of the respondents has a clear idea, even now, of what the Claimant's case against it actually is. If time were extended the prejudice to both respondents in having to deal with claims in respect of which there has not only been a significant delay in bringing the claims, but a further unexplained delay in setting out clearly what those claims actually are, creates a significant prejudice to both respondents. The factors pointing away from granting an extension include matters that significantly prejudice the respondents and outweigh the prejudice to the Claimant in not being able to pursue claims that are even now unclear and unarticulated.

36. Accordingly in my judgment the Claimant has not shown that it would be just and equitable to extend time, in particular because he has not established that there was a satisfactory reason for the delay and because it is still the case that the respondents do not understand the cases that they have to meet.

37. The Tribunal does not therefore have jurisdiction to hear the Claimant's claims, which are hereby dismissed.

38. Accordingly I also refuse the Claimant's application to amend the claim by adding the third respondent as a party and introducing fresh allegations relating to protected disclosures. To do otherwise would be perverse, given my decision that he has not shown that it would not have been reasonably practicable for him to bring a whistleblowing claim against any of the respondents within the statutory time limit and given that he had already, albeit unsuccessfully, attempted to bring a claim against the third respondent in December 2021, coupled with my decision that it would not be just and equitable to extend time in respect of his allegations of discrimination.

Employment Judge Morton
Date: 23 December 2022

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