



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N S Khaliq

**Respondent:** Secretary of State for Work and Pensions

## PRELIMINARY HEARING (OPEN)

**Heard at:** East London Hearing Centre

**On:** 16 March and (in chambers) 28 March 2023

**Before:** Employment Judge B Elgot

**Representation:**

For the Claimant: In person

For the Respondent: Ms J Russell, Counsel

The Employment Judge having reserved her decision now gives judgment as follows:-

## JUDGMENT

### **Rule 37 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**

1. The parties are agreed that the correct name of the Respondent is Secretary of State for Work and Pensions
2. The claims of unfair dismissal, unlawful deductions from wages, breach of contract (failure to pay notice pay), for accrued and unpaid holiday pay and the complaint that the Claimant has been subjected to detriment on the ground that she made protected disclosures are STRUCK OUT and DISMISSED.
3. This is because an Employment Tribunal has no jurisdiction to hear these claims and they therefore have no reasonable prospect of success. Each of the claims has been lodged outside the relevant time limit. I decline to extend time because I have determined that it was reasonably practicable for the Claimant to have filed these claims within the time limits.

4. The claim of disability discrimination is out of time but is not struck out and remains listed for hearing in person on **26,27 and 28 July 2023** at East London Hearing Centre. I am satisfied in relation to this claim that it is just and equitable to extend time until 22 March 2022 which is the date when the Claim (ET1) was lodged.
5. **No later than 7 April 2023** the parties shall write to the Tribunal giving their final decision on whether each of them seeks an offer of judicial mediation if one of the Acting Regional Employment Judges is willing to offer this facility.
6. **No later than 14 April 2023** the parties must agree and send to the Tribunal a revised List of Issues setting out the remaining issues and the disputes of fact/questions which the Tribunal will be asked to determine in relation to disability discrimination at the final full merits Hearing.
7. There shall be a further Preliminary Hearing by telephone for three hours on **18 May 2023 commencing at 10 am** in order to deal with all other outstanding matters and make case management orders for the full Hearing. There was insufficient time to make these orders at the conclusion of this hearing. If either party wishes to make any further application in relation to amendment of the claims and/or response it must do so in writing **no later than 21 April 2023** so that an Employment Judge may consider any such matters at the next Preliminary Hearing.

## REASONS

1. This open preliminary hearing in person was listed for one day on 16 March 2023 to consider the fact that all the claims have been made out of time and to consider whether to extend time or to strike out all or some of the claims.
2. There is a Preliminary Hearing (PH) Bundle of 152 pages and at pages 150-152 there is a statement by the Claimant stated to '*explain the reason for my late appeal application to the Employment Tribunal*'. I explained to the parties that I would read only those pages in the PH Bundle to which my attention was specifically directed. The Claimant gave evidence on oath and was cross examined by Respondent's counsel and answered questions put to her by me.
3. I have had the benefit of a written Skeleton Argument prepared by Ms Russell on behalf of the Respondent and both parties gave oral submissions. The Claimant was distressed during the hearing and apparently exhausted and very hot. She was provided with a quiet cool room and supervised rest over the period from 1.30 to 2.35 pm and offered further breaks which she declined. She was able to make oral submissions but in view of her difficulties I adjourned for a reserved decision.

4. I am satisfied that the Claimant had notice of the issues she was obliged to address and was enabled to put forward her evidence and arguments with due concern and adjustments for her welfare.
5. The parties have had the benefit of two previous preliminary hearings at which the claims and issues were discussed. On 17 October 2022 Employment Judge Beyzade listed an open preliminary hearing on the time limit points for 25 January 2023. He also ordered the Claimant to provide further information about her claims- see paragraphs 23 -27 on pages 43 -46 of the PH Bundle The Claimant was able to provide these particulars by 21 November 2022 (pages 51-59). She alleges that her dismissal was an act of disability discrimination as appears from paragraphs 1-4 and paragraphs 8- 9 of her further information on page 52 of the PH Bundle.
6. The Claimant also alleges direct disability discrimination, discrimination arising from disability and a failure by the Respondent to make reasonable adjustments. The issues in relation to these claims are set out in a draft List of Issues on pages 61 -66 and I am satisfied by reference to that document that there are significant and cogent complaints by the Claimant which require determination by a Tribunal and which it would not be just and equitable to strike out for want of jurisdiction.
7. It would be prejudicial to the Claimant if these disability discrimination claims (which are not only about her own disability but her caring responsibilities for her three allegedly disabled children) were not ventilated. There is no claim of associative discrimination.
8. The Claimant states that her disabilities are migraine, anxiety, depression, ADHD and emotionally unstable personality disorder (EUPD) and she states that her eldest son has mental health difficulties, is autistic and suffers from Crohn's disease, that her middle son has post- traumatic stress issues and that her daughter is unwell with asthma and eczema, anxiety and behavioural issues.
9. The second preliminary hearing took place before Employment Judge F Allen on 25 January 2023 when the hearing was postponed to 16 March 2023 because the Claimant did not understand the purpose of the hearing and did not realise that the question was whether her claims or some of them might be struck out. I am satisfied that she certainly understood that these were the matters in question before me.
10. The Claimant was employed by the Respondent from 21 January 2002 until 28 April 2021 (the effective date of termination) when she was dismissed summarily for gross misconduct. She had a career break between 2010 and 2015. Her appeal against dismissal was not upheld and she was notified of that outcome on 9 July 2021. The ACAS early conciliation period commenced on 26 July 2021 and the certificate was issued on 27 August 2021 but thereafter the Claimant did not submit her ET1 Claim to the Tribunal until 22 March 2022. The

latest date on which her claim ought to have been submitted was 26 September 2022 and she is therefore just under six months late with her claims.

11. There is no text in her ET1 which requests any extension of time and the Claimant did not respond to a letter from the tribunal (EJ Gilbert) dated 5 April 2022 which alerted her to the fact that all her claims were submitted outside the time limits.
12. The period in question in this case is therefore the time between 26 September 2021 which was the deadline for lodging the claims and the date on which they were filed on 22 March 2022. I explained to the Claimant that I would apply the test of whether it was reasonably practicable for her in relation to all her claims except disability discrimination to bring her complaints before the end of three months, extended by the ACAS early conciliation period. I similarly explained to her the different test which applies to discrimination cases where the time limit is the same but the test is whether it is just and equitable for me to extend the period within which she must claim. I considered, as background, the events of the late summer of 2021 so that I could understand the reasons for the delay which occurred after early conciliation commenced on 26 July 2021.
13. In particular I took into account not only that the Claimant was able to submit and conduct a lengthy appeal against her dismissal ( pages 127 -130 of the PH Bundle) which contains much of the dispute which is reflected in her tribunal claim but also that she was aware of the possibility of tribunal litigation as early as 6 May 2021 because in her appeal letter of that date she writes '*I am ready to go to the tribunal and further if I have to*'. I have made a finding set out below that I do not find it credible that the Claimant did not know that time limits applied to tribunal proceedings and she had the resources to investigate the length of those time limits.
14. The Appeals Officer Mr Shaun Curnow again states on 10 May 2021 at page 131 '*Nurjahan has in correspondence with me indicated it is her intention to go to Tribunal*'.
15. In September 2021 the Claimant was in correspondence with the Respondent's officer Mr Philip Harwood who was tasked to enquire of the Claimant whether she wished to pursue a post-employment grievance in relation to the allegations of bullying, harassment, and racism she had made during her appeal. He records in the Casework Query documentation on page 40 dated 27 September 2021 '*Miss Khaliq is currently prepping for an employment tribunal against the department regarding her dismissal*'. At page 141 he refers to '*pending employment tribunal*'.
16. I conclude that at almost exactly the same date when the claims ought to have been presented to the tribunal the Claimant was communicating to Mr Harwood that she had a pending claim. She was able, whatever the state of her mental health at the time, to engage in correspondence including a detailed discussion of the issues about her dismissal and enquired whether a successful resolution of her post-employment grievance would potentially result in a reversal of her

dismissal. Mr Harwood told her that he could not guarantee 'that putting in a grievance now could result in the decision to dismiss being overturned' and the Claimant therefore did not pursue that grievance option.

17. The relevance of these emails is that, for example, at page 143 of the PH Bundle it is clear that on 30 September 2021 even past the deadline for the tribunal claim the Claimant is conscious that she can dispute the fairness of her dismissal and tells the Respondent's officers that, although her '*mental health condition has been worse for some time now*' (page 144) she is able to discuss the interaction between a possible post-employment grievance and her pending tribunal. I find that she was sufficiently informed and organised at this time to discover the time limits and to file a claim; it was reasonably practicable for her to do so in the context of the other correspondence she entered into with the Respondent.
18. The Claimant sought some legal advice and assistance and spoke to ACAS several times. Indeed she was able to contact ACAS just within the time limit for early conciliation but she is insistent that she was not aware of the three month time limit for the presentation of her Employment Tribunal claims. She says that she could not get past the receptionist and was 'turned away' by all sources of help including Citizens Advice Bureau, 'law centre' in Limehouse and solicitors. I do not believe that this can universally be the case and her evidence in this respect is not credible. In addition there are wide-ranging on-line resources for potential claimants to obtain information about tribunal time limits and the Claimant told me that she did do some research about the type of claims she could bring. In those circumstances it was reasonably feasible for her to read about and identify the time limits and understand that she only had a relatively short time in which to make her claims in the tribunal.
19. The Claimant is clearly an articulate and intelligent person but she does have her own mental health difficulties and onerous caring responsibilities as a single parent for her three children now aged 22, 19 and 13. She has a painful and traumatic family history and early life described in her witness statement and at pages 35-39 in a letter to the Respondent on 12 September 2022. She suffered several family bereavements during the covid 19 pandemic in 2020. I have considered whether these medical and social factors made it not reasonably practicable for her to comply with the time limits for lodging her claims (save for disability discrimination)
20. The medical documents are at pages 76 – 91 of the PH Bundle and I examined those documents which are relevant to the period I identified above i.e. 27 September 2021 to 22 March 2022. It is for the Claimant to prove that during that period, for health reasons, it was not reasonably practicable to submit her claims.
21. Her consultant psychiatrist's letter at page 76 from Dr Luke Mearns at Bow and Poplar Community Mental Health Team (CMHT) is dated 13 October 2022 which is a later date but it does refer to '*I am very concerned about her mental state...constantly anxious, low, expressing suicidal ideas and unable to carry out many of her activities of daily living*'. The phraseology of the letter suggests

it was written to support an application for state disability benefits. Dr Mearns does say *'understand she has been as she is now for over a year'*. I have therefore examined whether the Claimant had the same worrying mental state going back beyond October 2021.

22. Her GP Notes are at pages 77-80 and although confirming the Claimant's diagnoses and treatment do not make reference to any worsening of her mental health conditions between September 2021 and March 2022. Indeed there is no note of any GP consultations over this period.
23. On 18 October 2022 the day after the PH with EJ Beyzade when the Claimant was informed that there would be a preliminary hearing on 25 January 2023 to determine the time limits issues she did contact her GP and ask for a *'letter confirming that due to my mental health worsening and caring responsibilities I have not been able to cope with daily routines and unable to get additional support as my anxiety depression and anger issues were extremely bad.'*
24. Her GP Dr Marmot prepared and sent the letter dated 12 December 2022. It contains no dates or details of consultations in the relevant period or indeed any dates at all. It says *'Nurjahan has presented to us many times over the years with complaints about stress at work. She attended several times in 2017...since that time Nurjahan has presented many times about her poor mental health... and other presentations related to stress...in fact worsened over the years.'* Dr Marmot goes on to confirm diagnosis and treatments. However, there is, as I say, no specific reference to the impracticability of the Claimant's being able to take action to deal with paperwork between September 2021 and March 2022. What the GP does say is that by December 2022 *'it has been quite evident to us at the surgery that Nurjahan has been unable to cope with everyday activities and especially paperwork... she has not been mentally able to proceed in a meaningful and timely way'*.
25. Nonetheless, it is clear from the tribunal file and the Claimant's engagement with two employment judges at two separate PHs before this one that she has since March 2022 been able to proceed with her tribunal claim and deal with the relevant paperwork including the preparation of detailed submissions and statements. Dr Marmot's letter does not assist her in relation to the earlier relevant period. Similarly, there are no disclosed fit notes relating to that period.
26. Finally, there is a letter dated 17 February 2023 from Nazrul Miah at Bow and Poplar CMHT referring to Dr Mearns's letter of 13 October 2022 (perhaps dictated on 23 September 2022 as page 88 indicates). The letter refers to *'previous indication from 2020 GP had significant concerns about the severity of her depression, risk to self and poor functioning...complex family dynamic'*. He says, as the Claimant stresses herself, that *'this has been ongoing through covid restrictions and it may be possible that Miss Khaliq did not appeal on time'*.
27. However, the 17 February 2023 letter does not focus on the relevant time period and therefore does not assist the Claimant in discharging her burden of proof. I

am cognisant of the fact that during 2020 and the covid 19 restrictions she was nonetheless able to prepare and file documentation relevant to her work, her dismissal and appeal and then contact ACAS. She has been able to contact and write extensively to the Tribunal and the Respondent since March 2022. Despite her complex and manifest health, family, and social difficulties she has not shown that there was a significant worsening of her situation which made it not reasonably practicable for her to lodge the ET1 within the prescribed time limit.

28. Finally, there is a comprehensive and supportive letter at pages 90-91 from the family's senior help worker at Tower Hamlets Supporting Families Division of the Children and Culture Directorate of the local authority speaking of a '*very difficult year*' for the Claimant from March 2021 to March 2022 since Ms K. McLoughlin has been working with her and her children particularly her daughter. It is a letter which evokes considerable sympathy for the Claimant's situation but it does not explain why she could engage with the dismissal/appeal/possible grievance /ACAS scenario between March 2021 and September 2021 but could not then put in her tribunal claim for six months between September 2021 and March 2022.
29. The Claimant told me that the intervention of Ms Mclaughlin and the help she provided made all the difference to her '*my stress calmed down a bit and I could concentrate on my other problems* [not just my children]. Ms Mclaughlin, who had previously been the attendance officer at the Claimant's daughter's school and therefore knew the family well, began helping them extensively from March 2021. This evidence again supports a conclusion that the Claimant was enabled and capable of bringing her claim to the tribunal, with the support of family intervention professionals, and it was reasonably practicable for her to do so. She told me that Ms McLaughlin had said to her '*go on the website and do it yourself*'.
30. In all the circumstances described above I therefore conclude that the claims of unfair dismissal, unpaid wages, accrued and unpaid holiday pay and in relation to detriments on the ground of whistleblowing should be dismissed and struck out because a tribunal has no jurisdiction to hear them. Those claims have been lodged outside the relevant time limits and I decline to extend time because I am not satisfied that it was not reasonably practicable to comply with those time limits.
31. I have stated above that I find it just and equitable to extend time for the submission of the Claimant's complex and significant disability discrimination claims which are arguably matters of public interest.
32. The complaints of disability discrimination are well documented insofar as I can ascertain. This is not a case where the Respondent has sought to persuade me that there is undisputed contemporaneous documentation which is totally inconsistent with the Claimant's version of the alleged facts; indeed, disclosure is not yet complete and it seems certain that there are issues of disputed fact which need to be resolved by a full hearing of the evidence.

33. I am not convinced that the cogency of the evidence on either side will be affected by the six-month delay. The final hearing is taking place within a few months from today at the end of July 2023. The Claimant's appeal documents alerted the Respondent as early as June 2021 to some of the disability discrimination issues to be determined. There is not such an excessive time gap that witnesses will not recall events particularly in a well -documented series of alleged discriminatory acts and events.
34. In all the circumstances the disability discrimination claims remain to be heard and are not struck out. I have made orders set out above which provide for further case management directions to be made promptly.

**Employment Judge B Elgot**  
**Dated: 30 March 2023**