EMPLOYMENT TRIBUNALS

Claimant: Mr Adnan Sheikh
Respondent: Mitie Care and Custody Limited

Heard at: London South (CVP) **On: 09 December 2022**

Before: Employment Judge Hill

REPRESENTATION:

Claimant: In Person
Respondent: Ms Sarah Harty - Counsel

WRITTEN REASONS

1. JUDGMENT having been sent to the parties and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

Introduction

2. The claimant presented his claim form to the Tribunal on 3 February 2022 having undertaken ACAS early conciliation between 29 November 2021 until 09 January 2022. The claimant brought claims of unlawful deduction of wages that included claims for unpaid sick pay, notice pay and accrued but untaken holiday pay, and claims of unfair dismissal and disability discrimination.

3. The effective date of termination agreed by the parties was 27 July 2021 when the Claimant was dismissed with payment in lieu of notice, on the grounds of capability. The claimant alleged that his dismissal was unfair, he did not receive his notice pay or holiday pay, was owed sick pay for when he was absent from work in 2017 and his dismissal was the final act of discrimination.

4. The primary time limits for the Claimant's claims were:

Unfair dismissal	26 October 2021	ERA 1996 section 111 (2)(b)

Disability Discrimination	26 October 2021	Eq Act 2010 section 123
Unpaid Injury at work/Sick pay	23 November 2017	ERA 1996 section 23

Notice Pay and accrued but untaken holiday were due to be paid in next wage run after dismissal which was 27 August 2021 therefore the three month time limit runs from that date 26 November 2021 ERA 1996 section 23.

5. None of the claims were presented within the primary time limits relevant to those claims with all claims being submitted on 3 February 2022.

The Issues

6. The issues for the Tribunal to determine were:
    a) Were the unfair dismissal and unlawful deduction of wages complaints made within the time limit in section 111 of the Employment Rights Act 1996? If not,
    b) was it reasonably practicable for the claim/s to be made to the Tribunal within the time limit?
    c) If it was not reasonably practicable for the claim/s to be made to the Tribunal within the time limit, were they made within a further reasonable period.
7. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? If not,
    a) Why were the complaints not made to the Tribunal in time?
    b) Is it just and equitable in all the circumstances to extend time?

The Evidence

8. The hearing was conducted by CVP. The Tribunal was provided with the following evidence:
    a) A bundle of documents prepared by the Respondent consisting of 201 pages.
    b) A supplementary bundle of documents prepared by the Claimant including a medical chronology of his conditions/treatments and specifically details of his medical procedures, a prescription from a Dr Sims who managed his pain which included a note about his medical conditions dated 7 December 2021.
    c) Further documents from the Respondent including the capability procedure.
    d) The Claimant gave oral evidence explaining the reasons for submitting his claims late.
    e) Both parties gave oral submissions.

9. At the start of the hearing, I discussed with the Claimant what would happened during the hearing and checked with the Claimant that he understood what the hearing was about and the questions the Tribunal was being asked to decide. The Claimant confirmed that he did understand and had produced medical evidence and a chronology to support his reasons for not submitting his claims on time.

Relevant Findings of Facts

10. The Claimant was employed as an Overseas Detainee Custody Officer with the Respondent from 16 July 2012 until his dismissal by reason of capability on 27 July 2021. The Claimant is a disabled person and has 3 torn spinal disks and is a disabled person for the purposes of the Equality Act 2010, this was conceded by the Respondent. The Claimant also has a medical condition, Multiple Sclerosis which may also amount to a disability within the meaning of the Equality Act, however, this was not conceded by the Respondent and for the purposes of this hearing was not relevant to determine.

11. The Claimant was signed off work on 23 May 2017 with a back injury and never returned to work. The Claimant alleges that the injuries were suffered at work and that he is entitled to injury on duty payments/sick pay. The claimant raised a number of concerns about this injury in his ET1 and believes the Respondent is responsible for his injuries. The Respondent denies that the injuries happened at work and therefore no payment is due. The Tribunal is not required to make a finding of fact on this issue but rather whether the Claimant presented the claim for the payments out of time.

12. During the period of his sickness absence the Claimant underwent spinal surgery on 1 November 2017 and 10 July 2019. The Claimant also underwent other medical procedures including spinal injections, scans and x-rays and pain management. Unfortunately, none of these procedures resulted in the Claimant being able to return to work. During this period, the Respondent arranged for the Claimant to attend Occupational Health Referrals in October 2018, February 2019, February 2020 and February 2021. The claimant also attended four capability meetings as well as other welfare meetings and email communications between the parties. A final capability meeting was held on 6 July 2021 where he was represented by his union representative and after this meeting the Claimant was dismissed on 27 July 2021 under stage 3 of the Respondent's Sickness Absence procedure. This was over four years after the Claimant first went off sick. The Claimant was informed that he would receive 11 weeks' pay in lieu of notice and 248 hours of unused but unpaid annual leave equal to 1 years' leave entitlement. The claimant did not appeal.

13. The Claimant's claim form states that he is claiming *"miscalculated wages and holiday pay dating back from April 2017".* In his further and better particulars, the Claimant makes a claim for 1094 hours of annual leave. The Respondent argues that the Claimant is owed 248 hours. The parties agreed that payment for 248 hours would be calculated and details sent to the Claimant along with his 11 weeks notice pay.

14. At the time of his dismissal the Claimant was waiting for further surgery on his spine and was located in Canada. This further surgery took place on 26 October 2021 and the Claimant remained in hospital until 29 October 2021. The claimant's chronology showed that no further medical intervention was

required between 26 October 2021 and 07 June 2022. The claimant has remained unfit for work and is still not fit to work.

15. On 29 November 2021 the Claimant entered into early conciliation with ACAS. An EC certificate was issued on 9 January 2022 and the Claimant submitted his completed claim form (ET1) on 3 February 2022.

16. The Claimant evidence about when he knew about time limits was at times confusing and contradictory. The Claimant was reluctant to acknowledge that he was aware of time limits. The Claimant accepted in oral evidence that he did know about time limits but at other points in his evidence said that he was not aware of any time constraints. When asked whether his union representative had advised him of time limits the claimant initially said no but then said that *"he (the union representative) said maybe some time constraints. I didn't know the dates and he said as quick as possible and the I contacted the FRU".* However, under cross examination the Claimant said *"they did highlight I was time barred. My union representative. No, I was not aware during October to February of any time restraints I put them (the claims) in as soon as I was able to. The union rep said get it in even though it was late".*

17. When I asked the Claimant about his understanding of the limitation issues, he confirmed that during the period from his dismissal until the date he submitted his claim he had advice from his union, that he sought advice from the Free Representation Unit and that he had made contact with solicitors to discuss them taking on his case. The Claimant stated that he was in contact with his union representative and their advice was to contact ACAS and include a claim for unfair dismissal.

18. When pressed on why he had asked Dr Simms to write a note on his prescription the Claimant stated that he asked for that to be added because he would have something if it was required to explain why the claim was late. The Claimant then stated that he was informed of time limits by his union and by ACAS on 29 November 2021.

19. The claimant had provided medical evidence in support of his late claims. The evidence provided was a note written on a prescription form which the Claimant had requested from his pain specialist, Dr Simms. When questioned about the prescription note he had obtained from Dr Simms, the Claimant stated that he asked Dr Simms to note on his documentation about his *"stresses"* because Dr Simms had known about his case before his spinal fusion. This note on his prescription was obtained on 7 December 2021 and the Claimant stated that when he asked Dr Sims to make a note of his medical conditions on the prescription he did so because he would have some evidence of his capability during the period as to the reasons why he had not put his claim in on time.

20. The note read "*Please note that Adnan Sheikh has been dealing with ongoing medical conditions. Specifically, he underwent a procedure in July 2021 and subsequent surgery on October 26 2021, for ongoing medical issues. Due to*

the complexity of these medical issues he has been unable to perform and manage him duties at work due to the mental strain and physical toll on his body. He has also required treatments and medications that have been very difficult on his overall health as well.'

21. The Claimant was living in Canada at the time and that is where he was receiving treatment. The claimant confirmed he had access to a computer and to the internet. The Claimant was asked what it was that particularly prevented him from completing the form the Claimant was vague and at time reluctant to be clear and candid with his responses. The tribunal found the Claimant was not open about when he knew of time limits or why he was unable to submit his claim either on time or shortly after he knew the time limits had expired, other than to refer the Tribunal to Dr Simms note or say that he was in a foreign country, without explaining why this was relevant and that there were stresses.

22. The Tribunal finds that the claimant was fully aware of the time limits on 29 November 2021 and that at that time he knew his claim was already out of time. He confirmed this in evidence that he was told by his union to put his claim in although it was late. The Tribunal finds that because the claimant knew it was late, he asked Dr Simms to make a note on a prescription to support a claim but that he then did not submit his claim for a further 7 weeks.

23. The claimant's claim form when submitted referred to mainly to the alleged injury at work which the claimant alleges caused his back injury and made little references to his dismissal or the procedure to dismiss him. The Claimant did refer to failure to make reasonable adjustments but did not specify what adjustments the Respondent had failed to make or if any had been recommended by occupational health. The majority of the complaints made by the Claimant were about events that took place from 2017 and referred to his difficulties with the companies policies in relation to that injury. The Claimant did state that he considered his dismissal had been prompted by his diagnosis of multiple sclerosis. The Respondent disputed that it had discriminated against the claimant and that it had made significant adjustments to its procedure by not starting the capability procedure until 2.5 years after the claimant's sickness began, adjourning and accommodating remote capability meetings and did not take the decision to dismiss until four years after the claimant's absence started.

24. At the end of the evidence a discussion took place around the Claimant's claim for notice pay and holiday pay. The Respondent conceded that 11 weeks' notice pay and 248 hours holiday pay had not been paid. The parties agreed that the Respondent would make those payments upon agreement between the parties of the normal weeks' pay and that the Respondent would set our how the payments had been calculated. The parties agreed to agree figures for the calculation and return to the Tribunal for further orders if this could not be agreed. Upon concessions between the parties the Tribunal has not decided whether these claims are out of time.

Claimant's submission

25. The claimant submitted that the reason he did not submit his claims in time was because of "*medical reasons and barriers"*. The Claimant's evidence was the stress of his condition and the medical procedures meant that he was unable to submit his claim on time. The Claimant stated that it was the tribunal discretion but that he had faced difficulties from the very beginning and asked for it to be looked at sympathetically and that he did his best and contacted ACAS. The Claimant said he felt "*there was a lot he was being asked for, that the company did not manage him properly and procedures were not managed correctly"*. The Claimant said he was advised that he could appeal but he had put grievances in that had not been dealt with before.

Respondent's Submission

26. The Respondent's submissions in respect of the unfair dismissal claim, unlawful deduction of wages claim including sick pay, holiday pay and notice pay was that the Tribunal was required to consider the test under section 111 of the employment Rights Act 1996. The Respondent stated that the burden of proof rests with the Claimant and that the threshold is a high one and that in its submission the Claimant had not presented sufficient evidence.

27. In respect of the claim for sick pay the Respondent argued that the claimant is automatically time barred under the amendment to section 23 ERA and the tribunal must not consider claims presented after two years, in this case any claims prior to 3 February 2020. In addition, the respondent denies that the claimant was ever entitled to the payment.

28. The Respondent argued that even though the claimant had surgery in October 2021 there had been no medical treatment between October 2021 – June 2022 and even if he had to attend medical appointments this was a long way off explaining why it was not reasonably practicable for him to have submitted his claims. In addition, the claimant had the benefit of professional advisors and even if he did not know he should have done he was a user of the internet and a search about employment tribunals brings up time limits.

29. In relation to the medical evidence, the respondent argued that he was not a specialist in mental health issues and is a pain specialist. The letter was vague and refers to medical issues and strain.

30. The respondent argued there was no explanation as to why the Claimant waited another two months after seeing Dr Simms to submit his claim. His chronology does not show any further procedures between Oct 2021 and June 2022 and no reference to other issues in chronology.

31. The claimant has failed to demonstrate that it was not reasonably practicable to submit his claim and or that he submitted within a further period as the tribunal considers reasonable.

32. In regards to the disability discrimination claim the respondent made the same arguments and referred to Tribunal to section 123 of the Equality Act 2010. The Respondent stated that there is no presumption and that an extension was the exception rather than the rule. The Respondent referred to British Coal and Keeble and that tribunals would be assisted by considering the factors listed in Section 33 (3) of the Limitation Act 1980.

33. The Respondent submitted that the claim had little prospects of success and that adjustments had been to the capability procedure and the process was not started for over 2 years, meetings were adjourned, OH reports obtained where no reasonable adjustments were identified and that the capability procedure took 2 years to complete. Therefore there was no undue haste but an employer is obliged to manage sickness. No evidence the Respondent treated any other employee more leniently.

The Law

34. Reasonably Practicable Test

    a) Section 111 (2) Employment Rights Act 1996 sets out a twofold test
    b) Was it reasonably practicable for the claimant to have presented his claim in time
    c) If not, the tribunal must then go on to decide whether the claim was presented 'within such further period as the tribunal considers reasonable'.
    d) what is reasonably practicable is a question of fact and thus a matter for the tribunal to decide.

35. The onus of proving that presentation in time was not reasonably practicable rests on the claimant. 'That imposes a duty upon him to show precisely why it was that he did not present his complaint' — ***Porter v Bandridge Ltd 1978 ICR 943, CA*****.** This means that if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal will find that it was reasonably practicable — ***Sterling v United Learning Trust EAT 0439/14***. Lady Smith in *Asda Stores Ltd v Kauser EAT 0165/07* stated 'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.

36. Whether the claim was submitted within such a further period as the tribunal considers reasonable depends on the impediment and facts of the case. This is a less stringent test and is a matter of fact for the Tribunal.

37. In **Cullinane *v Balfour Beatty Engineering Services Ltd and anor EAT 0537/10*** Mr Justice Underhill, then President of the EAT, commented that the question of whether the period between expiry of the time limit and the eventual presentation of a claim is reasonable, requires the Tribunal to give an objective consideration of the factors causing the delay and of what period should reasonably be allowed in those circumstances for proceedings to be instituted. Crucially, this assessment must always be made against the

general background of the primary time limit and the strong public interest in claims being brought promptly.

Conclusions – Unfair Dismissal and Unlawful Deduction of Wages

38. The Tribunal had a great deal of difficulty in determining the dates that the Claimant became aware of time limits due to the Claimant's vague and sometimes evasive answers, but it is clear from the evidence that he was informed by his union representative during the time he was being represented by them and by ACAS. He was also possibly made aware of time limits by the Free Representation Unit and any solicitor he may have contacted.

39. The only date that has been confirmed by the Claimant is that he was told of time limit is 29 November 2021 when he contacted ACAS and he was told to put a claim in even though it would be late. The claimant did not do this and appeared to suggest that it was because of 'stresses' but the Claimant did not provide any details about this despite being asked and did not provide sufficient medical evidence as to why he was unable to submit his claim form.

40. It is however clear from the evidence that between his dismissal on 27 July 2021 and October 26th the Claimant was awaiting further treatment and specifically waiting for further spinal surgery. The Tribunal accepts during this time the claimant would have been under stress. The date the primary limitation expired was also the date the Claimant was in hospital having his further surgery. The Tribunal therefore finds that it was not reasonably practicable for the Claimant to have presented his claim within the primary limitation period and that is was not reasonably practicable for him to have done so.

41. Turning to whether the claimant then submitted his claim within a further period which the tribunal considers reasonable, the Tribunal finds that the Claimant did not. The Claimant had turned his mind to obtaining advice and information about pursuing his claim at the latest on 29th November 2021 when he contacted ACAS. The Tribunal considers on the evidence before it that it is likely that the Claimant was aware of time limits prior to this date because he had been represented by his union and although vague and contradictory, the claimant did state that his union had told him about time limits and he had been told by his union representative to get his claim in as soon as possible even though it was late, to contact ACAS and include a claim for unfair dismissal. This suggests this was before 29 November 2021. So, taking the 29th of November as the date the claimant was definitely aware of the time limits the Tribunal must ask what the reasons were for the delay in submitting the claim after that date and whether it was submitted within a further period considers reasonable.

42. Very shortly after contacting ACAS, where again the Claimant eventually conceded he had been informed of time limits, the Claimant sought support from his pain specialist on 7 December 2021. The Tribunal considers looking at this objectively ,that the Claimant was in a position on 29th November 2021

to turn his mind to his obvious upset and sense of unfairness in respect of his dismissal and was able to make contact with ACAS, take advice and obtain some sort of medical evidence to explain the delay in submitting his claim. Despite taking these steps and acting reasonably quickly in obtaining the medical evidence the Claimant then took no further action and did not submit his claim for a further 7 weeks. The Claimant has not provided the Tribunal with either verbal evidence or medical evidence as to why it took him from 7 December to 3 February 2022 to submit his claim. The Claimant confirmed he had access to a computer/internet and that he had by 7 December 2021 had advice from ACAS, FRU, his union and a solicitor.

43. The Tribunal considered the evidence of Dr Simms which states the Claimant was unable to perform or manage his duties at work. The Tribunal accepts the Respondent's submission that this report was vague and indeed not an actual medical report, and that Dr Simms was not a mental health practitioner. Further the statement is included on a prescription form, appears to be referring to the Claimant still being employed and does not set out whether this remained an impediment at or shortly after that date or for how long in the future.

44. In any event whilst the Tribunal accepts that the Claimant would indeed have found it difficult to manage and perform duties at work, submitting an ET1 is not the same as being employed and being required to manage several duties at one time. On balance the Tribunal finds that the evidence of Dr Simms does not provide sufficient details or weight for the Claimant to demonstrate why he had been unable to submit his claim within such a further period as the Tribunal considers reasonable. The claimant provided no other evidence and was evasive in cross examination as to why he had been unable to submit a claim online and stated 'please refer to Dr Simms there were health stresses'. This is the evidence the Claimant relied upon and did not provide the Tribunal with any other just cause or excuse beyond 7 December 2021. Even at its highest the Claimant was fully aware that his claim was late on 29 November 2021, this is evidenced by the fact that he knew he needed to speak to Dr Simms and get a 'note' added to his prescription. The claimant then took no further action and provided not further explanation for that delay.

45. The onus is on the claimant to provide reasons and evidence and the Tribunal finds that the Claimant has failed to provide cogent reasons for his failure after 7 December 2021 and that it was reasonable for him to have presented his claim shortly after he had taken steps to obtain evidence for his late claim. The Tribunal would have expected that his claim should have been submitted within a few days of obtaining the medical evidence the Claimant considered he needed to explain the late application and certainly before the end of December.

46. There was a further delay until 3 February despite early conciliation ending on 9 January 2022. The Claimant provided no explanation to the Tribunal of why he waited nearly a further month after early conciliation ending. There is also no medical evidence to support any delay during this period.

47. The Claimant's claims for unfair dismissal and unlawful deduction of wages are therefore dismissed the Tribunal not having jurisdiction to hear them.

48. For clarity the Tribunal accepts the Respondent's submission that the Tribunal must not consider complaints of unlawful deduction of wages made after a period of two years in accordance with section 23 (4a) of the ERA. This means that the claimant's complaints for sick pay and leave prior to February 2020 would be time barred in any event.

Just and Equitable Extension

49. Under s.123(1)(a) of the EQA 2010, a claim "may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates". Under section 123(1)(b), the Tribunal may exercise its discretion in allowing another period it thinks just and equitable.

50. In ***Bexley Community Centre (t/a Leisure Link) v Robertson [2003] IRLR 434***, the Court of Appeal held that 'the time limits are exercised strictly in employment cases' so that a decision to extend time should be the 'exception rather than the rule' (per 3 Auld LJ at [25]). The Court found that there is no presumption to extend time; the onus on the claimant to convince the tribunal that it is just and equitable to do so.

51. It is necessary for tribunals, when exercising their discretion, to identify the cause for the claimant's failure to bring the claim in time ***(Accurist Watches Ltd v Wadher UKEAT/0102/09, per Underhill J at [15])).***

52. The Tribunal should have regard to the prejudice that will be suffered by either party and will be assisted by the factors mentioned in section 33 of the Limitation Act 1980 ***(British Coal Corpn v Keeble [1997] IRLR 336 per Smith J at [8]).***

53. Those factors are as follows:

    a) the length of and reasons for the delay;
    b) the extent to which the cogency of the evidence is likely to be affected by the delay;
    c) the extent to which the party sued had co-operated with any requests for information;
    d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and
    e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

54. The Tribunal notes though that in ***Southwark London borough v Afolabi 2003 ICR 800 CA*** Tribunals are not required to slavishly adhered to the list; it is not a legal requirement but should be used as a guide. The Court went on to suggest that the two factors which should almost always be considered are the reasons for the delay and whether the delay has prejudiced the respondent.

55. The Court of Appeal made it clear in ***Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA***, that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EqA, 'there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.' Therefore the onus is on the claimant to convince the tribunal that it is just and equitable to extend the time limit.

Conclusions – Discrimination

56. The Tribunal has set out above the findings of fact in this case and its reasoning in relation to the reasonably practicable test. In looking at the just and equitable extension for the discrimination claim the Tribunal has considered that the reasons for a potential extension beyond the primary limitation period of 26 October 2021 due to the claimant's operation, may be just and equitable for the reasons set out above, those reasons are not repeated here but form part of my consideration.

57. In this case the Tribunal is tasked with looking at an extension of over three months beyond the primary limitation period and over six months from the date the last act of discrimination occurred. This is not a short delay. Although the Tribunal has a wide discretion, an extension of time is not a presumption, and the Claimant must convince the Tribunal that it is just and equitable to extend time. I have found that the Claimant has not convinced me because of the following reasons.

58. The Tribunal has considered the promptness in which the Claimant acted once he knew of the time limits and as already found, the Tribunal has been provided with insufficient evidence as to why the Claimant took no action despite knowing his claim was out of time at its highest on 29 November 2021. It is clear that the Claimant knew he was out of time because he sought to obtain medical evidence on 7 December 2021 in support of a late claim. The Tribunal notes that it was not until questioned by me that the Claimant conceded that the reason he asked Dr Simms to put a note on his prescription was for the purposes of explaining a delay, but again took no action until he submitted his claim on 3rd February. Again, this is not a short period of time.

59. ACAS early conciliation ended on 9 January and the Tribunal was provided with no information as to why no action was taken at this date either. Overall and balancing the Claimant's evidence and reason for the late submission, this does not convince the Tribunal that the Claimant took reasonable steps to ensure his claim was presented promptly once knowing that his deadline had passed. In the end the claim was submitted over 8 weeks after learning of the limitation period. The Tribunal has found that the Claimant was evasive in giving evidence and suggested at several times even after saying he was made aware of time limits by ACAS, that he did not know about any time

constraints. The grant of an extension of time should not be automatically given for cases where a Claimant has been unreasonable in their approach to time limits and less than open about when they knew of limitation periods. I am required to be convinced that it is just and equitable to extend time and in this regard, I am not.

60. The tribunal is aware that the absence of a good reason is not in itself the only consideration when determining the issue of whether to extend time under the just and equitable grounds. The Tribunal must also balance of prejudice between the parties of allowing or not allowing an extension. The Respondent stated that the officer responsible for the capability hearings was no longer employed and that the Claimant had been absent for work for over 4 years before the Respondent took the decision to dismiss the Claimant. The Respondent also argued that it is prejudiced by the delay and would have difficulty in obtaining evidence from the departing employee who conducted the capability hearings and in view of the fact that's the Respondent had taken over 2 years to implement the capability procedures, had made adjustments to the way it conducted its meetings with the claimant and that it had engaged OH and held reviews after treatment/operations and had took the decision to dismiss after 4 years of the claimant being on the sick, the evidence from this person would be relevant. I find that the Respondent would be prejudiced in this regard.

61. The Claimant's claim form is almost entirely focused on his alleged injury at work and allegations relating to the spinal injury going back to 2017, the reference to discrimination and his dismissal is set out in the final paragraph of his ET1 which does not provide any details other than he believed he was dismissed because he had disclosed his multiple sclerosis diagnosis on top of his spinal surgeries, he did not believe they had a capability procedure and no reasonable adjustments were made. The Respondent submitted that they had made adjustments to their capability procedure which was not started until after 2.5 years after the claimant's sickness started where it would normally be 2-4 weeks, the OH made no recommendations for adjustments to be made that would enable the claimant to return to work. There was no evidence that the Respondent would have treated anyone else differently and the respondent alleges the merits of the claim are weak. I considered the pleadings and agreed that on the face of it and looking at the factors above the Claimant's case demonstrated little prospect of success.

62. Taking into account all of the above I am not convinced that it would be just and equitable to extend time on the particular facts of this case. The discrimination claims are therefore dismissed because the Tribunal does not have jurisdiction to hear them.

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Employment Judge Hill
Date 25 February 2023

Note
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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