



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Amornthep Srisa-art  
**Respondent:** Humble Group Ltd  
**Heard at:** East London Hearing Centre  
**On:** 29 June 2023  
**Before:** Employment Judge Suzanne Palmer

## Representation

**Claimant:** Mr Srisa-art was present and represented himself  
**Respondent:** Ms C Slevin, Solicitor

# JUDGMENT

1. Time for presentation of the claimant's unfair dismissal claim is extended pursuant to Section 111(2)(b) of the Employment Rights Act 1996.
2. The Claimant is permitted to amend his claim to include, in the alternative, a claim that the alleged dismissal amounts to an act of unlawful discrimination pursuant to Sections 13 and/or 15 of the Equality Act 2010 (direct discrimination because of disability and/or discrimination arising from disability).
3. Time for presentation of the claimant's discrimination claim is extended pursuant to Section 123(1)(b) of the Equality Act 2010.
4. The Tribunal therefore has jurisdiction to hear the claims.
5. The Respondent's application to strike out the claims for want of jurisdiction is dismissed.
6. The claims will proceed to a Final Hearing. A case management order will be sent out separately.

# REASONS

## *Introduction*

1. This Judgment concerns the issue of whether or not time should be extended for the Claimant to present his claims against the Respondent (i) that he was unfairly dismissed, and (ii) (pursuant to a decision at the hearing to allow the Claimant to amend his claim) that his dismissal amounted to an act of discrimination on the grounds of disability or for a reason arising from disability. Because the application to amend is inextricably bound up with the time issue in respect of the discrimination claim, I have included in this judgment my decision in relation to the amendment application.

## *The Claimant's employment with the Respondent*

2. The Claimant worked for the Respondent between 10 March 2020 and around July or August 2022 (the effective date of termination is unclear and will need to be determined definitively by the Tribunal which hears the Final Hearing). It is common ground that the start date of the Claimant's employment was 10 March 2020, and not 10 March 2022 as is mistakenly set out in the ET1.
3. The Respondent operates a chain of venues (consisting of wine shops, wine bars and kitchens) called The Humble Grape. The Claimant worked at one of those venues as a sous-chef. He did not attend the workplace after 4 May 2022 for reasons which will be set out below.
4. The Claimant considers that he was subjected to hostility, bullying and harassment at his place of work (that alleged treatment does not at this time form part of this claim and is a matter in respect of which the Claimant has sought separate advice from personal injury lawyers). The Claimant alleges that this course of treatment at his place of work led to him becoming unwell on or around 3 and 4 May 2022. He says that during an altercation on 3 May 2022 he was threatened by an operations manager with demotion and loss of job security. He says that this caused him to "emotionally break down" and that the following day, 4 May 2022, he had a "mini stroke".
5. The Claimant alleges that he attended hospital on around 4 May 2022 and was diagnosed as having had a transient ischaemic attack (TIA) and as suffering from stress-induced dysphasia (loss of ability to talk). He also had impairment of his sensory abilities, memory and general functioning.
6. The Claimant was subsequently referred to a Consultant Neurologist who diagnosed him with a Functional Neurological Disorder. His symptoms are ongoing and he continues to receive treatment, including talking therapies.
7. The Claimant alleges that he kept the Respondent informed about his state of health, and that by 21 July 2022 it was apparent that he could no longer perform his duties at that time.

8. The Claimant alleges that he received a message on 21 July 2022 asking him to speak to the Respondent's Executive Chef. They had a telephone conversation in which, the Claimant says, the Executive Chef asked him to give notice to terminate his employment, as his statutory sick pay would be coming to an end.
9. The Claimant says that as he was focused at that time on his recovery and on avoiding stress, he gave notice by letter dated 27 July 2022. However he says that he "*did feel forced in doing so*".
10. The resignation letter dated 27 July 2022 said "*I am writing to inform you of my decision to resign due to my health condition. Given the circumstances I will not be able to fulfil my role at this present time*". The letter was silent as to whether or not notice was being given. The notice the Claimant was required to give by virtue of his contract of employment was 1 month.
11. The Respondent's responses to the resignation letter (one from the Executive Chef, one from the People and Operations Director and one from a Human Resources officer) acknowledged and accepted the resignation but were silent as to the effective date of termination. Neither was any clarification sought from the Claimant as to whether or not he was giving notice.
12. In due course the Respondent completed a P45 for the Claimant giving the leaving date as 1 August 2022. On 26 August 2022 the Claimant was issued a final payslip setting out sums paid to him in respect of the period 1 to 31 August 2022, consisting of salary (which I am informed was SSP) and "final holiday pay". He says that he received the P45 with this pay slip.
13. It is therefore unclear from the available documentation whether the resignation was intended by the parties to take effect immediately (on 27 July 2022) or at the conclusion of the notice period (on 26 August 2022). If the latter, it is unclear whether the Claimant was being treated as on sick leave or annual leave, or both, during the notice period. The effective date of termination is therefore, at this stage, unclear and will need to be considered by the Tribunal in due course.

#### *The claim*

14. On 24 November 2022 the Claimant notified ACAS of his prospective claim. ACAS issued an Early Conciliation Certificate on 7 December 2022.
15. On 12 December 2022 the Claimant presented his claim to the Tribunal.
16. In section 8.1 of the ET1, the Claimant ticked the box to claim unfair dismissal. He did not tick the box relating to discrimination. He gave brief details of his claim of unfair dismissal in section 8.2. That did not refer to disability discrimination.

17. However in section 15 of the ET1, under “additional information” the Claimant provided information including the following: *“In good faith I kept relations during the period of my health concerns with my employer and although my diagnosis of Functional neurological disorder [sic]. The employer had requested that I give notice as my statutory sick pay was coming to an end... My memory and thinking has been impaired and I have not been able to seek help from ACAS or an employment tribunal as I struggle to communicate”*.
18. On one view, that could arguably be seen as an assertion that the Claimant was asked to resign because of his ongoing sickness absence due to his functional neurological disorder, which has an ongoing adverse effect on his day-to-day activities including cognitive function and communication.
19. It appears that the Respondent recognised that possible interpretation of the final section of the ET1, because the ET3 which the Respondent subsequently presented to the Tribunal includes the following (at paragraphs 2 & 3):  
  
*“It is noted that the Claimant did not indicate he was bringing a claim of discrimination, however, the Claimant does state that his health had been compromised in the time proceeding [sic] his resignation. In event that the Claimant does suggest disability discrimination, the Respondent denies any and all claims of disability discrimination, to include direct and indirect discrimination, discrimination arising from a disability, failure to make reasonable adjustments, or harassment as is alleged or at all”*.
20. The response goes on to set out further denials in respect of any potential discrimination claim at paragraphs 4 to 8 and at paragraphs 20 to 27 of the ET3.
21. On 24 January 2023, in response to a letter from the Tribunal asking him to clarify the claims he was making, the Claimant wrote saying *“I believe I have grounds to argue for: unfair dismissal, discrimination, bullying and harassment”*.
22. On 29 March 2023 the Tribunal wrote to the parties listing this hearing (originally listed as a telephone hearing and later converted to a CVP hearing) and saying *“The Claimant’s email dated 24 January 2023 will be discussed at the hearing. The Respondent must come to the hearing ready to respond to explain any prejudice they would suffer if the Claimant has permitted to amend his claim as per his emails dated 24 January 2023”*.
23. On 20 March 2023 the Claimant sent a further email to the Tribunal to give clarification of his claim. This email included the following: *“... I updated the employer and they said that they would wait for me to recover and take me back even if it took 6 months or longer. I had updated my employer and a few months later diagnosed with Functional neurological disorder to which the employer did not wish to make adjustments. They rang me on the 27<sup>th</sup> of July asking me to give notice as they are not a charity. I had lost my speech and short term memory was terrible to which my partner helped me write a resignation. I felt forced to doing so as they offered me a housing*

*and job reference in return. Few weeks prior to them knowing about my diagnosis they said that they would wait for me to return to employment when my health recovered even if it took 6 months. I felt discriminated up due to me updating about my diagnosis of neurological disorder... I was unable to express this in the ET1 as the experience was too traumatic to revisit. I am writing this with great difficulty”.*

24. On 13 April 2023 the Claimant made an application for permission to amend his ET1. He said that his original ET1 was submitted in error: *“I did not have access to legal advice and my disability made it really difficult to communicate my claim without any support. I received a letter from the tribunal asking me to clarify my claim and did not understand at the time on what was required in the ET1. I have recognised that I have not included the particulars in my claim and also wish to provide clarity to my intended claim as to not waste the tribunal’s time”.*
25. On 4 May 2023 the Respondent made an application for the Claimant’s claim to be struck out on the basis that *“the Claimant did not enter early conciliation with ACAS until after three months from the end of his employment”.* They asked for the application to be considered at the forthcoming Preliminary Hearing.
26. On 12 May 2023 the Claimant responded to the Respondent’s application. Amongst other things, he said that he considered that his effective date of termination should be regarded as 26 August 2023, he was not aware of the 3 month time limit, and he found it difficult to understand his employment law rights due to his ongoing cognitive impairment.
27. On 5 June 2023 the Tribunal advised the parties that consideration of whether to list the applications would be made at the forthcoming Preliminary Hearing.
28. On 6 June 2023 the Respondent provided the Claimant and the Tribunal with various documents including a hearing bundle and a witness statement from the Executive Chef.
29. In response the Claimant sent various documents to the Tribunal and to the Respondent. These documents included various WhatsApp messages between the Claimant/his partner and the Respondent, in May and June 2022, and documentation in relation to various hospital admissions in May, June and July 2022.
30. On 12 June 2023 the Respondent provided written submissions opposing the Claimant’s application to amend his claim.
31. On 13 June 2023 the Claimant provided a witness statement from his partner. On the same date he provided a further email in which he said *“I just wanted to clarify that in my original ET1 I thought that the extra information would help the tribunal to understand my claim and apologised for the mistakes. I had thought that discrimination was the same as unfair dismissal and indicated this in the box 8.2 in the original ET1... I later realised that the ET1 needed to be more specific.”*

32. On 16 June 2023 the Claimant provided submissions in relation to the applications. Amongst other things he said:
- 32.1. At paragraph 5, *“Reasons for delay – illness – I suffered a TIA and stress induced dysphasia which later led to a diagnosis of Functional neurological disorder. I lost the ability to talk, suffered memory and loss of general functioning. I was referred to a neurologist and have been seeking help from the local GP during this time. The condition is ongoing and has made it difficult to deal with paperwork and revisit the trauma that the events caused... I argue that due to my health and state of mind this imposed a fundamental impediment in the way of progress at that time”*.
  - 32.2. At paragraph 6, *“... Due to functional neurological disorder I had a difficult time explaining my reasoning to the solicitors I tried to contact. It was difficult to comprehend my rights but I kept trying for months as I was adamant that the respondent caused me personal injury due to neglect and by breaching their duty of care. Most attempts were to no avail therefore there was delay because I could not process or present what happened in a cohesive manner... I had many issues in regard to my health and state of mind and sought help from my GP multiple times and was admitted to hospital again in December 2022... I was put on a waiting list for talking therapy and only recently started to receive treatment early April 2023. I still have ongoing issues due to the aforementioned events and this affected the claim process. The stress of pursuing litigation heightened my condition making me further unwell”*.
  - 32.3. At paragraph 8, *“The original ET1 was intended to disclose discrimination as highlighted in section 8.2 and 15 of the form. Given the circumstances and health related issues, the claimant struggled with the tribunal process and understanding it. The claimant originally thought that unfair dismissal was an umbrella term and would include constructive dismissal and also discrimination”*.
  - 32.4. At paragraph 23, *“I was under the impression that I was on a notice period and that from my understanding my termination date would be on the 26<sup>th</sup> of August. Received P45 on the 26<sup>th</sup> of August. Resignation was not intended to be with immediate effect. Additionally a claim for disability discrimination and the dismissal are linked and I did not know that I could choose multiple boxes in the original ET1”*.
33. On 22 June 2023 the Claimant provided a completed Case Management Agenda. I was informed at the hearing that although the Respondent’s representative had taken her client’s instructions in relation to a draft agenda, no agenda had been provided by the Respondent to the Claimant or to the Tribunal for this hearing.

*The Preliminary Hearing*

34. The start of the hearing was delayed because it transpired that the Respondent had provided a bundle for the Preliminary Hearing which had not reached me. I adjourned for a short period so that this could be sent again and provided to me. Having briefly read the bundle, it transpired that many of the documents, if not all of them, were already on the Tribunal case file and I had seen them.
35. Both parties confirmed that they were ready to proceed with the hearing of both applications (the Claimant's application to amend and the Respondent's application to strike out) and that they would like me to deal with those applications and to make consequential case management directions in respect of such parts of the claims as survived the applications.
36. The applications I was considering were therefore:
  - 36.1. The Claimant's application, dated 13 April 2023, to amend his claim;
  - 36.2. The Respondent's application, dated 4 May 2023, to strike out the claim.
37. I was assisted by oral submissions from both parties.
38. The Claimant informed me that he had thought that his employment ended at the end of his notice period, on 26 August 2022. He had received his P45 on that date.
39. He said that during August 2022 he was attempting to consult personal injury lawyers in respect of his concern that his symptoms had been caused by his workplace environment. He said that he had found the process of seeking advice difficult because of his ongoing health issues, and had found it hard to comprehend matters in a cohesive manner.
40. The Claimant said that he had never spoken directly to an employment lawyer. He had contacted many solicitors in an attempt to seek help. He said that in preparation for this hearing he had attempted to seek representation through a law centre and through the Free Representation Unit, but they had not been able to assist him in time for this hearing.
41. The Claimant said that when he first became unwell in May 2022 he had had difficulty in breathing and been unable to speak. He went to hospital. He said that for the next couple of months he had experienced ongoing symptoms which came and went and fluctuated in severity. He said that his speech had almost completely disappeared for about 2 or 3 months but came back intermittently. In about June 2022 he had experienced intermittent loss of function in his right leg, about which he had consulted his GP. He said that he had regained his motor skills, but that his memory continued to be affected and he continued to experience difficulties in understanding what was being said to him. He said that in about June or July he had seen a neurologist who had explained that there was an issue with his nervous system.

42. The Claimant said that his symptoms had continued to affect him throughout the period up to the presentation of his claim in late November/early December. He would lose the use of his right leg for periods of time, sometimes for weeks on end. He continued to have issues with focus and concentration. He had issues with sensory overload or hypersensitivity, and was in a constant “fight or flight” state. He had ongoing issues with his breathing and his senses. He had contacted the Samaritans and other organisations and had been told that his symptoms resembled panic attacks. He said that his symptoms occurred regularly, about 3 or 4 times a week, with varying symptoms and severity on each occasion.
43. The Claimant said that he did not know what his employment rights were, and that he had been struggling with his ongoing health issues and the trauma associated with them. He said that his symptoms were triggered by stressful events and memories, including revisiting the experiences in his workplace. He said that he had struggled to link what had happened to him with his rights in law. He said that he had not understood the differences between personal injury and employment law. He became aware that there was a 2 year limitation period for personal injury claims, but for a long time was not aware of the 3 month limitation period for employment claims.
44. The Claimant told me that he could not recall at precisely what stage during the period from August to November 2022 he had first become aware of the 3-month time limit. He said that he thinks it was about 2 or 3 weeks before he contacted ACAS in relation to the claim. He accepted that he had been able to consult lawyers during the period between August and November 2022, but said that he had struggled to understand his rights or make sense of what had happened. He said that he had not managed to obtain advice from employment lawyers, although several had quoted him their rates for providing advice.
45. The Claimant said that he had kept trying but in the meantime had done his best to fill in the form himself because ACAS had told him about the time limit. He said that he thought that unfair dismissal was an “umbrella term” and had given information about disability discrimination in his ET1 but had not realised he needed to tick the box. He said that he had tried to put information in a coherent manner, but did not understand the legal particulars required.
46. On behalf of the Respondent, Ms Slevin submitted that the Claimant’s assertion that he was not aware of the effective date of termination lacked credibility, noting that the Claimant had put the date of 1 August 2022 as the end of his employment in the ET1. She queried whether the notice period made any practical difference in any event. She submitted that the Claimant appeared to be familiar with sources of free legal advice and had been able to consult a law centre in relation to his landlord and tenant issues. She submitted that it was to be assumed that the Claimant would be able to understand the advice given.



47. Ms Slevin submitted that it had not been clear to the Respondent whether the Claimant had intended to give notice, although she accepted that no query had been raised in the emails sent to the Claimant in response to his resignation. She did not know on what date SSP would have expired and was unable to assist on how the figures in the final payslip broke down (in other words, how many days of statutory sick pay and annual leave were paid in August 2022).
48. Ms Slevin submitted that the Claimant could have ticked the box in the ET1 to indicate that his claim included a discrimination claim, but that he did not do so and did not raise it within the pleadings. She submitted that this was an entirely new claim not brought within the claim form, and was being made 10 months after the end of employment.

*Decision in relation to the application to amend*

49. In relation to the application to amend, I am mindful of the guidance set out in the Presidential Guidance on General Case Management, dating from 2018. I am required to carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the amendment. In *Selkent Bus Co Ltd v Moore* [1996] ICR 836, EAT, it was explained that relevant factors are likely to include the nature of the amendment, the applicability of time limits and the timing and manner of the application.
50. In *Abercrombie & others v Aga Rangemaster Ltd* [2013] IRLR 953, CA it was pointed out that when considering an application to amend that arguably raises new causes of action, I should focus “not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted”.
51. The Claimant’s application is to amend the claim to include an allegation that the dismissal was an act of discrimination because of or arising from a disability.
52. I note, in this regard, that the precise nature of the Claimant’s application was somewhat difficult to pin down from the documentation available to me. No redrafted ET1 has been placed before me. In various correspondence with the Tribunal from January 2023 onwards, the Claimant has referred to the fact that he considers that he has an arguable case in relation to constructive dismissal (relating to events prior to his illness), failure to make reasonable adjustments, indirect discrimination, victimisation and harassment. None of those are immediately apparent from the facts set out in the ET1.
53. I therefore spent some time during the hearing clarifying with the Claimant what his allegation is. In essence, it seems to be that in July 2022, the Respondent asked him to tender his resignation because he continued to be unable to return to work. He says that, with statutory sick pay due to

come to an end, he felt compelled to do as the Respondent asks and to resign. He considers that what the Respondent should have done was to afford him more time to recover sufficiently to return to work, and/or to carry out a capability assessment and discuss with him steps which might be taken to facilitate a return to work (such as moving him to a different location to minimise stress). He considers that the reason the Respondent did not do this was either because of the disability, or because of his ongoing sickness absence which arose from the disability.

54. Couched in those terms, it seems to me that the complaint the Claimant wishes to bring (in terms of discrimination) is one relating to an allegedly discriminatory act of dismissal, either because of the alleged disability or for a reason arising from the alleged disability, namely the ongoing sickness absence.
55. I explained to the Claimant that if he wishes to seek to amend his claim further to include the other potential areas of claim he has referred to, such as constructive dismissal, victimisation, harassment, indirect discrimination or failure to make reasonable adjustments, then he should seek advice in relation to those claims as a matter of urgency and submit a further amendment application setting out those claims, and the factual basis for them, properly.
56. However in relation to the relatively narrow discrimination claim which I understood the Claimant to be seeking to make, namely that his dismissal was not only unfair but also an act of discrimination, I concluded that it was appropriate to permit the amendment he seeks.
57. In reaching that decision, I note that the ET1 already alleges the factual basis on which the claim is now to be made. It asserts the ongoing illness from May 2022, the fact that the Claimant advised the Respondent of the diagnosis he received from his neurologist, and the allegation that the Respondent, rather than performing any kind of capability assessment, asked him to resign.
58. Although the form does not state in express terms that there was a causal link between the disability/disability-related absence and the alleged request to resign, I do not consider that it requires a significant leap of imagination to draw the inference from the pleaded case that the Claimant asserts such a link. I therefore consider that this can properly be characterised as a “re-labelling” case in relation to the same or similar facts, rather than an entirely new or unconnected claim.
59. I further note that the Respondent appears to have understood that the Claimant’s case involved an allegation that the dismissal was in some way related to the disability, because the Respondent has gone to significant lengths to address that case in the response, albeit on the basis of a protective pleading in case that is what the Claimant is trying to say.
60. In the circumstances, I do not consider that there is significant prejudice to the Respondent, and I note that the Respondent has not pointed to any specific prejudice despite being invited to do so by the Tribunal as long ago

as 29 March 2023. I appreciate that the Respondent is entitled to understand the case against it and to be in a position properly to defend that case. I will allow the Respondent the opportunity to amend its ET3 in response to the case now put. However it appears that instructions have already been taken on the issues which arise because of the amendment, and that there is no real litigation prejudice to the Respondent. If the amended claim does not have merit, the Respondent will be able to defend it in due course. However if I refuse the application, the Claimant will be deprived of a potentially valid claim against the Respondent in circumstances where he has had difficulty in accessing or understanding advice in relation to his employment rights.

61. Because I consider this to be a “relabelling” case, it may be that issues about time limits are not of relevance in respect of this amendment. If I am wrong about that, however, then I consider that it is just and equitable to extend time in relation to the amended claim which now includes an allegation that the dismissal was an act of discrimination because of, or arising from, disability. My reasons for concluding that it is just and equitable to extend time are essentially the same as those I have set out in relation to the “not reasonably practicable” test for the unfair dismissal claim – they relate to the Claimant’s ignorance of his rights, in the context of his ongoing illness and associated cognitive impairment. I note that the Claimant first raised his wish to make this amendment in January 2023, only a month after the ET1 was presented to the Tribunal. Although the formal application was not made until 13 April 2023, I note that the Claimant is not represented and has, for reasons already set out, struggled to access and understand advice about his employment rights.
62. I therefore grant the Claimant’s application to amend his claim in respect of his allegation that the “dismissal” was an act of unlawful discrimination contrary to section 13 and/or section 15 Equality Act 2010. In so far as is necessary, I consider that it is just and equitable to extend time in relation to that claim.

*Decision in relation to application to strike out*

63. In relation to the application to strike out, I clarified with Ms Slevin that this is based entirely on the ground that the claim was brought outside the initial 3 month period, and that the ACAS notification was also made outside that period. Effectively, therefore, the application turns entirely on my decision as to whether the escape clause in relation to time limits applies. In the case of the unfair dismissal claim, the test is whether it was not reasonably practicable to present the claim in time, and if so whether the claim was brought within such further period as is reasonable. In the case of the discrimination claim, the test is whether it is just and equitable to extend time.
64. In relation to this test, I am mindful that Section 111(2)(b) of the Employment Rights Act 1996 should be given a “*liberal construction in favour of the employee*” and requires practical common sense. [*Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53, CA; *Wall’s Meat Co Ltd v Khan* [1979] ICR 52, CA]. I am mindful that the burden is on the

Claimant to show why he did not present his complaint in time, and that it was not reasonably practicable (or “reasonably feasible”) to do so.

65. The evidence which has been put before me, and the submissions made by the parties, are very similar in respect of both applications. That is because they go to a considerable extent to the Claimant’s circumstances in the period between the termination of his employment and the presentation of the claim.
66. I have noted that until a Tribunal is in a position to consider all the evidence in this case, there is a lack of clarity about when the effective date of termination actually occurred. If the parties are to be taken to have understood the contractual notice provisions to be applied, then the Claimant’s notice took effect from 26 August 2023. If that was the case, then notification to ACAS was made within 3 months, time was extended by reason of the ACAS provisions, and the limitation issue does not arise.
67. I note, in this regard, that the Respondent appears to have done nothing to clarify the position in response to what I am told they regarded as an ambiguous resignation letter (in so far as notice was concerned). Their reply does not indicate whether or not the Respondent would be making payment in lieu of notice and the final payslip does not refer to payment in lieu of notice. There would therefore be some basis for reaching at least a provisional view that the parties must have understood that notice was being given and that the jurisdictional issues therefore do not arise.
68. In case I am wrong about that, I will go on to consider the application on the assumption that the primary limitation period had expired. I therefore have to consider whether or not it was reasonably practicable for the Claimant to have brought the claim within the primary limitation period.
69. I accept the Claimant’s evidence that he was not aware of the three month limitation period throughout most if not all of the primary limitation period. I have to consider the reasonableness of that ignorance in all the circumstances.
70. In this regard, I consider that in this case, the issue of the Claimant’s knowledge is inextricably tied up with his state of health at the time. A fairly short time before the end of his employment, he experienced a significant illness, the consequences of which were ongoing throughout the remainder of the primary limitation period. Those consequences included issues with communication and understanding (making it difficult to seek and comprehend advice), and issues with cognitive function, including focus and concentration. They were exacerbated by revisiting the past events which appear to have triggered the episode of ill health, which can only have added to the difficulties in seeking legal advice about the workplace issues.
71. I am mindful that I have not seen independent medical evidence in relation to the Claimant’s diagnosis or symptoms. However I have seen evidence confirming his account of having visited hospital emergency departments on a number of occasions between May and December 2022, and I see no

reason to doubt the diagnosis which he says he was given after his referral to a neurologist.

72. In the circumstances, it is in my view understandable that for a period of time, the Claimant's attention was focused on the personal injury claim. It is also understandable that the Claimant, having not managed to speak to an employment lawyer, did not necessarily appreciate that the time limits in an employment claim might be different. I note that on his account, which I accept, he notified ACAS in relation to his claim within two or three weeks of that discovery. I accept that in the meantime he had been continuing, without success, to attempt to seek advice from an employment lawyer. I consider that he acted very promptly in presenting his ET1 less than a week after the ACAS Early Conciliation Certificate was issued.
73. In the context of his primary focus on his potential personal injury claim and his ongoing health issues and accompanying cognitive impairment, I consider that the Claimant's ignorance of his rights was reasonable, and that it was therefore not reasonably practicable for him to present his claim within the primary limitation period. I further consider that it was presented within such further period as was reasonable in all the circumstances.
74. I therefore consider that time should be extended for the presentation of the Claimant's claim in accordance with Section 111(2)(b) ERA, and that the claim is in time. I therefore refuse the Respondent's application to strike out on the basis that the claim was not presented in time.
75. For reasons I have already set out in relation to the application to amend at paragraphs 61 and 62 above, I also consider that, in so far as is necessary, it is just and equitable to extend time in relation to the claim that the dismissal was an act of discrimination.

### *Conclusion*

76. It follows from what is set out above that my decision in relation to the applications is as follows:
- 76.1. The Claimant's application dated 13 April 2023 to amend his claim is allowed.
- 76.2. The Claimant is permitted to amend his claim to include an allegation that the dismissal was an act of discrimination under Sections 13 and/or 15 of the Equality Act 2010, either because of the alleged disability or for a reason arising from the alleged disability, namely the ongoing sickness absence.
- 76.3. The Respondent's application dated 4 May 2023 to strike out the claim is refused.

- 76.4. Time is extended for the presentation of the Claimant's unfair dismissal and discrimination claims pursuant to Section 111(2)(b) of the Employment Rights Act 1996 and Section 123(1)(b) of the Equality Act 2010.

**Employment Judge S Palmer**  
**Dated: 29 June 2023**