# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Karl Cordwell

**Respondent:** DHL Services Ltd

# PRELIMINARY HEARING

**Heard at:** By CVP **On:** 21 July 2023

**Before:** Employment Judge Rakhim (sitting alone)

**Appearances**

**For the claimant:** Represented by Ms A Fadipe (counsel)

**For the respondent:** Represented by Ms A Rumble (counsel)

# JUDGMENT

1. The claimant's applications to amend his claim, dated 12 May 2023 and 21 June 2023, are both refused.

2. The claimant's complaint of health and safety detriments was presented out of time, and it was reasonably practicable to have presented it in time. The tribunal does not therefore have jurisdiction to hear that complaint and it is therefore struck out.

# REASONS

1. At the Preliminary Hearing of 12 May 2023, Employment Judge James identified a time limit issue and the claimant made an application to amend his claim. On 30 June 2023, his solicitors made an application to further amend the claim.

2. Both the amendment applications and the jurisdictional issue of time limit have been heard today.

**Background**

3. The claimant has been employed by the respondent since 5 April 2013. He has worked as a HGV Class 1 Driver at the respondent's Knottingley depot but operated out of the Tingley depot from May 2022. His employment is continuing. The claimant commenced a period of sickness absence on 17 October 2022 due to work related stress and he remains absent from work.

4. By a claim form presented on 1 March 2023, following a period of early conciliation between 3 January and 14 February 2023, the claimant brings complaints of protected disclosure detriments. He alleges that he was told that if he continued to fill in near misses/incidents/dangerous occurrences reports (SLAMs) he would be removed from his regular delivery route. (SLAM stands for 'Stop, Look, Assess, Manage').

5. The respondent denies all of the claims as per the response form and grounds of resistance dated 6 April 2023.

First Application - 12 May 2023

6. On 10 March 2023, the parties were notified of a Preliminary Hearing for Case Management by telephone to be heard on 12 May 2023. This hearing was attended by the claimant and Ms Rumble attended representing the respondent. At the hearing, it became apparent to Employment Judge James that the claimant wanted to add a further allegation; namely, that staff in the office at his workplace had a separate box for near miss incidents for him. The parties were notified that this amendment application ('First Application') would be heard at a further Preliminary Hearing, which was listed for today. A detailed list of issues was annexed to the Case Management Order dated 12 May 2023.

Second Application –30 June 2023

7. Since the last hearing, Morrish Solicitors, now acting for the claimant, have made an application to further amend the claim ('Second Application'). This application was made by email on 30 June 2023, with accompanying Amended Grounds of Complaint, which was 21-pages in length (inclusive of the 11-page appendix table). These Amended Grounds of Complaint were intended to supplement the claim form. The amendments can be summarised as:

    7.1 the claimant states he filed SLAM reports according to the respondent's policy guidance;
    7.2 these were passed to the Shift Manager who was to forward the reports to the Safety Representative;
    7.3 reasons given on why each of the 170 SLAM reports were protected and qualifying disclosures;
    7.4 reasons provided for believing why they were in the public interest;
    7.5 a summary of 70 SLAM reports, of which only two were actioned between 1 June to 10 October 2022;
    7.6 a list of 10 different detriments suffered due to the disclosures;
    7.7 confirmation that a complaint of discrimination is not pursued;
    7.8 financial compensation for detriment suffered is pursued and confirmation that a complaint of unlawful deduction of wages or other pay arrears is not pursued; and

7.9 list of remedies sought.

8. On 7 July 2023, DAC Beachcroft, acting for the respondent, wrote to the Tribunal objecting to the Second Application. The main objection was that this amendment was not mere 're-labelling' but was in fact a re-writing of the entire claim. The respondent argued the claimant was bringing various new claims of detriment on the grounds of a protected disclosure as well as new allegations of detriments not previously pleaded. It was also argued that it appeared the claimant was arguing each SLAM report amounted to a protected disclosure and unlawful detriment.

## Documents

9. I had sight of the 103-page bundle, which was not available to me prior to the hearing, but the representatives assisted in providing this at the start of the hearing. My decision was reserved so I was able to review this in detail.

10. I also had sight of the claimant's four-page written submissions, which was sent to the Tribunal as the start of the hearing. I had sight of this and considered this before I heard the submissions.

## Application to vary the Employment Tribunal Order dated 28 May 2023

11. At the previous hearing on 12 May 2023, Employment James had identified the time limit within the list of issues and directed a witness statement is to be filed containing all the evidence that the claimant wished to rely upon for the Preliminary Hearing, which was to be served by 30 June 2023. The directions were within the Order drawn up on 28 May 2023, albeit the claimant had attended the hearing so would be aware from 12 May 2023.

12. In the claimant's application dated 30 June 2023 (i.e. Second Application) via his solicitors, the claimant also applied to vary the Order so he no longer had to address the time issue or file a witness statement in support.

13. Employment Judge James issued a letter to both parties on 13 July 2023 to further clarify matters as the claimant's solicitors had been instructed after the Preliminary Hearing of 12 May 2023. He detailed the assistance provided by him to the unrepresented claimant and how he ascertained that an application to amend was being made (i.e. First Application). He also clarified that time limits are a factor for the amendment applications as well as a jurisdictional issue, the latter becoming clear at the hearing following detailed discussions with the parties. He confirmed that both amendment applications and the limit issues would be considered at today's hearing.

14. I heard submissions from both parties.

15. Ms Fadipe submitted that the amendments and time issue are inextricably linked, the claimant was unrepresented at the last hearing so did not know how to formulate his case and the applications to amend should be considered before the time limit issue in order to prevent injustice. Ms Fadipe suggested she could get the claimant to join in this hearing and would make enquiries.

16. Ms Rumble submitted that Employment Judge James had responded on the time issue in his letter of 13 July 2023, yet the claimant still failed to provide a witness statement. She also submitted that she had attended the last hearing and Employment Judge James had ensured the claimant was placed on an equal footing, despite being unrepresented, via the lengthy discussion that took place.

17. After a short adjournment, Ms Fadipe confirmed that she had taken instructions from the claimant and he was driving, but he would arrive at his destination by around 11:30, would be stationary at that point and in a position to join the hearing by telephone. Ms Rumble did not take issue with the claimant giving oral evidence and confirmed she would raise questions on the time limit issue.

18. The claimant had applied to vary the Order so that he no longer had to address the time issue or file a witness statement in support. I considered both issues in turn.

19. In relation to the time issue, I had noted that on 13 July 2023 Employment Judge James had considered the claimant's application and effectively rejected the claimant's application. He confirmed that both the amendment applications and the time limit issue would be heard today. I considered the issue had been determined and the parties notified. I considered there was no suitable reason as to why the time limit issue should not be considered and the parties had been aware of it since 12 May 2023.

20. In relation to the witness statement issue, over a week had passed since Employment Judge James' decision and the claimant had still not filed any witness statement as directed.

21. Exercising my power under Rule 41, despite the lack of a written statement, I gave permission for the claimant to give oral evidence.

22. I noted Ms Fadipe had confirmed that the claimant would be available. I reminded Ms Fadipe that it would be for her to consider if she wanted the claimant to give evidence and suggested she keep him available until the end of the scheduled hearing to allow her flexibility in calling him. I reminded the parties that this was a *party v party* jurisdiction and that Ms Fadipe will not be reminded further about the witness as it is a matter for her whether she calls him to give evidence and when she called him for this purpose.

**Management of Hearing**

23. I then considered the order of issues, having already heard submissions from the parties.

24. I agreed with the Ms Fadipe's submission and decided to hear the amendment applications prior to the time limit issues. I agreed the applications and time limit issues were inextricably linked, which was in line with the view taken by Employment Judge James in his letter of 13 July 2023 to the parties. I determined that hearing the time limit issue first would cause injustice to the claimant becauseif the claim was to be found out of time then it would be struck

out and the amendment applications could not be considered. I considered there was benefit in having all the relevant details placed before me.

25. I had the power to regulate the Tribunal's procedure, and by hearing the amendment applications first, I determined that the hearing would be fair and in keeping with the overriding principles of ensuring parties are on an equal footing and avoiding formality.

26. Given the time constraints and the issues being inextricably linked, I invited the representatives' views on hearing submissions for the amendment applications followed by the time limit issue. Both representatives were in agreement. This approach was in keeping with the overriding objective of dealing with the matter proportionally and avoiding delay.

27. Submissions were provided by both representatives on the amendment applications, followed by submissions on the time limit issue. Despite the claimant being available, Ms Fadipe never sought to add him into the hearing at any point. Accordingly I had no evidence, written or oral, from the claimant to assist me.

Claimant's submissions

28. Ms Fadibe submitted that the facts were pleaded in the ET1 but as the claimant was unrepresented he did not identify the facts that fell under the Health and Safety detriments (s.44 of the Employment Rights Act). She proposed that this was a relabeling exercise and in her written submissions she provided amendments to the list of issues that had been issued at the last hearing. She accepted these draft amendments to the list of issues was just a summary and she relied upon the more comprehensive Amended Grounds of Complaint that accompanies the Second Application.

29. Ms Fadipe submitted that the balance of prejudice weighs in the claimant's favour as a refusal of the amendments would effectively end his claim. She argued that there was little prejudice to the respondent as they were already on notice of the facts in the ET1, had responded to these within the Grounds of Resistance, the proceedings remain at an early stage, and the matters are inextricably linked to the facts already pleaded. Her primary submission was that no amendment application is in fact necessary as the key dates and narrative are contained within the ET1. However, she did accept that there was a new allegation in respect of the First Application (in relation to the respondent having a separate box for the claimant's SLAM reports). She stated the Second Application was made out of an abundance of caution.

30. In relation to the time limit issues, Ms Fadipe disputed the last relevant date was July 2022 and submitted that the additional facts were brought within time. She submitted that the last grievance was raised on 11 October 2022, thus allowing for the ACAS conciliation period meant that the ET1 received on 1 March 2023 was within the three-month time limit. She thus argued everything within the ET1 remains in time, with the SLAMS and grievance being an ongoing series of events. She submitted that if the Tribunal find the last complaint was made on 11 October 2022 then the claim would be in time. In relation to the reasonable

practicability test, she submitted that the Employment Appeals Tribunal had repeatedly stated that time limits are not fatal to a claim. She did not accept that the respondent suffers a prejudice in relation to witnesses.

31. Ms Fadipe argued that whilst the First Application may be out of time, there was an ongoing state of affairs in relation to the SLAM reports and within the Grounds of Resistance, when outlining that the correct process had been followed, the respondent refers to various reports being completed by the claimant. She submitted the Second Application was made at the earliest opportunity after the claimant obtained legal advice/assistance and this led to a more structured and detailed approach.

32. Finally, Ms Fadipe submitted that the merits are sufficiently strong as regular health and safety complaints were raised, and they caused detriment as the grievances were not being properly investigated.

Respondent's submissions

33. Ms Rumble deferred to the respondent's email of 7 July 2023 which outlined the objections to the amendment application. The objections can briefly be summarised as:
    33.1 Despite being unrepresented, the claimant had a full opportunity to state relevant facts and only raised a single amendment being sought in relation to the box (First Application);
    33.2 The Amended Grounds of Complaint radically re-write the entire claim, bring various new detriment claims, introduce new allegations not previously pleaded (e.g. colleagues deliberately twisting and tightening sealant cables on doors of trailers the claimant would use) and argue that each SLAM report amounted to detriment;
    33.3 The detriments that were later in time have no prospects of success because the claimant would have to show the respondent took such an approach because he had submitted a protected disclosure (e.g. delays in a grievance process).

34. Ms Rumble submitted that if the application is granted then the current responses provided will not suffice as they counter the narrative provided in the ET1 and the Grounds of Resistance demonstrate that it was unclear as to what claims were being made. She submitted that the respondent will now face the cost of having to deal with proceedings that have greatly expanded and the respondent would have to radically change the way it defends this claim with new witnesses required and effectively starting from scratch.

35. Ms Rumble submitted that the amendments applications were out of time and the last detriment was in July 2022 meaning the claim was required to be made by the end of November 2022. She argued the First Application on 12 May 2023 was out of time as the SLAM box issues were from July 2022, and even taking the 11 October 2022 relied upon by the claimant date would mean the amendment remains out of time. She argued that if the Tribunal did conclude there had been a detriment on 11 October 2022, then this was only raised as a date of detriment in the amendment application dated 30 June 2023, which means it is significantly out of time despite the claimant having been made

aware of time limits at the last hearing on 12 May 2023. Ms Rumble submitted that allowing the amendments would circumvent the claim being out of time and that this would be unfair.

36. Ms Rumble submitted that time limit was not raised by the respondent in the Grounds of Resistance as there was a lack of clarity on what the claims are and the time limit issue became clear at the last hearing. She confirmed that she had attended the 12 May 2023 hearing where Employment Judge James had explored relevant dates with the claimant. She went through her note of the hearing.

37. She submitted that, as per her notes of the last hearing, the claimant had confirmed he had went on sick leave on 17 October 2022 and had been informed in June/July 2022 that he would be removed from driving duties if he did not cease to raise SLAM reports. She confirmed that the claimant had clarified he is not raising the grievances as a detriment and he then raised the SLAM box issue (First Application) which he said had occurred around July 2022. She stated the claimant did confirm he had no other issue to raise. In relation to the List of Issues where Employment Judge James stated that any claims brought before 4 October 2023 may not be in time, she explained that the Judge had worked three months back from the Early Conciliation notification date of 3 January 2023.

38. Ms Rumble submitted that the claim would be out of time, even if the amendments applications were allowed, due to the strict time limits. She submitted that the claimant had failed to provide any evidence, such as medical evidence, on why he did not bring the claim in time, despite the Tribunal having ordered him to do so. Accordingly, she submitted that the claimant could not meet the burden of the reasonably practicable test, which she explained meant "reasonably feasible" as per *Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, CA*. She submitted being ignorant of his rights did not bring the claim to be within time as the law and rules are clear. Finally, Ms Rumble submitted that at no point had the respondent been obstructive or prevented the claimant from issuing his claim in time, and that he had trade union support throughout.

**Amendment applications**

39. I considered both applications. I considered the hearing bundle, the claimant's written submissions and the detailed oral submissions from both representatives.

Law

40. An amendment in Employment Tribunal proceedings does not relate back to the date of the claim but rather is taken to be effective (if granted) from the date the application to amend was made (*Galilee v Commissioner of Police of the Metropolis [2017] UKEAT 0207_16_2211*).

41. Under Rule 29 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, I have a broad discretion to allow amendments at any stage of the proceedings. In the exercise of my discretion I should seek to

do justice between the parties having regard to the circumstances of the case. The key principle is that in exercising my discretion I must have regard to all the circumstances, in particular any injustice or hardship which would result from the amendment or a refusal to make it.

42. In line with the EAT authority of *Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT*,I must carry out a careful balancing exercise of all relevant factors, which include:

- The nature of the amendment;
- The applicability of time limits;
- The timing and manner of the application.

43. I also had regard to the guidance given in *Vaughan v Modality Partnership 2021 ICR 535, EAT* that the core factors are the balance of injustice and hardship and I must have regard to the practical consequences of allowing or refusing the amendment.

44. I should, when considering applications to amend that arguably raise new causes of action, 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."*

(As per IDS Employment Law Handbook "Practice and Procedure" at 8.27)

Decision

45. I note the legal basis of the claim is unclear. The legal basis was not clear in the claim form, but references were made to health and safety issues being reported by the claimant but ignored. In the Grounds of Resistance state, the respondent states it is unclear to as to the legal claims being pursued. At the 12 May 2023 Preliminary Hearing, a lengthy discussion with the claimant, a list of issues was drawn by Employment Judge James. The detriments identified by the Judge were health and safety detriments under section 44 of the Employment Rights Act 1996 ("ERA").

46. In the Second Application, the claimant's solicitors stated the following in relation to the legal basis of the claim: "*Claimant brings complaints of protected disclosure detriments after raising health and safety concerns, pursuant to section 47B Employment Rights Act 1996, although not specifically pleaded at the time, on that, or any, legal basis*." The accompanying Amended Grounds of Complaint further clarify that the claimant had brought claims for detrimental treatment contrary to section 47B of ERA. The remedies sought included a declaration of suffering a detriment contrary to section 47B of ERA.

47. In the reply to the Second Application, the respondent submits that Employment Judge James had clarified the claim as a health and safety detriment under section 44 of ERA and this was now an "*attempt to radically re-write the Claimant's entire claim and bring various news [sic] claim of detriment on the*

*grounds of a protected disclosure contrary to 47B of the Employment Rights Act 1996*".

48. In the claimant's written submissions provided to me today, Ms Fadipe submits "*C pleaded facts in his ET1, but being a litigant in person, he did not identify which facts in particular fell under s.44. This is a relabeling exercise.*" She then goes on to propose amendments to section 2.2 of the list of issues. Ms Fadipe did not propose to change the header (of sections 2.1 and 2.3) of the list of issues. This would thus all remain under 'Health and safety detriment (s.44 Employment Rights Act 1996).

49. The original claim was already clarified to be under s44 of ERA, namely health and safety detriments. Within the Second Application, there is an amendment to seek to bring the claim under section 47B, namely protected disclosure detriments.

50. I first considered the nature of the amendment. The First Application was made at the hearing of 12 May 2023 and it sought to add the further allegation of the claimant's colleagues having a separate box to the claimant to report near miss incidents. The Second Application dated 30 June 2023 addressed various amendments (summarised further above).

51. I considered all the circumstances going to the balance of hardship and prejudice. I firstly considered the nature of the amendments. In relation to the First Application, Ms Fadipe had acknowledged this was a new allegation. In relation to the Second Application, I do not accept that such an extensive Amended Grounds of Complaint totalling 21-pages was mere re-labelling. It provided a detailed summary of 70 SLAM reports and 10 specific detriments with details of the date/acts provided. It introduced new allegations not previously pleaded (e.g. colleagues deliberately twisting and tightening sealant cables on doors of trailers that the claimant would use), argued that each SLAM report amounted to detriment, alleged each of the 170 SLAM reports were protected qualifying disclosures. The legal basis was also effectively being changed from section 44 to section 47B of ERA in relation to the type of detriments. When considering against the ET1, the claim had significantly expanded and the amendments went beyond mere clarification. This would require substantially different areas of enquiry.

52. In considering time limits, I concluded both amendment applications were made out of time. The claimant had confirmed at the last hearing that he had been on sickness absence from 17 October 2022 and that his last detriment was when he was threatened with being removed from driving duties if he continued to raise further SLAM reports, which he stated was three to four months before his sickness absence. Taking the latest date, I calculated the last detriment was on 17 July 2023 and so the claim needed to be brought by 17 October 2023. The First Application was made on 12 May 2023 (almost seven months late) and the Second Application was made on 30 June 2023 (almost eight and a half months late). The applications were more than twice the original time limit.

53. The Second Application was also made seven weeks after the 12 May 2023 hearing in which the First Application had been made. The claimant should have

appreciated the need for a prompt application. No explanation had been provided on why it took seven weeks for the Second Application to be made. There was no good reason as to why the new matters could not have been brought in time, in common with the original matters. The amendments related to facts of which the claimant had been fully aware at the time.

54. The fact that an amendment is made out of time is but one factor for me to consider and is not determinative. It was neither my first nor my only consideration as I considered all the circumstances and balanced the injustice and hardship of allowing the amendments against the injustice and hardship of refusing them.

55. I accepted the respondents' contention that the timing and manner of the amendment created further prejudice. The amendments were significant and considerably enlarged the claim. This would require the respondent to consider new witnesses and undertake detailed investigations, which would be significant and at some considerable cost. Whilst there was nothing to indicate witnesses or documents are lost, I do accept the wider scope of the claim would mean additional witnesses would need to be contacted. The respondent would also have to file an amended response. This increased the prejudice to the respondent.

56. None of the above factors are decisive and the balance of justice is key. I considered the real practical impact of permitting or refusing the amendment applications. Permitting the amendments would likely add to the length and complexity of the final hearing. Refusing the amendment would result in the claimant being unable to bring additional detriment claims. He would effectively lose a part of the claim that he wished to make. However, permitting the amendment would expose the respondents to further allegations and potential legal liability.

57. I considered the First Application to amend was more finely balanced as it was less likely to considerably increase the length of the hearing. The prejudice to the claimant in not relying on this amendment as a detriment was, however, relatively minor. The respondent would still suffer some prejudice and the amendment was made late.

58. The Second Application to amend significantly expanded the claim. I had already considered the prejudice it would cause to the respondent. I do accept the prejudice to the claimant would be more than in the First Application, but this prejudice would be somewhat mitigated by the fact that he could rely on the issues raised as background when the tribunal considered the other examples in the original claim.

59. I accepted that the timing and manner of amendments puts the respondent at a material disadvantage in arguing their case before this tribunal. I considered that the prejudice suffered by the respondent was in excess of that suffered by the claimant.

60. Taking in to account all the circumstances and balancing the issue between the parties, in my judgment, it would <u>not</u> be fair and just to allow the proposed amendments. Consequently, both applications are refused.

**Time limit issue**

61. After having decided the amendment applications, I next moved on to consider the time limit issue. I considered the hearing bundle, the claimant's written submissions and the detailed oral submissions from both representatives.

Law

62. The Employment Rights Act 1996 ("ERA") provides at section 48(1) and 48 (3) in relation to a health and safety related detriment that:

> *"An employment tribunal shall not consider a complaint under this section unless it is presented—*
>
> *(a)before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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 month"*

63. Additionally, section 48(3)(a) of ERA explains that "*where an act extends over a period, the "date of the act" means the last day of that period*".

64. That time-limit is adjusted in relation to periods of ACAS early conciliation.

Decision

65. The first issue was whether the claim was brought in time. For the sake of clarity these would be section 44 of ERA detriments, as the application to change the basis to section 47B of ERA has been refused. The claimant started his sickness absence on 17 October 2022. I accepted Ms Rumble's account of what was stated at the last hearing of 12 May 2023, as she had attended the hearing and read out extracts from her note of the record of that hearing. This was not challenged by Ms Fadipe.

66. When explaining his detriments at the hearing of 12 May 2023, the claimant had told Employment Judge James that he was not pursing his sickness absence or the raising of the grievances as a detriment. The last detriment he did refer to was explained as being told by Melinda (an employee of the respondent) that the claimant would be removed from driving duties if he did not stop raising SLAM reports and that J Smith (another employee) was aware of this. He clarified that this was three to four months prior to his sickness absence. In response to this Employment Judge James did seek clarity if this was in June/July 2022 and the claimant did confirm this was correct.

67. I note Employment Judge James' letter of 13 July 2023 detailing the significant help provided to the claimant who was unrepresented at the time. I do not consider the claimant's explanation was inaccurate simply because he was without representation at the time.

68. It is clear that the last detriment will have been no later than 17 July 2023, that being three months prior to the claimant's sickness. Accordingly, the ET1 should have been received by 16 October 2023. The ACAS conciliation period began 3 January 2023 (so does not have the effect of extending any time limit) and the ET1 was in fact received by the Tribunal on 1 March 2023. The claim was therefore brought out of time.

69. I therefore went on to consider whether to exercise the discretions set out in the relevant statutes in relation to extending time.

70. The first question which I have to address is whether it was reasonably practicable for the claimant to have presented his claim within the time limit. I thus have to consider any explanations put forward by the claimant as to why the claim was not made in time.

71. The time limit issues had been clarified when it came to light at the last hearing on 12 May 2023. On 30 June 2023, the claimant, via his solicitors, applied to vary the Order so that he no longer had to address the time issue or file a witness statement in support. This had been rejected and Employment Judge James had confirmed on 13 July 2023 that the time limit issue would be considered at today's hearing.

72. In relation to the witness statement, the following direction was given at the last hearing on 12 May 2023 (in the Order drawn up on 28 May 2023):

> *"this should include details about what the claimant knew about Employment Tribunal time limits before starting Acas Early Conciliation, when he found that out, and how? Whether he approached his trade union Unite at any time for advice in relation to the health and safety issues/detriments he was raising and if so, who he approached and when? When he raised a grievance and what happened with that grievance, e.g. when was it heard/dealt with etc? What prompted him to submit the ET claim when he did? Does the claimant have any health conditions which have prevented him or made it more difficult to present a claim earlier?"*

73. Despite no witness statement being filed, I had allowed the claimant to provide oral evidence. Ms Fadipe had confirmed that he would be available around 11:30. The hearing lasted until nearly 13:00 and Ms Fadipe never elected to have the claimant to attend. This was despite Ms Rumble submitting that there is no evidence from the claimant on the time limit issue.

74. Ms Fadipe's submissions also failed to address any reason for the claimant not bringing his claim in time. I also noted that Ms Rumble had stated that the claimant had trade union support throughout, and if this was correct then I would have expected him to aware of the time limits. Even if he did not have such

support, I do not consider being ignorant of his rights would be a sufficient reason or excusable.

75. Whilst being out of time is not fatal to the claim, time limits in tribunal proceedings are strict and the “escape clauses” in the event of a late submission limited. In this case I had no reasons or explanations available to me and thus I was unable to consider any justification for the delay.

76. It was, in my view, reasonably practicable for the claimant to have submitted his claim within the time limit. Therefore, as he did not do so, the Tribunal does not have jurisdiction to hear his detriment complaint and that claim is struck out.

_____
Employment Judge Rakhim

11 August 2023

.