EMPLOYMENT TRIBUNALS

Claimant: **Mr K. Sawrey**

Respondent: Cosworth Limited

Preliminary Hearing
Heard at: Huntingdon by CVP in public On: 25 July 2023

Before: Employment Judge Boyes (sitting alone)

Representation
Claimant: Mr Anthony Korn, counsel
Respondent: Mr Pilgerstorfer KC, counsel

RESERVED JUDGMENT

Following the amendment to the claim of the 8 February 2023 on the 23 February 2023, the Tribunal has jurisdiction to determine the Claimant's complaints of automatic unfair dismissal, unauthorised deductions from wage and for unpaid holiday pay.

REASONS

1. The Claimant makes complaints of automatic unfair dismissal contrary to section 103A of the Employment Rights Act 1996 ("ERA"), unauthorised deductions from wages and of unpaid holiday pay.
2. The Claimant previously confirmed that he does not pursue a detriment complaint contrary to section 47B of the ERA.
3. The purpose of the preliminary hearing was to determine whether or not the Tribunal has jurisdiction in light of the fact that the claim was presented on 8 February 2023 and the Claimant was dismissed on 16 February 2023.

Background

4. The Claimant was employed by the Respondent as a machine tool maintenance technician from 7 March 2022 until his summary dismissal on 16 February 2023.
5. The Claimant asserts that he made protected disclosures on 15 August, 17 August, 30 August and 3 October 2022. Whether each of the alleged communications occurred and are protected disclosures remain live issues.

6. In August 2022, there was an investigation into Claimant's grievance and an outcome decision made on 30 August 2022. The Claimant appealed and an appeal outcome decision was made on 14 November 2022. The Respondent concluded that there was no serious risk or danger to life or health. At the Claimant's request, the Health and Safety Executive ("HSE"), also inspected the premises on 21 December 2022. The HSE notified its findings on 10 January 2023 (revised on 13 January 2023). The HSE did not close the workplace.

7. The Claimant did not return to work following the grievance appeal outcome. The claimant's pay was stopped on the basis that the Claimant's absence was unauthorised. There is a dispute as to the date on which the pay stopped. The Claimant asserts that this was the 3 January 2023 whereas the Respondent asserts that it was 12 January 2023.

8. A disciplinary hearing took place on 25 January 2023 and an outcome letter was sent on 2 February 2023. The outcome was to impose a final written warning. The Claimant was required to return to work on 3 February 2023. The Claimant initially stated that he was dismissed on the 2 February 2023, but has now accepted he was not dismissed on that date.

9. When the Claimant did not return to work, he was invited to a further disciplinary hearing which was held on 13 February 2023. He did not attend. On 16 February 2023, the outcome (summary dismissal) was communicated to him by letter.

10. In a claim presented to the Tribunal on 8 February 2023, the Claimant asserted that his dismissal was automatically unfair caused by him having made various protected disclosures relating to health and safety. In his ET1, he asserted that the effective date of termination ("EDT") was 2 February 2023. The claim also contains a claim for alleged unpaid wages and holiday pay. The claim form was accepted as valid.

11. The Claimant submitted a further claim form and other documents to the Tribunal on the 9 February 2023. Employment Judge Quill noted the following about that second claim form at paragraph 35 of his reasons

> *These documents were another claim form (ET1) with more information, as well as several attachments. In totality, the 9 February documents referred to more alleged protected disclosures than the 8 February claim form (the one that had been accepted); though there might be room for debate about whether the 9 February items alleged that the detriments and dismissal were because of those other alleged protected disclosures.*

12. The Claimant made an application for interim relief, which EJ Quill rejected at a hearing on 23 February 2023. During that hearing, the Claimant accepted that his EDT was in fact 16 February 2023. He made an application to amend his claim which was granted.

13. This was followed by written Judgment and Reasons dated the 24 February 2023. In respect of the amendment, EJ Quill's Judgment was:

> *3. I allow the section 103A claim to continue on the basis of an allegation that the reason for the dismissal on 16 February 2023 (or, if more than one, the principal reason) was that the Claimant made a protected disclosure. I make no other decision on possible amendment of the claim.*
>
> *4. I make no other decision on possible amendment of the claim.*

14. In his Reasons, EJ Quill noted, at paragraph 28, the factors to be taken in to account when deciding an application to amend, including time limit issues, as per *Selkent Bus Company Ltd v Moore* EAT/151/96

15. EJ Quill recorded the nature of the amendment dealt with as follows:

> *52. It was in his response to the Respondent's submissions that he made clear that he would like to concede that he had not been dismissed on 2 February (or any other date prior to 16 February 2023) and would instead like to make an application to amend, to allege that the dismissal was indeed on 16 February 2023 (as the Respondent had asserted) and that this dismissal was unfair because of section 103A of the Employment Rights Act 1996. […]*
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> *54. I had made clear at 10am that the Claimant's 9 February documents did not (at present) form part of the claim and that the Claimant would have to make an application to amend if he wanted those added. There was no such application from the Claimant, and (therefore) no response to such an application from the Respondent.*
>
> *55. […] If granted permission to amend, I would not be giving carte blanche to the Claimant to submit a written amendment at a later date; I would simply be converting the section 103A claim to be that (i) the event which terminated his employment was the letter of 16 February 2023 from the Respondent, signed by Ms Prajapati (the Respondent's bundle pages 221 to 223); (ii) the effective date of termination was therefore 16 February 2023 (or later) and not before; (iii) that dismissal (as opposed to the one previously alleged to have occurred on 2 February 2023) was by reason of the protected disclosures mentioned above. […]*
>
> *56. […] By making the application so late (in the sense that it was just before I would have otherwise started deliberating on the interim relief application), the Respondent had little, if any, opportunity to take detailed instructions. (Just the lunch break). The disadvantage caused by Ms Prajapati rather than Mr Cargill being the decision-maker has to analysed taking into account that that was the Respondent's case anyway, regardless of the Claimant's application to amend. However, had the Claimant made his application earlier, then there would have been no need for the Respondent to focus on why sections 111(2)(a) and 111(3) of the Employment Rights Act 1996 should lead to the conclusion that his claim did not have a pretty good chance of success, and they could, instead, have spent more time on addressing why (in the Respondent's opinion) the interim relief application should be dismissed based on the events of 3 February to 16 February and the contents of the letter [which (as a result of the Claimant's late concession) was the dismissal letter], and the 13 February hearing which is alleged to have preceded that letter. […]*
>
> *58. Overall, I decided that the balance of injustice and hardship was in favour of granting the amendment to the existing claim and dealing with the interim relief application today. It would not be beneficial to either side, or in accordance with the over-riding objective, for the Claimant to simply present a new claim form, and new interim relief application, later today, and have a further hearing in due course. […]*
>
> *71. The only amendment to the 8 February claim form is that the claim now proceeds as a s103A claim relying on dismissal date 16 February 2023.*

16. EJ Quill refused the Claimant's application for reconsideration of his Judgment relating to the interim relief application under cover of a letter sent to the parties on 3 April 2023.

17. There was a case management hearing before Employment Judge Michell on the 24 May 2023. At that hearing Judge Michell directed that a preliminary hearing be listed "*to determine whether or not the tribunal has jurisdiction to hear the claimant's complaint of automatically unfair dismissal (s.103A Employment Rights Act 1996) in the light of the fact that his claim was presented on 8 February 2023 and his dismissal was on 16 February 2023*". There is no reference to the equivalent jurisdictional issues relating to the holiday pay and unauthorised deductions from wages complaints.

Issues to be decided at the Preliminary Hearing

18. Mr Korn stated that given what is said in Judge Michell's case management orders he had only prepared to deal with the jurisdictional issue relating to the automatically unfair dismissal claim. However, he confirmed that the Claimant was content for a decision to be made regarding the application of statute in respect of the jurisdictional issue relating to the holiday pay and unauthorised deductions from wages complaints. However, he was not in a position to proceed at the hearing in respect of the dates from which specific pay is said to be owed as he did not have instructions in this respect.

19. Given what is recorded in the case management orders, it would not have been fair to expect the Claimant to deal with specific aspects of the holiday pay and unauthorised deductions from wages complaints. The hearing therefore proceeded on the basis that the Tribunal would decide, in principle only, whether or not the Tribunal has jurisdiction to deal with the holiday pay and unauthorised deductions from wages complaints.

20. Consequently, the issues for the Tribunal to decide are as follows:

> <u>Automatic unfair dismissal – s103A ERA</u>
>
> i. Was the Claimant's claim, presented on 8 February 2023, presented in accordance with s111(2)(a) ERA?
>
> <u>Arrears of Pay – unauthorised deductions from wages</u>
>
> ii. The claim having been presented on 8 February 2023, what (if any) part of this claim is presented in accordance with s23(2)(a) ERA?
>
> <u>Holiday Pay -The Working Time Regulations 1998</u>
>
> iii. The claim having been presented on 8 February 2023, what (if any) part of this claim is presented in accordance with regulation 30(2) The Working Time Regulations 1998 WTR?

The Relevant Law

<u>Automatic unfair dismissal – s103A ERA</u>

21. Section 111(2) to (3) ERA provides:

> *(2) Subject to the following provisions of this section, an employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal –*
>
> *(a) before the end of the period of three months beginning with the effective date of termination,*

or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).

(3) Where a dismissal is with notice, an employment Tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.

Unauthorised deductions from Wages - section 13 ERA

22. Section 23(2)(a) ERA provides:

(*2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*

(a)in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b)in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a)a series of deductions or payments, or

(b)a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

Holiday pay - The Working Time Regulations 1998 ("WTR")

23. Regulation 14 provides:

Compensation related to entitlement to leave

14.-(1) This regulation applies where—

(a)a worker's employment is terminated during the course of his leave year, and

(b)on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

24. Regulation 30 provides:

30.(1) A worker may present a complaint to an employment tribunal that his employer-

[…] (b)has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented-

(a)before the end of the period of three months […] beginning with the date on which it is alleged that […] the payment should have been made;

(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 or, as the case may be, six months.

The parties' submissions

Claimant

25. The Claimant submits that his claim was amended at the interim relief hearing on 24 February 2023. At that hearing, the Claimant acknowledged that he had not in fact been dismissed on 2 February but on 16 February and accordingly applied to amend his claim.

26. EJ Quill allowed the Claim to proceed on the basis of an allegation that the reason for the dismissal on 16 February 2023 (or, if more than one, the principal reason) was that the Claimant had made a protected disclosure [paragraph 41 to 53 of Reasons]. EJ Quill directed himself on the issue of amendment at paragraph 25 of his Reasons and considered the application of that Direction at paragraphs 55 to 57. He granted the application for the reasons set out in paragraph 58 of the Judgment concluding that '*it would not be beneficial for the Claimant to simply present a new Claim form*' for the reasons set out in that paragraph.

27. It is submitted by the Claimant that he had presented a new claim, the jurisdictional point made by the Respondent would not arise. The Claimant, as a litigant in person, should therefore not be prejudiced by the course of action followed by the Employment Judge and so the claim should be treated as having been re-presented on that date.

28. In the alternative, the Claimant submits that the substantive amendment took effect on that date and therefore the Claim was presented within 3 months of the EDT as required by section 111(2)(a). In support of this submission, the Claimant relies on the EAT's decision in *Galilee v Commissioner of Police of the Metropolis* [2018] ICR 634 and the reference to that case in Harvey on Industrial Relations and Employment Law [Volume 4 paragraph at 312.05] to the effect that where a new claim is permitted by way of amendment, it takes effect from the date on which permission to amend was given and does not 'relate back' to the date when the original claim was presented.

29. The Claimant acknowledges that the cause of action, namely a complaint under Section 103A ERA, was the same but the claim itself was 'new' in the fundamental sense that in the original claim the Claimant had wrongly asserted that his dismissal took place on 2 February whereas in the amended claim he was given permission to amend his claim to the actual date of dismissal namely 16 February and it is the reason for dismissal asserted by the Respondent at that date which will be relevant to determine the merits of the section 103A claim.

30. The Claimant therefore submits that the Tribunal does have jurisdiction to determine the Claim.

Respondent

31. The Respondent submits that the Tribunal only has jurisdiction to hear and determine the unfair dismissal complaint if that jurisdiction is granted to it by section 111 ERA. Under section 111(2)(a) ERA, a Tribunal "shall not consider a complaint" of unfair dismissal "unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination". The claim was presented on 8 February 2023, whilst the Claimant was still employed, before he was dismissed, and therefore before the effective date of termination. The claim was therefore premature. A premature claim presented prior to the EDT is not presented in accordance with s111(2)(a) and accordingly the Tribunal has no jurisdiction to consider it.

32. It is submitted that an extension of time does not avail the Claimant because he presented before the first date when presentation was permitted.

33. Further, as per *Commissioners for HM Revenue & Customers v Serra Garau* [2017] ICR 1121, a limitation clock that has never started is not stopped by reference to early conciliation conducted prior to it running [paragraph 30].

34. Section 111(3) ERA provides that where a dismissal is "with notice", a claimant may present his/her claim before the EDT provided it is after the giving of notice. The Claimant was summarily dismissed on the 16 February so section111(3) cannot apply.

35. The Respondent relies upon *Rai v Somerfield Stores Ltd* [2004] IRLR 124. The EAT considered the case of an employer who wrote to an employee to say that if he failed to turn up for work on 9 April, his employment would be treated as having ended. The employee presented a claim to the Tribunal on 6 April 2023, after that communication but before 9 April, on which day he did not attend for work and was dismissed by the employer. The EAT rejected the submission that the employer's original letter requiring the employee to attend on 9 April was "notice" of termination. It said at paragraph 30:

    In our judgment, this was not a dismissal on notice falling within s.111(3). We take the view that, whether described as an ultimatum or a conditional notice or not, and we do not regard either expression as necessarily inappropriate, a notice which enables the employer to terminate the contract of employment only if the employee does or does not perform a particular act specified in the notice, which only he, the employee, can choose whether or not to perform, is not an unequivocal notice to terminate the employment.

36. The Respondent submits that the position here is even clearer than in *Rai* because no notice was given by the Respondent to the Claimant to say that his employment would be treated as at an end if he failed to return to work on a specified date. The 2 February 2023 outcome letter imposed a final written warning, and merely indicated that C was expected back to work on 3 February 2023 [110]. The invitation to a further disciplinary hearing on 9 February 2023 also did not pre-empt the decision because the Claimant was told "*The outcome from the hearing may be any sanction up to and including summary dismissal, although no decision has yet been made*" [113]. It was only following the disciplinary hearing on 16 February 2023, that immediate dismissal was communicated [120-121].

37. The Respondent submits that, like in *Rai*, there was no advance notice of dismissal to engage section 111(3), and the presentation of the claim preceded the EDT.

38. The Respondent submits that the Tribunal therefore has no jurisdiction and so the unfair dismissal complaint should therefore be dismissed.

39. The Respondent submits that Tribunal has no jurisdiction to determine the claim for accrued but untaken holiday pay. This is because:

    (i) By section 23(2)(a) ERA an Employment Tribunal only has jurisdiction to consider a complaint of unauthorised deductions where it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made.

    (ii) The Claimant's claim under this heading is for money in lieu of holiday entitlement which had accrued and was untaken as at his termination. That entitlement can therefore only arise as at the termination date. Under Regulation 14 of the Working Time Regulations 1998, the obligation to make a payment in lieu of untaken leave can only arise upon termination. This reflects the underpinning provisions of Article 7(2) of the Working Time Directive 2003/88/EC.

    (iii) The relevant payroll dates were 21 February 2023 (the first after his dismissal, but only 5 days after) and 21 March 2023. The Claimant was made a payment in lieu of untaken holiday entitlement on 21 March 2023 in the sum of £2,096.34, from which deductions for income tax and national insurance were taken, leaving the net sum paid of £1,760.94.

    (iv) The Claimant asserts that this sum was deficient; but he has presented it prematurely, on 8 February 2023, before his Effective Date of Termination (when the payment would be calculated) and before the paydays post-dating his dismissal in February, and in March (in which holiday entitlement was paid).

40. The Respondent submits that the complaint should therefore be dismissed because, as per section 23(2)(a) ERA, a claim for unauthorised deductions must be presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made.

41. The Respondent submits that as the Claimant presented his claim on 8 February 2023, before the February wages payment was paid or fell due to be paid, the Tribunal only has jurisdiction to determine the arrears of pay claim for the period from 3 January 2023 – 31 January 2023 (based on the pay day of 20 January 2023).

42. The Respondent therefore submits that the Tribunal should (a) dismiss for want of jurisdiction the complaint of unfair dismissal; (b) dismiss for want of jurisdiction the complaint in respect of holiday pay; (c) declare that it has jurisdiction to determine the complaint of arrears of pay only in respect of the period 3 January – 31 January 2023.

43. The Respondent also submits that, given the interim relief judgment, the Claimant is now estopped from arguing a wholly new claim inconsistent with his original claim which would have prevented the interim relief application from proceeding.

MY CONCLUSIONS

44. Neither party argues that the Claimant's dismissal on the 16 February 2023 was on notice. That being so I need not consider arguments made relating to section 111(3) of the ERA.

45. There is reference to the need for time limit issues to be taken in to account at para 28 of his reasons.

46. EJ Quill's considers, at paragraph 56, the disadvantage that is likely to be suffered by the Respondent if the amendment is allowed. He noted that "*had the Claimant made his application earlier, then there would have been no need for the Respondent to focus on why sections 111(2)(a) and 111(3) of the Employment Rights Act 1996 should lead to the conclusion that his claim did not have a pretty good chance of success*…".

47. There is therefore clear reference to the Respondent making arguments relating to 111(2)(a) and 111(3) of the ERA at the hearing before EJ Quill. The issue regarding the date on which the original claim was made was therefore a matter that EJ Quill would have been aware of when deciding the amendment application and in deciding that *"the section 103A claim* [is] *to continue on the basis of an allegation that the reason for the dismissal on 16 February 2023*."

48. Further, at paragraph 58 of his reasons, EJ Quill states that it would not be beneficial for the Claimant to submit a fresh claim.

49. It is therefore clear from EJ Quill's reasons of the 24 February 2024, that he had in mind section 111(2)(a) and 111(3) of the ERA when determining the amendment application and that the amendment was granted instead of the Claimant submitting a fresh claim.

50. In *Galilee v Commissioner of Police of the Metropolis* UKEAT/0207/16/RN, His Honour Judge Hand QC held that:

> *Neither the procedural common law doctrine of "relation back" (now defunct - see Beecham Group plc v Norton Healthcare Ltd [1997] FSR 81, Liff v Peasley [1980] 1 WLR 781 and Ketteman v Hansel Properties Ltd [1987] AC 189) nor section 35(1) of the Limitation Act 1980 apply directly to amendments to pleadings in the ET, which introduce new claims or causes of action. These take effect for the purposes of limitation at the time permission to amend is given and do not "relate back" to the time when the original proceedings were commenced and in so far as the reasoning in the cases of Rawson v Doncaster NHS Primary Care Trust UKEAT/0022/08, Newsquest (Herald and Times) Ltd v Keeping UKEATS/ 0051/09 and Amey Services Ltd and Another v Aldridge and Others UKEATS/0007/16 is based on the "relation back" doctrine, this is inconsistent with statements in Potter and Others v North Cumbria Acute Hospitals NHS Trust and Others (No 2) UKEAT/0385/08, [2009] IRLR 900 and Prest v Mouchel Business Services Ltd UKEAT/0604/10, [2011] ICR 1345. Alternatively, Rawson, Newsquest and Amey Services were wrongly decided (on that point). On either basis they would not be followed (see Lock and Another v British Gas Trading Ltd (No 2) UKEAT/0189/15, [2016] IRLR 316).*

51. At paragraph 19, HHJ Hand QC noted that in consideration of the appeal to the EAT, "[…] *what might be termed as the prior question, as to what, in the context of ET procedure, is the effect of allowing an amendment? Putting it another way, does the common law doctrine of "relation back" apply so that allowing an amendment must have the consequence of defeating any limitation point the*

Respondent would otherwise have?" It is that issue that is of relevance in this case.

52. In *Galilee,* the factual matrix is somewhat different to in this case: in *Galilee* the application for amendment was argued to be outside the three month time limit whereas in this case the original claim was premature. However, the rationale by which it was decided on what date an amendment has effect remains applicable.

53. I have borne in mind that the starting point must always be the wording of statute itself. On the plain reading of sections 111(2) to (3) the Tribunal has no discretion to entertain a complaint made prematurely whereas there is discretion to accept a complaint made late (outside the primary three month time limit).

54. The EAT's decision in *Rai v Somerfield Stores Ltd* [2004] IRLR 124 also involves a claim made prior to the EDT. The ET found that Mr Rai was not dismissed with notice and that his claim was made three days prematurely so there was not have jurisdiction in light of section 111(2)(a). The EAT dismissed Mr Rai's appeal. The primary focus of arguments to the EAT was (i) whether or not Mr Rai's dismissal was with notice and hence whether the ET had jurisdiction pursuant to section 111(3) and (ii) whether the Mr Rai had been constructively dismissed prior to the date on which the claim form was presented to the ET.

55. Whilst the decision to dismiss the appeal in *Rai* was on the basis that there was no jurisdiction because of section 111(2)(a), in *Rai* the EAT did not consider the effect of an amendment on the date that the complaint takes effect. Therefore whilst *Rai* confirms, in a general sense, the operation of section 111(2)(a), it does provide guidance in relation to the central issue that I must determine.

56. The interplay between the date that a claim was presented and the effect of an amendment was granted was also consider in *Prakash v Wolverhampton City Council* [2006] Lexis Citation 1095. In that case the EAT made the following comments:

[61] The Respondent's case involves holding that an amendment can be allowed to add or substitute a cause of action that was not available when the originating application was first presented. There is nothing in the rules that expressly prevents such an amendment being allowed. It would obviously make sense in a case such as this. to allow an amendment (if considered appropriate) rather than require the Claimant to issue a second originating application. We do not see any basis for the technical rule that used to apply at one time under the Rules of the Supreme Court that one could not permit by amendment the raising of a cause of action that had accrued after the issue of the writ.

[62] Statutes that deal with discrimination on the grounds of disability, sex, race and so on are phrased differently but claims under these statutes are frequently amended so as to add different causes of action. We see no reason in principle why a cause of action that has accrued, so as to speak, after the presentation of the original claim form, should not be added by amendment if appropriate. <u>The claim form can still serve as a vehicle for the amendment even if the original cause of action is bad.</u> Some support for this proposition can be found in the passage that we have Cited from Chaudhary. [my underlining]

[63] We see no reason why the term "present" Should be given any technical meaning. in our opinion, a claim can be "presented" as well by amendment as by the issue of a separate originating application. If this were not so, in very many cases amendments adding new causes of action would require to be

initiated by the presentation of a fresh originating application rather than by amendment. In our opinion, such is neither current practice nor in accordance with common sense nor the law as we understand it.

57. In *Commissioners for HM Revenue & Customers v Serra Garau* [2017] ICR 1121, the issue to be decided by the EAT was whether more than one certificate can be issued by Acas under the statutory procedures and what effect, if any, a second such certificate has on the running of time for limitation purposes. In doing so it considered the relevant enacting legislation and regulations.

58. The Respondent relies on this case as authority for the proposition that a limitation clock that has never started is not stopped by reference to early conciliation conducted prior to it running [as per paragraph 30].

59. However, the EAT's decision in *Commissioners for HM Revenue & Customers v Serra Garau* was made against the backdrop of the very specific legislation and rules governing the Early Conciliation process and the impact of the Early Conciliation certificate on time limit issues. There is no consideration of the impact of an amendment on a claim made prematurely. Consequently, I consider that what is said at paragraph 30 is of limited assistance in terms of the issues that I must decide.

60. Relying on *Galilee* and *Prakash* I find that that it is not the effect of an amendment to backdate the amended claim to the date on which the original claim form was presented. Rather the amendment takes effect for the purposes of limitation at the time permission to amend is given. I therefore find that the amendment allowed by EJ Quill on 23 February 2023 has effect as of that date and results in the amended claim not being caught by section 111(2)(a) as being premature. The same principle equally applies in respect of section 23(2)(a) ERA and regulation 30(2)(a) of the WTR.

61. In relation to the estoppel argument made by the Respondent, the amendment application was determined during the course of the interim relief hearing. EJ Quills had discretion to proceed with the hearing in the manner that he did under The Employment Tribunals Rules of Procedure 2013. Whilst the Claimant may have conceded during the course of that hearing that he was dismissed on the 16 February 2023 not the 2 February 2023, such concessions are not uncommon in hearings before the Employment Tribunal at the preliminary stage. In the circumstances of this case and considering the manner in which proceedings unfolded at the interim relief hearing, I do not consider that the previous Judgment in relation to interim relief estops the Claimant from pursuing his automatic unfair dismissal claim.

62. I apologise to the parties for the delay in providing this Judgment and Reasons.

Employment Judge Boyes

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Date: 20 October 2023

Reserved Judgment and Reasons Sent to The Parties On
23 October 2023

FOR EMPLOYMENT TRIBUNALS

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