



# EMPLOYMENT TRIBUNALS

**Claimant: Paul Raymond Longmead**

**Respondent: Govia Thameslink Railway FAO: Chris Mclennan**

**Heard at: London Central**

**On: 10 January 2024**

**Before: Employment Judge A.M.S. Green**

## **Representation**

Claimant: In person

Respondent: Ms L Veale - Counsel

**JUDGMENT** having been sent to the parties on 10 January 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. For ease of reference, I refer to the claimant as Mr Longmead and the respondent as Govia.
2. Mr Longmead has been employed by Govia since 12 November 2001. He presented a claim of less favourable treatment because of his part-time status to the Tribunal on 29 August 2023. This followed a period of early conciliation with ACAS which started on 19 August 2023 and ended on 23 August 2023. The claim proceeds under regulation 5 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (“PTW”).
3. In summary, Mr Longmead says that he applied for flexible working in August 2022 so that he could move from working full-time as a Train Driver Instructor to a part-time basis. He wanted to do this because of work/life balance issues and to care for his wife who suffers from ill-health. In his claim form, he says that he started a three-month trial on 28 August 2022 and was told that if this were successful, he would be required to

relinquish his role as a Driver Instructor. He says that he felt pressurised to do this and when the trial period ended on 30 November 2022, he went part-time with effect from 1 December 2022 and relinquished his Driver Instructor role. He cites this as unfavourable treatment because of his part-time status, and he has named a comparator, Mr Lambert, who is another Driver Instructor who went part-time but was able to continue in the role of Driver Instructor.

4. Mr Longmead raised a grievance in February 2023. His grievance was heard on 27 April 2023 and rejected. The outcome of the grievance was communicated in a letter to him on 19 May 2023. Mr Longmead unsuccessfully appealed the grievance outcome, and he was notified of that decision on 8 August 2023.

Preliminary issue

5. Govia denies liability. They raised preliminary issues in the grounds of resistance on the following basis. The claim was presented out of time and the Tribunal does not have jurisdiction to hear it. They say that the claim should have been presented to the Tribunal on or before 28 February 2023. They acknowledge that time can be extended by ACAS early conciliation but in this instance, Mr Longmead only engaged in that process in August 2023. Consequently, the claim is significantly out of time (by nine months) and the Tribunal does not have jurisdiction to hear the claim unless it exercises discretion to extend time on the grounds that it would be just and equitable to do so.
6. In a letter dated 24 October 2023 Govia applied to the Tribunal to list a public preliminary hearing to consider:
  - a. Whether the Tribunal has jurisdiction to hear the claim on the basis that it is out of time.
  - b. Whether the claim should be struck out on the basis that it has no reasonable prospect of success as the comparator on whom Mr Longmead relies on is also a part-time worker.

Employment Judge Glennie directed that these preliminary issues could be dealt with at this hearing.

7. At the beginning of the hearing, I asked Ms Veale if Govia was still relying upon this application. She told me that her client had prepared for the final hearing and that witness statements had been prepared as had a hearing bundle. However, I decided that I needed to determine the matters as a preliminary issue as both applications went to the root of the claim and the jurisdiction of the Tribunal. Ms Veale informed me that if I was minded dealing with the preliminary issues, I should limit myself to the time bar point only. This was because that, on further analysis, Mr Longmead could rely upon his named comparator by virtue of regulation 3 (2) of PTW. Consequently, I agreed that I should restrict my consideration to the time bar point.

Findings of fact on the preliminary issue

8. Mr Longmead adopted his witness statement and was cross examined. Having heard his evidence, I make the following findings of fact:
- a. Mr Longmead went from being a full-time employee to a part-time employee with effect from 1 December 2022. At that point, his Driver Instructor duties were removed from him.
  - b. Mr Longmead is a member of a trade union. His trade union representative accompanied him at his grievance hearing and his appeal hearing.
  - c. Mr Longmead took legal advice from his trade union's solicitor when he prepared his claim form. In his claim form, he indicates that he believed that his claim was made in time.
  - d. Mr Longmead has access to the Internet and he was able to do some research and also visited the ACAS website. He was aware of time limits from that research. However, he could not remember precisely when he acquired that knowledge, but he believed it must have been sometime in August 2023 when he started to engage in early conciliation.
  - e. Mr Longmead is a long-serving employee and had previously no experience of grievances. He genuinely believed that he needed to resolve his grievance locally and this is what he was attempting to do by engaging with Govia's grievance procedure. It was only when the grievance procedure was exhausted that he decided that he had to take matters further, which is why he contacted ACAS and why he presented his claim to the Tribunal.

Govia's submissions on the preliminary issue

9. Ms Veale referred to the Limitation Act 1980, section 33 which sets out the principles for determining whether to extend time. In this case, there was a significant delay of nine months before Mr Longmead presented his claim to the Tribunal. This was three times longer than the statutory time limit. Ms Veale submitted that Mr Longmead had not provided a good reason for the delay. He was relying upon the fact that he wished to exhaust the grievance process before instigating Tribunal proceedings. Mr Longmead is an intelligent and capable individual and would or ought to have been able to have discovered the time limits applicable to making his claim. He had been to the ACAS website which sets out time limits. He was a long serving union member and had access to support if he required it. He had involved his union in the grievance procedure. He could have taken advice from his union about time limits for presenting a claim to the Tribunal. If the Tribunal were to exercise its discretion to extend time on just and equitable grounds, it had to have good reasons to do so. Ms Veale gave examples of a claimant who was ill or disabled or feared recrimination from their employer or had no access to union or other professional

advice. None of those factors applied in this case. The only reason relied upon was exhausting the grievance procedure, but this did not preclude presenting the claim to the Tribunal in time. The balance of prejudice favored Govia. It was confronted with the prospect of having to defend the claim that was otherwise out of time. Ms Veale acknowledged that there was no forensic prejudice to Govia however, this was not a decisive matter in exercising discretion in favour of Mr Longmead.

Mr Longmead's submissions on the preliminary issue

10. Mr Longmead said that this matter should never have got as far as a Tribunal case. He had given Govia every opportunity to resolve this issue and it was not his fault that his grievance had dragged on for many months. After he came out of his meeting with Govia on 30 November 2022, he did not secure a grievance hearing until 27 April 2023. He had been 45 years in employment and had never previously had to go through a grievance process let alone taking an employer to a Tribunal. He simply did not think that he needed to go to a Tribunal, and he had no experience of such proceedings. He believed the whole problem could have been dealt with in a reasonable amount of time. He was unhappy with Govia because they had taken away his Driver Instructor responsibilities which he had earned through his good work. He simply wanted to continue doing his job part-time, but he was prevented from doing that.

Applicable law on the preliminary issue

11. The Tribunal cannot hear a complaint under regulation 8 of the PTW unless it is brought before the end of the period of three months beginning with the date of the less favourable treatment or detriment to which the complaint relates. However, the Tribunal retains the discretion to hear any claim under PTW that is brought out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so. The just and equitable formula is the same as that is applicable to out of time discrimination claims under the Equality Act 2010, section 123(1)(b).
12. Except in those cases where the less favourable treatment under regulation 5 or the detriment complained of under regulation 7 PTW constitutes a one-off act, it may be unclear when time starts to run for the purposes of the statutory time limits. Whether less favourable treatment complained of under regulation 5 PTW or the detriment complained of under regulation 7 (2) consists of detriment in the form of a series of similar acts or failures to act, time starts to run from the last of those acts or failures to act (regulation 8 (2) PTW).
13. In this case, the alleged unfavourable treatment is a one-off act that took effect on 1 December 2022 – removing the Driver Instructor role. Consequently, I must consider whether it would be just and equitable to extend time. This is a matter for the Tribunal's discretion.
14. In **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA**, the Court of Appeal held that that when tribunals consider exercising the discretion 'there is no presumption that they should do so

unless they can justify failure to exercise the discretion. Quite the reverse, a Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.' The onus is therefore on Mr Longmead to convince the Tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable.

15. A useful summary of the principles governing the exercise of the 'just and equitable' discretion was set out by Mrs. Justice Elisabeth Laing (as she then was) in **Miller and ors v Ministry of Justice and ors and another case EAT 0003/15**:

- a. The discretion to extend time is a wide one.
- b. Time limits are to be observed strictly in employment tribunals. There is no presumption that time will be extended unless it cannot be justified. The reverse is true: the exercise of discretion is the exception rather than the rule.
- c. If a Tribunal directs itself correctly in law, the EAT can only interfere if the decision is, in the technical sense, 'perverse', i.e. no reasonable Tribunal properly directing itself in law could have reached it, or the Tribunal failed to take into account relevant factors, or took into account irrelevant factors, or made a decision which was not based on the evidence.
- d. What factors are relevant to the exercise of discretion, and how they should be balanced, are a matter for the Tribunal. The prejudice that a respondent will suffer from facing a claim which would otherwise be time-barred is customarily relevant in such cases.
- e. The Tribunal may find the checklist of factors in section 33 of the Limitation Act 1980 helpful, but this is not a requirement, and a tribunal will only err in law if it omits something significant.

16. Mr Longmead will also have to establish that the prejudice that he will suffer in not extending time outweighs the prejudice that Govia will suffer if time is extended.

17. The fact that a claimant is unaware of his or her right to make a Tribunal complaint is also much more likely to save an out-of-time discrimination claim than an out-of-time unfair dismissal claim (**Director of Public Prosecutions and anor v Marshall 1998 ICR 518, EAT**). Although the discretion is wide, it seems that it will apply only where the claimant's ignorance is reasonable. In **Perth and Kinross Council v Townsley EATS 0010/10** the EAT held that it was obvious that it is important when asking whether it is just and equitable to allow an extension of time in a case where the claimant was ignorant of the right to bring a complaint to consider whether it was reasonable for him or her to have been ignorant,

and to have remained so, throughout the period of the primary time limit. It followed from this that the need to consider not only whether the claimant was ignorant but also whether he or she was reasonably ignorant applied in the same way to the 'just and equitable' test as it applied to the 'not reasonably practicable' test.

18. The fact that a complainant has awaited the outcome of an internal grievance procedure before making a complaint is just one matter to be considered by a Tribunal considering the late presentation of a claim. There is no general principle that it will be just and equitable to extend the time limit where a claimant was seeking redress through the employer's grievance procedure before embarking on legal proceedings. The general principle is that a delay caused by a claimant awaiting completion of an internal procedure may justify the extension of the time limit, but it is only one factor to be considered in any particular case.

Discussion and conclusions on the preliminary issue

19. I do not think it is just and equitable to extend time to allow the Tribunal to hear Mr Longmead's claim for the following reasons:
- a. Whilst I acknowledge that Mr Longmead is a litigant in person, he has been a trade union member for many years. He had access to advice from his union on his grievance and it would be reasonable to infer that such advice would include time limits for presenting a claim to the Tribunal. He took advice on his grievance, and his trade union representative accompanied him at his grievance hearing and his appeal hearing.
  - b. Mr Longmead says that we wanted to complete the grievance process before embarking on Tribunal proceedings. He erroneously believed that both processes were mutually exclusive. They are not. Indeed, given what I have said above about his support from his union, he could reasonably have been expected to start his Tribunal claim whilst the grievance was ongoing. Had he done so, it would have been open to him to have stayed the Tribunal proceedings pending the outcome of the grievance. Had he done that, he would have preserved his rights in the Tribunal proceedings. He did not do that.
  - c. The delay of 9 months is significant. It is three times what the statute requires for presenting a complaint to the Tribunal. Tribunal time limits are to be strictly observed.
  - d. Mr Longmead also relies upon ignorance of his rights. That is a common challenge faced by litigants in person and one that is frequently relied upon in cases where claims are presented to the Tribunal out of time and is often persuasive. However, in this case, Mr Longmead knew where he could get advice. He could go to his union. Indeed, he went to his union. He also knew how to use the internet to conduct research on his rights and he had visited the ACAS website which provides helpful and user-friendly information

on employment rights and time limits to make claims. It was not reasonable for him to claim ignorance of his rights, and to have remained so, throughout the period of the primary time limit given the availability of advice and the fact that he took advice.

- e. Mr Longmead does not claim to have suffered ill health or a disability that might have prevented him from presenting his claim in time.
- f. Whilst I acknowledge Ms Veale’s candor that Govia will not suffer from any forensic prejudice if I extend time (it has prepared its case for a full merits hearing) the fact remains that Govia would have to meet a claim which would otherwise have been defeated by a limitation defence and I would still have had to consider the time limit preliminary issue at a full merits hearing.

20. For all these reasons, the Tribunal does not have jurisdiction to hear the claim.

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Employment Judge Green

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Date 25 January 2024

REASONS SENT TO THE PARTIES ON  
.....25/01/2024.....

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FOR THE TRIBUNAL OFFICE