



EMPLOYMENT TRIBUNALS

Claimant: Mr G Adamure

Respondent (1): Greggs Plc

Respondent (2): Adjustopen Ltd (in Voluntary Liquidation)

Heard at: Newcastle CFCTC

On: 9 November 2023

Before: Employment Judge Newburn

Representation

Claimant: In person

First Respondent: Mr Williams (Counsel)

Second Respondent: Not in Attendance

WRITTEN REASONS

Introduction

1. Further to Judgement in this matter and the reasons for the same having been given orally during the public preliminary hearing on 9 November 2023, the Claimant has made a request for written reasons.

Background and the Hearing

2. By an ET1 dated 6 April 2023, the Claimant brought claims of race discrimination, infringements of his rights as an Agency Worker, and unlawful deductions from wages.
3. A case management preliminary hearing was held on 27 June 2023, at which the Claimant's claims were clarified. Given the timeline of the claims and the date the Claimant presented his claim to the Tribunal, it appeared the Tribunal may not have jurisdiction to hear the Claimant's claims as they were not presented within the primary time limit. A one-day public preliminary hearing was listed to determine the issue of whether or not the Claimant had presented his claims within the required time periods that are contained in the legislation that is relevant to his claims, those being section 123 of the Equality Act 2010 ('EqA'), regulation 18 of the Agency Workers Regulations 2010 ('AWR'), and section 23 of the Employment Rights Act 1996 ('ERA').
4. The hearing was held in person at Newcastle CFCTC. The Claimant represented himself, Counsel appeared on behalf of the First Respondent, and the Second Respondent was not present. I had before me an agreed bundle of documents and a witness statement from the Claimant.
5. The Claimant's witness statement did not address the reason(s) why his claims were

not brought within the statutory time limits. The Claimant gave evidence on this point during the hearing and Counsel for the First Respondent was able to cross examine him on his evidence.

6. The Claimant's claims were as follows:
7. Direct race discrimination claim: The Claimant says that in October 2016, the Claimant and 10 other Agency Workers, all of African descent, were asked to sit an aptitude test by the First Respondent to determine whether they should be directly engaged as employees of the First Respondent. The Claimant was informed that he had passed this test. Despite having passed, the Claimant was not so engaged with the First Respondent directly until 25 November 2018 after he had been made to sit the same test again. During this period, the Claimant says the First Respondent directly hired other white individuals after they had only worked a few months as Agency Workers on the First Respondent's premises, as well as directly recruiting other people, some of whom had not been required to pass aptitude tests. The Claimant considers the First Respondent's failure to hire him directly before November 2018, and its decision to make him sit aptitude tests in October 2016 and November 2018 to have been because of his race and, therefore, directly discriminatory.
8. AWR claim: Contrary to regulation 5 AWR, between 2015 and 2018, while engaged by the Second Respondent as an Agency Worker and when he was supplied to provide work for the First Respondent, the Claimant claims that he did not receive the same basic working and employment conditions as direct recruits of the First Respondent engaged in the same or broadly similar work at the same establishment further to having been supplied to work with the First Respondent, in that specifically;
 - 8.1. He did not receive any employer pension contributions and neither were deductions from his salary remitted to NEST as employee pension contributions;
 - 8.2. He was paid at a lower rate of pay;
 - 8.3. He received "poor holiday benefit";
 - 8.4. He received a lower Sunday premium;
 - 8.5. His terms entitled the Respondent to "*immediately stop [him] from working whenever any issue [was] raised*"; and
 - 8.6. He was not paid a profit share in accordance with the First Respondent's profit share scheme.
9. Unlawful deduction from wages claim: The Claimant claims that the First Respondent failed to pay the annual profit share payment to him correctly. The Claimant says that he was entitled to a profit share payment each year between 2015 to 2018 however the First Respondent failed to pay this to him, and that the profit share policy confirms, further to completion of 5 years' service, an employee is entitled to a higher profit share payment, however the First Respondent failed to pay the Claimant a higher profit share payment in 2022 and 2023.
10. During the hearing, I clarified the Claimant's claims. The Claimant confirmed that in addition to the above, there was a further race discrimination allegation against the First Respondent in that he had been put on a 20-hour contract and the First Respondent refused to increase his contractual hours.
11. This allegation was not included in the Claimant's ET1, nor the supplementary "Claim Statement" drafted by the Claimant and attached to the ET1, and he had not discussed this allegation in the preliminary case management hearing when Employment Judge Morris was clarifying the Claimant's claims.
12. The Claimant had not made an application prior to the hearing to amend his claim,

the Respondents were not on notice or prepared to deal with the application, and the hearing had not been listed to deal with the same. I informed the Claimant that if he wished to amend his claim to include this allegation, he would need to make an application in writing.

13. Since the Claimant submitted the present claim, he has submitted a further claim to the Tribunal against the First Respondent which, at the date of this hearing, had been accepted by the Tribunal but had not yet been served on the First Respondent. The Claimant confirmed that he was no longer working for the First Respondent, and that his further claim included claims of unfair dismissal, race discrimination, and victimisation against the First Respondent.

Finding of Facts

14. The principal business of the First Respondent is that of baker and food retailer. Between March 2015 and November 2018, the Claimant was engaged as an Agency Worker by Adjustopen Ltd trading as Solutions Recruitment (the Second Respondent) and was supplied to work for the First Respondent.
15. In October 2016, the First Respondent made the Claimant sit an aptitude test. The Claimant was informed that he had passed this test, however he was not offered a position in direct employment with the First Respondent following this.
16. In 2018, the First Respondent made the Claimant sit another aptitude test. The Claimant passed this test again. After this, the First Respondent hired him directly.
17. On 25 November 2018, the First Respondent hired the Claimant as a Hygiene Operator working at the Respondent's Balliol site. At the date he submitted this present claim to the Tribunal, his employment with the First Respondent was continuing.
18. In 2020, the Second Respondent went into voluntary liquidation.
19. In Summer 2021, the Claimant contacted his pensions provider NEST, seeking to merge his pensions. He was informed of an anomaly in his pension; it appeared a pension had been opened by the Second Respondent on 27 May 2015 however it showed a nil balance. The Claimant made further enquiries but could not resolve the matter with his pension provider. In July 2021, the Claimant attended offices which had previously been occupied by the Second Respondent. However, the Second Respondent was no longer located within those offices as it had gone into voluntary liquidation.
20. Thereafter, the Claimant received letters from his NEST pension provider confirming that it was reporting the Second Respondent to the Pensions Ombudsman.
21. The Claimant contacted Citizens' Advice and was advised to speak to ACAS. The Claimant contacted ACAS in January 2022 to seek advice. The Claimant spoke to ACAS regarding the pension issue and his claim regarding being paid a lower rate of wages whilst working as an Agency Worker supplied to the First Respondent.
22. At paragraphs 17 and 18 of his witness statement, the Claimant stated that ACAS sent him a copy of the BIS Agency Worker regulations and guidance and that "*after reading through the regulations and guidance, I absolutely felt exploited and discriminated upon*". The Claimant confirmed that at this time "*it became apparent to me that race is a factor at [play]*".
23. In the first week of February 2022, the Claimant spoke to the First Respondent's Supplies People manager. Further to this, the Claimant's evidence was that he had

a few chats and discussions with the First Respondent's peoples manager and a Mr Grayson about the issues he had raised and was asked to put together some information about the loss and payments, which he did.

24. Having made little progress and having heard nothing back from Mr Grayson, in his witness statement the Claimant says that on 25 July 2022, he sent a chaser to Mr Grayson and two other people in the First Respondent's team, to which he did not receive a response and thereafter no further meetings were arranged and no further progress was made.
25. On 31 October 2022, the Claimant sent a formal grievance letter to the First Respondent, a copy of which appeared in the bundle at pages 228–230. The Claimant did not raise claims of race discrimination in his grievance letter, and the Claimant stated that he had not wanted to raise this as an issue because he was concerned that he would be dismissed if he did so.
26. On 25 November 2022, the Claimant attended a first stage grievance meeting. The Claimant attended a second meeting on 23 December 2022 and a reconvened grievance hearing meeting on 27 January 2023.
27. On 30 January 2023, Early Conciliation with ACAS began.
28. On 2 February 2023, the First Respondent sent a letter to the Claimant setting out the outcome of the grievance. The Claimant appealed this on 10 February 2023. An appeal meeting was held on 3 March 2023.
29. On 9 March 2023, the First Respondent sent a letter to the Claimant confirming there would be a delay in providing the outcome of his appeal as further investigations were needed. On 24 March 2023, the First Respondent sent the Claimant a letter confirming the outcome of his appeal.
30. On 24 March 2023, the First Respondent paid the Claimant a profit share payment. The Claimant says the profit share payment is paid annually. The Claimant says this profit share did not take into account the Claimant's period of service during the period of time he was an Agency Worker between 2015 to November 2018 and had the First Respondent done so, he would have been entitled to a higher profit share payment.
31. On 13 March 2023, the period of Early Conciliation with ACAS ended.
32. On 6 April 2023, the Claimant presented his claim to the Tribunal.
33. The Claimant stated in his oral evidence that he had not brought his claim to the Tribunal prior to this date because he was initially unaware of the existence of his claims against the First Respondent; upon learning of his rights, the Claimant says he trusted the First Respondent to resolve this issue internally and he believed it would be beneficial for both parties if he was patient while the internal grievance was processed.

Submissions

34. Counsel for the First Respondent gave oral submissions. He highlighted the significant length of the delay in bringing this claim, with the claims in question relating to events from 2015 to 2018.
35. Counsel submitted that there would be a very real prejudice to the First Respondent in trying to defend this claim where the events in question involved payments made to the Claimant as an Agency Worker over 5 years ago; where the Agency in

question (the Second Respondent) had gone into voluntary liquidation in 2020; and where a number of the relevant witnesses are no longer working with the First Respondent. Counsel drew my attention to a document at page 126 of the bundle which provided a list of 7 former employees, all of whom would have relevant evidence and documents. This list included the two site managers during the 2015–2018 period, 3 people named by the Claimant in his witness statement, a further member of the People’s Management Team, and a Manufacturing Manager / Supervisor.

36. The Claimant’s submissions were that he believed it was just and equitable to extend the time limit in his circumstances. He felt he should not be penalised for trusting the First Respondent and being patient while seeking to resolve issues with the First Respondent directly.
37. The Claimant submitted that, if the time for his claims were not extended, he would suffer more prejudice than the First Respondent, and argued that although some of the relevant witnesses had since left the First Respondent’s employment, one of those ex-employees worked in another factory in the next building on the estate, and he believed another of those ex-employees still worked on the First Respondent’s premises. Furthermore, he argued that other staff members could give evidence.
38. The Claimant submitted that even if he had brought his claims sooner, the First Respondent would still have continued behaving as they had and the delay in bringing his claims therefore made no difference. As an example of this, the Claimant highlighted that notwithstanding his grievance and the Early Conciliation discussions with ACAS in early 2023, in March 2023 the First Respondent paid the Claimant a profit share which he says was not the correct amount.

Relevant Law

Time Limits

Unlawful deduction from wages

39. The time limit for presenting a claim for unlawful deduction from wages is set out in section 23 ERA as follows:

- “(1) A worker may present a complaint to an employment tribunal —
 - (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)).....
- (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."

40. In Chief Constable of Northern Ireland v Agnew [2023] UKSC 33, the Supreme Court confirmed the position that "series" should be given its ordinary English meaning and that what should be included in a series was a question of fact:

"the word "series" is an ordinary English word and that, broadly speaking, it means a number of things of a kind, and in this context, a number of things of a kind which follow each other in time. Hence, whether a claim in respect of two or more deductions constitutes a claim in respect of a series of deductions is essentially a question of fact, and in answering that question all relevant circumstances must be taken into account, including, in relation to the deductions in issue: their similarities and differences; their frequency, size and impact; how they came to be made and applied; what links them together, and all other relevant circumstances."

41. The Supreme Court further held in Agnew that, whilst it might be a relevant factor in determining the existence of a series of deductions, there is no need for the underpayments to occur one directly after the other and that a lawful payment, or a three month gap between deductions, would not necessarily break that series of deductions.

"a contiguous sequence of deductions of a particular kind is not a requirement of a series, though it may be a relevant factor in deciding whether the deductions constitute a series. That is not to say that deductions which do follow each other in time necessarily constitute a series; nor does it mean that a series of unlawful deductions remains intact when they are interrupted by a lawful payment. All will depend on the nature and reason for the deductions of which complaint is made, and whether and, if so, how any lawful payment has anything to do with them."

Agency Workers Regulations 2010

42. The relevant time limit in relation to the Claimant's claims concerning the infringement of his rights as an Agency Worker under the AWR is set out in regulation 18 AWR as follows:

"18.Complaints to employment tribunals etc

- (1) In this regulation "respondent" includes the hirer and any temporary work agency.*
- (2) Subject to regulation 17(5), an agency worker may present a complaint to an employment tribunal that a temporary work agency or the hirer has infringed a right conferred on the agency worker by regulation 5, 12, 13 or 17(2)."*
- "(4) Subject to paragraph (5), an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning -*
 - (a) in the case of an alleged infringement of a right conferred by regulation 5, 12 or 17(2), with the date of the infringement, detriment or breach to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the infringement, detriment or breach, the last of them;*
- (4A) Regulation 18A (extension of time limits to facilitate conciliation before*

institution of proceedings) applies for the purposes of paragraph (4).

- (5) *A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.*
- (6) *For the purposes of calculating the date of the infringement, detriment or breach, under paragraph (4)(a) —*
 - (a) *where a term in a contract infringes a right conferred by regulation 5, 12 or 17(2) that infringement or breach shall be treated, subject to sub-paragraph (b), as taking place on each day of the period during which the term infringes that right or breaches that duty;*
 - (b) *a deliberate failure to act that is contrary to regulation 5, 12 or 17(2) shall be treated as done when it was decided on."*

Discrimination

43. The time limit for bringing a complaint of direct race discrimination is set out in section 123 EqA as follows:

- "(1) proceedings on a complaint within section 120 may not be brought after the end of:*
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or*
 - (b) such other period as the employment tribunal thinks just and equitable.*
- (3) For the purposes of this section:*
 - (a) conduct extending over a period is to be treated as done at the end of the period;*
 - (b) failure to do something is to be treated as occurring when the person in question decided on it."*

44. The time limit, then, for bringing a claim of discrimination and for the infringement of rights under the AWR are set out in section 123(1)(a) EqA and regulation 18(4) AWR, which confirm that the Tribunal has jurisdiction to hear those complaints if the claim is presented within three months of the act to which a complaint relates, this being the "primary time limit".

45. Where a claim is presented after the primary time limit, under sections 123.1(b) EqA and regulation 18(5) AWR, the Tribunal may still have jurisdiction to hear a claim if the Tribunal finds it is just and equitable to hear the claims. This is known as the "just and equitable test".

The just and equitable test

46. In Bexley Community Centre (Trading as Leisure Link) v Robertson [2003] EWCA Civ 576, the Court of Appeal confirmed that the Tribunal has a wide discretion when considering whether it is just and equitable to extend time to present a claim. Auld LJ highlighted that there is no presumption in favour of extending time, and Tribunals should not do so unless the Claimant convinces them that it is just and equitable to do so:

"25. It is also important to note that time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds 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 discretion is the exception rather than the rule".

47. Under the just and equitable test, the Tribunal has a broad discretion and is able to take into account any factor it thinks are relevant to the issue in the case in question.
48. In terms of what factors the Tribunal should take into account, guidance can be found at paragraphs 18-19 of Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA by Leggatt LJ:

"18. although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corpn v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi [2003] ICR 800...

19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

49. In Apelogun-Gabriels v London Borough of Lambeth [2002] IRLR 116, the Court of Appeal confirmed that a delay caused by a Claimant invoking an internal grievance or appeal procedure does not automatically justify an extension of time, it is only one factor to be considered in any particular case.

Conclusions

Unlawful Deduction from wages claim

50. With respect to the Claimant's unlawful deduction from wages claim, I found that this claim was brought within the primary time limit.
51. The Claimant is making a claim with respect to payments regarding the profit sharing scheme which was an annual payment.
52. Following the Supreme Court's decision in Agnew, the Claimant may argue that the annual payment of the profit share payment is capable of forming a series of deductions covering each of the profit share payments he asserts were underpaid.
53. The last payment of this scheme from the First Respondent to the Claimant occurred on March 2023. The Claimant's claim was brought to the Tribunal on April 2023, this falling within the 3 month time limit.
54. I therefore found that the Tribunal did have jurisdiction to hear this claim.

EqA and AWR claims

55. The Claimant's claim of race discrimination under this Tribunal claim relates to the time during which he worked as an Agency Worker for the Second Respondent and was supplied to work at the First Respondent's site between 2015 and 2018.
56. The Claimant's claim relates to having been made to undertake an aptitude test in October 2016 and a further aptitude test in November 2018. The Claimant asserts he should have been hired further to passing the first test in October 2016, and that he should not have been made to sit a further test in November 2018 or wait until after this period to be engaged directly with the First Respondent.
57. This present Tribunal claim does not contain allegations of race discrimination

occurring after the Claimant was made an employee directly with the First Respondent in November 2018. The primary time limit for bringing a claim of race discrimination is three months from the discriminatory act. This act of discrimination ended when First Respondent hired the Claimant directly, this being the point at which the First Respondent was no longer refusing to engage the Claimant directly and keeping his services as an Agency Worker only and / or making him complete aptitude tests.

58. Under section 123 EqA, the primary deadline within which the Claimant had to bring this claim of race discrimination would have been in February 2019.
59. The claim was brought significantly out of time, having been brought to the Tribunal in April 2023, over 4 years after the primary time limit expired.
60. The Claimant's claims regarding infringement of his AWR rights relates to the period of time during which he was an Agency Worker. This period ended in November 2018. The primary time limit for bringing a claim under the AWR is also three months from the date of the breach. The deadline for the Claimant to bring his claims under the AWR also passed at some point in February 2019. The Claimant's claim under the AWR is also significantly out of time.
61. A delay of over 4 years in bringing a claim to the Tribunal is clearly substantial.
62. The First Respondent submitted that if the claim were allowed to proceed, this significant delay would result in a real prejudice to the First Respondent.
63. The events in dispute occurred between 2015 and 2018. The Claimant submitted his claim over 4 years after the date on which the Claimant was directly hired by the First Respondent. During this period, in 2020 the Second Respondent went into voluntary liquidation, this being 2 years before the First Respondent was made aware of the Claimant's claim. The Claimant's claims include allegations that the Claimant was not paid at the correct rate during his agency work period and that he did not receive the same rights as those engaged directly with the First Respondent. As a result of this lengthy delay, obtaining documentary evidence spanning the period in question would be more difficult.
64. The First Respondent highlighted that a number of key people who would potentially be relevant to this matter have since left the First Respondent's employment, and this includes three of the people named in the Claimant's witness statement. Whilst the Claimant submitted that he believed two of those people were physically located in close proximity to the First Respondent's location, I did note that even if those people were available to assist with investigations and give evidence, memories of events that took place over 4 years ago will have faded and documentary evidence will be more difficult to obtain given the significant passage of time.
65. I was persuaded that the First Respondent would suffer some prejudice due to the substantial delay in this matter. Of course, if I did not exercise my discretion to permit the claims to continue, the Claimant would lose his ability to bring these claims to the Tribunal.
66. I considered the fact that the Claimant had the potential to bring his claim regarding his pension loss to the Pension Ombudsman, which could provide potential redress for the Claimant against this avenue of loss. However, there was no evidence before me about the viability of such a claim. Ultimately, its impact on my decision was negligible.
67. Having looked at the length of the delay and the prejudice the parties would suffer, I moved on to consider the Claimant's reasons for the delay.

68. The Claimant's reason for not bringing his claims on time is that up until January 2022, when he spoke with ACAS, he was unaware of his right to bring his claims. Thereafter, he says he did not bring his claim to the Tribunal for a further 14 months because he was awaiting the outcome of his grievance process as he believed it would be better for the parties to resolve the issues internally and he trusted the First Respondent to resolve his issues.
69. The Claimant did not raise his claim of race discrimination with the First Respondent through this internal process. The Claimant submitted that this was because he feared that he would lose his job if he did so. I note that the Claimant did however remain employed with the First Respondent further to bringing his Tribunal claim in April 2023. I accepted that the Claimant may have had this concern nonetheless, as I am sure many people fear the repercussions of bringing claims with such serious allegations against their employer. However, if those serious claims are to be addressed by the Courts or Tribunals, the Claimant must raise them.
70. I have sympathy with the Claimant's position regarding the period up to January 2022 in that, before speaking to ACAS, he was ignorant about his AWR rights. Unlike claims of unfair dismissal or discrimination, claims regarding a breach of Agency Worker rights are perhaps not as well known.
71. However, having learned of these rights and having stated that he felt exploited by his employer, the Claimant waited a further 14 months to bring his claim to the Tribunal.
72. The Claimant's evidence was that, at this stage, he had trust in the First Respondent to resolve the issues, he believed it would be better to resolve matters internally, and he felt it was better for him to be patient.
73. The Claimant is an intelligent man. The evidence demonstrates that the Claimant is able to research a topic, review information, and seek legal assistance where required. His ability to research, review, and process information about his legal rights was clearly demonstrated in the letters he sent to the First Respondent during his grievance procedure. Having been provided with the BIS guidance and regulations regarding the AWR from ACAS, the Claimant reviewed the same, put together his AWR claim, and provided that information to the First Respondent.
74. Having spoken with ACAS in January 2022 regarding his AWR claim, I consider the Claimant ought to have known at this point about the time limits within which he had to bring his claim; even if he was not advised by ACAS about these limits, the evidence indicates that he was more than capable of researching the time limits applicable to his claims.
75. Accordingly, I take from this that after learning of his claims in January 2022, the Claimant's decision to be patient and to trust that the First Respondent would resolve this issue directly with him, whilst understandable, was taken with the knowledge that this would result in a further delay in bringing his already out of time claim to the Tribunal.
76. The Claimant initially made the choice to delay a claim whilst he attempted to resolve this issue informally and spoke to the First Respondent's People team at the beginning of February 2022. He chose not to follow the First Respondent's formal grievance procedure at this stage.
77. The Claimant was not satisfied with the progress made by the First Respondent in resolving his issues with this informal approach. He continued to be patient, however he sent a chaser email to 3 people within the First Respondent organisation in July

2022 and commented that he received no response, and no further meetings were arranged.

78. At this stage, the Claimant's trust in the First Respondent's ability or willingness to resolve this issue internally must have waned. Despite this, the Claimant then waited a further 4 months before taking action. At this point, he then made a choice to begin a formal grievance process with the First Respondent and sent a letter of grievance on 31 October 2022.
79. I appreciate the Claimant's decision to seek to resolve this issue internally, and I understand he must have considered that the benefits of doing so were worth it. It remains the case however that the Claimant was aware, or ought to have been aware, that his claims were already nearly 3 years out of time in January 2022 when he made this decision. Thereafter, at various stages after having learned that his claims were out of time, he continued to follow steps to discuss the issue internally rather than bringing a Tribunal claim as soon as he could. This is notwithstanding the fact that the two actions are not mutually exclusive.
80. There was then ample opportunity for the Claimant to bring his claims sooner in order to limit the growing delay, however he chose to concentrate on resolving this issue with the First Respondent informally, even when his attempts at doing so for 9 months between February 2022 to 31 October 2022 were fruitless. I considered that throughout this period from January 2022 onwards, as the time progressed and the delay increased, and as progress on a resolution with the First Respondent was not forthcoming, the Claimant's ongoing decision to delay bringing his claims to the Tribunal became less and less reasonable in the context of determining whether it would be just and equitable to extend the time limit for presenting his claims.
81. In his submissions, the Claimant stated that regardless of when he chose to bring his claim, the First Respondent would have continued to act the way it had. The Claimant says this was demonstrated by the First Respondent's decision to pay him the profit share in March 2023 at a rate the Claimant states was incorrect. I did not consider this to be a relevant factor in determining whether it was just and equitable to allow the claims to continue notwithstanding the breach of the primary time limit.

Conclusion of the just and equitable test

82. Taking into account all of the factors above, I was not persuaded that it would have been just and equitable to extend time in this case to allow the Claimant's claims of infringements of his Agency Worker rights and race discrimination in this Tribunal claim to continue.
83. In this case, the delay in bringing his claims was significant. It was increased by a 14 month period at the Claimant's own option and this delay would impact on the First Respondent's ability to properly investigate the Claimant's claims and to defend them.
84. The length of the delay, coupled with the Claimant's continued choice to extend the delay further, by opting to resolve this issues internally in circumstances where the Claimant himself felt this was not resulting in any real progress for an extended period, were the most significant factors in my decision.

Summary

85. My judgment in this matter was as follows:

85.1. The Claimant's claim of unlawful deduction from wages was presented in time and the Tribunal therefore has jurisdiction to hear this claim; and

85.2. The Tribunal does not have jurisdiction to hear the Claimant's claims under the AWR and for race discrimination set out in this Tribunal claim and they are therefore struck out.

Employment Judge Newburn

Date 18 January 2023