



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000558/2023**

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**Held via Cloud Video Platform (CVP) on 1 March 2024**

**Employment Judge N M Hosie**

10 **Miss Audrey Hanvidge**

**Claimant  
In Person**

15 **Greater Glasgow Health Board**

**Respondent  
Represented by:  
Miss D James -  
Advocate  
[Instructed by  
Miss L Ewart –  
Solicitor]**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the claim is time barred and is dismissed for want of jurisdiction.

### **REASONS**

#### **Introduction**

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1. The claimant, Miss Audrey Hanvidge, brought complaints that she had been constructively and unfairly dismissed and of age discrimination and disability discrimination. The complaints were denied by the respondent (“the Health Board”) and their solicitor maintained that the Tribunal did not have jurisdiction to hear the claim as it was time barred.

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2. This case called before me, therefore, by way of a preliminary hearing to consider and determine the time bar issue. The hearing was conducted by video conference using the Cloud Video Platform (“CVP”).

#### **The evidence**

3. I heard evidence from the claimant who was unrepresented.
4. A Joint Bundle of documentary productions was also submitted ("P"). This included documentation in relation to the claimant's illnesses, which she had submitted by email on 29 February 2024. It also included a Note which  
5 Employment Judge Sorrell issued on 31 January 2024 following a case management preliminary hearing (P.50-53)

### **The facts**

5. Having heard the evidence and considered the documentary productions, I was able to make the following findings in fact, relevant to the time bar issue  
10 with which I was concerned. By and large, these facts were either agreed or not disputed.

### **Time Bar**

6. Miss Hanvidge resigned from her employment with the respondent, by email  
15 on 21 May 2023 (P.3-5). This was, therefore, the "effective date of termination".
7. She started ACAS Early Conciliation on 27 October 2023; an ACAS certificate was issued on 30 October 2023 (P 9).
8. Her claim form was presented to the Tribunal on 2 November 2023 (P.10-23).
9. It was not disputed that her claim had been presented outwith the three  
20 months' time limit. She failed to notify ACAS within three months of the effective date of termination of her employment.

### **"Escape Clauses"**

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10. The issue before me, therefore, was whether or not the claimant could avail herself of the so called "escape clauses", by establishing that it had not been "reasonably practicable" to present her unfair dismissal complaint in time; and

whether it would be “just and equitable” to allow the discrimination complaints to proceed and allow for an extension of time.

11. Miss Hanvidge was employed by the respondent (the “Health Board”) as a Registered Nurse from 2005 until her resignation on 21 May 2023.

5 12. On 21 March 2023, the claimant attended an Investigation Meeting which was arranged by the Health Board to investigate her allegations of disability discrimination. Notes of that meeting were produced (P.54–61). Miss Hanvidge had trade union representation at the meeting.

### **Previous employment tribunal claim (case number 8000140/2023)**

10 13. On 29 March 2023, Miss Hanvidge submitted a claim form to the employment tribunal in which she intimated complaints of age discrimination and disability discrimination. She was still employed by the Health Board at that time. Her claim form was rejected as she had given a different name for the respondent in her claim form from the name of the respondent in the EC certificate. She  
15 endeavoured to submit an amended claim form but experienced communication difficulties and decided not to proceed with the claim.

### **Alternative employment**

14. Prior to her resignation, Miss Hanvidge had been looking for alternative employment. She was offered work in a nursing home, working two days a  
20 week. She accepted this offer before her resignation and started work in the nursing home around a week after she resigned from her employment with the Health Board.

15. In connection with the present proceedings, she advised the respondent’s solicitor by email on 16 February 2024 that she had done agency work after  
25 she resigned. The following are excerpts from her email (P.64): -

*“I did very well in all three interviews and got all 3 jobs while having interviews and doing scenarios were [sic] I would explain how I would act as a nurse in charge to deal with specific situations.*

*I also had to complete modules, maths calculations and other exams.*

30 *Please find attached some information.*

*I was then forced to leave all of my new jobs after being unfairly suspended due to malicious lies, harassment and victimisation.*

*I am now unemployed and my mental and physical health has deteriorated.*

*I now suffer from insomnia and severe depression.”*

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16. The reason why Miss Hanvidge was required to leave these jobs was that she was issued with an Interim Suspension Order (18 months) by the Nursing and Midwifery Council (NMC) at a Hearing on 2 October 2023. (P.62/63).

17. Shortly after her employment with the Health Board ended and she had taken up alternative employment, Miss Hanvidge sent an email to Craig Broadfoot (NHS General Manager) on 25 May 2023 in which she said this (P6): -

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*“As you are aware I have been very concerned about my health! So due to this I have left the NHS (on 21 May 2023) which I emailed to yourself and I have now started a new job, where I am respected and treated properly as a staff nurse were [sic] we all communicate and use teamwork for patient care. Everyone is friendly, and I finally feel happy.*

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*I shall however be happy to meet up and discuss my emails, as I don't want this to continue in the NHS, or for it to happen to anyone else!*

*It has been horrific and has had a huge impact on me and my daughter's lives.*

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*I didn't deserve any of it!”*

### **Claimant's health**

18. Miss Hanvidge had a stroke in September 2020 (P74/75). She currently takes medication for depression and anxiety and high blood pressure (P73) and has been doing so since at least the time she terminated her employment with the Health Board on 21 May 2023.

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## Respondent's submissions

19. The respondent's Counsel made a written "Skeleton Submission" which is referred to for its terms. I take no issue with "relevant dates" and "relevant law" which he has set out therein.

## 5 Discussion and Decision

### Unfair dismissal

20. An employee who seeks compensation for unfair dismissal is bound to comply with a strict time limit. S.111 (2) of the Employment Rights Act 1996 is in the following terms: -

10 *"...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*

15 (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."*

21. As I recorded above, the unfair dismissal complaint was out of time. It was not presented within three months from the effective date of termination. Accordingly, I had to consider whether or not it had been "reasonably practicable" for the claim form to be presented in time and if not, whether it had been presented within a reasonable period thereafter.

22. The focus of my attention was the period from the effective date of termination on 21 May 2023 to 2 November 2023, when the claim form was presented.

23. While Miss Hanvidge did not enjoy the best of health in that period, and she was taking prescribed medication, she was not signed off work at any time. She was able to work as a Nurse in nursing homes and apparently enjoyed that work (P6). Miss Hanvidge said that she was not aware of the three month time limit. However, she was familiar with employment tribunal procedures, having submitted a previous claim form in March that year.

24. The case of ***Cygnnet Behavioural Health Ltd v Britton*** [2022] EAT 18, to which I was referred by the respondent's Counsel, provides a reminder not only of the strict test for extension of time in unfair dismissal cases, but also that a person considering bringing an unfair dismissal claim is expected to appraise themselves of the time limits that apply.
25. Miss Hanvidge has a computer at home and the applicable limits can easily been ascertained by a simple search on the internet.
26. There was no impediment to Miss Hanvidge submitting her claim in time. There was no reason for the delay. She was able to work at the material time and communicate by email; she had trade union representation, at least at one time (P.54); she was familiar with employment tribunal procedures and how to bring a claim; she could have easily ascertained the time limit. However, it seems that she did not consider bringing a further claim until her Nurse registration was suspended and her employment at the time was terminated. I am satisfied, as the respondent's Counsel submitted, and I find, in fact, that the motivation for the claimant submitting her claim form to the Tribunal on 2 November 2023 was her interim suspension by the NMC and her loss of employment, as a consequence.
27. I had little difficulty arriving at the view, therefore, that it *had* been reasonably practicable for her to present the claim form in time.
28. In Palmer & ***Saunders v Southend-on-Sea (Borough) Council*** [1984] IRLR 119, to which I was also referred, the Court of Appeal suggested that the best approach is to read "practicable" as "feasible" and to ask, "was it reasonably feasible to present the complaint to the industrial tribunal within the relevant three months." In my view, it was.
29. Further, and in any event, having regard to the second limb of the "escape clause", I was not satisfied that the claim had been presented within a reasonable period.

30. The Tribunal does not have jurisdiction, therefore, to consider the unfair dismissal complaint as it is time barred and this complaint is dismissed.

### Discrimination complaints

- 5 31. The general rule is that claims of work-related discrimination under the Equality Act 2010 must be presented to the Employment Tribunal within the period of three months starting with the date of the act complained of (s.123).
32. Although earlier acts of discrimination appear to have been averred, the latest possible starting date for the three month period which Miss Hanvidge could rely upon was the effective date of termination on 21 May 2023. In this regard, I should add that I found favour with the submission by the respondent's  
10 Counsel that the Health Board's referral to the NMC in June 2022 (P.8) was not pled as an act of discrimination.
33. As I recorded above, the discrimination complaints were out of time. The issue for me, therefore, was whether, in all the circumstances, I should  
15 exercise my discretion to extend the time limit on the basis that it was "*just and equitable*" to do so (s.123 (1)(b)).
34. In ***British Coal Corporation v Keeble & others*** [1997] IRLR 336, the EAT suggested that employment tribunals would be assisted by considering the factors listed in s.33 of the Limitation Act 1980. That section deals with the  
20 exercise of discretion in civil courts in injury cases. However, in the recent case ***Adedeji v University Hospitals Birmingham NHS Foundation Trust*** [2021] EWCA Civ 23, the Court reviewed a number of recent cases involving the list of Limitation Factors cited in ***British Coal Corporation*** and said this:-
- 25 "*The best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) (Equality Act) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular, the length of, and the reasons for the delay.*
- 30 (Note: If it checks those factors against the list in *Keeble*; well and good; but I would not recommend taking it as the framework for its thinking.)"

35. As I recorded above, there was no impediment to the claimant submitting a claim form in time. She was able to work in the material period from the effective date of termination of her employment on 21 May 2023 until 2 November 2023; she was able to communicate by email; her ill health was not a material factor; she was familiar with Tribunal procedures. While she claimed that she was ignorant of the three month time limit, this could readily have been established by an internet search. However, she delayed and it would appear that she did not turn her mind to bringing a further claim until her Nurse registration was suspended and she was dismissed from her then employment. That was the catalyst for her bringing her claim.

### Prejudice

36. It was also relevant that were I to decide to exercise my discretion to extend the time limit, then the claimant would be prejudiced as her claim will be dismissed. On the other hand, were I to allow the claim to proceed, then the respondent would be prejudiced in having to defend the proceedings and considerable expense will be incurred, not only in conducting the employment tribunal proceedings, but also in investigating matters which occurred some time ago.

37. While I was mindful that I had a wide discretion to extend the time limit and that the just and equitable escape clause is much wider than that relating to unfair dismissal claims which require a claimant who has submitted a claim form out of time to show that it was not “*reasonably practicable*” to comply with the normal time limit, I was also mindful of such cases as **Robertson v Bexley Community Centre t/a Leisurely** [2003] IRLR 434, to which I was also referred. The Court of Appeal stated in that case, that when Employment Tribunals consider exercising the discretion under s.123 (1) (b) of the 2010 Act:

30 *“There is no presumption that they should do so unless they can justify a 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.*"( My emphasis)

5 38. I arrived at the view, therefore, that, in all the circumstances of this case, it would not be just and equitable to exercise my discretion and extend the time limit. Accordingly, the Tribunal does not have jurisdiction to consider the discrimination complaints as they are time barred and these complaints are also dismissed.

10 39. The entire claim is time barred, therefore, and is dismissed for want of jurisdiction.

N Hosie

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**Employment Judge**

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20 March 2024

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**Date**

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**Date sent to parties**

20 March 2024

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