Case No: **3307134/2023**

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms E Truksa	v	Teleperformance Limited

Heard at: Watford Employment Tribunal (in public; by video)

On: 18 March 2024

Before: Employment Judge Quill (sitting alone)

Appearances:
For the Claimant: In person
For the Respondent: Ms S Lundy, employee

JUDGMENT having been sent to the parties on 9 April 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Hearing and Evidence

1. This hearing took place in public and entirely by video.

2. The parties had each received the notice of hearing dated 15 December 2023 which included:

> At the hearing, an Employment Judge will determine whether the tribunal has power to hear the claim as it appears to have been presented out of time.

3. It contained various other orders as well.

4. I had the Tribunal file, and highlighted which correspondence and documents that I had, that I thought were likely to be discussed in the hearing, and gave the parties the opportunity to say if they thought that anything else had been sent in which they thought I should have.

5. I mentioned that I had the Claimant's email of 15 January 2024 and the attachment, the Claimant's email of 1 March, the Claimant's email of 15 March 2024 and the attachments, and the Respondent's email of 20 February.

6. The Claimant's email of 1 March stated as follows. It had not been copied to the other side; I read it out to parties.

> I am awaiting a preliminary hearing, scheduled for the 18 March 2024. I attach the notice. Highlighted is no. 5 which states that my claim appears to have been presented out of time. I was unaware of this and am now very concerned that I was not told at an earlier date. I had received an email on the 10/07/2023 stating that my claim was accepted (attached).
>
> Please could you kindly look into this for me. I telephoned today and was told that there was nothing in my notes mentioning a late claim.

7. Her 15 March email mentioned that she wanted orders made under Rule 50 and also "*Should my claim proceed I would also like permission to amend my ET1 claim form, most importantly points 8.1 and 8.2*." She supplied no other information about the specific amendments that she would seek.

8. The Respondent's email stated that disability was not conceded.

9. The parties confirmed that there was nothing else that had been sent in for this hearing.

Discussions before the Claimant gave formal evidence

10. The claim form stated that dates of employment were 27 September to 2 February 2023. The Claimant made an oral correction to state that the last date of employment should have been written as 1 February. At first the Respondent's position was that 2 February was correct. During discussions, Ms Lundy emailed to me and to the Claimant a copy of the email dated 2 February 2023 from Stephen Hall to the Claimant. As a result, it was common ground that, on 1 February 2023, the Claimant had been told that she was dismissed with immediate effect, and that the email of 2 February 2023 confirmed that that is what had happened the previous day.

11. The Claimant confirmed that the disability complaints (indicated by the box being ticked at section 8.1 of claim form, and set out in claim form) were based entirely on the argument that the Claimant was disabled, not that anyone else was.

12. We discussed and clarified what was written in Section 8.2. The Claimant was signed off from 5 October 2022 (not 2023). The return to work date of 24 January 2023 and the signed off as sick date of 1 February 2023 were both correct (that is, they both accurately represent the Claimant's assertion of the facts), and she alleges that she was put under pressure to return to work even though her fit note covered the period to 1 February.

13. The allegations in that claim form were:

13.1. There was a failure to make reasonable adjustments (whether to enable

her to return from sickness absence more promptly, or at all) including – potentially – the failure to offer phased return, and/or reduced hours, and/or different hours, and/or flexible hours.

13.2. Alleged PCPs for that were:

13.2.1. Requirement to complete the training

13.2.2. Requirement to be fit to attend training (a 2 week mandatory training course: Monday to Friday 9am to 5pm).

13.2.3. Requirement to be fit to attend work

13.2.4. Requirement to attend training at specific times of day

13.3. The dismissal was disability discrimination.

13.4. Regardless of whether the dismissal was also an example of a failure to make reasonable adjustments or direct disability discrimination, there was a complaint that the dismissal was discrimination within the definition in section 15 of the Equality Act 2010.

13.4.1. Things which arose from the Claimant's disability included absence from work and failure to complete the training (and/or failure to complete it within the schedule fixed by the Respondent).

13.4.2. The Claimant alleged that she was dismissed because of one or more of those things.

14. ACAS early conciliation was from 17 May 2023 to 19 May 2023. The claim form was presented on 19 June 2023.

15. I informed the parties that early conciliation had commenced more than 3 months after the end of employment (based on the agreed date of 1 February 2023, but it would make no difference if employment ended on 2 February instead). I said that, in those circumstances, to decide on time limits, I would have to hear witness evidence. I said that I would usually expect to have a written witness statement, but, if the parties were both content, I would still deal with the matter today by swearing the Claimant in and taking oral evidence. I asked if either party wished to have an adjournment instead, and an order for written evidence to be prepared. The Claimant informed me that she had spoken to the Tribunal staff and had been told she did not need to prepare a written statement. I confirmed that I was not disagreeing with that, but rather asking her if she was content to proceed without one. She said that she was, and Ms Lundy confirmed that the Respondent was also willing to proceed on that basis.

16. We then took a 15 minute break after which I heard the Claimant's evidence.

The Claimant's evidence on oath

17. The Claimant's evidence in chief was that she answered my questions. She had the chance to make additional points, and the Respondent had the chance to cross-examine.

18. The Claimant accepted her employment ended on 1 February 2023. She stated that she had appealed on 9 February 2023.

19. The appeal was acknowledged towards end of February, and there was appeal hearing in middle of March. It was an audio only remote meeting. It was conducted by Thomas Carrigan. She asked about reasonable adjustments (as an alternative to dismissal). She was told that she would get a decision in about 2 weeks.

20. The written outcome was more than 2 weeks later. The Claimant had to chase for it. She got it in middle of April. It upheld the decision to dismiss her and asserted there were no reasonable adjustments that could be made.

21. She stated that she believed that time would run from the date of the appeal.

The oral amendment application

22. Following her evidence, I asked her to confirm, as precisely, as possible, what the exact amendment request was. The amendments were:

    22.1.1. In welfare meetings, possibly including 14 November 2022, unwelcome comments were made. (Disability related harassment and/or discrimination)

    22.1.2. In around December 2023 she was asked to give consent for her medical adviser to be approached (which did happen) but she was not invited to attend any Occupational Health appointments. (Failure to make reasonable adjustments)

    22.1.3. Background checks were done on her (during employment) which amounted to harassment and, in December, she was suspended, or threatened with suspension, for alleged failure to co-operate.

    22.1.4. The decision to reject her appeal was discriminatory.

    22.1.5. The delays in the appeal process were discriminatory.

Law regarding amendments

23. When considering an amendment request, I must balance the injustice and hardship that would be caused to the Claimant if I refused the amendment,

against the injustice and hardship that would be caused to the Respondent if I were to allow it. I must take into account all relevant factors in the circumstances and ignore any irrelevant factors and circumstances.

24. Selkent Bus Company Limited v Moore [1996] set out some of the matters which should be taken into account. It has been emphasised many times including in Vaughan v Modality Partnership UKEAT/0147/20/BA, that Selkent - while it is good law and must be taken into account - does not set out a mere checklist or algorithm that supplies the Judge with the correct outcome. Selkent does not contain an exhaustive list of all of the factors that might be relevant.

24.1. The factors that are potentially relevant include the nature of the amendment application, any time limit issues and the timing and manner of the application itself.

24.2. Those are only some of the factors, there might be others as well and, in any event, the relative importance of any of the factors just mentioned will vary from case to case depending on the specific details of the matter at hand.

25. In terms of the timing and the manner of the application, it is usually important for an Amendment Application to be put in writing before a decision is made on it. That is so that the Judge understands specifically what the proposed amendment is, but also so that the other side, the Respondent in this case, knows what specific amendments are being requested so that they can adjust their particular arguments that they might want to make to the specific amendment that is being sought. If the details of the proposed amendment are described only orally, they must be specific enough that the judge can make an order that put the amendment that has been allowed into specific and exact words. It is not appropriate to grant an amendment in principle, such that the exact wording of it is left to be decided at a later date, and/or to be agreed between the parties.

26. The nature of the amendment and one of the reasons it is better to be put in writing is that different types of Amendment Applications might have different consequences for time limits. In any event, the factual allegations that would be relied upon (if the amendment is granted) in support of the amended claim have to clear to the judge (and the other party) so that there can be analysis of

26.1. Firstly, how much (if any) extra evidence would be needed

26.2. Secondly, whether that extra evidence is likely be available, and how much (if any) additional time and effort would be needed to obtain the extra evidence (compared to the time and effort that would be required in any event to obtain evidence for the hearings for the claim if the amendment were to be refused).

26.3. The extra evidence (if any) could be in the form of additional documents that would be required, or additional witnesses that could be required. In either case whether or not that evidence is going to be available is potentially relevant and important, especially if the situation might have been different had the proposed amendment been made at an earlier point in time (or, indeed, compared to the situation where no amendment application was needed, because the original claim, as presented, contained the new/amended complaints that are proposed by the amendment application).

27. In terms of the timing of the Application, it is relevant both how long after the Claim Form itself was submitted is the Amendment Application made, also how long before it is made prior to any hearings. Has it been made in good time before a Preliminary Hearing, and – very importantly - has it been made in good time before a Final Hearing, and is it before or after important stages of the preparation for that hearing (such as bundle being agreed, witness statements exchanged. etc).

28. In terms of time limits, if the proposed amendment it is just a relabelling of existing facts or allegations, just wanting to put some new type of legal claim based on those existing allegations, then there will not necessarily be a new / different time limit argument. The time limit argument might potentially fall to be analysed based on the date when the original Claim was presented. However, where there are different and new factual allegations raised, then the date that is relevant is not likely to be the date the Claim Form was presented, but rather the date(s) when the amendment application was made and/or granted. (Galilee v Commissioner Of Police Of The Metropolis UKEAT/0207/16/RN).

29. Granting an Amendment Application does not mean that (i) the judge has decided that the claim is in time or (ii) that time limits has been extended or (iii) that, for time limit purposes the amendments are to be treated as if they were made in the original Claim Form (and therefore, in this case, as if they were presented on 19 June 2023). Correspondingly, if the judge decides that it is likely that the proposed new/amended complaints are out of time, then it does not follow that the application to amend is automatically refused. Unless the hearing has been specifically listed to deal with, and finally make decisions about, time limits as a preliminary issue, then the judge – when considering the amendment application – is required to make an assessment of how likely it is that – if allowed – the amended claims would be deemed to be out of time. That, of course, for Equality Act complaints, includes an assessment of whether the amended claims might be found to be in time as of right (such as because, at the final hearing, they were found to be part of a continuing act which was in time), but also whether a just and equitable extension of time might be granted at the final hearing (or any earlier hearing deciding time limits as preliminary issue). When looking at time limit issues it is important to bear in mind that the simple fact that an

amended Claim would be out of time, that is not in itself an automatic barrier to refuse the Amendment request. It is just one of the factors to be taken into account. Clearly if a Claim is ultimately going to be decided to be out of time then there would be an injustice and hardship potentially to a Respondent that it had to prepare all of the evidence only for the case to ultimately be dismissed as being out of time.

30. In this case, if I were to grant the amendment, then the date on which the Amendment Application was made and the date on which it was granted, would be the same date, namely 18 March 2024.

31. This Hearing has already been listed for me to consider time limits and make final decisions on time limits as preliminary issues. Thus, if I do grant the amendment, I will straight away decide whether the complaints are in time or not.

32. If there was going to be a Final Hearing, or any other Hearing postponed as a result of granting the Amendment request, that would be an important factor. In this particular case, the first Preliminary Hearing as it has been listed is the one that is taking place today, 18 March 2024 and granting the Amendment request would not necessarily delay any Final Hearing. Granting the amendment application would potentially lengthen the final hearing (which has some relevance in its own right), but I do not think that the earliest dates on which the final hearing could potentially be scheduled would be significantly impacted by any potential difference in the duration of that hearing.

Law regarding amendments

33. In EQA, time limits are covered in s123, which states (in part):

> (1) Subject to sections 140A and 140B 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.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> (a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it

34. In applying Section 123(3)(a) of EA 2010, the tribunal must have regard to the guidance in Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530); Lyfar v Brighton and Hove University Hospitals Trust [2006] EWCA Civ 1548. Applying that guidance, the Court of Appeal has noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents: Aziz v FDA 2010 EWCA Civ 304. The tribunal must consider all relevant circumstances and decide whether there was an act extending over a period or else there was a succession of unconnected or isolated specific acts. If it is the latter, time runs from the date when each specific act was committed.

35. A crucial distinction is between – on the one hand – an invariable rule which will inevitably result in a discriminatory outcome each time and – on the other hand – a discretionary decision made under a policy, in which the discretionary decision may sometimes result in an employee getting the desired outcome, and sometimes not. In the latter case, the discretionary decision causes the time to run (for a complaint based on that decision), regardless of arguments about whether the policy itself is discriminatory.

36. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. That being said, time limits are there for a reason and the default position is to enforce them unless there is a good reason to extend. That does not meant that the lack of a good reason for presenting the claim in time is fatal. On the contrary, the lack of a good reason for presenting the claim in time is just one of the factors which a tribunal can take into account, and it might possibly be outweighed by other factors.

37. The Tribunal has a broad discretion to extend time when there is a good reason for so doing. Parliament has chosen to give the Employment Tribunal the widest possible discretion. Unlike, say, the Limitation Act 1980, s 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it is wrong to interpret it as if it contains such a list. A tribunal can consider the list of factors specified in s 33(3) of the Limitation Act 1980, but if it does so, should only treat those as a guide, and not as something which restricts its discretion.

38. The factors that may helpfully be considered include, but are not limited to:

38.1. the length of, and the reasons for, the delay on the part of the claimant;

38.2. the extent to which, because of the delay, the evidence is likely to be less cogent than if the action had been brought within the time limit specified in

Section 123;

38.3. the conduct of the respondent after the cause of action arose, including the extent (if any) to which it responded to requests for information or documents

39. In particular, it will usually be important for the Tribunal to pay attention to (and, where necessary, make specific findings about) "whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)": Abertawe Bro Morgannwg University Local Health Board v Morgan Neutral Citation Number: [2018] EWCA Civ 640.

40. Recently in Jones v Secretary of State for Health [2024] EAT 2, the EAT reviewed the Case Law and highlighted that the earlier case of Robertson v Bexley should not be misunderstood. The true position is that Tribunals have a wide discretion to decide what is just and equitable in all the circumstances of this particular case.

Facts

41. The facts that I take into account for today's purposes, especially in relation to the time limit issues, are as follows.

42. I am satisfied that the last day of employment was 1 February 2023. That is when the Claimant was told in a virtual and remote meeting that her employment was being terminated with immediate effect.

43. She was also sent an email the following day, 2 February 2023, from her Line Manager, Steven Hall. He stated in the email that he was confirming a decision that had been given to the Claimant the previous day that her employment terminated with immediate effect from 1 February 2023. The Claimant accepts that that is what he said and that she knew that that is what he said and she accepts that she got this email confirming it.

44. One of the things stated in the email was,

> "You have the right to appeal against my decision. This should be made in writing, addressed to, Jordan Bole at [email address] within 5 working days from the receipt of this letter, your letter of appeal should clearly state the reasons for the appeal."

45. 1 February 2023 was a Wednesday and 2 February was a Thursday. Five working days from the appeal would have been 9 February 2023. The Claimant did in fact submit an Appeal by that date although I do not have a copy of it.

46. The Claimant had been off work starting from around 5 October 2022. For today's purposes, for deciding time limits, I am satisfied that she supplied

Fit Notes to the Respondent for at least some of that period. Considering the time limit issues and the amendment issues only, I have no reason to doubt the Claimant's account that she had some meetings during that absence period, one of which was a Capability Meeting around 14 November 2022. Also, I have no reason to doubt her when she says that - either at a meeting or in writing - she was asked to give consent so that the Respondent could contact her Medical Specialist. In any case, on behalf of the Respondent, Ms Lundy, accepted that to be true.

47. Again, although I have not seen the specific emails in question, what the Claimant says in her Claim Form is that she asked a few times for reasonable adjustments and in the oral evidence she gave today, she says that she used that exact phrase, "reasonable adjustments" in the correspondence to the employer. Whether or not the Respondent admits that she used that exact phrase (no concession is made for today's purposes) is less relevant to the time limit point. I am more interested in whether the Claimant knew that exact phrase during her employment, and, if so, why. I asked the Claimant how and when she became familiar with that expression. At first, the Claimant's recollection was that it was mentioned to her by an organisation called EASS after the termination of her employment and that she had found that organisation when she had done an internet search for unfair dismissal.

48. On giving the matter further thought - and I do not think the Claimant was trying to deceive me, I think she conscientiously did her best to remember and to try to give accurate evidence - she told me that actually the first time she had spoken to EASS was probably not long after the November 2022 Welfare Meeting.

49. The Claimant does not think that EASS are lawyers, but they gave her some advice. The advice she received included the fact that she would not be able to bring an unfair dismissal claim because she did not have two years' service. They advised her that she potentially had the right to reasonable adjustments. It was her discussions with EASS that caused the Claimant to use the phrase "reasonable adjustments" in her correspondence she says that was sent to the Respondent asking for reasonable adjustments.

50. The Claimant's case is that although her Fit Notes covered her up to the period 1 February, she was asked to come back before the end of her sick notes and again whilst she agreed to do so she also asked for reasonable adjustments to be made. She was back at work on her case from around 24 January onwards, until she was invited to a meeting on 1 February having reported IT problems and rather than provide the assistance with the IT problems such as giving the correct information to the IT Department so that they could resolve the issues for the Claimant, she was instead told on 1 February that she was dismissed.

Analysis and Conclusions

51. I am satisfied that the existing Claim Form does contain allegations of disability discrimination that would fall within the definition in Section 15 of the Equality 2010, being allegations that the Claimant was treated unfavourably because of something arising in consequence of her disability. That would be her sickness absence and / or the fact that because of her sickness absence or because of the Respondent's failure to make reasonable adjustments she had not been able to complete a particular training course.

52. The Claim Form also contains allegations of failure to make reasonable adjustments. The PCP in question would be the Respondent's requirement to complete a particular training course and / or the requirement that she undertake that training course from 9am to 5pm each day and / or the requirements that the training course would last for two weeks uninterrupted from Monday to Friday of each of those two weeks.

53. Subject to that, the Claim Form did not contain any other allegations. The Claimant in particular confirmed that she was not reliant on her mother's disability as something about which she sought to bring an Employment Tribunal Claim and there was nothing mentioned in the Tribunal Claim about the Appeal.

54. The Respondent did refer to the Appeal in its very short Grounds of Resistance. At paragraph 5 it says,

> "At the appeal hearing, the Claimant had stated she could not return to work on the hours requested but also in light of circumstances caring for her elderly mother, and not related to her own capability."

55. The Appeal was submitted by the Claimant on 9 February 2023. The Meeting took place on 23 March 2023 and the Outcome was supplied to the Claimant on 14 April 2023.

56. The Claimant says that in total it was between about 10 and 15 times that she spoke to EASS and she does not know the particular dates of the particular conversations; she does not think that she would be able to obtain that evidence from her telephone, etc. and there was nothing in writing as all of the discussions were oral. She thinks that after 14 April 2023 she potentially looked at contacting other advice providers, she was not able to identify any other specific advice provider other than ACAS.

57. The ACAS Early Conciliation in this case commenced on 17 May 2023 and my finding is that that was the first time the Claimant contacted ACAS. Had she contacted them earlier she should have a recollection of it and / or some evidence of it. The Certificate was issued on 19 May 2023 and the Claim was presented on 19 June 2023.

58. The Claimant's evidence was that she was unaware of the possibility of enforcing employment rights via an Employment Tribunal and she was also unaware that there might be time limits for such rights.

59. While I accept that the Claimant would not know - without checking - what the specific time periods were, I am not satisfied that she did not know about the possibility of enforcing rights via an Employment Tribunal, or the fact that there might be some conditions upon doing so. The Claimant, on her own account, did an internet search for the phrase "unfair dismissal" and I am satisfied that when she did that search it was because she was actively considering the possibility of challenging the conduct of the Respondent formally. Whether the search about "unfair dismissal" was before or after the dismissal does not matter so much to the point at hand, because, even if it was after, it was very soon after (and before the appeal was submitted). She thought that she might want to take some action and that is why she did that search.

60. Similarly I accept the Claimant was told that she could not bring a claim specifically for unfair dismissal because she did not have two years' service. However, on her own account, she was told about the possibility of the Respondent having an obligation to her to make reasonable adjustments. I do not accept that there was no discussion that this was a right that was potentially enforceable if the Respondent failed to do it, or about what the enforcement options were.

61. In terms of when she contacted EASS for the first time after the dismissal, the Claimant accepts that she must have contacted them after dismissal but before 9 February 2023 (because it was they who advised her that she should appeal). However, the dismissal Letter itself told the Claimant that she could appeal and so she would have known about the right to appeal just from that letter itself. She would not have needed to contact EASS at all if she had no intention of bringing an appeal (prior to speaking to them) and no intention of seeking to enforce any rights that she had.

62. I have been provided with no specific evidence that the EASS told the Claimant specifically what the time limits would be, or that they told her that the time limits for lodging any Tribunal Claim would have run from 1 February 2023 rather than any later date. The only evidence that I have about the discussions is the Claimant's oral comments. She has said that nothing was put in writing by EASS, and I accept her word on that. She also claims that there was no advice to her at all about time limits.

63. I do not accept that the Claimant had no intention of bringing an Employment Tribunal Claim or taking matters further as of 1 February. It would be obvious to anybody that one potential outcome of lodging an appeal is that the appeal is refused. Nobody would think that the only possible outcome of an appeal would be that they would be re-instated.

64. The Claimant says that she believed that the time limit would run from 14 April 2023 when she got the Appeal Outcome letter. She has not satisfied me of what actually caused her to think that. She has not said and it is not my finding that she was specifically advised by anybody that time limits would run from the date of the appeal letter. However, the fact that she asserts that she believed the time limit clock would start running from the date of the appeal letter does show that she was aware that there would be some time limit.

65. My finding is that the Claimant was aware that there were time limits for bringing claims to the Tribunal.

66. Even after 14 April 2023 there was still a delay of a month until she started ACAS Early Conciliation and even after Early Conciliation finished on 19 May 2023 there was still a delay of a month before she lodged the Claim. I do accept of course that if hypothetically the Claimant had been right that a relevant time limit started running from 14 April 2023, then the Claim would have been in time: the ACAS Early Conciliation would have started in time and the gap of a month between 19 May and 19 June would not have stopped the claim being in time on that hypothesis.

67. However, the appeal was not mentioned anywhere in the Claim Form.

68. I need to decide both the Amendment Application and the time limit issue. They are closely inter-related. Time limit arguments do form part of my analysis as to whether to grant the amendment or not; whereas, if I do grant an amendment to rely on the appeal as an alleged contravention of the Equality Act 2010, then the claim is likely to be decided to be in time, at least as far as the dismissal decision itself is concerned, as that would be so closely connected to the appeal outcome that the dismissal decision and the appeal decision would be likely to be a continuing act.

69. In terms of the Amendment Application to potentially add arguments about things that were said to the Claimant in Welfare Meetings or Capability Meetings, or to add anything about the fact that the Claimant was suspended on 19 December she says because of failures to supply information so that the Respondent could carry out background checks, there are very strong arguments in the Respondent's favour for why those matters should be rejected.

70. The proposal to amend the Claim to add those has not been put in writing, so even now it is not clear exactly what the Claimant is alleging was said or when. It is not appropriate to simply grant a blanket amendment and then allow the Claimant to fill in further details of the allegations at a later date.

71. The issue of who said what and when would obviously be relevant to which witnesses would appear at the Tribunal Hearing and whether the Respondents still had those witnesses available. It appeared from the

Respondent's submissions that there is no particular individual that has left employment, Susan Thomas was mentioned but it was accepted that Susan Thomas probably would not have been a witness in any event.

72. On the Claimant's account of things having been said to her in meetings, the evidence for those matters would presumably be evidence dependent on peoples' recollection of specifically what was said, perhaps the tone of voice, perhaps the fuller context of what questions were being asked and why.

73. Those Claims which related to the end of 2022 were already around three months out of time by the time the Claim was presented in June of 2023. Because they were out of time, not just because they were out of time, but because of the effects that would have on the cogency of the evidence, and the injustice and hardship caused to the Respondent as a result of that, I would not have been minded to allow the amendment in relation to those claims even if the Claim Form itself had otherwise been in time for the matters which it did raise.

74. The analysis is slightly different in relation to the appeal issue. One of the complaints in the Claim Form is about her dismissal. In principle a claim that alleges disability discrimination within the definition in s.15 of the Equality Act 2010, in other words unfavourable treatment because of something arising in consequence of a disability, there can indeed be two separate complaints presented. One about the original decision to dismiss a Claimant or an employee and the other about the later decision to refuse the Appeal and to not allow re-instatement. One of the reasons, not the only reason but one of the reasons, that there can be separate complaints for those two things is that the Respondent could potentially have different information presented to it at the Appeal stage. Even if, for example, the Respondent was to say it did not know that the Claimant was disabled when it chose to dismiss her, even if that argument were true and was found to be true by the Tribunal, it might be different for the appeal stage because by the Appeal Hearing the Claimant or the employee presented further medical evidence which would shown a reasonable person that the Claimant was (or might be) a person with a disability.

75. Something that would potentially be in favour of allowing this Amendment, is that if the Respondent knew from the Appeal that the Claimant was disputing the dismissal then they were potentially on some notice at least that the matter might go to a Tribunal. They would be less likely in those circumstances to destroy relevant documents and information.

76. As against that, allowing the amendment so that the appeal formed part of the issues that needed to be determined at the final hearing would mean that different and additional evidence would be required. The appeal documents itself would be relevant, any medical (or other) evidence which

the Claimant supplied (either to show she had a disability, to show she required reasonable adjustments, or at all) would be necessary. The appeal decision-maker (and potentially other people who provided evidence, advice or assistance to that person) would be required to give evidence.

77. In this case, if I were to allow an Amendment in relation to the Appeal against dismissal, I would be making a decision to extend time by around eight months. The reason I say that is that there is nothing mentioned about the appeal in the claim form. The allegation that the rejection of the appeal was discrimination (or any contravention of EQA) was not made until today's hearing, when it was made orally. The Claimant is seeking to rely on a brand new cause of action, albeit one related to the dismissal on 1 February, which was referred to as discrimination in the claim form.

78. The appeal decision was 14 April 2023. A claim by 13 July 2023 would have been in time in the absence of early conciliation extension. The Claimant was required to commence early conciliation by no later than 13 July, and she did do that. Discounting 18 and 19 May, as required by the early conciliation extension provisions, she would have had until 15 July 2023 to present the claim. However, she did not do that. The claim form presented on 19 June did not deal with these matters.

79. The Application to Amend is being presented on 18 March 2024. That is a considerable delay, although of course it is relevant that the Respondent would have been aware that a Claim had been presented about the dismissal and it was aware - because it mentioned it in its Grounds of Resistance - that what each party said at the appeal stage might potentially be relevant.

80. However, the fact is that in this case, the Claim Form itself was already presented out of time. The last date by which the Claimant could have presented a Claim based on a dismissal date of 1 February, would have been 30 April 2023. Had she commenced ACAS Early Conciliation prior to 30 April 2023, then she would potentially have had an extended time limit. The fact is she did not do so.

81. Therefore when the Claim was presented on 19 June 2023, it was six weeks out of time already. Although it is only one factor and not the only factor, I am not satisfied that the Claimant had any good reasons for failing to present the Claim on time. I do not accept what she says that she had not had any advice about the possibilities of bringing a Claim to an Employment Tribunal. In any event, there would have been some onus on her. She was able to do sufficient internet searches to get herself put in touch with the EASS, she spoke to them she thinks between 10 and 15 times and she was later able to find out the contact details for ACAS. The Claimant could have done all of that in time and done it early enough to commence ACAS Early Conciliation on or before 30 April 2023.

82. She says that at first after the dismissal she was not interested in bringing a claim as she was potentially interested in pursuing the internal proceedings. However, pursuing the internal proceedings would not have prevented her from researching what she would do in the event that the outcome of the Appeal did not go the way that she wanted.

83. There was not any good reason for failing to meet the deadlines in this case and the Respondent has been prejudiced by those failures.

84. It would not be just and equitable to grant an extension of time (for the alleged act on 14 April 2023, the time limit for which expired on 15 July 2023) to 18 March 2024 and for that reason I refuse the Amendment Application to add that Claim about the Appeal.

85. That means that the Claim itself which is six weeks out of time as I have already said in relation to things that are presented in the Claim, I also consider it would not be just and equitable to extend time in all of the circumstances for the Claim itself given that it was presented a significant period of time, after the dismissal, and after the time limit for claims about the dismissal had expired.

86. For those reasons the decision is that there is no jurisdiction to hear any of the complaints in this Claim Form and the Claims are dismissed and therefore the proceedings are at an end.

Employment Judge Quill

Date: 19 April 2024

Judgment sent to the parties on
25 April 2024

For the Tribunal office

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Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or Reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/