EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr George Ojiako	**v**	**(1) ICSA** **(2) Jacqueline Dodd** **(3) Jagdip Dhariwal** **(4) Kathryn Jack** **(5) Chartered Governance Institute UK and Ireland** **(6) Emily Omonya**

Heard at: London Central
On: 2 February 2024

Before: Employment Judge G Hodgson

Representation

For the Claimant: in person
For the Respondent: Mr G Probert, counsel

JUDGMENT

1. **The claim of unfair dismissal is dismissed.**

2. **The claim form contains no claim of race discrimination and, in the alternative, to the extent any claim of direct race discrimination has been brought it is dismissed.**

3. **The claim form contains no claim of disability discrimination, and in the alternative, to the extent any has been brought, it is dismissed.**

4. **The claim of breach of contract is dismissed.**

ORDER

Employment Tribunal Rules of Procedure 2013

Unless orders

1. **Unless, on or before 16:00, 29 April 2024**, the claimant provides in writing to the tribunal and the claimant the information requested below, **the claim of unlawful deduction from wages will be dismissed** without further warning order. The claimant shall detail the sums claimed as unlawful deduction from wages. The claimant will confirm by reference to each month it is said there is a failure to pay wages:
    a. the rates or sum the claimant alleges he should have been paid (and the reason why that rate or sum applied);
    b. the rate or sum actually paid;
    c. the alleged loss for that month and the date it should have been paid; and
    d. the respondent said to be responsible.

2. **Unless, on or before 16:00, 29 April 2024**, the claimant provides in writing the information requested below, **the claim of failure to pay holiday weather brought pursuant to regulation 16** Working Time Regulations 1998 **will be dismissed** without further warning order. The claimant should state:
    a. each date it is alleged he took holiday;
    b. the rate of pay for the day;
    c. the dates the holiday pay should have been paid; and
    d. the respondent said to be responsible.

Further orders

3. On or before **16:00, 6 May 2024** the respondents must write to the tribunal and confirm whether the unless orders are been complied with.

4. If either order has been complied with, the respondents must set out proposals for the further conduct of the case.

5. The claimant should provide any response within seven days of the respondent's statement of position.

REASONS

Introduction

1. On 16 January 2023, the claimant presented a claim to the London Central Employment Tribunal. The claim form had limited details. It failed

to set out the date the employment ended. Section 8.1 was completed to indicate claims of unfair dismissal, race and disability discrimination, notice pay, holiday pay, and arrears of pay. No details were given. At paragraph 8.2 the claimant stated that details were to be "provided in due course."

2. The claim was accepted. The response was filed. The response recorded the dismissal occurred on 3 February 2023. It contained a request that the matter be referred to an employment judge pursuant to rule 12 Employment Tribunal Rules of Procedure 2013. It alleged no details of the claims had been given, and the claim could not be responded to. In the alternative it sought to strike out as there was no prospect of success.

3. It is unclear whether the claim was ever referred to a judge pursuant to rule 12. Any such referral should have occurred before acceptance. The respondent has not sought to appeal any pre-acceptance decision.

4. On 2 March 2023, the tribunal sent an order that the claimant provide, by 24 March 2023, "a list, in chronological order, of the actions, or omissions which he says amounted to race and/or disability discrimination." He was asked to provide details of each alleged incident. It is unclear whether that order was made by judge, and if so whom.

5. The claimant filed three documents following that order. On 24 March 2023, he sent a 12 page document. On 1 May 2023, he sent a 62 page document. On 3 May 2022, he sent a 68 page document. None of the documents contained the list as envisaged by the order. None of the documents contains an explicit application to amend.

6. On 17 May 2023, at a case management hearing, EJ Brown listed a public preliminary hearing to consider whether "the claimant has permission to amend." In addition, the tribunal was able to consider, at its discretion, questions of strike out and in the alternative deposits.

7. The claimant failed to attend the case management hearing. He failed to attend the hearing in September. The hearing was relisted for 2 February 2024, and the claimant attended. It is that hearing that I deal with.

The issues

8. The day before the hearing, the claimant sent an email which had several attachments which he says were relevant to his medical position. The respondents prepared a bundle of documents and filed a skeleton argument.

9. At the hearing, I identified the issues to be considered.

    i. What claims are brought in the original claim.

b. Whether any of those claims should be struck out, or whether any case management order should be made to clarify them.

c. Whether there was any application to amend.

d. Whether any application to amend should be granted.

Disability

10. The claimant alleges that he is disabled. His document of 24 March 2023 records that he has dyspraxia and that he also suffers from anxiety and depression with restless leg syndrome and peripheral neuropathy caused by medication prescribed for tuberculosis.

The original claim

11. The original claim form contained the following claims:
    a. an allegation of unfair dismissal;
    b. an unparticularised claim of race discrimination.
    c. an unparticularised claim of disability discrimination (the type of disability discrimination is not identified);
    d. a claim of failure to pay notice;
    e. an unparticularised claim of failure to pay holiday pay; and
    f. an unparticularised wages claim.

12. The claim form failed to identify any circumstances of the alleged dismissal.

13. At the hearing, both parties agreed certain relevant facts. On 25 January 2023, by letter dated 26 October 2022, the claimant resigned, said to be effective 18 March 2023. In response, on 3 February 2023, the respondent terminated his employment immediately stating the claimant would be paid in lieu of notice.

14. At the hearing, the respondent accepted this amounted to an express dismissal on 3 February 2023. This superseded the claimant's notice of resignation given on 25 January 2023. The claimant's resignation would have resulted in an effective date of termination of 18 March 2023.

15. It follows it was accepted there was an express dismissal on 3 February 2023.

16. The claimant accepted that the claims of race discrimination, and disability discrimination were wholly unparticularised.

17. The claimant accepted that none of the subsequent documents of 24 March 2023, 1 May 2023, and 3 May 2023 were express applications to amend.

Concessions

18. The respondent accepted that there had been no appeal of any pre-acceptance decisions. The respondent did not proceed with any application pursuant to rule 12 Employment Tribunal Rules of Procedure 2013.

The law

19. The tribunal may strike out a claim pursuant to rule 37 Employment Tribunal Rules of Procedure 2013.

> **37(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds--**
>
> > **(a) that it is scandalous or vexatious or has no reasonable prospect of success;**
> > **(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;**
> > **(c) for non-compliance with any of these Rules or with an order of the Tribunal;**
> > **(d) that it has not been actively pursued;**
> > **(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).**

20. As a general rule, cases should not be struck out on the ground of no reasonable prospect of success when the central facts are in dispute (see **North Glamorgan NHS trust v Ezsias 2007** IRLR 603**)**. This is authority for the proposition that it would only be in exceptional cases that it would be appropriate to strike when the central facts were in dispute. Such situations would include situations were the facts sought to be established by the claimant were "totally and inexplicably inconsistent with the undisputed contemporaneous documentation."

21. As a general principle, discrimination cases should not be struck out except in the very clear circumstances. For instance in **Anyanwu v South Bank Students Union 2001 IRLR 305**; Lord Steyn put it as follows:

> **For my part such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.**

22. This does not place a fetter on the tribunal's discretion. Nevertheless, it indicates that the power to strike out in discrimination cases should be exercised with greater caution than in other, less fact sensitive, types of case.

23. In the case of **Jiad v Byford and others 2003 IRLR 232 CA**, **Anyanwu** was followed it was held that the employment tribunal and Employment Appeal Tribunal had been wrong to strike out a claim of victimisation under the race relations act on the basis that the employee had failed to demonstrate there had been a detriment. In that case it was said the claimant's case crossed the line of possibility and therefore could not be described as bound to fail. The tribunal was therefore wrong to strike it out.

24. There is a two-stage test: (1) has one of the grounds for strike-out in r 37(1)(a)–(e) been established on the facts; (2) if it has, is it just to proceed to a strike-out in all the circumstances (see, e.g., **Hasan v Tesco Stores** Ltd UKEAT/0098/16 (22 June 2016, unreported

25. It should also be noted that where the threshold grounds for striking out proceedings has been made out, the tribunal should still consider alternatives where appropriate this may include ordering further particulars or ordering a single joint medical reports in the case of a disability claim (**see Lambrou v Cyprus Airways Ltd** EAT 0417/05).

26. This is not a fetter on the tribunal's discretion, but the power to strike out in discrimination cases should be exercised with great caution.

27. A tribunal should not take the view that **Anyanwu** creates some form of public policy that prevents claims being struck out. The test is whether there is no reasonable prospect of success, as is made clear by Lord Hope at paragraph 39 of Anyanwu itself.

> **Nevertheless, I would have held that the claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time and resources of the employment tribunals ought not to [sic] taken up by having to hear evidence in cases that are bound to fail.**

28. The Court of Appeal in **Ahir v British Airways Ltd** [2017] EWCA Civ 1392 made it clear there is no general proposition that where there is a potential disputed facts a claim must proceed. It is necessary to look carefully at the facts and to consider the nature of the dispute.

29. Underhill LJ put it as follows:

> **16 … Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment, and I am not sure that that exercise is assisted by attempting to gloss the well understood language of the rule by reference to other phrases or adjectives or by debating the difference in the abstract between 'exceptional' and 'most exceptional' circumstances or other such phrases as may be found in the authorities. Nevertheless, it remains the case that the hurdle is high, and specifically**

> **that it is higher than the test for the making of a deposit order, which is that there should be 'little reasonable prospect of success.'**

At paragraph 19 he went on to say:

> **… in a case of this kind, where there is an ostensibly innocent sequence of events leading to the act complained of, there must be some burden on a claimant to say what reason he or she has to suppose that things are not what they seem and to identify what he or she believes was, or at least may have been, the real story, albeit (as I emphasise) that they are not yet in a position to prove it.**

And at paragraph 24

> **… As I already said, in a case of this kind, where there is on the face of it a straightforward and well documented innocent explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that that explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so...**

30. It is part of the tribunal's role to exercise control over the way in which the issues are presented.

31. The point was re-emphasised by Langstaff P in the case of **Chandhok v Tirkey** EAT 190/14.

> **17. I readily accept that Tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication. They were not at the outset designed to be populated by lawyers, and the fact that law now features so prominently before Employment Tribunals does not mean that those origins should be dismissed as of little value. Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or denying amendments; it allows issues to be based on shifting sands; it ultimately denies that which clear-headed justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.**
>
> **18. In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may**

> **have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings.**

32. When further and better particulars are needed, the question of amendment is engaged.

33. The relevant legal principles to be applied, when considering amendment, are well known and can be stated briefly. The leading authority is **Selkent Bus Company Limited v Moore 1996 ICR 836**.

34. The tribunal must carry out a careful balancing exercise of all the relevant circumstances. It must balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

35. When considering the balance of injustice and hardship, **Selkent** states that all the relevant circumstances must be taken into account, and those circumstances include the following: the nature of the amendment (is it minor or substantial); the applicability of time limits; and the timing and manner of the application.

36. **Selkent** states minor amendments include the following: the correction of clerical errors; the addition of incidental factual details to support existing allegations; and the relabelling of existing factual allegations as a different cause of action. Substantial amendments may include pleading new factual allegations, whether as a fresh cause of action or new allegations for an existing cause of action.

37. **Selkent** confirms substantial amendment will require a consideration of the applicable time limit.

> **(b) The applicability of time limits**
> **If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal, s.67 of the 1978 Act.**

38. Whilst it is clear that a tribunal must consider whether a complaint is out of time, the nature and scope of that enquiry is less clear. No specific guidance is given in **Selkent**; it is not considered or addressed in the EAT's conclusions. There are two broad possibilities: first, the fact the claim is out of time as at the date of the amendment is an absolute bar to the claim being added by amendment, unless time is specifically extended having regard to the applicable test, be it a test of reasonable practicability, or an exercise of a just and equitable discretion; second, the

fact the claim is out of time as at the date of the amendment is simply one factor to be taken into account when exercising the tribunal's discretion

39. The reference in **Selkent** to considering whether time "should be extended under the applicable statutory provisions" could suggest that the first approach is correct. However, it is now generally accepted that when considering amendment, time is simply one factor to be taken into account, and it does not operate as an absolute bar.

40. It is not necessary for me to review the case law in detail. The correct approach was considered by Underhill J, as he was then, sitting in the EAT in the case of Transport and **General Workers Union v Safeway Stores Limited** 2007 UK EAT 92. The EAT considered how to interpret **Selkent** quoted above:

> **Point (b) might, if taken out of context, be read as implying that if the fresh claim is out of time, and time does not fall to be extended, the application must necessarily be refused. But that was clearly not what Mummery P. meant. As Waller LJ observed in Ali v. Office of National Statistics [2005] IRLR 201, at para. 3, point (b) is presented only as a circumstance relevant to the exercise of the discretion; and the reasoning of the Appeal Tribunal on the actual facts of the case clearly turns on the exercise of a "Cocking discretion" rather than the application of an absolute rule (see in particular points (3) and (4) at pp. 844-5)… Thus the reason why it is "essential" that a tribunal consider whether the fresh claim in question is in time is simply that that is a factor – albeit an important and potentially decisive one - in the exercise of the discretion.**

41. **Safeway** acknowledges that there is some contrary case law in support of the proposition that if a case is out of time as at the date of amendment, time operates as an absolute bar to amendment. This is dealt with at paragraph 12, but Underhill J, found in that time does not operate as an absolute bar.

42. Granting an amendment does not determine whether the tribunal has jurisdiction to hear a claim. It had been the accepted position that granting the amendment would lead to the final tribunal being constrained to consider whether the amended claim was in time at the date of the ET1. Thus, a respondent may have been denied the possibility of arguing that the claim should be treated as presented at the date of amendment, and that is when time should run.

43. The position has been complicated by **Galilee v The Commissioner of Police of the Metropolis** EAT/0207/16. HHJ Hand decided that the relation back principle does not apply, and section 35(1) of the Limitation Act 1980, which provides for a statutory deeming of a relation back, does not apply to employment tribunals.

44. I should say some more about the approach the tribunal should take when considering whether an amendment should be granted and the importance of the time point. A proposed amendment may contain a claim that was either in time or out of time at the date of the original ET1. There

are four possibilities. First, the new claim sought to be added by way of amendment may have been out of time when the original ET1 was presented. Second, it may have been in time at the date of the ET1. Third, time may have begun to run at some time after the presentation of the original ET1. Fourth, time may not have started to run.

45. If the relation back principle applies, and the claim is in time as at the date of the ET1, no time issue can arise. If the relation back principle does not apply, time remains a jurisdictional issue. If a claim is out of time, a tribunal must formally extend time or dismiss the claim. Granting an amendment does not extend time, as time is merely a factor to be considered as part of the exercise of discretion. It follows that granting an amendment may lead to a claim that is out of time being included. Time could be considered at a further preliminary hearing,[1] or it could be left to the final tribunal. If left to the final tribunal, there is a real risk that significant costs will be incurred in pursuing and defending a claim that may well be dismissed if it was presented out of time.

46. When considering any application to amend, it is vital that the tribunal must identify the specific amendment sought. This involves identifying any relevant factual allegation, and the associated cause of action. It is necessary to do this because the tribunal must consider whether the amendment is substantial and whether the claim is out of time. If the allegation is unclear, it may be impossible for the tribunal to determine whether the claim is substantial and whether it is in time as at the date of the application, or indeed at the date of the ET1.

47. If a claimant wishes to amend the claim, there is considerable onus placed on that party to make the application clear. The Court of Appeal's decision in **Housing Corporation v Bryant** 1999 ICR 123 emphasises the importance of clarity of pleading. In that case, the claimant alleged unfair dismissal and sex discrimination. The dismissal was not said to be an act of sex discrimination. All the claims of sex discrimination predated the dismissal and were out of time. Later, the claimant sought to allege the dismissal amounted to victimisation. It was clear that the fact of dismissal was pleaded, there was reference to sex discrimination, and there was reference to victimisation. However, the claim form did not specifically refer to the causal link of retaliatory victimisation as a reason for the dismissal. The mere fact that elements existed within the claim form did not mean the claim had been sufficiently identified; there needed to be the statement of causal connection. Buxton LJ put it as follows:

> **...it is not enough to say that the document reveals some grounds for a claim of victimisation, or indicates that there is a question to be asked as to the linkage between the alleged sex discrimination and the dismissal. That linkage must be demonstrated, at least in some way, in the document itself.**

[1] Presuming the tribunal has not expressly extended time when granting the amendment.

> **..the words making the necessary causative link between the making of the complaint of discrimination and the dismissal were absent from the application. But if this is to be taken as a question of construction, as a matter of law, and not merely of the judgment and assessment of the Chairman, the absence from the document of any such linkage must be fatal: because the issue of construction is whether the document makes a claim in respect of victimisation.**

48. It follows that any amendment should carefully identify the specific claim that is to be added. It stresses the need for clarity and accuracy on the part of the claimant in pleading the case. It may not be enough for a claimant to simply say there is general reference to discrimination, general reference to victimisation, and general reference to dismissal. If the claim requires a necessary causational link, there should be some wording which alleges it. If that wording is absent, the claim has not been brought.

49. I remind myself of the three points **Selkent** says should normally be considered: the nature of the amendment (is it minor or substantial); the applicability of time limits; and the timing and manner of the application.

50. It is important for a claimant to identify with clarity the amendments because, if the claimant fails to do so, the tribunal cannot determine whether the amendment is minor or substantial. Further, it is necessary for the amendment to be clear to identify whether there is any issue with time at all.

51. The timing and the manner of the application must also be considered. It is necessary to consider all of the relevant circumstances. Those circumstances may include those taken into account in **Safeway**: how closely related are the new and old claims; are all the relevant facts already in issue and must be proved; was the claim omitted by mistake on the part of the lawyers; should the respondent be surprised that the new claim has been brought; and how promptly has the application been made. These examples are merely illustrative. All the relevant circumstances must be taken into account.

52. As part of the balancing exercise, it is important to identify to what extent the amendment will lead to a different factual enquiry. In **Evershed v New Star Asset Management** EAT 0249/09, Underhill P, as he was then, found it was necessary to consider with some care the areas of factual enquiry raised by the proposed amendment and whether they were already raised in the previous pleading. In that case he concluded that the new evidence would be substantially the same as to be given in the original claim; he allowed the amendment and overturned the original tribunal decision. This approach was approved by the Court of Appeal in **Evershed V New Star Asset Management Holding Limited** [2010] EWCA Civ 870 at paragraph 50 were Rimer LJ stated:

> **...A comparison of the allegations in the amendment… shows that the amendment raises no materially new factual allegations... the thrust of the complaints in both is essentially the same...**

53. In summary, the following propositions can be distilled:

    a. First, the overarching consideration is the balance of injustice of hardship of allowing the amendment against the injustice and hardship of refusing it.

    b. Second, it is necessary to identify whether the amendment is minor or substantial in that it involves a substantial addition of fact and a new cause of action.

    c. Third, the timing of the application may always be relevant, but if the amendment involves a substantial alteration, it is necessary to consider whether the claim would be out of time at the date of the amendment. This is a factor to be considered in the general exercise of discretion.

    d. Fourth, the balance of hardship is not an abstract concept. The tribunal should consider whether there is evidence of real hardship, and it must give supporting reasons having regard to all the relevant circumstances.

The existing claims

54. I should first consider the existing claims and what action should be taken in relation to those, if any.

Unfair dismissal

55. It is respondent's case that the claimant did not have two years' continuous employment and therefore the claim should not be allowed to proceed.

56. That was not disputed by the claimant. It is common ground that his employment began on 18 July 2022. His employment ended by express dismissal one third of February 2023.

57. I also discussed the operation of section 111 Employment Rights Act 1996. Section 111 provides, insofar as its material following

> **(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.**
>
> **(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—**
> **(a) before the end of the period of three months beginning with the effective date of termination, or**
> **(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.**
>
> **..**

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

58. It is clear that the unfair dismissal claim was presented before either the dismissal occurred, or notice was given by the claimant. It was therefore presented prematurely and before the effective date of termination. The saving provision under 111(3) does not apply as notice had not been given. This is a jurisdictional point. As the claim was presented early, it should be dismissed.

59. It follows that the unfair dismissal claim should be rejected for two reasons. First, it was presented prematurely. Second, the claimant did not have relevant qualifying period of employment pursuant to section 108 Employment Rights Act 1996.

Direct race discrimination

60. No allegation of race discrimination is cited. It is not enough to simply tick the box at 8.2. Some particularisation must be set out.[2]

61. Read in the most purposive manner, the original claim may be taken to allege that the dismissal was an act of discrimination. However, at the time the claim was brought, the claimant had given no notice, so there could be no constructive dismissal. The respondent had not dismissed him, and had given no notice, and so therefore there could be no express dismissal.

62. I find there is no claim of race discrimination brought in original claim form, it being insufficient to simply tick the box. It is necessary for there to be some particularisation which sets out the detrimental treatment and has some words of causation linking that treatment to race.

63. To the extent it can be said that the claim of race discrimination was the dismissal, there had been no dismissal. The claim would inevitably fail on its facts, as no dismissal had occurred. There is nothing in the claim which identifies any conduct short of dismissal that is said to be an act of discrimination. It follows that there is no claim of race discrimination to pursue, or in the alternative, I dismiss it as having no reasonable prospect of success.

Disability discrimination

64. The claimant fails to identify the nature of the disability discrimination claim. In our discussion, he referred to a failure to make reasonable adjustments. He alleged any failure concerned the suspension meeting which occurred on 26 October 2022.

[2] See, e.g., *Housing Corporation v Bryant* 1999 ICR

65. The claimant identified no allegation of direct discrimination, or discrimination arising from disability (section 15 Equality Act 2010). I concluded that there was no disability discrimination claim set out in the claim form. It is not enough to simply tick the box at 8.1. There must be some particularisation. I considered whether reference to dismissal could be a claim of disability discrimination, but it fails for the same reasons as set out for the race discrimination above: it is not pleaded, and there is no reasonable prospect of success.

66. There is no claim of disability discrimination pleaded, and an in he alternative, to the extent that there may be claim of direct disability discrimination, it has no prospect of success, and I dismiss it.

Notice period

67. The tribunal's jurisdiction to hear breach of contract claims is limited to matters which arise or are outstanding on termination of employment (see article 4 Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994). The claim is for failure to pay his notice period. A claim for failure to pay notice would arise on termination of employment. There had been no termination of employment and no notice given. At the time the claim was brought, there was no jurisdiction to consider it, and I dismiss it.

Wages

68. The claim for wages is wholly unparticularised. I do not consider it appropriate to dismiss it without giving the claimant an opportunity to set out the particulars. The claimant was unable to explain the claim adequately at the hearing. The respondent cannot know the case it is to answer. The claimant should set out full particulars. If he fails to do so, it is reasonable for the claim to be dismissed. The claim should provide particulars in accordance with the unless order set out above.

Failure to pay holiday

69. The claimant was unable to clarify this claim. I explained there are two broad claims. The first is a claim for payment of accrued holiday pay pursuant to regulation 14 Working Time Regulations 1998. I find no such claim has been brought, as the employment had not been terminated.

70. The claimant is permitted to seek payment for any holiday taken, which should have been paid, but which has not been paid (regulation 16 Working Time Regulations 1998). However, I do not understand that to be the claimant's case. In case I am wrong, I have ordered the claimant to provide particulars of any holiday taken but which was not paid. In the absence of that clarification, the holiday claim will be dismissed.

The application to amend

71. As noted, there is no express application to amend. I considered whether the further information provided on 24 March 2023, 1 May 2023, and 3 May 2023, can be seen as an application to amend. None contains an express application.

72. I gave the claimant an opportunity to confirm whether any of the documents contained details of any claim he wished to bring. The claimant failed to identify any specific claims. I asked the respondent to identify any specific claims that may been identified, which could form the substance of an application to amend.

73. Mr Probert confirmed that there were some possibilities in the document to 24 March 2023, albeit the document is confused and difficult to navigate.

74. I asked the claimant to clarify, orally, the nature of the race discrimination claim. He referred to the suspension meeting on 26 October 2022. In relation to that, he suggested there were a number of reasonable adjustments which were not made. He stated the failure to make those reasonable adjustments was an act of race discrimination.

75. The claimant did not identify any other allegations of failure to make reasonable adjustments. The claimant did not identify any other race discrimination case

76. The document from 24 March 2023 did include reference to reasonable adjustments. With the assistance of Mr Probert, I identified the following possible allegations:

    a. The claimant stated that he needed “a day’s notice of meetings as a reasonable adjustment.” This was attached to the meeting of 26 October 2022. Later in the document, this need for a day’s notice is repeated with regard to a meeting on 7 October 2022.

    b. He referred to the need for “extra time” when undertaking the task of taking personal documents from a laptop. This appeared to relate to the meeting on 26 October 2022, but the reference is confused.

    c. As for any claim of race discrimination, there is no particularisation. The claimant stated, “I felt I was treated differently because of my race as no discretion was taken to reduce the distress and impact on my well-being.” The general allegation was not attached to any specific allegation. As noted, in his oral submissions, the claimant referred to the failure to make adjustments as being an act of race discrimination.

77. I have considered all three documents carefully. They contain a lengthy and confused narrative which is difficult to navigate or understand. They do not set out clear claims.

78. Taking all those documents as a whole, and considering the claimant oral submissions, it is possible to identify a broad complaint that reasonable adjustments were not made for the suspension hearing, and the failures to make reasonable adjustments was an act of race discrimination. It is less clear whether the claimant is seeking to say that the suspension was an act of race discrimination. The documentation does not appear to alleged the dismissal was an act of discrimination.

79. Before me, the claimant sought to suggest that his medical condition, in some manner, prevented him from setting out his claims adequately in the original claim form. I considered the medical evidence carefully. It is not supportive of that argument. The respondent notes that the claimant submitted lengthy formal complaints against respondents two, three, four, and six. These were submitted around 30 January 2023. It follows that at time he presented his claim, he was capable of writing and setting out detailed allegations. I find that he was capable of setting out the factual basis of his claim at the time submitted it, but chose not to.

80. I have considered whether I should allow amendment to this claim.

81. There are no existing claims of direct race discrimination, or failure to make reasonable adjustments, for the reasons I have noted above.

82. To the extent that the claimant's documents now contain an application, it must be construed as new claims of race discrimination and failure to make reasonable adjustments based on new facts. It is necessary to look at the balance of justice and hardship in allowing the claim as against the balance of justice and hardship in refusing it.

83. The claimant has not sought amendment to allege the dismissal was an act of discrimination. However, I kept that possibility in mind. The dismissal occurred after the claim was presented. Any application related to the dismissal would postdate the claim.

84. It is possible to include claims which postdate the original claim. (See for example **Prakash v Wolverhampton City Council** EAT 140/06). However, **Prakash** was decided at a time when it was generally accepted that the amendment would take effect as from the date of the original claim. **Galilee** is authority for the proposition that the date of presentation is the date the amendment is allowed. If new claims arise after the issue proceedings, it is safer for the party to present a new claim and seek consolidation. It may be inappropriate to pursue, by way of amendment, a claimant could have been brought as of right, particularly when the claim may be out of time when the amendment is considered.

85. The claim of failures make reasonable adjustments appears to be concerned with actions in October 2022. If the letter of 24 March 2022 can be seen as an application to amend, those claims are already out of time.

86. Any amendment to include the dismissal as an act of either race or disability discrimination is now significantly out of time.

87. Where a potential claim is out of time, I am not required to determine whether time should be extended, but I should consider time generally. The claimant has given no evidence as to any steps taken to obtain advice. The respondent notes that the claimant has litigated previously. The claimant does not suggest that he did not understand the relevant time limits, or the need to set our particulars. The claim form states that he will provide particulars; however, he failed to do so until ordered. Even then, no document supplied complied with the order.

88. The only reason advanced for delay was an inability to engage with drafting the claim because of his disability. The medical evidence is not supportive. I have considered this above. The contemporaneous evidence would suggest the claimant was capable of drafting documents. I reject that submission.

89. I have to consider the balance of hardship. It is apparent that the claimant wishes to pursue numerous allegations. However, despite being given ample opportunity to particularise his claim, he has failed to set out any claim adequately or at all. Instead, he appears to wish to pursue whatever allegations or points that are of concern to him in an unstructured way. The three sets of further particularisation amount to over 140 pages of information which is unfocused and difficult to understand. Despite the volume of documentation, no clear claims emerge.

90. Any hardship caused to the claimant has been caused by his own approach. He has had ample opportunity to set out his claims in the original claim form. He failed to do so. He has had a further opportunity to set out the claims clearly when ordered. He has failed to do so in the documents filed in March and May 2023. He has had opportunity to set out his claims clearly before this tribunal, but he has failed to do so.

91. The hardship occasioned to the claimant must be balanced against the hardship caused the respondent. The respondent must know the case it is to answer (see **Chadhok**, above).

92. The overriding objective requires the tribunal to deal with cases fairly and justly. That involves dealing with matters in a proportionate way, avoiding unnecessary formality, avoiding delay, and saving expense. The objective is to provide a fair hearing. However, it must be a fair hearing for both parties.

93. For the respondent to have a fair hearing, it must know the case it is no answer. Moreover, it should not be subject to conduct which unduly lengthens the hearing and permits the claimant to present a case in a way which is oppressive.

94. It is important to have clear pleadings. Clarity prevent prevents a claimant from putting a case, from time to time, in a way that best suits the claimant in that moment. Without that clarity, the respondent cannot prepare adequately. The lack of clarity can lead to disproportionately long proceedings which can be significant hardship to respondent and which undermines a fair hearing.

95. The claimant has had an opportunity to present clear claims, but he has failed to do so. To the extent that he has identified claims, they are out of time and he has given no adequate explanation for the delay. The claimant's focus is not on the specific claims. The nature, and volume, of the particularisation given demonstrates that he is determined to proceed in a way which is unreasonable and possibly vexatious. No claimant should be permitted to pursue any matter that the claimant considers appropriate from time to time, as an alternative to a clear pleading.

96. This claimant's approach is oppressive, and he has failed to set out clear claims, despite being encouraged to do so. The respondent would face significant hardship in dealing with this claim and I therefore refuse the application to amend.

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Employment Judge G Hodgson

Dated: 16 April 2024

Sent to the parties on:

25 April 2024
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For the Tribunal Office