



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E A Ofoniam

**Respondents:** (1) London Underground Limited  
(2) Mr N Dent  
(3) Ms T Simms  
(4) Mr R Orphanides  
(5) Ms K Whitehouse  
(6) Mr S Abdullah  
(7) Ms A Owodunni  
(8) Ms A Ademoye  
(9) Ms A Jones  
(10) Ms J Downey

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford Employment Tribunal

**On:** 12 April 2024

**Before:** Employment Judge Tuck KC

### Appearances

For the claimant: Mr P O'Callaghan, Counsel

For the respondent: Ms Thomas, Counsel

## JUDGMENT

Ms A Jones is dismissed as a party from these proceedings. The claim against her is struck out.

### REASONS.

#### Facts:

1. The background to the three claims presented by the Claimant are set out in the case management orders of EJ George following a PH on 16 January 2024, and the case management order I prepared following today's Hearing.
2. In his third of three claims (case no: 3311702/23) the Claimant presented complaints against his employer, London Underground Limited and also against two named Respondents, firstly Ms A Jones who is a senior manager

in the Employee Relations team of the First Respondent, and secondly against Ms J Downy who is an Nurse Practitioner within TfL's Occupational Health Team.

3. In clarifying the issues the claimant stated that his claim against Ms Jones was for direct sex discrimination, direct race discrimination and victimisation. All related to an allegation that she had lied to the police about the Claimant. He told me that he had raised a complaint with the police about being discriminated against at work in mid 2021, and that he received a letter from the police on 29 June 2022 setting out that they had been told by London Underground Limited that the Claimant had been found guilty of harassing and bullying Ms Ollibacce. He telephoned the police and they said that the information had been provided by Ms Jones. The claimant alleges that this was a deliberate lie by Ms Jones because of his sex and race and to victimise him.
4. The claimant was fully aware of the facts of this allegation by the end of June 2022. He applied to amend his first ET claim in January 2023 – but did not seek to include this allegation, and nor did he include this allegation in his second claim which was presented on 16 August 2023.
5. The claimant commenced ACAS EC against Ms Jones on 19 September 2023 and received an ACAS EC Certificate on 21 September 2023. He presented his third ET1 on the same date, 21 September 2023. Any act or omission occurring after 20 June 2023 are, on their face, in time.
6. The claimant does not complain about any other acts / omissions of Ms Jones before or after June 2022. The complaint against her is therefore 12 months out of time.

**Application and Response:**

7. Ms Thomas submitted that the claim against Ms Jones should be struck out as having no reasonable prospects of success because the claim is on its face out of time and she submitted that there were no reasonable prospects of success in persuading the tribunal either that it was part of a course of conduct extending over a period, nor that it would be just and equitable to extend the time period. Whilst she submitted that the claims in the second ET1 appeared to be out of time, she did not seek to pursue any deposit or strike out applications in relation to the allegations therein in circumstances where the Claimant said that he had not become aware of the matters until he received disclosure for the first claim in July 2023.
8. Mr O'Callaghan submitted that the claimant had good prospects either of establishing that the conduct of Ms Jones was part of a course of conduct or alternatively that it would be just and equitable to extend time. No obligation to give an explanation or reason for the delay, and that as the complaint is about correspondence there would be little prejudice. Mr O'Callaghan was instructed that the Claimant did not realise the extent of what Ms Jones had said to the police until disclosure had taken place; this was at odds with what

the claimant told me directly when clarifying the issues when he said that he had received correspondence from the police on 29 June 2022 and that day or very soon thereafter, he telephoned the police and was told that the information in the letter was from Ms Jones. Mr O'Callaghan further submitted that this was just one issue within wider litigation – he however did accept that it was the only allegation against Ms Jones who was named as an individual respondent.

**Law:**

9. Rule 37 of the ET (Constitution and Rules of Procedure) Regulations 2013 provide that a case may be struck out if it has no reasonable prospects of success. Whilst one must be slow to strike out discrimination claims where facts are in dispute – as submitted by Ms Thomas – the application is not about the substantive claim per se, rather about the fact that the claim is out of time.
10. Ms Thomas referred me to the case of **Jones v Secretary of State for Health and Social Care** 2024 EAT 2, and in particular the summary of the law relating to extensions of time limits under section 123 EqA in discrimination claims set out by HHJ Taylor at paragraphs 27 - 37. I have read those paragraphs and the cases referred to therein carefully.

**Conclusions:**

11. The claim against Ms Jones has been presented 12 months outside the primary limitation period. It is not alleged to be part of a course of conduct as it is the only allegation involving her. It is a discrete matter about what information she gave to the police.
12. No explanation has been offered as to why the claim was not presented within three months of the claimant finding out about it in June 2022. Nor has any explanation been given as to why he did not seek to include the allegation when applications to amend were made by counsel on his behalf in January 2023, nor as to why it was not part of the second claim in July 2022.
13. The delay is lengthy and there are no reasons given for it. The claimant clearly well knew about how to make a claim – having done so in May 2022.
14. The prejudice to Ms Jones of having to defend a stale allegation is considerable. On the other hand, I do not consider that the claimant suffers any great prejudice by this single issue being removed from his claims against many other parties.
15. I have therefore concluded that the claimant has no reasonable prospect of showing that it would be just and equitable to extend the limitation period, and therefore strikeout the claim against Ms Jones.

Employment Judge Tuck KC

12 April 2024

**Case Number: 3305299/22; 3310295/23; 3311072/23**

Sent to the parties on:  
14 May 2024

For the Tribunal Office: