EMPLOYMENT TRIBUNALS

Claimant: Mr A Jones

Respondent: The Chief Constable of Lancashire Constabulary

Heard at: Manchester (by CVP) **On:** 13 May 2024

Before: Employment Judge KM Ross

REPRESENTATION:

Claimant: In person
Respondent: Ms V von Wachter, Counsel

JUDGMENT having been sent to the parties, oral reasons having been given on 13 May 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The hearing was listed on 13 May 2024 as a public preliminary hearing to determine the following matters:

(1) Whether in accordance with section 11 Employment Rights Act 1996 (“ERA 1996”) the claimant's claim of unfair dismissal under section 103A ERA 1996 was made within three months of the effective date of termination, and if not whether the claimant can show that it was not reasonably practicable for it to have been presented within the time limit and that it was presented within a further reasonable period (“the UD time limit issue”);

(2) The respondent’s strike out application on the basis the Tribunal did not have jurisdiction to hear a claim that the claimant’s arrest on 2 May 2023 and the ensuing criminal investigation could amount to a whistleblowing detriment falling within s47B Employment Rights Act 1996;

(3) Whether the claim of whistleblowing detriments under section 43A ERA 1996 was made within three months of the dismissal and/or the act (or the last act complained of), and if not whether the claimant can show that it was not reasonably practicable for it to have been presented within time and that it was presented within a further reasonable period "the whistleblowing time limit issue");

(4) The claimant's amendment application for direct race discrimination pursuant to section 13 Equality Act 2010 on the basis the claimant is Caucasian and was less favourably treated as a result of race by being placed on a management plan from 18 October 2022 until his dismissal. The claimant's comparators were sergeants who were Asian.

(5) Whether the discrimination complaint was presented within the time limit and if not whether it would be just and equitable to extend time.

Introduction

2. The claimant was employed by the respondent as a Probationary Police Officer from 9 August 2021 until 30 March 2023. The claimant presented a claim form (without reference to ACAS) on 3 April 2023 ("the first claim"). This was withdrawn at the claimant's request on 14 June 2023. The Tribunal wrote to the claimant on 20 June 2023 acknowledging the claimant's request to withdraw the matter and informing him the case was closed.

3. On 31 August 2023 the claimant wrote to request the Tribunal's permission to restart the claim. On 13 September 2023 the claimant's correspondence was referred to me as Duty Judge. I directed that the claimant should be informed there was no power to reopen his claim once it had been dismissed by the Tribunal. I suggested the claimant may wish to serve a new claim with an application to proceed out of time. The claimant was sent a letter with this instruction on 18 September 2023.

4. The claimant submitted a new claim (case number 2409417/2023) on 20 September 2023.

5. The case came before Employment Judge Newstead Taylor on 4 March 2024. In a detailed and thorough case management note of the hearing Employment Judge Newstead Taylor clarified that the claimant wished to bring claims for public interest disclosure detriment and dismissal also referred to as "whistleblowing" complaints.

6. Employment Judge Newstead Taylor identified the claimant wished to bring a claim that he had been unfairly (constructively) dismissed for making three protected disclosures. In her List of Issues she clearly identified those disclosures.

7. Employment Judge Newstead Taylor identified that the claimant wished to bring a public interest detriment claim pursuant to sections 47B and 43B Employment Rights Act 1996, relying on the same 3 protected disclosures. Employment Judge Newstead Taylor identified the following 5 detriments:

(1) Following public interest disclosure 1 and the welfare meeting on 13 January 2023, Chief Inspector Holt

(i) required the claimant to change teams;

(ii) kept the claimant on the management plan instituted on 18 October 2022;

(iii) failed or refused to re-institute the claimant's place on the Blue Light course.

(2) Following public interest disclosure 1, in early March 2023 Inspector Potts verbally implemented a new and more onerous incarnation of the management plan which the claimant never accepted.

(3) Following public interest disclosure 2, Inspector Potts demanded the claimant came into work on his rest day for a 'dressing down.'

(4) On 30 March 2023, the respondent dismissed the claimant.

(5) Following public interest disclosure 3, PS 4777 Edmunds arrested the claimant on 2 May 2023 and commenced a criminal investigation that concluded on 5 January 2024.

8. Employment Judge Newstead Taylor also identified a technical issue in relation to how the Employment Rights Act 1996 relates to police officers. By the time of the hearing before me the parties had agreed that the claimant was eligible to bring a claim pursuant to section 103A Employment Rights Act 1996 (unfair constructive dismissal) because of section 43KA ERA 1996 which permits police officers to bring whistleblowing claims.

9. Employment Judge Newstead Taylor also identified that the claimant suffers from a mental impairment, namely bipolar disorder, but that there were no adjustments requested or required for the hearing, and that remained the position for the hearing before me.

10. Employment Judge Newstead Taylor made clear and detailed directions for the preliminary hearing listed before me. In particular she required the claimant to provide a witness statement in relation to the time limit issue, which he did. The claimant also provided statements from his mother (Jane Jones) and his neighbour (Dave Hart). Mrs Jones and Mr Hart did not attend the Tribunal. I read their statements carefully but attached limited weight to them because they were not present.

11. In addition to the claimant's statement relevant to time limits I read his original statement and the documents contained in a detailed bundle prepared by the parties consisting of 385 pages. In addition, at the outset of the hearing I arranged for the parties to have copies of relevant documents from the claimant's original claim. These were the claimant's original claim form in case number 2404183/2023 (which arose out of the same set of circumstances as his second claim). It also included the claimant's correspondence with the Tribunal on 8 May and 14 May and the Tribunal's response on 9 May 2023.

12. It also included the claimant's request to restart his claim on 31 August 2023 and the letter sent by the Tribunal on 18 September 2023.

13. The parties were also given a copy of the letter from the Tribunal confirming the claimant's first claim had been closed dated 20 June 2023.

14. In advance of this hearing the parties had written to the tribunal to confirm that they had complied with the Case Management directions of Employment Judge Newstead Taylor. In particular the claimant had filed an amendment application in relation to his application to amend to include a claim of race discrimination dated 13 March 2024 as required by Judge Newstead Taylor.The parties had cooperated to prepare the bundle described above and the claimant had prepared a witness statement as described above.

15. The parties had also written to the Tribunal to confirm that they were ready for this hearing.

16. However, on the day of the hearing the claimant submitted a new amendment application for a claim of disability discrimination. At the outset of the hearing, I explained to the claimant that there simply was insufficient time for a new application to amend the claim to be considered at today's hearing, on such short notice. The claimant accepted that was the position. I explained that if the claimant's claims survived the hearing today, that application would be listed and heard on another occasion.

17. I heard evidence from the claimant.

18. For reasons of fairness and procedural regularity I considered the issues identified by Employment Judge Newstead Taylor in the following order:4, 2,1, 3. There was no need to deal with issue 5 because by that stage all claims were struck out.

The Issues

19. I turn now to the issues as set out by Employment Judge Newstead Taylor.

Application to amend claim to include a claim for direct race discrimination (Issue 4)

20. For reasons of procedural fairness, I considered first the claimant's application to amend to include a claim for race discrimination. The amendment was identified by Employment Judge Newstead Taylor. She required the claimant to send to the Tribunal a written application to amend, which he did (see pages 69-74 of the bundle). The claimant alleges he was treated less favourably as a direct result of the protected characteristic of race by being placed on a management plan from 18 October 2022 until his dismissal on 30 April 2023. The claimant is Caucasian. He compares his treatment to Sergeant Bhai who is described as Asian.

21. I reminded myself that the Tribunal has a discretion to permit an amendment to the claim (see rule 29 Employment Tribunal Rules of Procedure 2013).

22. I also reminded myself that that discretion must be exercised in accordance with the relevant legal principles. I must carry out a careful balancing exercise of all the relevant factors, but the core test is the balance of injustice and hardship in allowing or refusing the application.

23. The parties reminded me of the long-established case of **Selkent Bus Company Limited v Moore [1996] IRLR 661**.

24. Before dealing with the amendment application, I considered the claimant's submission that this was not a true application to amend but was really a particularisation of the existing claim form. The claimant submitted that his application was a “relabelling exercise”.

25. I am not satisfied that the claimant is correct.

26. The Employment Tribunal claim form invites a claimant at paragraph 8 (page 6 of the claim form) to tick a box if the claimant considers they have been discriminated against. The boxes identify different protected characteristics. In this claim form the claimant did not tick any of the protected characteristics. This is in contrast to the claim he originally filed with the Tribunal where he ticked the boxes for age, race, disability, sex and sexual orientation.

27. There is nothing in the narrative section at box 8.2 of the claim form to suggest any facts giving rise to a claim for race discrimination. At box 9 there is a section which relates to compensation. The claimant has ticked the box “if claiming discrimination, a recommendation”. However, 9.2 below which asks for further information about compensation or remedy does not give any reference to race discrimination.

28. Finally, the claimant relies on section 15 of the claim form which he says relates to a claim for race discrimination.

29. I find that a reading of paragraph 15 suggests that the claimant is referring to his public interest disclosure case or “whistleblowing” . He states “ A public interest case would highlight the regional relevance of Baroness Casey’s review and Anugrah Abraham’s IOPC investigation into racially motivated bullying in Police Forces of the North of the United Kingdom”.

30. I therefore find there is no reference at all to the factual circumstances the claimant now relies upon for a claim of race discrimination, namely being placed on a management plan from October 2022 until his dismissal.

31. The claimant gave evidence that he has a law degree (2:1 from the University of Nottingham – see page 243). I find also based on the claimant's evidence that he attended the bar finals course but was unsuccessful in passing the examination.

32. I find the claimant is an educated man, who has studied the law both academically at university to a high level and on a more practical level for the bar exams, and is an intelligent man. There is no dispute he previously completed a claim form in which ticked the boxes for discrimination. I am satisfied there is no reference to a claim for race discrimination in the existing claim and that this is not a case where a claim for race discrimination is a mere “relabelling” exercise.

33. I turn now to the issue of the balance of injustice and hardship. I turn to consider the timing and nature of the amendment. The amendment is made late. The facts the claimant relies upon ended when his employment ended on 30 March 2023. The issue of the amendment only came to light when Employment Judge Newstead Taylor (as Judges do at case management hearings) strove to understand the basis of any potential claim, enquiring about the fact he had ticked the recommendation box in the remedy section.

34. The nature of the amendment is difficult to understand from a legal perspective. The claimant was a Police Probationer at the relevant time i.e. October 2022 to March 2023. He relies on a comparator who he says is a Sergeant. (Sergeant Bhai.)

35. However, by the very fact he is a Sergeant and not a Probationer, Sergeant Bhai will not be an appropriate comparator within the meaning of section 23 Equality Act 2010. On a comparison there must be “no material difference between the circumstances relating to each case”.

36. The claimant says that a white Polish female officer was on a similar development (or action) plan to himself. That does not assist the claimant in showing that he was treated less favourably than a real or hypothetical comparator of a different race within the meaning of s9 Equality Act 2010.

37. The claimant has not adduced any evidence other than bare assertion that another officer, who is not a true comparator, was not placed on an action plan when he was. There is no suggestion of any actions/lack of action/behaviour of Sergeant Bhai requiring him to be placed on a development plan.

38. Accordingly, the claimant is likely to face an uphill struggle in showing placing him on a development plan was an act of direct race discrimination. It is not sufficient to have a difference in protected characteristic and a difference in treatment, even if that can be shown. There must be “something more” to shift the burden of proof.

39. I consider time limits issue briefly. The application to amend is very late.

40. The claimant relies on his poor mental health in his submission as the reason why his application for an amendment for a claim of race discrimination is 12 months out of time. I am not satisfied that is the real reason. The claimant was able to tick the boxes which included race discrimination when he lodged his original claim. He said in evidence the reason for that was that he had added another named individual as a further claimant, and he had ticked the boxes on behalf of that individual.

41. That may be, but it shows that the claimant was aware that there were boxes on the claim form to tick if he considered he had a claim for race discrimination.

42. The claimant gave evidence that when he submitted his second claim in September 2023 his mental health had improved compared to the position soon after his arrest in May 2023. The claim form is clear and coherent. There is nothing to suggest the reason the claimant had failed to tick the box for race discrimination was his mental health.

43. I turn back to the heart of the issue, which is the balance of injustice and hardship. I am not satisfied there is real injustice and hardship to the claimant in denying this amendment. The claimant said in evidence that it was the public interest disclosure claims that were the "main motivator" to bring a claim. The narrative of his claim form makes it clear that public interest disclosure detriments (known colloquially as "whistleblowing") is the focus of the claimant's claims. There is no significant hardship to the claimant in denying an amendment for such a race discrimination claim, particularly as given the information provided at this stage suggests the claimant will have great difficulty in establishing his case because the basis on which it is put at present is flawed.

44. Furthermore, the claimant's claim that placing him on a development plan was an act of race discrimination is rather at odds with his fundamental claim, which was that maintaining the claimant on the development plan was an act of whistleblowing detriment .

45. By contrast, there is injustice and hardship to the respondent if I permit the application. It would substantially expand the case, elongate the final hearing and it would put the respondent to additional expense and investigation and no doubt require additional witness evidence.

46. Finally, the claimant in his submissions referred this to being a "David and Goliath" situation with him as David. Although it is clear that the claimant has suffered from mental health difficulties, he is an articulate and intelligent man with a substantial degree of legal knowledge and the fact that he is a litigant in person who has suffered from poor mental health is not a reason of itself to permit an amendment for the reasons I have described above.

47. For these reasons I do not permit the amendment.

Application to strike out detriment 5 for lack of jurisdiction (Issue 2)

48. I turn now to the second issue identified by Employment Judge Newstead Taylor: the respondent's application to strike out detriment 5 in the claimant's claim for public interest disclosure, for want of jurisdiction. Detriment 5 is that a police officer "arrested the claimant on 2 May 2023 and commenced a criminal investigation that concluded on 5 January 2024".

49. The respondent submitted that the claimant's arrest and the criminal investigation which concluded on 5 January 2024 were carried out by the Lancashire Constabulary in their role as a Public Service Policing Organisation. Those activities were not and could not be carried out in their role as the claimant's employer.

50. The claimant says his arrest and criminal investigation was an act of post termination victimisation maliciously carried out by the respondent and I should construe the law widely to permit the Tribunal to hear this claim.

51. The relevant law is section 43KA Employment Rights Act 1996 which provides that persons holding the office of Police Constable and those appointed as Police Cadets are to be regarded as "employees" employed under a contract of employment for the purposes of the protected disclosure provisions of the Act, i.e.

part IV A, part V and sections 43B and 47B (detriment). Section 47B(1) ERA 1996 states:

> (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

52. Section 47B (1A) states:

> "A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act done –
>
> (a) by another worker of W's employer in the course of that other worker's employment, or
>
> (b) by an agent of W's employer with the employer's authority on the ground that W has made a protected disclosure.

53. The parties referred me to **Tiplady v City of Bradford Metropolitan District Council [2019] EWCA Civ 2180, CA**. This case concerned a claimant who was both a Senior Planning Officer employed by the respondent but also had extensive dealings with the council about problems affecting a property owned by the claimant The Employment Tribunal and Employment Appeal Tribunal both held that the protection of the whistleblowing provisions under the Employment Rights Act 1996 relate to the employment sphere and do not extent to the wider functions that might be performed by those who are employers, for example as suppliers of goods and services to the public (customers or service users) at large.

54. In the EAT Judge Eady stated:

> "The starting point must however be the statute under which the claimant was seeking to pursue her claims. By part V of the Employment Rights Act 1996 protection is afforded to *workers* and is expressed to relate to the suffering of the detriments *in employment*. The protection thus relates to the employment sphere (albeit it extends to workers and not just those who meet the definition of employee) it does not extend to the wider functions that might be performed by those who are employers as, for example, suppliers of goods and services to the public (customers or service users) at large. Workers employed by the employer might also be its customers or users of the service it provides but in a normal course there is a distinction between those relationships."

55. At the Court of Appeal Lord Justice Underhill reviewed the case law, noting that there was no express case on this jurisdictional issue but reviewing similar cases from the field of the Equality Act claims. He concluded the approach of the ET and Judge Eady in the EAT was correct. He was satisfied it was appropriate to have regard to the discrimination cases on jurisdiction stating, "the whistleblower legislation and the discrimination legislation are fundamentally of the same character", relying on **Royal Mail v Jhuti [2017] EWCA Civ 1632**. He stated that in his view Parliament must be taken to have intended when using the terminology of detriment in the discrimination legislation and in part V of the 1996 Act that it should have the same scope in both.

56. Lord Justice Underhill had regard to the fact that part V refers to detriment “in employment”.

57. Lord Justice Underhill accepted that of course one important difference between “whistleblower discrimination” and the forms of discrimination proscribed by the Equality 2010 Act, was that in the Equality Act the statute provides for protection in the context of other kinds of relationships beyond that of employer and worker, for example a claim under part 3 of the 2010 Act for goods and services in the County Court. There is no equivalent statutory provision preventing public bodies from discriminating against people who have blown the whistle on their activities. Lord Justice Underhill went on to say:

> “…but I do not regard that as sufficient reason to construe the language of detriment differently. Rather it seems to me simply to reflect the legislative choice to afford whistleblower protection only as between worker and employer and not to members of the public more widely.”

58. The claimant a submits that this was a post-employment victimisation claim and accordingly should proceed.

59. That is not the issue here. There is no dispute that where an employer acts in their role as employer and discriminates after the employment ends by reason of a public interest disclosure (for example the provision of a reference), then the claimant is entitled to proceed (see **Woodward v Abbey National PLC (No. 1) [2006] ICR 1436 CA**). There is no dispute the Employment Tribunal has jurisdiction to hear a claim for post employment victimisation in the employment sphere.

60. I turn back to the facts of this case to consider the issue of jurisdiction, taking account of the guidance from the Court of Appeal in **Tiplady.**The claimant's employment ended on 30 March 2023. He was arrested on 2 May 2023 and Lancashire Constabulary commenced a criminal investigation into him concluding in January 2024. That is not disputed. It is a matter of fact that these alleged detriments occurred after the claimant's employment ended. As I have already stated there is no bar in a post-employment claim being brought under the whistleblowing legislation.

61. The issue in this case is: was Lancashire Constabulary acting in the course of employment?

62. The Employment Rights Act 1996 protects whistleblowers who work for a respondent, make disclosures of information and suffer detriments. I rely on Lord Justice Underhill’s words in **Tiplady** that when considering whether the detriment arose or not “in the employment field”, broadly the test is “of asking in what capacity the detriment was suffered” or to put the same things another way, whether it was suffered by the claimant “as an employee”. Lord Justice Underhill said, “it seems to me likely to produce the right answer in the generality of cases”.

63. I turn to consider whether the arrest of the claimant and his criminal investigation was suffered by the claimant “as an employee”. I find it was not. The respondent had no power to arrest the claimant or conduct a criminal investigation

into him as an employee, or former employee. It was acting in the exercise of its powers as a public service policing body.

64. Accordingly, I find the Tribunal does not have jurisdiction to hear the claimant's claim for this specific detriment namely the claimant's arrest and the criminal investigation into him, identified as detriment 5.

65. Both parties described the allegation of detriment in relation to the arrest of the claimant and the criminal investigation into him as "post-employment victimisation".

66. This is the language of section 27 Equality Act 2010 and indeed the respondent's submission for strike out for want of jurisdiction dated 7 March 2024 (see pages 66-68) and the claimant's objection (see pages 75-80) refer to the cases which are relevant in equality legislation. These cases of **Shamoon v Chief Constable of Royal Ulster Constabulary [2003] UKHL 11**; **London Borough of Waltham Forest v Martin UKEAT 0069/4/SM**; and **Woodward v Abbey National PLC [2006] EWCA Civ 822**, were expressly considered by Lord Justice Underhill in the **Tiplady** case. He reviewed those cases to conclude that if Mrs Tiplady's claim had been a discrimination claim it could not have proceeded in the Employment Tribunal because the detriments in question did not arise in the field of "work" (to use the terminology of part V of the 2010 Act), but in a different field namely "services and public functions" which were covered by part 3. He then went on to consider whether the same restriction applied to a claim of whistleblowing. For the reasons I have outlined above, he found that it did.

67. Therefore Tribunal has no jurisdiction to hear allegation 5 of the claimant's detriment claims and the application to strike out that specific detriment succeeds.

Time Limits Issues (issues 1 and 3)

68. I turned to consider the time limit issues,dealing first with the unfair dismissal time limits issue (Issue 1) namely: "whether, in accordance with section 111 ERA 1996 the claim of unfair dismissal under section 103 ERA was made within three months of the effective date of termination, and if not whether the claimant can show that it was not reasonably practicable for it to have been presented within the time limit and that it was presented within a further reasonable period ('the unfair dismissal time limit issue'".

The Facts

69. I find the following facts.

70. The claimant's employment ended on 30 March 2023 when he resigned. He presented a claim to the Employment Tribunal on 30 April 2023, bringing a claim for unfair dismissal and ticking the boxes for age, race, disability, sexual orientation and sex discrimination. He also ticked the boxes claiming a redundancy payment and claiming notice pay, holiday pay, arrears of pay and other payments. At section 8.2 he identified his claim as a "constructive dismissal/police whistleblower claim".

71. I rely on the claimant's evidence to find that on 1 May 2023 the claimant had believed that a neighbour, who was a female serving police officer, was" out to get

him" and had come into his house and hacked his internet. He believed the neighbour had done this to scupper his Tribunal claim. The claimant went to her address and spoke with her partner. As a result of this he was arrested the following day, 2 May 2023. He was released the following day on police bail with conditions he did not enter the home of the relevant neighbour or contact them. I find the claimant was mentally ill at that time.

72. I find the claimant's mental health continued to deteriorate. I accept his evidence that he walked home from the police station in Blackpool to Blackburn overnight a distance of approximately 40 miles.

73. The claimant then made his way to Aberdeen in Scotland where he was admitted as a voluntary patient into psychiatric care between 5 May and 16 May 2023. I accept his evidence that he went to Aberdeen because his sister was there and because given his deteriorating mental health he felt frightened for his own safety in Lancashire.

74. Whilst in hospital on 8 May 2023 he wrote to the Tribunal asking for an update on the status of his claim and explained he was in psychiatric care and unable to attend a hearing. The Tribunal wrote back the following day (9 May 2023) explaining that the claim had not yet been served on the respondent as the Tribunal had a backlog of casework.

75. The claimant was discharged from hospital on 16 May 2023. (p334) The discharge record notes that the presenting complaint was hypomania and referred to persecutory delusions regarding his neighbours hacking him and that he was under constant surveillance from his workplace. On discharge he was noted to have good insight and it it was recorded there was no evidence of hypomania. He was noted to have no psychotic symptoms or grandiose ideas.

76. The claimant did not have any accommodation in Aberdeen and on discharge from hospital his address was noted as "homeless" (pages 339 and 340). However, I find the claimant was initially accommodated in bed and breakfast accommodation (see page 341) and then secured a tenancy from 27 May (see page 343).

77. On 14 May 2023 the claimant had written again to the Tribunal asking for correspondence to be sent via email.

78. On 14 June 2023 when the claimant was still living in Aberdeen(although not in hospital) he contacted the Tribunal stating, "please consider this matter discontinued". The claimant explained that the matter had never been formally issued or served. He mentioned that he was motivated to protect his family and was too psychiatrically unwell to proceed with the claim. The concluded by saying, "my family and friends have urged me to drop the matter. Sometimes there is no justice except that we get on with our lives".

79. The Tribunal responded by a letter of 20 June 2023 informing the claimant, "both cases are closed". The Tribunal had issued case number 2404183/2023 for the claimant's claim and case number 2404184/2023 for the claim relating to the second claimant the claimant had listed on the claim form.

80. I rely on the claimant's evidence that he withdrew his claim because he accepted the advice of family and friends it was appropriate to drop the litigation.

81. I find the claimant returned to Blackburn in early July 2023 when his mother became very seriously unwell and was admitted to intensive care. I rely on the claimant's evidence to find that she remained in hospital until November 2023 although she was out of danger in terms of her life being threatened in or around August/early September. I find the claimant remained under the care of his GP who certified him not fit for work due to hypomania between 15 May and 15 July 2023 (page 335). Between 4 August and 3 September 2023 the GP certified the claimant had bipolar disorder and was fit to work altered hours (page 336). In the period 29 August 2023 for eight weeks the GP certified that the claimant was not fit for work due to bipolar disorder (page 337). During the period 27 October to 25 December 2023 the GP certified the claimant was fit for a limited number of hours of work and that his condition was bipolar symptoms.

82. On 31 August 2023 the claimant wrote to the Tribunal asking, "please can this matter be reconsidered?". He said:

> "I was psychiatrically unwell at this time as a direct result of the stress of a Tribunal claim. No defence was filed. I need the Tribunal's permission to restart the claim after discontinuance."

83. The matter was referred to me (Employment Judge Ross) by the Tribunal's administration team on 13 September 2023. I instructed a letter to be sent informing the claimant that:

> "Unfortunately there is no power for the Tribunal to reopen your claim once it has been dismissed and the Judge notes the claimant's claim was never served on the respondent.
>
> The claimant may wish to submit a new claim with an application to proceed out of time. If the claimant does resubmit his claim he must obtain an ACAS early conciliation certificate.
>
> Employment Judge Ross suggests the claimant seek legal advice and an advice leaflet giving information about advice agencies is attached."

84. On 20 September 2023 the claimant submitted a new claim form. It was acknowledged on 18 October 2023 and served on the respondent.

The Law

85. The law in relation to time limits is set out in section 111 Employment Rights Act 1996. Section 111(2) states:

> "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."

86. There is no dispute in this case that the effective date of termination was 30 March 2023. Accordingly, the claim should have been presented to the Tribunal by 29 June 2023.

87. Section 207B(3) Employment Rights Act 1996 gives an extension of time in relation to time limits to facilitate conciliation before institution of proceedings. It is the so called " stop the clock" provision. It is arguable as to whether it applies here as the claimant went to ACAS well outside the primary limitation period.However, if it applies , the claimant's contact with ACAS was recorded as being on 18 September 2023 ("DAY A)" and a certificate was issued on 20 September 2023. ("DAY B)", so n the period beginning with the day after Day A ie 19 September and ending with Day B ie 20 September is not to be accounted. Therefore so the days not to be counted are 2 days. So taking the claimant's case at its highest limitation would expire not on 29 June but on 1 July 2023.

88. There is no further extension under s207B(4) ERA 1996 because the primary limitation expired before the claimant went to ACAS.

Discussion and Conclusions

89. There is no dispute in this case that the claimant's case, which was presented on 20 September 2023, was presented outside the time limit.

90. I therefore the next issue, which is whether the Tribunal "is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months".

91. The parties reminded me of the well-known case of **Dedman v British Building and Engineering Appliances [1974] ICR 53**. I reminded myself that what is reasonably practicable is a question of fact and also that the onus of proving that the presentation in time was not reasonably practicable rests on the claimant.

92. The claimant is an intelligent man. He has a law degree and studied for the bar finals exams. The claimant said in his evidence that there was no dispute that he was well aware of the time limits in relation to his claims.

93. It is also the case that the claimant has been mentally unwell, particularly in the period from 1 May -16 May 2023.On 16 May he was discharged from a psychiatric hospital. A psychiatric assessment report completed in November 2023 notes a diagnosis of the claimant's mental health condition is possibly affective disorder such as bipolar, although a stress vulnerability model of psychosis was also met.

94. However, the Tribunal reminds itself that the question to consider is whether it is satisfied that it was not reasonably practicable for the complaint before the end of the period of three months. In this case it was reasonably practicable for the complaint to be presented within the time limit because it was. The claimant

presented a claim within the time limits.He presented it very quickly after his employment ended on 30 March 2023. He presented his first claim days later on 3 April 2023. The point in this case was that the claimant discontinued his claim. He wrote to the Tribunal expressing asking to do so on 14 June 2023., using the language of "discontinuance".

95. The claimant says that the Tribunal should have regard to his state of mental health when he decided to withdraw his claim on 14 June 2023. He has referred to suffering from medical incapacity at that time.

96. I am not satisfied that there is evidence of medical incapacity in terms of the claimant's email of 14 June 2023. The claimant has provided a letter from his GP (pages 375 and 376 of the bundle) which confirms that the claimant "had been very unwell mentally during the period between March and September 2023". It says there was "evidence he suffered psychotic episodes where he was not sleeping, having delusional symptoms following him being arrested". It does not say the claimant suffered from medical incapacity to make decisions.

97. There is no doubt that the claimant was very mentally unwell during the period March 2023 until September 2023 as the doctor describes. However, there is no evidence that the claimant was unable to communicate with the Tribunal.

98. The Tribunal heard from the claimant that in a previous episode of hypomania when he was a university student preparing for his dissertation, in fact he was able to function at an extremely high level when in a hypomanic phase and secured the best mark in his year for his dissertation.

99. In any event, the claimant was able to communicate coherently to the Tribunal even whilst he was an inpatient in the psychiatric hospital (see his letters of 8 May and 14 May 2023). I entirely accept the claimant's evidence and that of those treating him that he was unwell in the period March to September 2023. However, that did not prevent him from lodging his first claim within time.

100. I also find that the claimant had a number of challenging personal family issues, namely his mother becoming very seriously ill and being taken into intensive care and his sister obtaining a non-molestation order against him during the summer of 2023 and cutting off contact with him. However, these are not directly relevant to the issue of whether the claimant could present his claim within time. He was able to present his claim within time because he did.

101. I am not satisfied that there is evidence of mental incapacity such that the claimant's decision to withdraw his claim can be disregarded. I find what happened in this case was that the claimant changed his mind. On 18 June 2023 he accepted the advice of family and friends to withdraw his claim. On his own evidence, by 31 August 2023 when he asked to reinstate his claim, he had changed his mind. By that stage he was feeling better mentally and his mother (who had been admitted into hospital in July) was now no longer quite so seriously ill.

102. However, at the point when the claimant decided not to continue with his claim on 18 June 2023 his mother was not yet ill, requiring a hospital admission.

103. The claimant was most acutely ill between 1 May and 16 May 2023. The claimant was not in the most acute stage of his illness after 16 May. I find after that date he was no longer in a psychiatric hospital, although he remained unwell. I return to the question posed by the statute: was it reasonably practicable to present his claim in time? I find it that it was reasonably practicable for the claimant to present his claim within time because he did so. It was reasonably practicable to re submit his claim during the remaining "in time" period which expired at the latest on 2 July. The claimant was able to live independently during this period reflected by the fact he secured and signed a tenancy agreement. Accordingly, the claimant's application for the time limit to be extended is refused.

Time limits (issue 3) Public interest Detriments

104. I turn to the final issue, which is to consider whether the claimant's claim of whistleblowing detriment under section 43A, 43B and 47B Employment Rights Act 1996 was presented within the time limit in section 48(3)(a) Employment Rights Act 1996. The law states that:

> "An Employment Tribunal shall not consider a complaint under this section unless it is presented –
>
> (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them; 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."

105. The claimant relies on five allegations of detriment. I have already decided that detriment 5, which relates to the claimant's arrest and criminal investigation, is a detriment which the Tribunal does not have jurisdiction to hear.

106. Therefore, the other detriments relied upon by the claimant as identified by Employment Judge Newstead Taylor relate to matters which, taking the claimant's case at its highest, relate to a series of acts which culminate in March 2023. The allegations are:

(1) After January 2023 Chief Inspector Holt:

 (i) required the claimant to change teams;

 (ii) kept the claimant on the management plan instituted on 18 October 2022;

 (iii) failed or refused to re-institute the claimant's place on the Blue Light course.

(2) In early March 2023 Inspector Potts verbally implemented a new and more onerous incarnation of the management plan which the claimant never accepted.

(3) Inspector Potts demanded the claimant came into work on his rest day for a 'dressing down.'

107. I have disregarded detriment 4: "On 30 March 2023, the respondent dismissed the claimant" because the claimant cannot bring a claim of dismissal as a detriment when he is bringing a claim for automatic unfair dismissal under section 103A Employment Rights Act 1996.

108. Therefore, taking the claimant's case at its highest, the last act appears to have occurred in March 2023. Again, taking the claimant's case at its absolute highest the latest date must have been, for any of those actions, on the last day of the claimant's employment on 30 March 2023, and therefore the date the claim should have been presented was 29 June 2023 or 2 July 2023 if the claimant is entitled to an extension. I rely on the same reasons as set out above in the claimant's time limit unfair dismissal issue that it was reasonably practicable for the claimant to present his claim within the time limit, because he did so. What happened was that the claimant withdrew his claim and then changed his mind and decided to reinstate it. As it was reasonably practicable to present within the time limit, the Tribunal does not have jurisdiction.

109. Therefore, given that the claimant's claims for whistleblowing detriment were presented outside the time limit and it was reasonably practicable for them to be presented within time, given the claimant's application to amend to bring a claim for direct race discrimination was not permitted and given that the detriment 5 has already been disallowed for want of jurisdiction, there is nothing left of the claimant's claim as it has all been struck out for want of jurisdiction.

110. The final issue for listed for decision making by Employment Judge Newstead Taylor was the issue of discrimination (time limit issue). However, given the claimant's application to amend to include race discrimination was not permitted then there was no remaining time limit issue under the Equality Act to decide.

111. On the day of the hearing the claimant submitted an application for an amendment for disability discrimination. With the agreement of the parties we did not proceed to hear that application because it had not been identified by Employment Judge Newstead Taylor and the respondent had no opportunity to consider it. I explained to the claimant that should his claim survive the applications listed today it would be heard on another date. However, given that the claimant's claim has been struck out there is no claim left to amend and no action can be taken with regard to that application.

Employment Judge KM Ross

Date:29 May 2024

REASONS SENT TO THE PARTIES ON
Date: 11 June 2024

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FOR THE TRIBUNAL OFFICE

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