



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A K Taneja  
**Respondent:** Barts Health NHS Trust  
**Heard at:** East London Hearing Centre  
**On:** 09 February 2024  
**Before:** Employment Judge Townley

## Representation

**For the Claimant:** In person  
**For the Respondent:** Mr O Holloway (of Counsel)

Judgment having been sent to the parties on 22 April 2024 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013:

## REASONS

### Procedural history

1. The Claimant has a number of other matters pending before the tribunal in respect of age and race discrimination and related claims. These are listed under case number 3204209/22 and they are not affected by this judgment. This matter, which relates to further claims of race discrimination, age discrimination, and victimisation, was listed before the tribunal today for a preliminary hearing in public to decide whether these claims could be consolidated, as further claims, with those already before the tribunal under case number 3204209/22.

2. The scope of today's hearing was set out in a case management order (CMO) of 28 November 2023 of EJ Crosfill (of which the Claimant asked for a reconsideration, which was declined). The CMO states the following:

'110. ... It was necessary to deal with the question of whether the Claimant's second claim should be consolidated with his first and heard

during the same time period. The Claimant said that it should and the Respondent was opposed to that course of action.

111. The Claimant's second claim is almost as poorly drafted as his first. That is a matter of real disappointment. It is not obvious what claims are being brought other than the fact that there is a further complaint that the Claimant was not offered the role of Cardiology Clinical Lead. The Claimant was notified of that on 6 February 2023. He issued his claim on 15 May 2023 ... There is an issue as to whether the claim was presented within the statutory time limits.

112. I decided that the claims could not be heard together. The Claimant's first claim is of enormous scope. It would add to the burden of the tribunal hearing that claim to add further claims. The claims remain unclear and there are jurisdictional questions that need to be resolved. I decided not to consolidate the claims and I made the orders below for a further preliminary hearing. The hearing shall be listed as a hearing in public to deal with ... at the election of the judge conducting the hearing: deciding whether the claims should be struck out under Rule 37 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the basis that the Claimant has no reasonable prospect of showing that they were presented within the time limit set out in section 213 of the Equality Act 2010; or deciding whether the claims were presented within the time limits set out in section 123 of the Equality Act 2010 ...'

3. It is agreed that the complaints relate to Claimant not being appointed, as the Cardiology Lead Clinical Role, following interview at Whipp's Cross Hospital. This decision was communicated to the Claimant on 6 February 2023. He raised complaints, under the Equality Act, in his ET1 dated 15 May 2023. There was no period of early conciliation and the three-month time limit to issue a claim had therefore expired on 5 May 2023. The Claimant's claims under case number 3200885/2023 are, therefore, time-barred unless he can argue that it is just and equitable to extend the time limits under s 123 of the Equality Act 2010.

### **The hearing**

4. The Claimant represented himself at the hearing after which a full oral judgment was given. I informed that him, before giving my judgment, that he was at liberty to take notes, but he declined to do so.
5. The Claimant gave evidence, under oath, and was cross-examined by Mr Holloway on behalf of the Respondent. In his evidence, the Claimant said that he had asked the counsel, who represented him at the preliminary hearing on 28 March 2023, about adding the complaint about the Cardiology Lead interview outcome, which was communicated on 6 February 2023. He said that counsel had advised him that he did not need to put in a new claim as this act was a continuance of his existing claim. The Claimant then said that that counsel was no longer able to represent him. He then consulted a firm of solicitors during the third week of April 2023. They had advised him that while he had no need to 'do' another ACAS conciliation period, that he

had to submit a new ET1 relating to the current claims. This was done on 15 May 2023.

6. In relation to the Cardiology Lead interview, the Claimant said that he was abroad in India visiting family on 6 February 2023 and that he was interviewed for the post of Head of Cardiology via an online platform on that day at his request. He said that he gone to a neighbour's house to undertake the interview and had then emailed Dr Archibold from there asking for the outcome of the interview to be sent to him via email (he was using a phone with a SIM while in India). The Claimant said that he had gone out for dinner after the virtual interview and had then stayed in a hotel for 3 – 4 days where he had internet access but no computer. After that he had become involved with attending a family wedding and had had to attend to various family issues, including problems with his teeth and other important family jobs and that his mother, cousins, aunts and everyone else were complaining to him about things. The Claimant returned to the UK on 18 or 19 February 2023 and he had received a lot of emails in his absence which he had to open. He did not see the email telling him that he had been unsuccessful in the interview until 19 or 20 February 2023. It was in his head that race and age discrimination had already been raised and he thought that this was just a continuity of the complaints that were already before the tribunal.

### The law to be applied

7. When exercising a discretion under s 123(1)(b) of the Equality Act 2010, and deciding whether it would be just and equitable to extend time, the tribunal had to assess all relevant factors in a case, including the length of, and reasons for, the delay (**Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23).
8. With reference to **British Coal Corporation v Keeble** [1997] IRLF 336 and **DPP v Marshall** [1998] IRLR 494, the tribunal's discretion, when extending time, is as wide as that of the civil courts under s 33 of the Limitation Act 1980. This requires courts to consider factors relevant to the prejudice that each party would suffer if the extension of time were refused, including (i) the length of and reasons for the delay; (ii) the extent to which the cogency of the evidence is likely to be affected by the delay (iii) the extent to which the party sued had co-operated with any requests for information. (iv) the promptness with which the claimant acted once they knew of the possibility of taking action, and (v) the steps taken by the claimant to obtain appropriate advice once they knew of the possibility of taking action. However, the list is not exhaustive.

### The submissions

9. Both parties made oral submissions. The Claimant states that he was not aware of the interview outcome until 20 February 2023 due to his being abroad and that he considered that it was a continuity of the other matters already before the tribunal and he was so advised by counsel who represented him at the preliminary hearing on 18 March 2023. He had submitted a further claim as soon as he had been advised to by solicitors, who he had instructed during the third week of April 2023. Therefore he

submits that it is just and equipment to extend the time limits to bring these claims out of time and to consolidate them with the existing claims

10. The Respondent argues that the Claimant's claims are time-barred because they are time-barred by ten days and that the Claimant has no reasonable grounds for showing that the claims were presented within the time limit under s 123 of the Equality Act. The Respondent submits that it is unlikely that the Claimant had not read the email communicating that he was unsuccessful in his interview on 6 February 2023 until 20 February, given that he had specifically requested that the outcome was sent by email, and the outcome was, in fact, provided by return email. The Claimant had admitted to checking his work emails prior to 6 February 2023 when he was on holiday in India. Furthermore, this only accounted for 14 days of the normal time limit and the Claimant had given no adequate explanation as to why he did not bring his claim in the remaining time before the expiry of the normal time limit (approximately a further two and a half months). The Claimant would have been acutely aware of the issues with regards to the time limits concerning his existing claim, at the very least, by the date of the preliminary hearing of 28 March 2023. He would also have been aware that he was not appointed to the role by that preliminary hearing and chose not to raise it at the hearing, where he had also had the benefit of legal advice. The Respondent also contended that the merits of the claim were weak and that the Claimant had no reasonable prospect of succeeding in his claim because the reasons for his non-appointment, as set out in the particulars of the response, were that he had scored less in the interview than the other applicant for the same role.
11. The Respondent further submitted that it would not be just and equitable to extend time as it would be prejudiced by lack of finality in proceedings. The Claimant had already brought multiple allegations and had repeatedly sought to add more allegations to his claims. It was particularly prejudicial to the Respondent if it could not rely on the finality of time limitation to limit the Claims the Claimant might bring, particularly given the ostensibly unmeritorious nature of the out-of-time complaints. In his witness statement (dated 19 January 2024) the Claimant had said only that the fact that he was not appointed 'may' have been due to the fact that he had brought a tribunal claim against the Respondent. Furthermore, if the claim were to proceed, it would result in greater cost, use of resources, and time that the Respondent was required to spend on litigation, all of which will impact upon public services and the public purse. Against that there was limited prejudice to the Claimant as the vast majority of his claims were already before the tribunal in case number 3204209/22.
12. The Claimant had also, within his statement (of 19 January 2024) referred to a further legal complaint of victimisation which was not pleaded in his original ET1 of 15 May 2023 or since. Therefore, the Respondent argues that the tribunal should refuse that amendment.

## **Conclusions**

13. The act about which the complainant submits his complaints in this case, namely the failure of the Respondent to appoint him as Cardiology Lead, was communicated to him on 6 February 2023, by email. The Claimant had

had an email exchange with Mr Andrew Archibold of the Respondent on that date requesting that he be informed of the outcome of the interview. Some 43 minutes later, Mr Archibold sent an email to the Claimant informing him that he had been unsuccessful at interview. At the time of the interview, the Claimant's complaints under case number 3204209/22 were already before the tribunal.

14. Furthermore, on 28 March 2023, the Claimant attended a preliminary hearing represented by counsel, before EJ Feeny, in respect of his claim under case number 3204209/22. A number of amendments to that claim were submitted at that hearing, including the addition of several complaints relating to alleged acts of race and age discrimination. EJ Feeny brought it to the parties attention that some of the claims were out of time. The claimant failed to mention that he intended to bring further claims relating to the act of 6 February 2023 (the interview for Cardiology Lead).
15. I do not accept the Claimant only got around to reading the email of 6 February 2023 (stating that he had been unsuccessful in interview) until 20 February 2023 when he returned from leave. He had a SIM phone and access to the internet whilst in India and he had, by his own admission been checking work emails while in India. He had also been interviewed for the role online and had asked to be emailed the result by return, which it was. It is implausible that he did not check his emails until he returned home on 20 February.
16. In any event, the further delay from the Claimant's return from leave until the submissions of his claims was not justified. The Claimant had attended a further preliminary hearing on 28 March 2023 where he was legally represented. At that hearing the issue of time limits for claims under The Equality Act was specifically raised by EJ Feeny. By this stage the Claimant was aware that he had been unsuccessful in interview and the issue of discrimination/victimisation would have been uppermost on his mind. It was made clear by EJ Feeny that any further issues to be pleaded would need to be subject to an application to amend and the three-month time limit had also been made clear at this hearing. The Claimant would also have been aware of the time limits for bringing claims before his interview as he had had a preliminary hearing on 6 January 2023 before EJ Lewis where he had been unrepresented. EJ Lewis had informed the Claimant about the need to particularise his claims and she had also referred him to the Equality and Human Rights Commission's guidance on The Equality Act and its Code of Practice (within which time limits for bringing claims under the Equality Act are explained) telling him that he should read it before re-drafting his further particulars.
17. I find that the Claimant would have been aware by at least 23 March 2023, when time limits for bringing Equality Act claims were discussed during the preliminary hearing, that a time limit of three months would start to run from the date of any complained of act. He was aware of the interview outcome at this time. He had also taken further advice from solicitors in April 2023 about the need to submit a further claim in respect of his complaints regarding the interview. While the Claimant has been at times without legal representation, he has written to the tribunal on a number of occasions himself and is aware of how to contact and communicate with the tribunal

about the progress of his cases. I find that the Claimant has offered no adequate reason for this delay and that he had failed, without good reason, to act promptly following the preliminary hearing of 23 March 2023 to submit his claims.

18. While I accept that the nature of the Claimant's claims are important in themselves, with regards to the merits of his claim, he himself had stated it as no higher than that the Respondent 'may' not have appointed him at the interview due to the fact that he had brought a claim against them in the Employment Tribunal.
19. In weighing up the balance of prejudice, while I accept that the claim is time-barred by only 10 days, this has to be viewed in the context of the Claimant's ongoing litigation which has been the subject of a number of hearings over a considerable period of time, during which the issue of time limits was live and discussed on a number of occasions. The Claimant also had the been referred to the law in relation to time limits under the Equality Act. Therefore, to permit the Claimant to add further claims at this time, when he was aware of, and could have brought the claims well within, the statutory time limits, would result in the balance of prejudice falling upon the Respondent, which, like the tribunal, is a publicly funded body which does not enjoy unlimited resources and which is therefore is entitled to be aware of the limit of the Claimant's claims.

**Employment Judge Townley**  
**Date: 20 May 2024**