



EMPLOYMENT TRIBUNALS

Claimant: MOHNEEB AKHTAR

Respondents: JAGUAR LAND ROVER LIMITED

PRELIMINARY HEARING

Heard at: Video CVP **On:** 06 June 2024

Before: Employment Judge McCluggage

Appearances

For the claimant: In person
For the respondent: Ms Davies, Counsel

JUDGMENT

1. The claim has not been brought in time.
2. It is not just and equitable to extend time.
3. The claim is dismissed.

REASONS

Introduction

1. The Claimant has brought a case complaining of unfavourable treatment due to disability during his employment with the Respondent, Jaguar Land Rover Limited, where he was a Group Leader.
2. This public preliminary hearing was listed by Employment Judge Beck at a case management hearing on 17/10/23. The issues listed for consideration were:
 - (i) *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?*
 - (ii) *If not, was there conduct extending over a period?*
 - (iii) *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*
 - (iv) *If not, were the claims made within a further period that the Tribunal thinks is just and equitable?*

The Tribunal will decide:

 - *Why were the complaints not made to the Tribunal in time?*
 - *Is it just and equitable in all the circumstances to extend time?*
3. Other issues were listed, but the Respondent conceded that the Claimant was 'disabled' for purposes of the Equality Act 2010 in relation to depression, anxiety, and panic attacks. The Claimant did not pursue the applications to amend his complaints as proposed in EJ Beck's order.
4. The Claimant informed the Tribunal that his employment had been terminated on 19 February 2024. There was no application to amend the claim to include dismissal. I informed the Claimant he should seek advice to consider whether to bring a new claim regarding dismissal and should consider time limits.
5. The Claimant continues to experience anxiety and depression. He found it difficult to give evidence, and accommodations were made, such as giving an extended lunch break. Despite appearing anxious and fatigued, he was articulate and effectively communicated his points during the hearing.
6. Though the Claimant had not served a witness statement in breach of directions, I allowed him to give evidence under oath and be cross-examined, ensuring that he could get his whole case across and giving the Respondent the opportunity to challenge the evidence.

Law

7. Section 123 of the Equality Act 2010 governs time limits and extensions in discrimination cases. It states that proceedings may not be brought after:

- a. the period of 3 months starting with the date of the act to which the complaint relates, or
 - b. such other period as the employment tribunal thinks just and equitable.
8. For the purposes of this section, conduct extending over a period is treated as done at the end of the period, and failure to do something is treated as occurring when the person decided on it.
 9. In practical terms, discrimination claims should be sent to the Tribunal (or for a prospective claimant to enter EC) within "the period of three months starting with the date of the act to which the complaint relates" or, where there has been continuing discriminatory conduct, within three months of that conduct ceasing. This three-month period is known as the "primary time limit".

Continuing Act

10. *Barclays Bank plc v Kapur & ors* [1991] ICR 208, HL established the distinction between a continuing act and an act with continuing consequences.
11. In *Aziz v FDA* [2010] EWCA Civ 304, the Court of Appeal noted that a relevant factor is whether the same or different individuals are involved in the alleged acts of discrimination.
12. *Lyfar v Brighton and Sussex University Hospitals Trust* [2006] EWCA Civ 1548 confirmed that the Tribunal should examine the substance of the complaints to determine if they form part of one continuous act by the Respondent or an ongoing state of affairs.

Just and Equitable Extension

13. The Tribunal has broad discretion when considering the just and equitable extension. While this test is more generous than the 'not reasonably practicable' test for other claims, an extension is not automatic (*Robertson v Bexley Community Centre* [2004] IRLR 434, CA). No exceptional circumstances are required; the law simply requires the extension to be just and equitable (*Pathan v South London Islamic Centre EAT* 0312/13).
14. The Claimant must convince the Tribunal that it is just and equitable to extend the time limit. This is not a burden of proof, but rather a burden of persuasion.
15. Key factors for the Tribunal include why the claim was not brought within the primary period of 3 months, and why it was not brought sooner.
16. The Tribunal may also weigh the balance of prejudice to both parties and consider factors such as the length and reasons for delay, the impact on evidence, whether the Claimant acted promptly upon knowing the facts, and steps taken to get advice.
17. A desire to pursue an internal appeal before legal proceedings is not itself a good reason to extend time but can be a factor within the tribunal's discretion. It must be considered in its overall context, with no requirement to be allied with other factors or

prejudice to the respondent (*Wells Cathedral School Ltd v Souter* UKEAT/0836/20, applying *Robinson v Post Office* [2000] IRLR 804, EAT).

Analysis and Decision

18. The basic chronology of events, which was uncontroversial for the purposes of today's hearing, was as follows:
 - 18.1 The Claimant was employed as a Group Leader.
 - 18.2 By the end of 2019, the Claimant had experienced significant time off work through illness lasting some 16 months. Occupational health records suggested that the problem was the Claimant's perception of work-related issues.
 - 18.3 On 18/12/19, he underwent an employment review. The Claimant's employment was terminated, with a dispute over whether it was on grounds of incapability or for not following a management instruction to return to work.
 - 18.4 The Claimant appealed and had an appeal hearing on 27/01/20. This appeal was successful, and he was reinstated. The hearing manager sought agreement for the Claimant to return in a more junior and less stressful position than Group Leader, called an A grade associate. The Claimant agreed to return to work on 03/02/20.
 - 18.5 The Claimant returned to work but was unhappy with the job roles he was required to fulfil in the weeks after his return. There was no return-to-work interview.
 - 18.6 On 02/03/20, the Claimant raised a formal written grievance concerning the circumstances around his dismissal and his role upon return.
 - 18.7 On 05/03/20, the Claimant banged his head on a disc behind a wheel on a vehicle, suffering injury. The Claimant was unhappy with how the accident was recorded by management.
 - 18.8 On 09/03/20, the Claimant went off sick due to anxiety and depression, exacerbated by work issues.
 - 18.9 On 18/03/20, the Claimant attended a grievance hearing.
 - 18.10 The Claimant further advice from Thompsons solicitors in the summer of 2020 about his work problems and complaints. On 07/08/20, a letter of claim was written.
 - 18.11 The Claimant was furloughed over much of 2020/2021.
 - 18.12 On 19/01/22, the Respondent communicated its grievance decision. There had been a considerable delay, which the Respondent explained by reference to COVID-related issues. The grievance was upheld in part, with the decision-maker recommending that he return to work as Group Leader.
 - 18.13 On 08/02/22, the Claimant wrote to the decision-maker saying he wanted to seek legal assistance but was unwell at the time.
 - 18.14 The Respondent extended the appeal window to the end of February.
 - 18.15 In March 2022, the Claimant wrote to say that he had found a legal representative to support him, but they needed time to review the case documentation.
 - 18.16 On 14/02/23, the Claimant made his grievance appeal, essentially repeating the points of the original grievance.

- 18.17 On a date which is not clear thereafter, the Claimant by email gave grounds for his grievance appeal. The first was that he should have been supported in connection with his original dismissal; the second was that the grievance relating to his placement on his return to work had been successful.
- 18.18 On 11/03/23, early conciliation started.
- 18.19 On 22/04/23, ACAS issued the Early Conciliation Certificate.
- 18.20 On 19/05/23, the Claimant presented his ET1 to the Tribunal.
- 19 Employment Judge Beck listed issues bearing on discrimination, which fell mainly within a period 11/12/19 to March 2020 (the date of the grievance) but which also included as an allegation of victimisation the delay in resolving the grievance (said in the list of issues to be until March 2022, but now clear to be 19/01/22).
- 20 Dealing with the listed issues:

Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

- 20.1 The time for bringing the claim was on 18 April 2022 on the assumption of a continuing act. The claim is therefore out of time. It is not extended by the conciliation period in 2023.

If not, was there conduct extending over a period?

- 20.2 For purposes of the time jurisdiction issue, I have assumed that there was a continuing act from the complaints of December 2019 to March 2020 but also extending to 19/01/22, the date of the grievance decision. This was because I was not in a position today to make findings on the issue of 'continuing act'. That was an issue more appropriately left to a tribunal hearing the substantive issues on the case.
- 20.3 However, I reject any argument that a continuing act persisted past that date due to a grievance appeal. The way in which the Respondent dealt with the appeal is not a discrete issue identified by Employment Judge Beck. It in any event involved a Human Resources Officer and was significantly removed from the other allegations of discrimination.

If not, were the claims made within a further period that the Tribunal thinks is just and equitable?

- 20.4 The Claimant has two explanations for the delay:
- a. Firstly, that his health problems, specifically his mental health, justified an extension of time. He explained in evidence that he was ill through anxiety over the entire period and had difficulty with communication. His health deteriorated and he felt isolated as the pandemic lockdown began.
 - b. Secondly, the Claimant says that he wanted the grievance process to be concluded.

- 20.5 I accepted that the Claimant was ill during the entirety of the period and continued to be unwell today. He suffered from mental health issues, an important cause of which were work-related problems.
- 20.6 The documents and cross-examination showed that, though ill, the Claimant had been able to seek legal advice from various sources during the period 2020 to 2023.
- 20.7 Significantly, the Claimant had previously brought an employment claim in relation to harassment at work in about 2018, which was successful. He was therefore familiar with sources of legal advice.
- 20.8 The Claimant said in evidence that he received help from a friend in writing his well-structured March 2020 grievance letter. He thought also that he might have received assistance from the Islamophobia Response Unit (IRU) at this time. They advised him as to the potential for bringing a race/religion discrimination claim but could not assist him with a disability claim. Nonetheless, I took the view that they were in a position to provide assistance with discrimination time limits.
- 20.9 Correspondence from Thompsons dated 07/08/20 to the Respondent was illuminating. This was a letter of claim for what a personal injury lawyer would call a 'workplace stress' claim. This set out a significant chronology of complaints about the Claimant's workplace from November 2017 to 03/02/20 up to and including the grievance for the failure to implement a return-to-work plan. He also consulted Thompsons about his March 2020 head injury. The Claimant was therefore in a position to give instructions as to a detailed history of events. He knew the factual basis of his complaints.
- 20.10 The Claimant had access to various other sources of legal advice:
- a. A GP note on 23 August 2021 references his involving HR and a solicitor. In evidence the Claimant explained that he had sought advice from solicitors other than Thompsons.
 - b. In evidence, the Claimant told me that he had sought advice from a solicitor who was a family friend.
- 20.11 In these circumstances, I accepted that though ill, the Claimant was able to explain his complaints and seek legal advice.
- 20.12 While the Claimant was unwell, he did not disclose his GP records past 2021 and I am unable to find that he was in a significantly worse position health-wise in 2022 than 2020/2021.
- 20.13 While the Claimant's desire to finish the grievance process was understandable, my conclusion is that the Claimant was able to and did seek legal advice in 2022 and it was necessary for him to make progress once he had the result. The Respondent's email dated 23/02/23 refers to the Claimant

writing in March 2022 saying he had found a legal representative. The Claimant agreed this was correct in evidence. He explained that this legal representative was a family friend 'like a solicitor'.

20.14 I place some but limited weight on evidential prejudice to the Respondent in opening up issues in 2019/2020 years later. The Respondent does not point to specific prejudice, but I considered that a matter of common sense.

20.15 In all of the circumstances, I would have been sympathetic to allowing the Claimant an extension of time on the just and equitable basis to the end of June 2022, about 3 months after receiving advice in March 2022, but not after that period. A delay of a further 9 months was unreasonable and excessive in circumstances where the Claimant was in a position to seek advice as to time limits for the entire period.

21. The case has therefore been brought out of time and I do not extend the time limit under section 123 of the Equality Act 2010. The case must therefore be dismissed.

Employment Judge McCluggage

12 July 2024