



EMPLOYMENT TRIBUNALS

Claimant: Mr S. Manoharan

Respondent: Searce UK Limited

London Central

3 July 2024

Employment Judge Goodman

Representation:

Claimant: Ms A. M. Robinson, counsel

Respondent: Ms K. Balmer, counsel

PRELIMINARY HEARING IN PUBLIC

RESERVED JUDGMENT

1. The claims for unfair dismissal and a redundancy payment are dismissed on withdrawal by the claimant.
2. The claims for discrimination or harassment because of sex or because of gender reassignment are dismissed under rule 37 because they have no reasonable prospect of success.
3. The money claims, whether for notice pay, arrears of pay and holiday, are dismissed because they are out of time and were not presented within a reasonable period when it became reasonably practicable to do so.
4. The discrimination and harassment claims are dismissed because out of time and it is not just and equitable to extend time.

REASONS

1. This hearing was listed by Tribunal Judge Plowright at a case management hearing in March 2024. The claim form accepted in these proceedings was presented on 20 December 2023. The claimant had made a broad range of

claims, some identifiable as discrimination, others as money claims, others unclear. There was little to explain what had happened.

2. Judge Plowright identified a dual purpose for today's hearing. The first was to establish whether the tribunal had jurisdiction to hear any or all of the claimant's individual complaints, including whether they had a legal basis, and whether he had sufficient service to qualify for them. The second was to determine whether the tribunal lacked jurisdiction because all or any of the complaints were out of time.

Jurisdiction if claims made in time

3. The first part of the hearing was in the nature of a case management discussion. The claimants claim form, in the section completed to state what the claim is about, lists claims for race discrimination, workplace bullying and harassment, religion or belief teasing and harassment, age teasing and harassment, social media "stacking" (we established this means stalking) and "enforcement", termination without reason, mental/ physical torture on planned/ sick leaves, variable pay not paid, offer letter pay not entertained, personal life interference and asking personal questions, interfering in personal life and making suggestions/ threatening, sex and gender discrimination, interfering in personal life and asking personal questions, and cheating the variable pay/ bonus in wrong calculations. On page 8 of form ET1, he had ticked boxes to claim unfair dismissal, discrimination because of age, gender reassignment, sexual orientation, religion and belief, race, marriage or civil partnership and sex. He also ticked boxes to claim a redundancy payment, notice pay, holiday pay, arrears of pay and other payments.
4. In February 2024 when filing a response the respondent also served a request for further information. This had not been answered. Until today the claimant has not been legally represented. In this hearing we explored the further information required for the respondent and the tribunal to understand what was being alleged.

Unfair Dismissal and Redundancy

5. In respect of the claims for redundancy payment and unfair dismissal, the claimant now accepts that he lacked qualifying service for these claims, and he withdrew them.

The Money Claims

6. There is a claim that by his contract of employment he was entitled to 90 days notice, but has only been paid for 30 days. The 90 day term was granted in a confirmation letter dated 16th of August 2022 stating that he had passed probation, and was now Full-Time Associate Vice President - Data And Analytics Practise, effective from 3rd September 2022. Correspondence

between his dismissal in May 2023 and service of proceedings in January 2024 indicates that the respondents were not prepared to pay any more until he returned a laptop. He returned the laptop this morning. The respondents also maintain that according to the terms of the contract he is not entitled to more than statutory notice pay if he is dismissed on performance grounds, as they say he is.

7. The respondent deducted £2,800 from his final payment because he had not returned to the laptop. In this hearing counsel for the respondent conceded that now it had been restored, the money would be paid.
8. Variable pay: the claimant says that he was underpaid in that his remuneration package provided for a payment each six months of a performance related payment. He has not made a calculation of loss, and when trying to examine today what this was, it was not clear whether he had quantified this. He says final payment was the less than it should have been, but he also said that the targets by which he was to be paid had not been signed off by him.
9. According to the letter offering employment, and the claimant's own claim form, he started work on 8 March 2022. He makes a claim for payment from 2nd January 2022 until that date, on the basis that the respondent's Samir Dadia asked him, after offering him employment on the 10th January 2022, to carry out some tasks while he was serving notice with his previous employer. No information was available as to the rate at which the claimant understood he was to be paid for this work. The claim has not been quantified, indeed it could not be deduced from the claim form that there was such a claim. No application to amend was made today, but if this claim is to proceed there would have to be such an application.
10. Finally there is a claim for holiday pay. The claimant was unable to say how much holiday he had taken or what he had been paid on termination for holiday.

The Discrimination Claims

11. The claimant was asked to identify the protected characteristics relied on.
12. In respect of race, he says that he is South Indian, a Tamil speaker from Tamil Nadu. The company's senior executives, and most of the staff other than the claimant's own team, were North Indian Hindi speakers. The CEO was a Hindi speaker living in Gujarat. The claimant said many meetings were conducted in Hindi which he understands but does not speak.
13. Marriage: the claimant was married. The couple separated in mid 2022 and divorced in April 2023. At the time the contract of employment ended he was involved in court hearings in England to gain custody of their two children. She was also a Tamil speaker from a Tamil Nadu family though born in

Mumbai in Maharashtra. Her father now has a factory in Gujarat and was said to be influential in politics there. From this arises the claim of marriage discrimination. The claimant says that he was under pressure from senior managers who were from Gujarat, to change his LinkedIn profile, and to reconcile with his wife, or later, drop the custody proceedings, because of pressure from her family. The stalking and enforcement is about her family and the respondent making frequent visits to his Linked In page.

14. On religion and belief, the claimant explained that his family deity was Kuruppu Sami and Angola Parameswara. This is part of being south Indian. In his witness statement today the claimant said that in February 2023 he had asked for a few days leave around the two day Shivatri prayers and was refused, and teased about it.
15. On age discrimination or harassment, the claimant said that at a number of meetings he was teased for being young, or being too young to seek promotion. He was 41. He described the more senior managers, Hardik Parikh and Vamsi Krishna, as being in their 50s or 60s. These were were the one to one performance reviews in September 2022 and April 2023.
16. On the claim of sexual orientation discrimination or harassment, the claimant said that he himself is straight. The claim is about an episode in August 2022 After he had separated from his wife, he says, Hardik Parikh said he should come to India with him and they could have a good time together. The claimant interpreted this as an invitation to a gay relationship. The claimant responded he could not make it because his father was unwell.
17. On dismissal, the claimant maintains that he was dismissed because of his race or religion, or because of marriage. The respondents says in the grounds of response that he was dismissed because of poor performance as he had not met revenue targets for some time. It emerged in discussion In this hearing that on the day of dismissal, 9 May 2024, the claimant had asked for time off to go to the court hearing on custody, had been refused time off, and then went sick with a fever, although he attended the hearing.
18. The claimant has volunteered no details of a gender reassignment discrimination claim, and on the claim for sex discrimination, in the witness statement the claimant alludes to poor treatment of women in the company, but, asked if he had been less favourably treated because he was a man, he said not. Although not formally withdrawn, it appears that neither claim is being pursued therefore.
19. Rule 37 gives the tribunal power to strike out a claim that has no reasonable prospect of success, or is not actively pursued. When striking out a claim a tribunal must take the claim at its highest, that it, assume the claimant will establish as fact what he has asserted. The claimant has not asserted any facts, in the claim form or in his witness statement for today, or in describing his claims in more detail today, from which a tribunal could conclude that he

was treated less favourably because he is a man, or because of gender reassignment. Those claims are struck out as having no reasonable prospect of success.

Jurisdiction – Time Points

20. Having identified that the unlabelled treatment complained of in the claim form was in fact related to one or more protected characteristics, the hearing went on to consider whether the employment tribunal had jurisdiction on time grounds to entertain those claims not withdrawn or struck out under rule 37.

Evidence

21. The claimant had prepared an 18 page witness statement and answered questions from the respondent and the tribunal. The respondent adduced a witness statement from their Vice President-People Success, Samir Dadia, resident in Pune, who was not called, as the claimant had no questions for him. His witness statement was commentary on documents in the bundle, rather than matters known by him.

22. The claimant had prepared a hearing bundle of 210 pages and a “complaints bundle” of 49 pages. The respondent had a bundle of 210 pages, containing largely the same material. I read those documents to which I was directed.

Findings of fact

23. The claimant formally started work for the respondent on the 8th March 2022. The compensation structure attached to the offer of employment indicated that during the first year he would receive £205,000 per annum, payable monthly, a joining bonus of £10,000 payable after 3 months, and a fixed bonus on his first anniversary of £15,000. All these were paid. In addition he was to receive performance pay, variable being £75,000 and incentive pay another £10,000, payable 6 monthly.. He was paid some of this, but under payment forms part of this claim. From the 1st of April 2023 his fixed pay was to go up to £210,000per annum. The claimant says he did not get this increase.

24. As mentioned, the claimant separated from his wife in the summer of 2022, leading to the divorce proceedings and a dispute about custody of the children. At the moment both wife and children live in India.

25. The claimant brought with him, or recruited after his own appointment, around 40 people for his team. This team was being reduced at the time for dismissal and reduction has continued.

26. The claimant says that although he had not signed off on the bonus targets for variable pay, his performance had been found satisfactory and there was no criticism of it. It may or may not be relevant background that he complains of “teasing” or unfair treatment because of his relative youth, and his religious background.

27. The respondent, in the grounds of response, asserts that the claimant was recruited to help establish a data and analytics practice, and that he was required to meet targets for revenue bookings. They say his performance was lacking and that he obtained less than 20% of his revenue booking goal from March to December 2022. The respondent asserts too that they proposed to reorganise his team in late April 2023, with the claimant to have a lesser role and a smaller revenue target, and that he disagreed. The claimant does not discuss this in his statement. This background would be covered in evidence on a final hearing.
28. On 9th May the respondent emailed the claimant (then away from work, either because he was sick, or because he was attending a court hearing, perhaps both). Samia Dada wrote “we wanted to do this in person and over a video call and have a conversation around this and why it's important for sales to take this decision. However we will have that conversation when you feel better. We are just informing you that your services are no longer needed and here is the termination letter. We have also tried reaching you for the past few days to discuss and convey the same, however you have not been available for the same. We have taken this decision after careful consideration and in the best interests of the organisation. We wish you all the best in your future endeavours”. (The attached letter is not in the hearing bundles)
29. The claimant replied on the 12th May appealing the decision. He gave as reasons that he disagreed with the way disciplinary action was taken when he was off sick, procedure had not been followed, it was too harsh, reasons had not been given for the dismissal, and there was “too much interference in the personal life”. On 1st June he was invited to an appeal hearing. On 7th June he was told that the primary reason for dismissal was inadequate performance by not meeting business goals by a wide margin and for a long time period; stakeholders have no confidence that he would be able to meet goals in future.
30. Having appealed on 12 May, on the 15 May 2023 the claimant presented a claim online to the employment tribunal. On the prescribed form ET1 is a question, 2.6, “do you have an ACAS early conciliation certificate number?” The claimant answered no. To the right of this box, the printed form has in italics “nearly everyone should have this number before they fill in a claim form. You can find it on your ACAS certificate. For help and advice call ACAS on 0300-123-1100 or visit www.acas.org.uk”. The next two questions asked for the certificate number, or tick a box explaining why he didn't have that number. The claimant left those blank.
31. On 23rd May 2023 the claimant flew to India because he had been informed by family members that his father was gravely ill. He remained in India until last week, when he returned to the United Kingdom for this hearing.
32. On 31st May 2023 the claimant contacted ACAS for early conciliation. He describes a telephone conversation with a conciliation officer in which the

claimant said that the respondent was not paying. A certificate was issued on the 2nd June 2023. The final sentence of the certificate says “please keep this certificate securely as you will need to quote the reference number (exactly as it appears above) in any employment tribunal application concerning this matter”.

33. The claimant then emailed the employment tribunal, using the address from which he had had a confirmation notice, attaching the early conciliation certificate. He commented: “my employer has not paid my May 2023 salary or notice. Settlement and not getting any positive response from the employer on the termination reasons. This is purely discrimination in the employment”.
34. On 2nd June 2023 the employment tribunal, in a letter drafted before receipt of the email with the certificates, wrote to the claimant by post to his address in Watford. It is a standard letter telling him: “your claim form has been referred to Employment Judge Gilbert who has decided to reject it”, because he has not given an early conciliation number. Explanatory notes were enclosed including how to apply for reconsideration of the decision to reject.
35. On 19th June 2023 the employment tribunal wrote to the claimant, again by post, to his address in Watford, about “your application dated 2nd of June 2023 for a reconsideration of decision to reject your claim which has been considered by Employment Judge Stout”. As there was no specific application for reconsideration, it should be assumed that the claimant's e-mail 2nd of June attaching his early conciliation certificate was treated as an application to reconsider the rejection. The letter explains that he was required by the Employment Tribunals Act 1996 to contact ACAS prior to commencing his claim, that he had not contacted them until two weeks after presenting his claim, the defect was not rectified by contacting ACAS after commencement of the claim and “what you need to do is to submit a new claim online, this time inserting the ACAS reference numbers for each respondent in the appropriate boxes on the claim form. You should note that time limit continues to apply as if you had not already attempted to submit a claim, so you should act quickly to resubmit your claim if you wish to do so”.
36. Had the claimant done so he would still have been well within the three month time limit. The claimant explains however that his rented house at Watford was not inhabited and no one was monitoring his post, indeed during his lengthy absence he received two or three calls from the house agent asking him to clear his letter box.
37. The claimant repeated his message to the tribunal, in effect chasing progress, though they did not say so in terms. He emailed on 8th June, 20th June, 14th August and 5th September. They all complain that the employer has not paid salary.
38. On 7 September 2023 Kay Graves, administrative officer in the London Central vetting team, replied to the claimant's latest email: “unfortunately, your

claim has been rejected and your reconsideration request has been rejected. These letters were posted to you 2nd June and 19th June respectively to the address provided on your claim form". She attached both those letters to the e-mail: "in case there was an error with the post", together with a document about sources of legal advice. The letter concludes: "unfortunately, as your claim has been rejected the tribunal cannot be of any further assistance".

39. The claimant did not reply to this until 14th December 2023 when he wrote: "Thanks Kay graves. My bad; still now my employer has not paid my salary. Please suggest next steps, thanks". He received a reply that the tribunal could not provide legal advice; another list of legal advice sources was attached.
40. The claimant then took advice from UK lawyers and on 20th December 2023 presented the ET1 again, this time giving the numbers of the early conciliation certificates. This time the claim was accepted. A response was filed on 15th February 2024 disputing the claims and asking for further information. A case management hearing in March was held online as the claimant said he had neck pain and could not travel to the UK for several months. The open hearing was listed for today so that he would be well enough to attend a hearing in person.
41. The claimant has explained his delays by reference to his own health, his father's health, and his lack of understanding of employment tribunal procedure, adding that he was without income after his employment was terminated, while conceding that he did not need to pay a fee to submit a claim. The tribunal therefore looks at what happened between presenting the first claim and the second claim.
42. After travelling to India on the 23rd May to be with his father, the claimant, as can be seen, continued to correspond with the respondent, to chase the employment tribunal and was in touch with ACAS. He also set up four companies in the UK. Documents show that he incorporated Info Pulse Limited, with himself as director, on 9 June 2023, and Addup Inc Limited on the same date. On 4th July 2023 he set up two more companies in which he is shown as director, Beau Roi Limited and Sivieeon UK Limited.
43. On LinkedIn, the claimant claims to be the founder of SGS Global Consultancy Limited, incorporated on 30th May 2018, although it is his wife who is the director, at an address in Glasgow. On 7th June 2023 Companies House shows a change of the registered office address to the claimant's own address in Watford. The claimant says this was not initiated by him, but occurred when SGS ceased to pay for the use of a commercial registered office at another address, and the registered office address reverted to his home address. The tribunal allows that this activity can be discounted when assessing what the claimant could and could not do at a relevant time.
44. The claimant's father died on the 1st July 2023. He says that following this he

became depressed, and was also in poor physical health, compounded by dismissal, and loss of income. He had difficulty with digestion from May or June 2023 and was investigated for a liver complaint. He says from September to December he was confined to bed. There is documentary evidence of various investigations, but none mentions depression; of course that may not mean that he was not depressed, but only had his physical symptoms investigated.

45. Despite this, from June and August websites for the new companies were developed, and updates posted to LinkedIn. For example, it looks from the website as if on 21st of September 2023 the claimant was photographed accepting an award from the governor of the state of Tamil Nadu, though the claimant says he received the award in June and only posted the photograph in September. To receive the award he had to travel from Madarai, the family home, to Chennai, about 450 kilometres by car. The respondent expressed scepticism that he should receive an award for entrepreneurship in June 2023 when at that date his only company, SCM, was his wife's.
46. In his witness statement the claimant refers to winning 5 other awards in 2023 including "most inspiring business leader 2023" and IT software entrepreneur 2023, and CEO excellence 2023. He says these were all awarded before his employment terminated - although it might be doubted whether an award for being CEO or an entrepreneur related to his work for the respondent. He also received "digital entrepreneur of the year 2024" from the London School of Digital Business. The respondent suggests this is some evidence of active communication by the claimant with other bodies at a time when he says he was too ill to engage with his tribunal claim.

Moving on to September, the claimant denies reading e-mail while he was bedridden. A friend in Chennai, Ashwini Priyanka Rajendran, read emails for him and communicated what they said. He denied receiving e-mail on his phone in his home town, but he did receive WhatsApp messages, as he complained of continuing harassment from his employer on WhatsApp. He explained he has seven e-mail addresses. As well as his friend, he said "my team" was managing the LinkedIn profiles, the websites, and setting up a new companies. Ms Rajendran has provided a letter dated 2nd April 2024 in the bundle saying "he has given complete access to us and I am his end of end last one year. We manage the daily operations of his personal arrangements and company activities. Ensures that all business processes and functions are carried out efficiently and effectively. Manages all social media accounts and e-mail ID's" for the claimant and his group of companies. In evidence the claimant said he did not pay her, or the group of friends who constituted his team, and that he did not receive income from the companies, which were not doing business.

47. There was a two months interruption of communication between the parties: respondent wrote on 6th September to ask again for their laptop, and chased

this on the 5th November when they were renewed the offer to pay an extra 60 days' notice if he returned the laptop promptly. The claimant then replied at some length on 7th of November saying he had been sick for the last few months, and his representative/ consultant roger Sekhar 'would take the conversation further'. He included a detailed list of questions, an assertion that there was no company data on the laptop and they were harassing him. including on WhatsApp. All this suggests it was written at the claimant's dictation if not by himself.

48. The claimant was asked when he got the email of 7 September from the tribunal he did not ask Ashwini - or anyone else - to re-present the claim form if he was unable to do so himself. He replied first that she would not know how to use the employment tribunal website, and later that he did not want them to know that his employment had been terminated. In respect of his ability to manage correspondence at this time, it is noted that he had written to the tribunal on 5 September (and it must have been him if he did not want others to know about the termination and the employment tribunal, but was unable to read or act on the email of 7 September.
49. Finally, when considering what was practicable, it is noted from the written exchanges with the company and the witness statement he wrote recently, that the claimant has good written English. He also speaks good English with an Indian accent.

The Money Claims

Relevant Law

50. The money claims are brought under the Employment Rights Act 1996, or insofar as there are complaints of breach of contract, under the Employment Tribunals Extension Of Jurisdiction Order. The time limit for unlawful deductions from wages is enacted in section 23 of the Employment Rights Act 1996: "an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with (a) .. The date of the payment of wages from which the deduction was made". If the claim is made in contract article 7 of the extension of jurisdiction order provides a three months' time limit "beginning with the effective date of termination of the contract giving rise to the claim", A complaint about holiday pay can also be made under regulation 30 of the Working Time Regulations 1998 which provides a similar period of three months "beginning with the date on which it is alleged that the payment should have been made. In both cases the relevant date will be the date towards the end of May when the claimant was expecting the balance of his wages to be paid.
51. in all three cases there is a proviso: "where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under the section to be presented before the end of the relevant period of three months,

the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable” This is a two stage test as tribunals are reminded reminded in **Tesco Stores Limited v Kayani UKEAT/0128/16**. The cause of the failure to present in time is a question of fact - **London international College v Sen 1993 IRLR 333**. What is practicable has been discussed in a number of the earlier cases. It means that tribunal must consider what in practice prevented the claimant from making a claim in time and whether it was “reasonably feasible” to do so – **Palmer and Saunders v Southend on Sea Borough Council 1984 ICR 372**. If practicability is a question of the claimant’s state of mind, rather than a physical factor, the tribunal should consider whether that ignorance of their rights was reasonable, including whether any advice which was taken, or could have been taken - **Walls Meat Company Limited V Khan 1979 ICR 52** and **Marks and Spencer plc V Williams-Ryan 2005 IRLR 562**.

Discussion and Conclusions

Was it reasonably practicable to present the claim in time?

52. The May claim was presented but not accepted. That was because the claimant had not gone to ACAS before presenting it. The claimant has not explained why he did not heed the message on the claim form that he needed to get a conciliation certificate first. It is also hard to understand why an able and well-paid software engineer was not able to access the websites of the employment tribunals, or gov.uk, or ACAS, which would all explain what he needed to do and what the time limit was. It is not explained why he went to a ACAD two weeks later to get the certificate; perhaps it was then that he realised the error.
53. By this stage he was in India, and there being no one at his house in Watford, the letters posted to him by the employment tribunal on the 2nd and 19th June went unread. Had he read them he would have had plenty of time to present a valid claim in time. It is understandable that he did not have time to make arrangements to have his post collected when he was away, less understandable that he did not inform the tribunal that his postal address was no longer effective and that they should communicate by email, although as the claim was presented and receipt acknowledged online he could have assumed email would be used to communicate.
54. Those letters were brought to his attention in the e-mail from the tribunal of 7th September 2023. The tribunal therefore has to consider whether it was not reasonably practicable for the claimant to present his claim again then, this time naming the conciliation certificate numbers, until he did this on 20th December. The letter of 19th June, which was attached to the e-mail of 7th September 2023, explained what he had to do. It was not complicated.
55. The tribunal has to assess the claimant’s evidence that he was completely bedridden and unable to deal with correspondence or practicalities between 7th September and mid-December. During that time he, or others on his

behalf, were posting on social media, the claimant was reading WhatsApps, his e-mail to the company the 7th November, reads as if written by the claimant, or at his direction, because of the quality of the detail and engagement with the argument. Similarly, it is hard to understand how during August, September and the rest of the autumn, others were busy building websites and posting on LinkedIn and social media for him without any involvement by him. There is little evidence other than the claimant's oral answers as to his physical or mental health at the time. The investigations into the liver do not appear to have concluded with a diagnosis. The only diagnosis is of cervical spondylosis, in December, by which time he was on his own account (taking 14th December, the date he emailed to the tribuna,l as evidence that he was reading e-mail now if not before), back in Chennai and engaging with correspondence and business. Even then, he does not seem to have read the attachments to the 7 September e-mail. It is also barely plausible that if he could use his phone at home in Madaray, he could not get onto the web to read his e-mail. It may be true that Wi-Fi was not as strong there as in Chennai, but he was able to communicate with his team in Chennai during this time.

56. The tribunal concludes that it was reasonably practicable for the claimant to read the 7th September e-mail and its attachments, and to act on it within a week or two.

Reasonable Time Thereafter?

57. Was it reasonable not to take action from then until the 20th December? It seems that at least by the 14th December the claimant had read the e-mail and was replying to it, although he does not seem to have engaged with the attachment which told him what he needed to do next. Given that he does appear to have been active at some level between September and December (for example when he wrote to the company on 7th November) and that presenting his claim online using the same text as before, with addition of the early conciliation numbers he already had in digital form was not in any way difficult or requiring thought, it cannot be said that he acted "within a reasonable time" thereafter. It was a lengthy period of inaction, which must be measured against Parliament's prescription of a three month time limit for claims.

58. The employment tribunal does not have jurisdiction to hear the money claims.

The discrimination and Harassment claims

Relevant Law

59. The Equality Act also prescribes a time limit for claims, at section 123, also three months, starting with the date of the act to which the complaint relates, or "such other period as the employment tribunal thinks just and equitable". Time for claims of discriminatory dismissal runs from 8 May 2023. Claims for

other discrimination vary. The sexual orientation claim appears to run from August 2022 and is well out of time. The race discrimination claim concerns delays in on boarding at the start of employment, but was said to apply to the rest of the team, only 80% of whom were south Indian, and may be difficult to establish, even if they were in time. There is a religion and belief harassment claim from February 2023, but no evidence of religion discrimination or harassment after that, so those acts will have been out of time before he went to ACAS.

60. What is just and equitable has been extensively considered in the case law. Tribunals should consider how long the delay was, and the reasons for it – Some relevant are listed in **British Coal Corporation v Keeble**, by analogy with the Limitation Act and personal injury claims, but it is not an exhaustive checklist. What has to be considered is why the claims were late, and the balance of prejudice between the claimant under respondent – **Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 EWCA 23**.

Discussion and Conclusion

61. The initial delay arises from the claimant's error in presenting the form without inserting a conciliation certificate number, despite the specific questions asked about this on the form. People do however make mistakes. When the mistake was pointed out to the claimant, when he was still in time to present his claim, he was overseas and had not notified the tribunal of any change or that they needed to contact him by e-mail. Of course he may have had other things on his mind at the time. As discussed above, it is much harder to understand why the claimant did not see, or was not told by those reading his e-mail, about the communication from the tribunal at the beginning of September 2023. He neglected this, despite being able to contact business activities at some level until mid-December 2023 when he did respond to the tribunal email. The health factor relied was most likely depression, given the lack of clear diagnosis of some other condition, but it does not seem to have been disabling given the level of other activity.
62. What is the disadvantage? The real difficulty of delay is the effect it has on the cogency of the evidence. Judging by what has been said and presented today there seems to be little or no documentary evidence of the claims of sexual orientation discrimination, race discrimination, religion and belief discrimination, and possibly even marriage discrimination, unless there are any emails making specific reference to this. That means much of the claimant's case will rely on his oral evidence and the oral evidence of the two principals he identifies as responsible for his treatment. The lack of detail in his claim form as to what actually happened or how it corresponds to any protected characteristic has only been clarified today. That means that even when the claim was sent to the respondent at the beginning of 2024, they will not have been able to investigate the detail other than to put their side of why they dismissed him. Only now can they begin to investigate matters other than the dismissal itself. That puts the respondent at great disadvantage.

63. As for disadvantage to the claimant, it can be argued that some of his claims have little prospect of success, either because they are very old and would have been difficult even if his claim form had been presented within three months of termination - for example complaints about on boarding at the start of employment , the race harassment remarks in February 2023 or the sexual orientation claim. The complaints about age would only be in time from April 2023,;while the payment might be able to prove harassment in remarks about being too young for promotion made in performance reviews, it seems unlikely he could establish discrimination. With respect to his ethnic origin, religion, or even age, given that he was recruited at a very substantial salary when the respondent must have known these things about him, it would require more than these facts alone to establish a case.
64. The principal claim is for dismissal, where the dispute will be whether he was dismissed because he was engaged in a marital dispute, with members of his wife’s family having business links to the principals, or whether it was, as they say, his failure to deliver on his targets for revenue. The claimant does not discuss this, save to assert that his performance had not been criticised, but evidently there was some dispute about his goals, as he says he had not signed them. I conclude that his claims for discriminatory dismissal may have some prospect of success, but many of his claims are not strong, such that the disadvantage to him of not being allowed to pursue them out of time is less.
65. Weighing the reasons for delay in the balance of prejudice between the parties I conclude that it is not just and equitable to extend his time to present the Equality Act claims. These too fail for want of jurisdiction.
66. That being the conclusion, it is not necessary to consider other prospects of success for the applications to strike out or make a deposit order.

Employment Judge Goodman
4 July 2024

JUDGMENT AND REASONS SENT to the PARTIES ON

5 July 2024

.....
.....
FOR THE TRIBUNAL OFFICE