EMPLOYMENT TRIBUNALS

Claimant: Mrs A Kaur

Respondent: Berryworld t/a Prepworld Ltd

Heard at: London South by MS Teams **On:** 20 June 2024

Before: Employment Judge Jones KC

Appearances:

For the Claimant: Mr Kuldeep Clair, Solicitor
For the Respondent: Mr Patrick Keith, Counsel

JUDGMENT

1. The Claimant's discrimination claims are out of time and are dismissed.
2. The Claimant's claim for notice monies is out of time and is dismissed.
3. The Claimant's claim for a redundancy payment is dismissed upon withdrawal.
4. The Claimant's application to amend her claim to add claims for unfair dismissal and for direct discrimination arising from the termination of her employment is refused.

REASONS

Background

1. The Claimant started employment on 29 July 2014. With effect from 16 April 2016 she became an employee of the Respondent by operation of the **Transfer of Undertakings (Protection of Employment) Regulations 1992**.

2. The Claimant alleges that she was she was bullied and harassed at work.

3. The Claimant began a period of sick leave on 16 March 2021 from which she never returned to work. Her statement of fitness for work, dated 23 March 2021, says that she was suffering from a "viral illness". A further statement was submitted dated 24 May 2021 which states that the reason for her absence is "headache". A letter from the Claimant's GP (dated 17 June 2024) suggests that she consulted them about "anxiety and depression" in June 2021. The GP's letter suggests that the Claimant's mental health had struggled "due to the work environment".

4. On 2 June 2021, the Claimant's husband emailed the Respondent alleging that the Claimant had been "bullied" on a daily basis. He made it clear that the Claimant was affected by "very bad anxiety and stress". He also made reference to depression. He outlined a number of steps that he was proposing to take including that they would "contact [their] solicitor".

5. By 15 June 2021, the Claimant had been absent from work for three months. Notwithstanding the threat to contact a solicitor, no claim had been commenced. The Respondent says that it follows that any matters about which the Claimant may now wish to complain were out of time.

6. On 14 September 2021, the Claimant's husband again emailed the Respondent. In his email he says:

> "Our solicitor is working on Our discrimination case against your firm. Due to his busy schedule we are little late. Our issue will be solve in court room is your company not taking responsibility for this discrimination and anxiety/depression."

He goes on to say later in the email:

> "You will receive her sick note soon. She has lost around £8000 in this sickness. Our solicitor will contact you in coming days. If not then we have to change our solicitor. We going to use our solicitor against your film [sic] for
>
> (1) discrimination
>
> (2) employment settlement.
>
> (3) full sick pay.
>
> (4) health and employment insurance for her rest of life."

On its face, the correspondence suggests that the Claimant believed she had grounds for claims against the Respondent, including, specifically, for discrimination. It also suggests that she realised that the claims might be out of time (i.e. "we are a little late"). It unequivocally confirms that a solicitor had been instructed and that they were working on the threatened claim.

7. The Respondent did not hear from any solicitor at that stage and no proceedings were commenced.

8. On or about 23 September 2021, the Claimant started a job elsewhere. She does not appear to have told the Respondent, which was under the impression that she remained unfit for work. According to her ET1, the Claimant's new job was better paid than her old one.

9. On 15 October 2021, the Respondent wrote to the Claimant pointing out that she had been absent from work without a further statement of fitness from 16 August 2021 and that they had been unable to contact her by telephone. A welfare call and meeting had been offered on 19 September 2021 "to discuss and try to support your current depression and anxiety" but the Claimant had not attended the meeting. The letter went on to say that the Respondent was "still very keen on supporting your return to work" and invited her to get in touch with the HR department "as a matter of urgency". It then issued an ultimatum:

> "If we do not hear back from you by 28/10/2021 we will have no choice but to make you a leaver and pay you outstanding annual leave you may have accrued and issue your P45".

"Make you a leaver" appears to be a euphemism for "terminate your employment".

10. The Claimant did not respond and, from the Respondent's point of view, her employment terminated on 29 October 2021. A leaving form of that date records her last working day as 29/10/2021 and gives "AWOL" as her reason for leaving.

11. The Claimant's husband wrote to the Respondent again on 19 January 2022. That was within three months on the date on which the Respondent had treated the Claimant's employment as coming to an end. If there was a complaint about the dismissal, it would, therefore, still have been in time. The email says:

> "I am contacting you behalf of Mrs Amandeep kaur .She have suffered Psychological injuries in your company. Due to bullied and discrimination at work by her managers and supervisor, Mrs Amandeep kaur is still unwell .our all family is suffered with her condition including our children every single day.
>
> You have finished her job in company and send her P45 via email, She had worked more the seven years. You have finished her job without any compensation. She had lost her 8 month pay plus got Psychological injuries in her life. This action have confirmed that this Discrimination and bullied was fully support by management.
>
> We already have our solicitor for this matter. But She did not sign on the papers after three months. you have scared her very badly .She don't want to talk about your company any moment. She don't want to listen your company's name.
>
> Our legal insurance have allowed us to use our own solicitors in this matter. legal cost will paid by our insurance This reason we will take your firm to employment court or high court very safely and smoothly because of our legal insurance. Otherwise we have no money to fight against your firm.

> Mrs Amandeep kaur is not signing on legal documents to sue your firm due to stress and anxiety given by your firm's . Please don't ask for depression treatment and support.
>
> Her case value according to our solicitor. Now you have to speak to your insurance with in few days regarding settlement . even she did no sign the paper but legal action will be carry out today or tomorrow.
>
> After discuss with your insurance you have to solve this issue a.s.a.p. without further delay . If you don't want solve this issue outside the court, that is up to you otherwise I will try to take fully permissions from Amandeep kaur and start legal action against your firm."

12. The email appears to accept that the Claimant's discrimination claims are out of time (i.e. "she did not sign on the papers after three months"), but asserts that a solicitor has advised on the value of the claim, that she has insurance that will cover the cost of litigation and that in the absence of a settlement litigation would be commenced either that day or the following day.

13. The reason given for why the Claimant had not commenced her claims in time is that she was suffering from "stress and anxiety" which had been caused by the Respondent's actions.

14. By 28 January 2022, no claim had been commenced, with the effect that unless justice and equity required otherwise, time had run on any dismissal claim. The Claimant eventually notified Acas of her claim 26 June 2023, roughly 17 months later and a little over two years after her last day attending work. It was around 21 months after she had commenced employment with a new employer. Day B was 7 August 2023 and the ET1 was finally lodged on 8 August 2023.

The Claims

15. In her ET1, the Claimant says that her workplace was hazardous. Colleagues were injured as a result of falls caused by water on the floor. The production belt, she says, was run too fast with the consequence that low quality fruit was making its way to the businesses that the Respondent supplies. The Claimant says that she raised complaints and was then picked on. As a result, she organised a meeting with the Respondent's HR department and brought a solicitor to the workplace. After the solicitor visited, matters improved for a time and the Claimant was promoted to team leader.

16. After a few months, a new supervisor was appointed. The Claimant alleges that supervisor behaved in an aggressive manner towards her. The supervisor punched

    a table he found the Claimant working at. It is also alleged that he threw a walkie talkie at her. The Claimant also believes that the supervisor broke a window on her car. The Respondent is alleged to have refused to check CCTV records to determine whether or not her claim was well-founded.

17. The Claimant alleges that the supervisor did not like people of Indian ethnic origin and that he, further, did not like Sikhs. The Claimant believes that she was treated less favourably because of her race and/or her religion. She also alleges that she was treated less favourably because of her sex, although the basis for that allegation is not made clear in the ET1.

18. The ET1 identifies the following claims:

    (1) Discrimination (which is a reference to a **Equality Act 2010** , **s. 13** claim relying upon race, sex and religion as protected characteristics);

    (2) Injury to feelings (which is sought as a remedy in respect of the **s. 13** claim);

    (3) Personal injury (which, again, arises as an element of the **s. 13** claim);

    (4) Aggravated Damages (again, as a remedy in respect of the **s. 13** claim);

    (5) Financial loss (again, as a remedy);

    (6) A redundancy payment; and

    (7) A claim for notice pay.

19. During the preliminary hearing, Mr Clair told me that he accepted that there was no claim for a redundancy payment and wished to withdraw it. However, the Claimant wanted to add a claim for unfair dismissal and a further discrimination complaint arising from the termination of employment. Mr Clair also confirmed that: (1) there was no “whistleblowing” claim made; and (2) there was no claim advanced on the basis of a protected characteristic of disability.

The Preliminary Hearing

20. The preliminary hearing had been listed for the purpose of considering the question whether the claims had been brought in time.

(a) **The Statutory Time Limits**

21. The time limit for discrimination claims is to be found in **EA 2010**, **s. 123** which provides:

    “**123 Time limits**

    (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

    (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.”

22. The time limit for a breach of contract claim (i.e. for a notice money claim) is set out in **Article 7** of the **Employment Tribunals (Extension of Jurisdiction) England and Wales Order 1994** and provides as follows:

> "7. Subject to article 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—
>
> (a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or
>
> (b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or
>
> (ba) where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b).
>
> (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable."

23. The time limit for an unfair dismissal claim is set out at **Employment Rights Act 1996**, **s. 111** which provides (so far as is relevant for present purposes):

> "(2) Subject to the following provisions of this section, 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."

Discussion and Conclusions (a) The Existing Discrimination Claims

24. The Claimant accepts that her **s.13** discrimination claim (as currently pleaded) is out of time unless a time limit of longer than 3 months would be just and equitable[1]. Her case is that it would be just and equitable to allow her claims to proceed.

25. Whether or not to apply a time limit of longer than 3 months is a matter for the tribunal's discretion. Appeal court decisions have consistently described the ambit of the discretion in the most generous of terms. In **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640 it was described as "broad and unfettered" and "the widest possible". As with any discretion, however, it is not a licence for perversity. The tribunal must take into account all relevant factors, disregard factors which are irrelevant and reach a decision which would be open to a reasonable tribunal properly instructing itself in law.

26. The **Equality Act 2010** does not expressly assign a burden of proof on the issue, but since it is the Claimant that asserts that it would be just and equitable for a longer time limit to be applied, at least the initial burden falls on her.

27. The Claimant's starting point is that there would be a clear prejudice to her if her claims are not permitted to proceed. It is possible that she was treated less favourably because of her sex, race and/or religion and that that caused her both injury to feelings and personal injury, damaging her mental health. Her poor health caused her to be absent and her absence resulted in a loss of income. She says that her loss is measured in thousands.

28. There is also a public interest in enabling employees to vindicate their rights where employers have discriminated.

29. One relevant factor is whether there is a good reason for the delay (although the absence of such a reason is not a bar to the exercise of the discretion in her favour[2]). On this issue, her case was not entirely clear. At first it seemed to be being suggested that she was too ill to commence a claim in time. That is a proposition that would need to be evidenced. There is insufficient evidence before me to allow me to reach that conclusion. There is a letter from the Claimant's GP, but it does not touch on the question as to whether or not she was unable either to commence proceedings herself or else to instruct someone else to do it on her behalf. Given that the Claimant was apparently able to give her husband the

instructions required to write what were, in substance, letters before action and was well enough to commence employment elsewhere, it could not be said that that her ill health was so obviously bad that she could not commence a claim in time. The Claimant did not give evidence herself. No witness statement was prepared dealing

[1] It is not strictly an extension of the time limit, but the application of a longer time limit where justice and equity require it (**Jones v Secretary of State for Health and Social Care** [2024] EAT 2). [2] See **Abertawe,** above.

with the issue. Mr Clair explained that the Claimant could not give evidence at the preliminary hearing itself, as she would need an interpreter. No steps had been taken by the Claimant or her representatives to inform the tribunal that the attendance of an interpreter was required. This seems to have been because they were not anticipating that any evidence was needed.

30. Mr Clair suggested that the tribunal might consider adjourning the hearing and reconvening at a later date so that Claimant could then give evidence. That was not a course of action that I considered to be in the interests of justice. The notice of hearing had been sent to the parties six months before the preliminary hearing. The purpose of the hearing was clear on the face of the notice and it is, I consider, incumbent on the parties to attend ready to deal with the issues. There was no explanation given as to why the necessary preparation had not been done, beyond a suggestion that Mr Clair had been instructed rather late in the day. However, the timing of instruction was a matter entirely within the Claimant's control. Further, once instructed, it was open to Mr Clair to make a formal application to adjourn the hearing in advance. Instead, the question of adjournment only arose once the absence of relevant evidence was raised with Mr Clair by me at the hearing itself. The Claimant had not, I consider, complied with her duty to assist the tribunal to further the overriding objective.

31. The focus of the Claimant's case developed away from the sole question of ill health. The discussion touched upon representation or, more accurately, the lack of it. It was said (via instruction to Mr Clair) that notwithstanding the frequent and consistent references in correspondence to the instruction of (and indeed receipt of advice from) a solicitor, no solicitor was in fact instructed. Instead, it was said, advice was sought informally from a family member who is a lawyer. It was clear that claims made in correspondence could not, therefore, be taken at face value. However, the ET1 itself suggests that the Claimant had previously instructed a solicitor in respect of her working conditions and, indeed, that the solicitor had paid a visit to the workplace which had not only apparently resolved the immediate dispute but resulted in the Claimant receiving a promotion. The Claimant did not resile from the pleading. It seems, therefore, that she had legal advice available to her (either formally or from a legally-qualified family member) and (as the correspondence further indicates) understood that instructing a lawyer would be of assistance in formulating and pursuing a claim.

32. Ultimately, the Claimant's position was that she had decided not commence proceedings in time. The explanation for her decision was that she was scared that it would result in retaliation against her and that that fear was combined with her ill health. Since I have already determined that there is insufficient evidence to persuade me that ill health was a bar to timeous commencement of the claim, I need now to consider the alleged fear of retaliation.

33. Reference was made to the allegation that the supervisor had broken the Claimant's car window and acted in an aggressive manner towards her at work. I was not in a

position to make any findings as to whether those events occurred. Furthermore, even assuming that they had, I was not in a position to conclude that fear of acts of retaliation had motivated the decision not commence proceedings on time. Again, this latter proposition was advanced through Mr Clair, no evidence being led on the issue.

34. I gave the suggestion anxious consideration but was ultimately unable to accept it. In support of the proposition is the reference to her being "scared" in the email of 19 January 2022:

> "We already have our solicitor for this matter. But She did not sign on the papers after three months. you have scared her very badly ."

However, that same email not only explicitly threatens proceedings but threatens to commence them either instantly or the following day. The necessary implication is therefore that any reluctance that the Claimant had previously felt to commence proceedings had, by that date, been overcome. A further 18 months elapsed before Day A.

35. In the circumstances, the Claimant has not been able to establish that there is, even prima facie, a good reason for her delay in commencing proceedings.

36. The Respondent does not go so far as to suggest that a fair trial has been rendered impossible by the passage of time. It does, however, raise the prospect that that cogency of evidence my by now have been adversely affected:

> "The cogency of the evidence will be seriously affected by the delay. The Claimant has not yet named any putative discriminators and the Respondent has therefore been unable to investigate the allegations properly or preserve its evidence. It is not clear whether any of the relevant witnesses are still employed by the Respondent or even contactable."

It is clear, however, that the Claimant alleges that her former supervisor discriminated against her. There is no suggestion that that individual is unidentifiable, uncontactable and/or unreliable in their recollection.

37. The Respondent stresses that time limits also serve a public interest. There is an interest in ensuring that claims are identified and disposed in a timely way. The Respondent's written submissions contain the familiar and essentially ritual invocation of the decision in **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434 and the suggestion that extension should be the exception rather than the rule and as to the desirability of the strict application of time limits.

In **Jones**[2] the EAT reminds tribunals of the very broad nature of their discretion and cautions against treating those propositions from **Robertson** as rules of law. I have approached the question on the basis that the public interest that underpins time limits is a matter which must be taken into account, but reminded myself that the statutory time limit specifically prioritises the question of justice and equity. The time

[2] See footnote 1 above.

limit in a discrimination case is that which is just and equitable. Justice and equity may, of course, require prompt resolution of complaints but the public interest in prompt resolution is no more a determinative factor than any other.

38. The Respondent helpfully reminds me of the factors identified in the **Keeble**[3] case as being relevant to my determination, namely all relevant circumstances including:

"(a) the length of and reasons for the delay;

(b) the extent to which the cogency of the evidence is likely to be affected by the delay;

(c) the extent to which the party sued had co-operated with any request for information;

(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and

(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action."

Again, the list of factors is not exhaustive and no one factor (or any specific combination of factors) is necessarily determinative.

39. Taking into account all of the information before me and doing my best to balance the various factors in order to assess the just and equitable approach to the current circumstances, I have concluded that it would not be just and equitable to apply a time limit that stretched to June 2023. I accept that the consequence is that the Claimant will be kept from her claim and that that will be, from her perspective, a drastic consequence. I was not persuaded that there was a significant risk that evidence would no longer be cogent. However, I concluded that the Claimant had deliberately decided not to commence a claim in 2021 in circumstances where she understood that there was a time limit[4]. I was not persuaded that that was because she genuinely feared there would be adverse consequences. Even on the assumption that the clear suggestions in correspondence that she had instructed solicitors were untrue, the position was

that: she believed that she had the resources to instruct a legal professional[5]; she had recent experience of instruction; she had access to legal advice within her family; and she had an ability to explain her case with sufficient clarity that her husband was able

[3] **British Coal Corporation v Keeble** [1997] IRLR 336

[4] Hence the reference in the 19 January 2022 email to: "But She did not sign on the papers after three months"

[5] "Our legal insurance have allowed us to use our own solicitors in this matter. legal cost will paid by our insurance". Mr Clair confirmed, on instruction, that the insurer had been spoken to and had "given the go ahead". It transpired at a later date that the claim was denied.

to identify her claims so as to notify her former employer of her intention to commence them. No convincing explanation for the delay from 19 January 2022 to June 2023 was formulated, let alone evidenced. Whilst the absence of a good explanation for delay is not necessarily determinative, taking all the circumstances into account, combined with the very significant length of the delay, it has proven a very significant factor in my view of the justice and equity of the case.

40. In the circumstances, this claim is dismissed.

(b) The Claim for Notice Monies

41. This claim, too, is prima facie out of time. The effect of **Article 7** of the **1992 Extension Order** is that the tribunal may not consider the claim unless it is satisfied that it was not reasonably practicable to commence the claim in time.

42. I am not satisfied that it was not reasonably practicable to commence the claim timeously. Given that the Claimant's position in correspondence was that she had funds available to instruct a solicitor to commence a claim and that even if her suggestion that she had already retained a solicitor was untrue, she was nevertheless in a position to have done so, there is no reason to think that any issue of practicability arose.

43. It was not a question of the Claimant being in any way hindered in commencing proceedings, she instead chose not to do so. Assuming for present purposes that a fear of retaliation is capable of rendering it reasonably impracticable to commence, for the reasons set out above, I am not satisfied that any such impediment in fact existed. I also note that the Claimant's ET1 suggests that by the time that the Respondent treated her employment as being at an end she was already working elsewhere for more pay than she had received whilst working for the Respondent, with the effect that any loss has been fully mitigated and the claim is, in any event, worthless.

44. In the circumstances, this claim is dismissed.

(c) The Redundancy Payment Claim

45. This claim has been withdrawn and is dismissed.

(d) The Application to Amend

46. At the hearing the Claimant sought to add two claims: one of unfair dismissal and another of direct discrimination arising from the dismissal.

47. The first difficulty faced by the application is that the proposed amendments were not formulated with the precision that might reasonably be expected[6]. Without a a properly defined amendment, it might be impossible to determine the balancing exercise required by **Selkent** and the **Presidential Guidance**. However, even assuming a particularised case had been advanced, I conclude that the balancing exercise would have to be resolved against allowing any amendment.

48. Starting with the unfair dismissal claim, the claim is not, on any view, a mere "relabelling". It will involve the consideration of the fairness of the decision to dismiss, which has not previously been in issue.

49. Further, it is a claim which is even more out of time than the claims to which it is proposed it should be added[7]. It would, in my view, have been reasonably practicable to have commenced the claim in time for much the same reasons as it would have been reasonably practicable to commence the notice monies claim in time. It would certainly have been reasonably practicable to have done so by June 2023 when the ET1 was first submitted. Mr Clair told me, on instruction, not that the Claimant did not wish to commence an unfair dismissal claim at that point, but instead that she considered it was covered by the claim for a redundancy payment. That is a very odd proposition. A redundancy payment is usually a consequence of a lawful dismissal. An application for a payment does not carry with it any suggestion that the dismissal was unfair. Mr Clair accepted that the Claimant was in a position to instruct a lawyer to assist her in June 2023. He was told by his client that the reason that they did not do so was because they were concerned that doing so would further delay the commencement of proceedings. That is difficult to reconcile with a threat to commence proceedings having been made in January 2022 and no action being taken until June 2023. There were many months during which advice could have been taken either from the Claimant's legally-qualified family member or from a solicitor. Even if it had been thought that Acas needed to be put on notice of the proposed claims without a moment's further delay, once Day A had been reached, it was open to the Claimant then to seek advice before triggering Day B and submitting her form ET1.

50. Refusing the amendment will preclude the Claimant from pursuing the claim, but that does not, in my view, create any great injustice for two reasons. The first is that the prospects of the success in the claim must, by any objective measure, be very low. It does not seem to be disputed that that the Claimant had ceased to submit statements

[6] **Scottish Opera Ltd v Winning** UKEAT/0047/09

[7] Whether this is to be considered as a factor going to the exercise of the discretion or as a discrete issue arising once the discretion has been exercised will not, I consider, materially affect the outcome here. Dealt with on the first basis, it is a highly relevant factor which points very strongly against the permitting of the amendment, but the other factors also point in that direction. However, even if left out of consideration at this stage, it would, I consider, prove fatal to the claim going forward since it was reasonably practicable to have commenced in time and there is no cogent argument for suggesting that having previously commenced a claim which itself has been dismissed as out of time should enable the tribunal to consider a claim that **s. 111** would not otherwise permit it to.

of fitness and was declining (or, at the very least, failing) to respond to the Respondent's attempts to contact her about her continued absence. She was given a clear warning that if she did not make contact by 28 October 2021, her employment would be treated as being at an end. It is not suggested that that communication was not received, nor that it was not understood. Nevertheless, the Claimant still did not make contact with the Respondent. It is difficult to characterise the Respondent's conclusion that the employment relationship was over at that point as unreasonable. That the relationship was over also seems to have been the Claimant's position since she had already started fresh employment elsewhere. Since that fresh employment paid better than her employment with the Respondent, any compensation would be limited to a basic award at best[8].

50. Similar difficulties arise in relation to the dismissal-related direct discrimination claim. Again, it would involve consideration of matters which were not in issue in the claim as originally drafted, i.e. the circumstances of and reasons for the termination of her employment.

51. Again, the claim is out of time. The Claimant knew she had been dismissed before she threatened proceedings in the email of 19 January 2022. Mr Clair's position is that the Claimant believed that the dismissal was an act of discrimination. Not only was that claim not commenced in time, there is no suggestion that the dismissal was an act of less favourable treatment in the ET1 submitted in June 2023. The possibility of a claim was first raised at the preliminary hearing. The claim is very substantially out of time and there is, in my view, no basis for concluding that it would be just and equitable to apply a time limit that allowed it to be commenced now.

52. Again, the claim, on any reasonable view, faces significant difficulties. No basis has been identified for alleging that the approach taken to an absent and uncommunicative employee would have been any different had her sex, race or religion been different. Even if the claim were successful, it would be limited to injury to feelings damages as any financial loss has been entirely mitigated.

53. To summarise, the amendments sought are very substantial and involve investigation of matters not previously in issue; both new claims are out of time by over two years and there is no basis for disapplying the default time limits; the applications have been made very late and in unparticularised form. They are claims which, putting it at its lowest, have poor prospects of success on the basis of the presently undisputed facts. In the circumstances, I do not allow the amendments.

[8] i.e. even assuming that her failure to respond to the Respondent's attempts to engage with her would not justify a reduction pursuant to **Employment Rights Act 1996**, **s. 122(2)**.

Employment Judge Jones KC
18 July 2024