



**IN THE EMPLOYMENT TRIBUNAL (SCOTLAND)**

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**Judgment of the Employment Tribunal in Case No: 8000330/2024 Issued  
Following Open Preliminary Hearing Heard at Edinburgh on the 5<sup>th</sup> of July  
2024**

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**Employment Judge J G d'Inverno**

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**Mr R Niwas**

**Claimant  
In Person**

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**Moet Spice Limited**

**Respondent  
Represented by:  
Ms D McGuire,  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Employment Tribunal is:-

**(First)** That the Tribunal lacks Jurisdiction, by reason of Time Bar, to consider the claimant's complaints of;

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(a) having suffered detriment in consequence of making a protected disclosure and

(b) the claimant's claim for an additional balance of holiday pay assertedly accrued but untaken by the claimant as at the Effective Date of Termination of his employment; and,

5 (c) the said claims are dismissed for want of Jurisdiction;

(**Second**) That the Tribunal lacks Jurisdiction, by reason of Time Bar, to consider the claimant's complaints of Harassment relating to the claimant's protected characteristics of Race and of Religion or Belief and that the said  
10 complaints are dismissed for want of jurisdiction.

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<b>Employment Judge:</b>	<b>d'Inverno</b>
<b>Date of Judgment:</b>	<b>01 August 2024</b>
<b>Entered in register:</b>	<b>09 August 2024</b>
<b>and copied to parties</b>	<b>09/08/2024</b>

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**I confirm that this is my Judgment in the case of Niwas v Moet Spice Limited  
25 and that I have signed the Judgment by electronic signature.**

#### **NOTE**

30 1. The Tribunal records the respondent's representative's concession, made in the course of Case Management conducted at the outset of the Hearing, that the respondent concedes that a sum of £415 net of PAYE and National Insurance deductions is due and payable to the claimant, by way of holiday pay (compensation for accrued but as at the Effective Date of Termination of  
35 Employment, 30<sup>th</sup> September 2023 untaken taken paid annual leave entitlement; and further records the respondent's representative's confirmation that she had obtained from the claimant, that morning, his bank

account details, and her undertaking that the sum of £415, in discharge of that admitted liability, would be paid into the claimant's bank account in the course of the working day.

- 5 2. This case called for Open Preliminary Hearing In Person at Edinburgh on the 5<sup>th</sup> of July 2024.
3. The claimant appeared In Person. The Respondent Company was represented by Ms McGuire, Solicitor.

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### **The Issue**

4. The issue for determination before the Tribunal was whether, by reason of asserted Time Bar, the claimant had Title to Present and the Tribunal
- 15 Jurisdiction to consider his:-

- (a) Claim for outstanding holiday pay in the sum exceeding £415 (Working Time Regulations)
- 20 (b) A complaint of having suffered detriment in consequence of making a protected disclosure (Employment Rights Act 1996 section 47B)
- (c) Complaints of Harassment in relation to the protected
- 25 characteristics of Race and of Religion or Belief (Equality Act 2010 section 26)

### **Sources of Oral and Documentary Evidence**

- 30 5. Parties placed before the Tribunal a Hearing Bundle extending to some 51 pages, to some of which reference was made in the course of evidence and or submission.

6. The claimant gave evidence on affirmation and answered questions put to him in cross examination and by the Tribunal. Each party addressed the Tribunal in submission, the respondent's representative making her submission first and the claimant replying.

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### **Findings in Fact**

7. On the oral and documentary evidence presented the Tribunal makes the following essential Findings in Fact restricted to those relevant and necessary to the determination of the Preliminary Issue of Jurisdiction.

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8. The claimant, who is an Indian national, was employed by the respondent under visa, as a chef, from the 1<sup>st</sup> of October 2022 to the 30<sup>th</sup> of September 2023, on which date he resigned.

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9. In August of 2023 the claimant's father died. The claimant who was an eldest son was under considerable pressure to discharge certain familial duties in respect of his late father's death in India, albeit from Scotland. He found that process stressful.

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10. Following his resignation and throughout the month of October 2023, the claimant felt particularly worried and stressed about how he would support his family without gainful employment and further by the fact that the respondent having been his employer sponsor for visa purposes, he now required to find an alternative employer and sponsor within 60 days of his resignation.

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11. The claimant resigned in consequence of the treatment which he perceived he was being subjected to by the respondents in the course of his employment.

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12. In the month of October, following his resignation, the claimant made contact with the respondent and met with him. The claimant was concerned at that time principally to recover his outstanding holiday pay. He had not decided to take forward complaints about other matters. The claimant advised that at

the meeting the respondent's Director undertook to send him his holiday pay and "sort it out" but that the holiday pay did not follow.

- 5 13. At the time of his resignation, the claimant knew that he had been treated unlawfully but did not know of his rights or how to pursue them until the 2<sup>nd</sup> or 3<sup>rd</sup> of November 2023 when, in conversation with a friend he was advised to make contact with ACAS which he successfully did in the course of the first two weeks of November 2023.
- 10 14. Although feeling stressed during the month of October 2023 and at times during the course of his employment in September of 2023, the claimant did not consult his GP as his strong preference is to avoid medication wherever possible.
- 15 15. Following his initial verbal contact with ACAS, the claimant received an email from ACAS on the 17<sup>th</sup> of November 2023 in which ACAS provided him with various links including links to;
- 20 (a) A full explanation of early conciliation;  
(b) The Employment Tribunals; and,  
(c) "Your Final Pay"
16. The claimant, who had access to the internet, connected to those links and accessed the information on them at that time.
- 25 17. The claimant first engaged with early conciliation, via ACAS, on the 3<sup>rd</sup> of January 2024. That is at a time after the expiry of the initial three month minus a day time limits during which parties may of right present such complaints. The early conciliation provisions accordingly did not operate to extend the time limit. He was issued an Early Conciliation Certificate by
- 30 ACAS on the 8<sup>th</sup> of January 2024.

18. The claimant took no steps to raise proceedings before the Employment Tribunal in reliance upon the Early Conciliation Certificate dated 8<sup>th</sup> January 2024.
- 5 19. In or around the middle of March 2024, the claimant made contact again with ACAS and enquired about next steps. He was advised that the Early Conciliation Certificate issued to him on 8<sup>th</sup> January 2024 had expired. He accordingly engaged, of new, with ACAS in respect of early conciliation on the 15<sup>th</sup> of March 2024.
- 10 20. ACAS issued a second Early Conciliation Certificate to the claimant on the 19<sup>th</sup> of March 2024.
- 15 21. The claimant first presented his initiating Application ET1 to the Employment Tribunal on or about 20<sup>th</sup> March 2024.
22. In the period November and December 2023 the claimant was busy in his new job, the Festive season being a particularly busy period for restaurants.
- 20 23. When the claimant made further contact with ACAS in the first fortnight of March 2024 he enquired about next steps and in response to that enquiry was given a detailed explanation of what he required to do with a view to raising proceedings before the Employment Tribunal he raised proceedings within a day or so of receipt of the second Early Conciliation Certificate.
- 25 24. The claimant had available to him via the links provided to him by ACAS in their email received by him on 17 November 2023, all of the information which he required to enable him to lodge his claims.
- 30 25. The claimant confirmed in evidence that had he appreciated the subsequent consequences of not raising proceedings within the applicable time limits he could have and would have raised his claims . His position was that he had never been engaged with Tribunal court proceedings before.

26. During the latter part of November and December 2023 the claimant could have initiated early conciliation but deferred doing so until 3<sup>rd</sup> of January 2024.

5 **Submissions**

27. The claimant explained in the course of his submissions that he had felt the impact of his late father's death had upon him, and the resultant pressure that he came under as the eldest son to deal with various matters in India. He submitted that financial concerns in the month of October impacted upon him significantly and that he had complained at that point hoping to successfully recover his outstanding holiday pay following an indication from the respondent's Director that he would sort out the claimant's holiday pay but did not do so. He then began to consider what further steps he might take and, in a discussion with his friend "Vineu" he told him to talk to ACAS to take forward.

28. The claimant became aware of his cause of action on or about 17<sup>th</sup> November 2023. He had available to him at that time all of the information which he required to present his claims. He had also been provided by ACAS with links to, amongst other matters, Early Conciliation and the Employment Tribunals, which links he was able to and did access.

29. For the respondent, Ms McGuire submitted that the Tribunal should hold, on the evidence, that the claimant had not timeously lodged his complaints of "whistleblowing" and for arrears of holiday pay within the initial three months minus a day statutory time period and thus they could only proceed if the Tribunal was to extend time.

30. Although noting what was said about the claimant's state of health, in this regard she noted that he had not contacted his GP and was well enough to look for and obtain other employment. Regardless of what his state of knowledge may have been before his doing so, he had successfully contacted ACAS in the first fortnight of November 2023. From that point

onwards he was aware of his causes and right of action to make reasonable enquiry of ACAS or followed up properly on the links which he confirmed he had both received and accessed, he could have, and, on his own evidence would have obtained an Early Conciliation Certificate and thereafter raised his claims before the Employment Tribunal. She invited the Tribunal to hold that the claimant was not ignorant of his rights in the primary time period. Even if the Tribunal were to conclude that the claimant was ignorant of his right or of how to progress them and or of the relevant time limits such ignorance was not reasonable or justified. The claimant could have and should have made reasonable enquiries on his own behalf and had he done so would, on his own evidence, have been in a position to timeously raise his claim.

31. Under reference to the case of ***Kumari v Greater Manchester Mental Health NHS Foundation Trust*** 2022 EAT132, the respondent's representative invited the Tribunal to take into consideration as a factor in considering a discretionary extension of time, the potential merits of the claimant's complaint. She drew the Tribunal's attention to paragraph 19 and 20 of Judge Sutherland's Note issued following the Closed Preliminary Hearing Case Management Discussion which proceeded before her on 17<sup>th</sup> May 2024 and in which she recorded that on the Form ET1 as presented, taken together with the claimant's oral explanation, the claimant was unable to provide "details of a stateable complaint for whistleblowing detriment". She had accordingly issued Case Management Orders directing the claimant to provide details of the complaint of whistleblowing detriment within a two week period or to confirm that the complaint was withdrawn. On the 24<sup>th</sup> of May 2024 the claimant had tendered Further Particulars in tendered compliance with that Order in which he stated that:- *"The Tribunal asked me to explain about whistleblowing so during my working period Amit Singh was the one who blew the whistle to me, and he started this thing more after I got visa in his company, it was unrespectful and rude, unprofessional way to approach me during my working hours. Because of this behaviour he was distracting my mind from work and in that situation it was very hard for me to work. Because of this thing plenty time my hand burn with Tandoori (clay oven).*



*Whistleblowing and unfair behaviour with me during my working hours. It was harassment and bullying in indirect way .....*"

- 5 32. On the basis of the above the respondent's representative submitted that no stateable complaint of whistleblowing detriment was disclosed in the ET1 even as further particularised and that was a matter which should be taken account of by the Tribunal in deciding not to extend time.
- 10 33. In relation to the complaints of Harassment, while Judge Sutherland had likewise ordered the claimant to provide full specification. He had not done so and that the averments contained in the ET1 remains general and unspecific as to the making of the allegedly harassing comment. On the separate ground it would not be just and equitable, in the circumstances, submitted the respondent's representative, to extend time in respect of the
- 15 complaints of discrimination.

### **Applicable Law**

#### **Discussion and Decision**

- 20 34. The putative complaint of whistleblowing is one regulated by the terms of section 111 of the Employment Rights Act 1996 which provides that an Employment Tribunal shall not consider such a complaint unless it is presented within three months minus a day of the date of the occurrence of the alleged detriment, or, in circumstances where the Tribunal is persuaded
- 25 that it was not reasonably practicable for the complaint to be so presented timeously, within such further period as is reasonable. While the claimant's explanation of the state of his knowledge at the relevant time was not entirely clear, taking his case at its highest he appeared to be asserting that it was not until in or about March 2024, when he engaged with ACAS on a further
- 30 occasion, that he became fully aware about how to progress his case to the Employment Tribunal and of the relevant time limits within which it required to be progressed. As soon as he obtained that information he presented his complaints within a day or two and he confirmed in evidence that, but for his lack of knowledge, there was nothing else which would have prevented him

from presenting the complaints and he could have and would have presented them timeously.

- 5 35. Let it be assumed that the claimant was so ignorant of his rights and or of how to go about enforcing them until in or about March of 2024, it is necessary to consider whether such ignorance was reasonable in the circumstances.
- 10 36. Let it be further assumed that the claimant's state of health, albeit unvouched by any contact with his doctor, combined with his emotional state in relation to the earlier death of his father and the financial worries he experienced in the month following his resignation, all combined to make it impracticable for him to submit his complaints in the month of October 2023, by early November 2023 he had secured and begun working in alternative  
15 employment and had, on advice of his friend successfully made contact with ACAS. While his recollection of what information in particular was conveyed to him in the course of his oral contact with ACAS was not entirely clear, the claimant acknowledged that he had received an email from ACAS on the 17<sup>th</sup> of November which contained links to where he might find further information,  
20 including in relation to a full explanation of Early Conciliation, to the Employment Tribunals and to what should be included in his final pay. The claimant had access to the internet and he confirmed that he did, in fact, access those links and looked at the information contained on the sites. Not finding it readily understandable on an initial brief consideration, he decided  
25 to rely upon ACAS to revert to him further with an explanation of next steps. For his part, he took no steps to engage with early conciliation and obtain an Early Conciliation Certificate until 3<sup>rd</sup> January 2024 after the expiry of the three month statutory time limit. In the intervening period he took no steps to inform himself further as to his rights and as to the mechanisms by which he  
30 might seek to enforce them, despite having access to the internet and despite becoming increasingly concerned about the passage of time and the fact that ACAS had not proactively reverted to him. The claimant confirmed in evidence that but for his lack of knowledge he could have and would have timeously presented his application, something which the ability to do he

demonstrated later in March 2024 when, having obtained a second Early Conciliation Certificate he thereafter immediately presented his complaints to the Employment Tribunal.

5 37. The Tribunal has concluded that the claimant's state of ignorance, let it be assumed that it was as he implied, was not justifiable in the circumstances and does not fall to be regarded as rendering it not reasonably practicable (not reasonably feasible) for him to have presented his complaints within the initial statutory period. Nor does it, in the circumstances, of itself provide the  
10 basis in justice and equity for the extension of time in respect of his complaints of Harassment.

38. The claimant could have, and reasonably ought to have, taken steps to obtain appropriate advice or to inform himself as to the matters about which he  
15 maintained he was ignorant. While appreciating that he was at the time busy and continuing to deal with aspects of his late father's death in his capacity as an eldest son, the existence of these factors, of themselves, do not provide a basis for justifying an extension of time.

20 39. Separately, in relation to the apparent complaint of having suffered whistleblowing detriment, no such complaint is relevantly given notice of in the initiating Application ET1 even as further particularised and, it would not be an appropriate exercise of the Tribunal's discretion, let it be assumed that the Tribunal had otherwise been satisfied that it was not reasonably  
25 practicable for the claimant to present the complaints timeously, which it has not so found, to extend time to allow the presentation of what is an apparent but in reality a non complaint. Doing so would subject the respondents to prejudice in having to engage with and resist what is in truth an incompetent complaint.

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40. In relation to the complaints of Harassment, although provided with the opportunity to and directed by Judge Sutherland to provide full specification of those complaints not least in respect to the dates upon which the acts said to constitute harassment occurred, in the Further Particulars tendered by the

claimant on the 24<sup>th</sup> of May 2024 he fails to do so. It would not be just and equitable in the circumstances to exercise discretion to extend time the effect of which would be to require the respondent to engage with and resist complaints in respect of which they have not been given fair notice of the case which they are required to meet.

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41. While the Tribunal has the widest of discretions in deciding to extend time there is no presumption in favour of an extension and the onus of satisfying the Tribunal that it was, as appropriate, not reasonably practicable for complaints to be lodged within the applicable time limit, or that it would be just and equitable to extend time to allow complaints to be received and considered although late, sits with the claimant. On the evidence presented and in the circumstances pertaining, the Tribunal finds that the claimant has failed to discharge that onus.

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42. The Tribunal determines that it lacks Jurisdiction to consider the claimant's complaints, by reason of Time Bar, and the complaints accordingly fall to be dismissed for want of Jurisdiction.

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<b>Employment Judge:</b>	<b>d'Inverno</b>
<b>Date of Judgment:</b>	<b>01 August 2024</b>
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