



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr David Cope

**Respondents:** Asda Stores Limited

## RECORD OF AN PUBLIC PRELIMINARY HEARING

**Heard at:** Birmingham Employment Tribunal **On:** 18 September 2024

**Before:** Employment Judge Hena

### Appearances

For the claimant: In Person, father in attendance

For the respondent: Mr C Ilangarante, Counsel

## JUDGMENT

The Tribunal makes the following decision in relation to the preliminary issues heard at the Public Preliminary Hearing:

1. The claimant's s.15 claim of discrimination arising from a disability was not presented within the applicable time limit, the last complaint of conduct over an extended period being 2 March 2023.
2. It is, however, just and equitable to extend the time limit. The Tribunal found that the claimant's claim could be distinguished from the case of *Miss N Khaliq v Secretary of State for Justice and Ors [2022]* in that the claimant's delay was not significant and the claimant was not aware of being out of time. With regards to the case of *Wells Cathedral School [2020]* it is accepted the claimant was reliant on the advice of his Union

which meant he followed the grievance process and then the ethics complaint process. The prejudice to the respondent is limited as they have been aware of his concerns of discrimination since September 2022 and none of the evidence in the notes and reports would be impacted by a 54-day delay.

3. The claim of discrimination arising from a disability (s.15 of the Equality Act 2010) will therefore proceed.

## ISSUES AND BACKGROUND

### *Issues for the Preliminary Hearing*

1. The issues in this matter are as follows:
  - 1.1. Given the date the claim form was presented (23rd August 2023) and the dates of early conciliation (A: 26th July 2023, B: 31st July 2023), any complaint about something that happened before 26th April 2023 may not have been brought in time.
  - 1.2. Were the discrimination and complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
    - 1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
    - 1.2.2. If not, was there conduct extending over a period?
    - 1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
    - 1.2.4. If not, were the claims made within a further period that the Tribunal thinks
    - 1.2.5. is just and equitable? The Tribunal will decide:
      - 1.2.5.1. Why were the complaints not made to the Tribunal in time?
      - 1.2.5.2. In any event, is it just and equitable in all the circumstances to extend time?

### *Background*

2. The claimant was employed by the respondent, a supermarket chain, as a Retail Department Manager, from 7th May 2013. His employment ended on 11th April 2024. Early conciliation started on 26th July 2023 and ended on 31st July 2023. The claim form was presented on 23rd August 2023.
3. The claim is about a first written warning that was issued to the claimant by the respondent on 15th September 2022. The warning related to sickness absence.

4. The claimant appealed and the respondent upheld the decision to issue the warning on 6th October 2022.
5. The claimant then submitted an ethics complaint about the warning. The respondent upheld the decision to issue the warning on 2nd March 2023.
6. The respondent's defense is that, whilst it accepts that it issued the warning, upheld it at appeal and at the ethics complaint stage, it denies it amounted to discrimination.
7. The parties at a case management hearing on 24 April 2024 before Employment Judge A Smith confirmed the claim was one of discrimination arising out of a disability and that the respondent accepted the disability to be depression and anxiety at the relevant time.
8. The Employment Judge felt there needed to be an open preliminary hearing to hear on the issue of time limits as it was felt that this was an issue as to whether the claimant's claim regarding incidents, the last being on 2 March 2023, can be included as it argued the cut off is 26 April 2023 due to when the claimant filed his claim when also taking into account ACAS conciliation.

**Signed by: Employment Judge A. Hena**

**Signed on: 18 September 2024**