EMPLOYMENT TRIBUNALS

Claimant: Mr W Atidzah

Respondent: GXO Logistics UK Limited

Heard at: Cambridge (in public) **On:** 21 August 2024

Before: Employment Judge L Brown

Appearances

For the claimant: In person

For the respondent: Mr Sands, Solicitor.

RESERVED JUDGMENT

The Judgment of the Tribunal is:

1. The claim of Unfair Dismissal was not presented within the applicable time limit. It was reasonably practicable to do so. The claim is therefore dismissed.

2. The claims of Age and Disability Discrimination were not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claims are therefore dismissed.

REASONS

1. This case first came before me on the 18 July 2024 at a preliminary hearing when the Respondent had applied for the private hearing to be converted to a public preliminary hearing with a decision then to be made on whether the claims

should be struck out due to the claims being submitted out of time. However due to the sound issues during the hearing, and the Claimant's difficulty with turning his camera on this application was withdrawn and it was agreed a separate public preliminary hearing in person should be listed by me to deal with this application.

2. This case then came before me again at this public hearing.

3. I ordered a bundle be prepared by the Respondent and that the Claimant prepare a witness statement.

4. I ordered in relation re the witness statement as follows:-

> *13. The Claimant must send his witness statement to the Respondent by 9 August 2024. It is to be limited to the issue of time and why it took the Claimant as long as it did to first contact ACAS and then issue his claims against the Respondent.*

5. I had this witness statement before me and it ran to two pages.

6. I also had a bundle from the Respondent which ran to 49 pages.

7. The Claimant was making the following complaints:

   7.1 Unfair dismissal;

   7.2 Direct race and age discrimination about the act of dismissal.

Issues

8.On time limits the issues were agreed at the preliminary hearing as follows:-

Time Limits

1. Did the Claimant submit his claim before the end of the period of three months beginning with the effective date of termination, taking into account the effect of the 'stop the clock' provisions in respect of early conciliation? (ERA 1996, ss 111(2)(a), 207B)

2. If not, in relation to his unfair dismissal claim was it reasonably practicable for the Claimant to submit the claim in time? (ERA 1996, s 111(2)(b))

3. If so, did the Claimant submit the claim within such further period as was reasonable? (ERA 1996, s 111(2)(b))

3. In relation to his discrimination claims, is it just and equitable for the time limit to be extended?

Findings of Fact

9. The Claimant was dismissed on the 21 July 2023. The primary limitation period therefore expired on the 20 October 2023. He did not contact ACAS until 3 November 2023 some 14 days late and as such did not obtain the benefit of the *'stop the clock'* provisions of ACAS in accordance with s.111(2)(a), 207B of the ERA 1996.

10. He issued the claim form on the 26 December 2023 and as such at the date of the issue of the claim it was issued over two months out of time.

11. I therefore had to consider whether for his unfair dismissal claim it was reasonably practicable to issue in time, and for age and race discrimination whether it was presented within a time period for which it would be just and equitable for the time period to be extended?

12. The Claimants witness statement, on the issue of delay in first contacting ACAS on the 3 November 2023, and then issuing his claim on the 26 December 2023, said as follows, and in particular he was referring to wating for the outcome of his appeal against his dismissal:-

While I waited some time for this agreed future meeting to be convened which never came, there were email reminders and exchanges between myself, Nichola Keable and Dave Middleton dated from 22.09.23 and 03.10.23 to expedite things so we can view the CCTV footage request and examinations.
This future meeting and CCTV requests never came until I picked the Disciplinary-Appeal-Hearing-Meeting Outcome from my letter box on the 3rd of November 2023.

Although the letter was dated 16th October 2023, it was not properly stamped, addressed and correctly delivered as I would have expected. I picked the letter on the 3rd of November 2023 from my letter box with the following written on the envelope:

1. *My name (William ATIDZAH).*
2. *Hand Delivery.*
3. *Dated 29.10.21. (an error in this date)*

There was nothing else on the envelope and have had to contact ACAS immediately about my employment issue.

Given the inconclusive Disciplinary Appeal Hearing meeting together with the unexamined evidence which we had hoped would have been shown, it was imprudent for me to contact ACAS sooner until I knew on the 3rd of November 2023 of being rather fooled and severely bullied by GXO Logistics.

I explained this excruciating issue to ACAS who have genuinely issued a certificate for proceedings to begin at the Employment Tribunal.

13. The envelope referred to by the Claimant, with a date written on it of the 29 October 2021 was not produced by the Claimant in evidence.

14. He was cross-examined about the issue of when he received the appeal outcome letter which was dated the 16 October 2023. He said in evidence that he could not remember when he received it contrary to what he said in his witness statement about receiving it on the 3 November 2023.

15. In relation to legal advice or guidance received about his legal rights he confirmed that he was not a member of the Union at the time of his dismissal but that the Union, identified as the TUC, did provide him with the assistance of a TU Official albeit he assisted the Claimant as a McKenzie friend instead of in the official capacity of a Trade Union representatives.

16. The Claimant gave evidence that he was told verbally in the disciplinary meeting on the 21 July 2023 that he was being dismissed and that if he wished to do so he may appeal. He received his letter of dismissal and then lodged a letter of appeal against the dismissal (page 39).

17. The letter dismissing his appeal was dated the 16 October (page 45), and he accepted that he knew the decision was final. The ACAS certificate then had a start date of the 3 November 2023, some 14 days after expiry of the primary limitation period on the 20 October 2023.

18. A central disputed issue was on what date did the Claimant receive the letter dismissing his appeal? I enquired whether there was any proof of delivery but due to the time it was delivered the Respondents confirmed during the hearing that although it had been sent by recorded delivery they were no longer able to obtain a tracking receipt from Royal Mail Website. However they did produce during the hearing a record of the date it was sent by recorded delivery and it showed, in an entry in a manual ledger kept by the Respondents for this purpose, that it was posted on the 16 October 2023. It was an entry sitting between two other items of post also recorded there to two other separate individuals and so I found that it was put in the post that day by recorded delivery on the 16 October 2023 by the Respondents and was not hand delivered on the 3 November 2023 as stated by the Claimant.

19. I also was taken to the Royal Mail Website and it showed that the latest it would have been delivered would have been the 19 October 2023 three days after it was sent on the 16 October 2023. I therefore found the Claimant received it sometime between the 17 (if delivered within 24 hours as was expected by the Respondents) and the 19 October 2023 (if it took up to three working days to arrive) and not as asserted by the Claimant on the 3 November 2023.

20. If it was received by him on the later date of the 19 October 2023 then I found the Claimant still had 48 hours to contact ACAS to *'stop the clock'* and preserve the limitation period on his claim.

21. Overall the Claimant was vague about the time he received the letter and during the hearing he did not give evidence in accordance with his witness statement and simply said initially he contacted ACAS the day he got the letter and when I

pressed him on this and said 'so the same day you contacted ACAS?' he replied that he spoke to his McKenzie friend and then *'within a few days'* contacted ACAS which was in flat contradiction to his assertion in his witness statement that he did not receive it until the 3 November and contacted ACAS the same day.

22. His explanation for contacting ACAS outside the limitation period was that he was waiting for the outcome of the appeal. On the issue of the knowledge of the limitation period however in response to a question from me he said that the Mc Kenzie friend did tell him that there was a rule about time and that he recalled it was something to do with it being less or plus one day, and that it was to do with issuing his claim, and then said he couldn't remember and it may have been 30 or 60 days the time limit from dismissal. I found therefore that while he was wating for the appeal outcome that he had been put on notice by advice received that there was a limitation period in relation to his claim and on the balance of probabilities I found that he was told it was three months less one day from when he was dismissed by which he must contact ACAS, but in any event even on his evidence the time was less than the three months within which he must take action.

23. He also gave evidence that he was told by ACAS he had 12 days to take action when he contacted them. This part of his evidence was not clear as of course by the 3 November 2023 when he contacted ACAS his claim was out of time. He also gave evidence that he obtained ACAS's telephone number from the internet.

24. I was satisfied that the Claimant was able to find things out about his claim and the legal position from the internet. I also found that he simply relied on the ACAS process and did not take further proactive action to find out when he must issue his claim by despite being told about this by his McKenzie friend and I found that he could have simply asked the McKenzie friend about this issue again but failed to do so. I also found that he was given advice about time limits but simply failed to act on them.

25. Even after the ACAS procedure concluded on the 14 December 2023 I found that even then he did not proceed straightaway by issuing his claim and waited another 12 days before issuing his claim. His case that he was waiting for his employer to respond to ACAS was contradicted by this further delay after the process with ACAS ended.

26. I heard submission from both parties, and though they are not repeated in full here they were taken into account in reaching this Judgment.

27. In short Mr Sands said that the Claimant presented his claim 67 days out of time.

28. He referred to case law such as **Cygnet -v- Britton – 2022,** where the EAT held that an ET finding that it was not reasonably practicable for a Claimant to issue proceedings in time when they had anxiety and who was embroiled in fitness to practice proceedings, and was unable to make himself aware of the time limit and bring it in time, when it had been presented within reasonable time of 62 days was deemed to be perverse. He asserted the case reasserted that the statutory framework is exceptionally narrow and that it is only in exceptionally rare circumstances that a Tribunal will conclude that a Claimant could not present a claim within s.111 and therefore extend time. He also referred to the case of

Reed v UK EAT - 2010 a case where a claim was presented one day late and that too was deemed not sufficient to meet the reasonably practicable test where the Claimant had a mistaken belief about the three month limitation period where had had failed to understand it was in effect three months less one day instead of three months starting the day after dismissal.

29. On the issue of an extension of time under the just and equitable test Mr Sands referred to the case of **Robinson -v Bexley Leisure 2003** where in summary it was said times limits were exercised strictly and it was not for the Tribunal to excuse non-compliance but it was for the Claimant to convince the Employment Tribunal that it would just and equitable to extend time, and that it was also made clear the exercise of discretion was the exception not the rule.

30. The Claimant stated that it was not true that he received the letter dismissing his appeal on the 19 October, that he was not always at home, and if someone dropped the letter in his mail box at the bottom of his block of flats he didn't know how they had done that as it was not possible to enter the flats where the mail boxes were without a key but that he never signed for any letter, and that his letter of dismissal took over month to arrive after the date of the 21 July 2023. This was the first time this was referred to by the Claimant and at this point he had concluded his evidence.

31. He asserted that it was unfair to suggest he must go to the Tribunal while waiting to hear from his employer via ACAS. Overall he asserted that he simply relied on ACAS.

The Law

32. Section 111(2) of the Employment Rights Act 1996, provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it is presented before the end of the period of three months beginning with the effective date of termination, or 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.

33. The burden of proof for establishing that it was not reasonably practicable to present the claim in time is on the claimant. The EAT reiterated in ***Cygnet Behavioral Health Ltd v Britton [2022] EAT 108*** (Para 53) that: "A person who is considering bringing a claim for unfair dismissal is expected to appraise themselves of the time limits that apply; it is their responsibility to do so."

34. Subsection 18A(1) of the Employment Tribunals Act 1996 provides that, *"Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter".* S18A(8) provides *"A person who is subject to the requirements in subsection (1)*

may not present an application to institute relevant proceedings without a certificate under subsection (4)."

35. Section 207B Employment Rights Act 1996 ('ERA') extends the above time limits by not counting the period beginning with Day A (the day on which the prospective claimants contact ACAS to request Early Conciliation) and ending with Day B (the day they get the Early Conciliation Certificate) and if the relevant time limit would (if not extended by subsection 207B (4) ERA) expire during the period beginning with day A and ending one month after Day B the time limit expires instead at the end of that period.

36. However that extension does not apply if by the time the prospective claimant contacts ACAS to request early conciliation the above three-month period has already expired. It is too late. ***In Pearce v Bank of America Merill Lynch and others UKEAT/0067/19/LA*** it was held that although time may be extended to allow for ACAS Early Conciliation that is only possible where the reference to ACAS takes place during the primary limitation period.

37. What is 'reasonably practicable 'is a question of fact for the tribunal.

38. The word' practicable 'is to be given a liberal interpretation in favour of the employee ***(Dedman v British Building and Engineering Appliances Ltd [1974] 1AER 520).*** May LJ described the relevant test in this way:

*'We think that one can say that to construe the words "reasonably practicable" as the equivalent of "reasonable" is to take a view that is too favourable to the employee. On the other hand, "reasonably practicable" means more than merely what is reasonably capable physically of being done - different, for instance, from its construction in the context of the legislation relating to factories compare Marshall v Gotham Co Ltd (1954) AC 360,HL. In the context in which the words are used in the1978 Consolidation Act, however ineptly as we think, they mean something between these two. Perhaps to read the word "practicable as the equivalent of "feasible" as Sir John Brightman did in Singh v Post Office (1973), CR437 NIRC and to ask colloquially and untrammelled by too much legal logic- "was it reasonably feasible to present the complaint to the employment tribunal within the relevant 3 months?"-is the best approach to the correct application of the relevant subsection." (**Palmer and Saunders v Southend-on-Sea Borough Council [1984] ICR at 384,385**). He said the factors could not be described exhaustively but listed a number of considerations which might be investigated including the manner of, and reason for the dismissal, whether the employer's conciliatory appeals machinery have been used, the substantive cause of the claimant's failure to comply with the time limit whether there was any physical impediment preventing compliance, such as illness, or a postal strike, whether, and if so when, the claimant knew of his rights, whether the employer had*

misrepresented any relevant matter to the employee, whether the claimant had been advised by anyone, and the nature of any advice given, and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

39. If ignorance is given as a reason, as in this case it was, Brandon LJ said in ***Walls Meat Co Ltd v Khan (1978) IRLR 499,*** as follows:

"The performance or an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike, or the impediment may be mental, namely the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of 3 months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not to be reasonable if it arises from the fault of the complainant in not making such enquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him." He went on:' *With regard to ignorance operating as a similar impediment, I should have thought that, if in any particular case an employee was reasonably ignorant of either (a) his right to make a complaint of unfair dismissal at all, or (b) how to make it, or (c) that it was necessary for him to make it within a period of 3 months from the date of dismissal, an [employment] tribunal could and should be satisfied that it was not reasonably practicable for his complaint to be presented within the period concerned. For this purpose I do not see any difference, provided always that the ignorance in each case is reasonable, between ignorance of (a) the existence of the right, or (b) the proper way to exercise it, or (c) the proper time within which to exercise it. In particular, so far as (c), the proper time within which to exercise the right, is concerned, I do not see it can justly be said to be reasonably practicable for a person to comply with the time limit of which he is reasonably ignorant. While I do not, as I have said, see any difference in principle in the effect of reasonable ignorance as between the 3 cases to which I have referred, I do see a great deal of difference in practice in the ease or difficulty with which a finding that the relevant ignorance is reasonable may be made. Thus, where a person is reasonably ignorant of the existence of the right at all, he can hardly be found to have been acting unreasonably in not making enquiries as to how, and within what period, he should exercise it. By contrast, if he does know of the existence of the right, it may in many cases at least, though not necessarily all, be difficult for him to satisfy an [employment] tribunal that he behaved reasonably in not making such enquiries. To that extent, therefore, it may, in general, be*

easier for a complainant to avail himself of the "escape clause" on the ground that he was reasonably ignorant of his having a right at all, than on the ground that, knowing of the right, he was reasonably ignorant of the method by which, or the time limit within which, he ought to exercise it."

40. In ***John Lewis Partnership v Charman [2011] EAT 0079/11*** Underhill J held that:-

Para. 9: "The starting-point is that if an employee is reasonably ignorant of the relevant time limits it cannot be said to be reasonably practicable for him to comply with them…. In the present case the Claimant was unquestionably ignorant of the time limits, whether one considers his own knowledge or that of himself and his father. The question is whether that ignorance was reasonable. I accept that it would not be reasonable if he ought reasonably to have made inquiries about how to bring an employment tribunal claim, which would inevitably have put him on notice of the time limits. The question thus comes down to whether the Claimant should have made such inquiries immediately following his dismissal".

Conclusions

Unfair Dismissal Claim

41. I am concerned with the primary three-month time limit. The time limit for presenting a claim of unfair dismissal expired at midnight on 20 October 2023, three months less one day from his dismissal on the 21 July 2023.

42. The claimant does not benefit from an extension of time under the EC provisions because he did not approach Acas (Day A) until 3 November 2023 by which date the three month time limit had already expired, and he did not obtain the EC Certificate (Day B) until 12 December 2023.

43. I found the Claimant to be vague in cross-examination and that he contradicted his own clear evidence in his witness statement. I did not consider him to be a credible witness. The claimant submits that it was not reasonably practicable for the claim to be presented in time because he was simply waiting firstly for the appeal outcome and then for the ACAS process to conclude and that it was not fair for him to have to issue his claim before the process concluded. He seemed to suggest that he did not understand the limitation rule and relied on ACAS to advise though on the other hand I found he ignored their advice to act quickly and still waited another 14 days to issue his claim after the ACAS process concluded on the 12 December 2023.

44. I am not satisfied that, at the relevant time he was unable to make enquiries about the time limit that applied to his claim to the extent that he could not comply with

the time limit in contacting ACAS on or before the 20 October 2023, having found that he did have at least 48 hours to do so after he received the appeal outcome on the 19 October 2023. He was clearly taking advice from his McKenzie friend a Trade Union advisor at the time, and had already received some advice about the time limit for contacting ACAS, and I find any remaining ignorance was not reasonable, particularly as there was nothing preventing him from making his own enquiries following his dismissal, and again after the outcome letter arrived on the 19 October 2023 which was a working day i.e. a Thursday. The claimant also had access to and use of the internet; and was being assisted by his McKenzie friend.

45. The fact that he made contact with ACAS on the 3 November 2023 when his personal circumstances were no different to when he was dismissed on the 20 October 2023 demonstrates that had he done his own research and/or sought legal advice within the limitation period he would have known about the possibility of making a claim, the time limits and procedure involved, which he could have done. The fact is he left it too late to contact ACAS and then delayed further after ACAS conciliation ended on the 12 December 2023.

46. I therefore conclude that it was reasonably practicable for the claimant to present the claim in time. Accordingly, the tribunal does not have jurisdiction to hear his claim, and is therefore dismissed.

Discrimination Claims

Is it just and equitable to extend time?

47. Where a claim is presented after the relevant time limit (here two months), a tribunal may still have jurisdiction if, in all the circumstances, it is "just and equitable" to extend time. The claimant bears the burden of persuading the tribunal that it is just and equitable to extend time - ***Robertson v Bexley Community Centre*** **[2001] UKEAT 1516/00, [2003] IRLR 434**.

48. The burden is not a high one – ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** **- UKEAT/0320/15** ("Morgan 2016"):

"As I have indicated above it is for the Claimant to persuade the Tribunal that it is just and equitable to extend time and in that sense there is clearly a burden on the Claimant; however, it is not a burden of proof which needs to be satisfied as when a party seeks to prove a fact or circumstance." (paragraph 25).

49. As per Langstaff J in ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** **- UKEAT/0305/13/LA** ("Morgan 2014"):

"A litigant can hardly hope to satisfy this burden unless he provides an answer to two questions, as part of the entirety of the circumstances which the tribunal must consider. The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and insofar as it is distinct the second is reason why after the expiry of the primary time limit the claim was not brought sooner than it was." (paragraph 52).

50. In considering whether to exercise its discretion to extend time, a tribunal is entitled to take into account anything that it deems to be relevant - ***Hutchinson v Westward Television Ltd*** **[1977] IRLR 69.**

51. Time limits are intended to applied strictly and there is no presumption in favour of extending time, and it is intended to be the exception and not the rule ***- Bexley Community Centre (t/a Leisure Link) v Robertson*** **[2003] IRLR 434.**

52. There is a very broad general discretion conferred on tribunals to decide whether it is just and equitable to extend time - ***Adedeji v University Hospitals Birmingham NHS Foundation Trust*** **[2021] EWCA Civ 23** and the "best approach" is for the Tribunal to "assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular ... 'the length of, and the reasons for, the delay'" (paragraph 37).

53. There is no requirement that a claimant must always put forward a good reason for the delay or that time cannot be extended without an explanation by the claimant for that delay ***- Abertawe Bro Morgannwg University Local Health Board v Morgan*** **[2018] IRLR 1050** (paragraph 26) ("Morgan 2018").

54. The Tribunal's discretion when extending time is as wide as that of the civil courts under *section 33* of the Limitation Act 1980 - ***British Coal Corporation v Keeble*** **[1997] IRLR**. This requires courts to consider factors relevant to the prejudice that each party would suffer if an extension were refused, including:

1. The length of and reasons for the delay.
2. The extent to which the cogency of the evidence is likely to be affected by the delay.
3. The extent to which the party sued had co-operated with any requests for information.
4. The promptness with which the claimant acted once they knew of the possibility of taking action.
5. The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

55. Similarly in ***Morgan 2018*** it was observed by Leggatt LJ that:

"…factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by

preventing or inhibiting it from investigating the claim while matters were fresh).” (paragraph 19)

56. The Court of Appeal in ***Adedeji v University Hospitals Birmingham NHS Foundation Trust*** **[2021] EWCA Civ 23** has cautioned tribunals against rigidly adhering to the checklist of potentially relevant factors and advised against the adoption of a mechanistic approach. When exercising the s. 123(1)(b) discretion, tribunals should assess all relevant factors in a case, including "the length of, and the reasons for, the delay". although some factors may be customarily relevant (such as the length of the delay and the reason for it), the factors that are actually relevant in a given case will be case-sensitive and must be determined by the tribunal on the basis of the given facts - ***Miller v Ministry of Justice*** **UKEAT/0003/15/LA**. Here the EAT identified two types of prejudice a Respondent may suffer where a limitation period is extended. The first is the obvious prejudice of having to defend a claim which would otherwise have been defeated by a limitation defence. The second is the forensic prejudice a Respondent may suffer by extending the limitation period by months or years. Such prejudice may include fading memories, lost documents or losing contact with potential witnesses.

57. In ***Concentrix GVC Intelligent Contact Ltd v Obi*** **[2022] EAT 149** where there had been no reason for the delay and the claimant was aware of the time limit, however the tribunal found that the delay did not cause any genuine prejudice to the Respondent, whereas if the extension had not been granted, the claimant would not have been able to receive any remedy. However the EAT held that it would be an error for a tribunal to fail to consider the potential “forensic prejudice” arising from historical allegations that would be brought in if an extension of time were allowed.

58. In ***Watkins v HSBC Bank Plc*** **UKEAT/0018/18/DA** the EAT held that where a claimant has a mental impairment this may place them at a substantial disadvantage when deciding whether to bring a claim or not, and this may be a relevant factor to take into account when considering whether it contributed to delay in bringing a claim.

Conclusion on the discrimination claims

59. In considering the reasons put forward by the Claimant for the delay I firstly had regard to the issue of the length of the delay. Two months is not an insignificant delay and the reasons the Claimant gave were weak. I found that he had access to advice and was working in a new job so there were no incapacity issues. There were no compelling reasons given for the delay and I was not persuaded that simply waiting for the appeal outcome until the letter of the 16 October arrived on the 19 October before contacting ACAS on the 3 November 2023, and thereafter waiting for the ACAS process to conclude, and failing to issue the claim until the 26 December 2023 were convincing reasons for the delay. It was simply that the Claimant, despite knowing times limits applied to his claim, delayed in taking steps to issue the claim.

60. On the extent to which the cogency of the evidence is likely to be affected by the delay I heard no evidence about that from the Respondent but that is only one factor that I must take into account in exercising my discretion to extend time. However the Respondent did point out that the Claimant in his claim form had referred to historic allegations of discrimination and they submitted that he was trying to open up historic allegations in effect. I found therefore there was some prejudice to the Respondent here as if I allowed the claims to proceed it would as per the case of ***Concentrix*** above cause potential "forensic prejudice" arising from historical allegations that would be brought in if an extension of time were allowed by a likely attempt by the Claimant to amend his claim so as to add pre-dismissal allegations of acts of discrimination.

61. The extent to which the party sued had co-operated with any requests for information was also considered by me. They were not asked for any information by the Claimant and the only criticism the Claimant levelled at that them was that they did not respond to calls from ACAS, however they were not compelled to do so and that was a matter for them. At any time the Claimant could have brought the ACAS procedure to a close and issued his claim sooner than the two months delay he caused.

62. In relation to the promptness with which the claimant acted once he knew of the possibility of taking action, I find there was no promptness on his part. Even after being advised of time limits by his Mc Kenzie friend and by ACAS he still did not issue the claim until two weeks after the issue of the ACAS certificate on the 12 December 2023 instead delaying until the 26 December 2023.

63. The steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action were simply related to the appeal process and contacting ACAS. The McKenzie friend had provided some advice on time limits though the precise nature of how the Claimant understood that was vague but he had a channel through which he could seek further advice on time limits but did not take firm steps to understand the time limit even when he was alerted to the fact that there was a time limit.

64. Looking at all the matters in the round, I have formed the conclusion that it would not be just and equitable in these specific circumstances to extend time on the claims for age and disability discrimination and accordingly, the tribunal does not have jurisdiction to hear these claims, and they are therefore dismissed.

Case Number: 3315264/2023

Employment Judge L Brown

Date 22 August 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

2 October 2024

FOR EMPLOYMENT TRIBUNALS