EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 8000824/2024

Preliminary Hearing held remotely on 4 October 2024

Employment Judge C McManus

Mr A Manzoor	**Claimant** **In Person**
KPMG	**Respondent** **Represented by:** **Ms S Cashell** **Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:-

- The claimant's claim for unfair dismissal is time barred in terms of the provisions of the Employment Rights Act 1996 section 111(2)(b) and is dismissed.
- The claimant's claims for unlawful discrimination on the grounds of (1) race and (2) religion or belief are timebarred in terms of the provisions of the Equality Act 2010 section 123 and are dismissed.

REASONS

Introduction

1. This was the first hearing in this case, the arranged initial Case Management Preliminary Hearing having been converted to this Preliminary Hearing ('PH') on time bar.

2. It is not in dispute that the claimant's ET1 makes claims of unfair dismissal and unlawful discrimination on the grounds of the claimant's race and / or his religion or belief. It is not in dispute that these claims were submitted to the Employment Tribunal outwiith the normal statutory time limits and that there was no extension to the time period resulting from the ACAS conciliation process. The purpose of this Preliminary Hearing ('PH') is to determine whether or not the claims should be allowed to proceed, with regard to the applicable statutory tests.

3. The acts relied upon by the claimant as unlawful discrimination on the grounds of the claimant's race and / or his religion or belief are his dismissal, and the alleged lack of procedure followed prior to that dismissal. The respondent's position is that the claimant was not an employee of the respondent, but was contracted through an agent. The respondent denies acting unlawfully.

4. As the respondent disputes that the claimant was employed by them, they do not accept the date of dismissal. It was agreed that in the circumstances of this case it was not necessary to determine the effective date of termination of employment, on the basis that it was either 13 October 2023 or 20 October 2023. For the purposes of applying the test set out in section 111(2) of the Employment Rights Act 1996 ('the ERA,'), the relevant period expired either on 12 January 2024 or 19 January 2024.

5. This PH was conducted remotely, by video. Evidence was heard on oath from the claimant only. Parties had helpfully liaised to produce a Joint Inventory, which contained all documents relied upon at this PH. The numbers in brackets in this decision refer to the page numbers in that Joint Inventory.

6. With regard to the claimant's position at section 9.1 of his completed Agenda form, it was agreed that the treatment referred to there was material to this decision but should be referred to as 'the treatment', rather than any Order being made under Rule 50 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ('the Procedure Rules').

Issues for Determination

7. The issues for my determination at this PH are:

- Whether I am satisfied that it was not reasonably practicable for the unfair dismissal complaint to be presented before the end of the relevant 3 months period under section 111(2)(a) of the ERA,
- Whether the Tribunal has jurisdiction to hear the claimant's unlawful discrimination complaints, on application of any extension considered to be just and equitable to apply, under section 123 of the Equality Act 2010 ('the EqA').

Findings in Fact

8. The following material facts were not in dispute or were found by the Tribunal to be established.

9. The claimant was exited from working at the respondent's premises on 13 October 2023 and was paid until 20 October 2023.

10. In the period immediately after his exit from the respondent's premises, the claimant was advised that he should not contact employees of the respondent. The claimant contacted the respondent and the agency in respect of his dismissal and to seek to raise a grievance. The claimant was advised by a contact at the agency that he should not contact anyone at KPMG.

11. The claimant's dismissal caused him emotional and financial stress. In addition, prior to being dismissed, the claimant was undergoing tests and treatment which had an emotional effect on him. His performance at work had been affected. He had discussed with his manager that he was emotionally affected by the tests. The treatment began in November 2023. The emotional impact of the treatment, together with losing his job and financial pressures, led to the period after his dismissal being a stressful time for the claimant. In March 2024 the claimant was informed that the treatment was unsuccessful. That negative result increased the emotional stresses and their impact on the claimant.

12. In the period after being dismissed the claimant was in receipt of Job Seekers Allowance. The claimant was not certified as unfit for work. The claimant was sending his CV to contacts and speaking to Agencies. The claimant felt that he was not in the right frame of mind to complete lengthy job application forms. He was able to undertake internet searches. He was aware of ACAS. In January 2024 the claimant attended an interview for alternative employment. The claimant felt that he could not perform well at that interview and was not offered a job. The claimant was approached and obtained new employment from February 2024. There followed an 'on boarding' process, then a training process, from INSERT . From the time of being 'onboarded' in February 2024, the claimant was paid a flat rate, which has not varied since. The work was at a lower level and with a lower rate of pay than his previous employment. From the end of April of beginning of May 2024 the claimant was working on projects in his new job. The claimant has received counselling through his new employment.

13. From April or May 2024, the claimant began to engage more socially. He spoke to friends, who informed him that he may be able to make a claim to the Employment Tribunal. The claimant contacted a Citizens Advice Bureau ('CAB') and ACAS. The claimant became aware that a claim to the Employment Tribunal may be accepted late if the delay in submission was due to medical circumstances. The claimant contacted his GP. He wanted an appointment with the GP who was aware of the treatment. He required to wait for approximately 2 weeks to have an appointment with that particular GP.

14. On 5 June 2024 ACAS issued the Early Conciliation Certificate ('ECC') in respect of this claim. By 5 June 2024, the claimant was aware what he required to do to submit a claim to the Employment Tribunal. By 5 June 2024 the claimant was aware that a late claim to the Employment Tribunal may be accepted if the delay was caused by medical incapacity. The claimant waited to submit his ET1 claim form when he had spoken to his GP and received the letter from his GP.

15. The claimant did not attend a GP in the period between 13 October 2023 and 9 June 2024. On 10 June 2024, the claimant spoke to the GP who knew about

the treatment and that GP provided a letter dated 10 June 2024 (p30). That letter sets out what the claimant told the GP in relation to his health in the period since October 2023. That letter reflects what the claimant told the GP in respect of the impact on his health. That letter from the GP confirms the treatment. That letter does not state that the claimant has been diagnosed with any mental health condition or any other debilitating health condition. It does not state that the claimant was offered or prescribed any medication or other therapy by a GP. The GP letter confirms that the treatment started in November 2023. The GP letter states that the claimant told the GP that the treatment and his dismissal caused him stress.

16. On 12 June 2024 the claimant himself completed and submitted an ET1 form, ticking the boxes to indicate claims made for unfair dismissal and unlawful discrimination of the grounds of race and on the grounds of religion or belief. At box 8 of that ET1 claim form, the claimant set out the grounds of his claims and concluded with the following:-

*"***Please note that I am submitting this application late due to medical reasons. I have attached a GP Letter to support this explanation.*****"*

Comments on Evidence

17. I accepted the claimant's position that the treatment had an emotional effect on him and was stressful. I accepted that the treatment had an effect on the claimant's ability to to focus on external matters such as the tribunal process. I accepted that in the entire period from 13 October 2023 until 19 January 2024 the claimant was undergoing stress from losing his job, from requiring to undergo the treatment, from the treatment process and from financial pressures. I did not accept the claimant's position that that effect was such that he did not have the '*mental capacity'* to submit his claims before 12 June 2024. I took into account the evidence from the claimant that he has received counselling through private health insurance secured through his new employment and that there was no evidence before me of the claimant having been diagnosed with any mental health condition.

18. There were some inconsistencies in the claimant's evidence. The claimant's evidence on when he started employment changed. His initial evidence was that he was approached in February 2024 and 'onboarded' after a 30 minute conversation about his experience and what he could bring to the role, with the project starting in May. The claimant's initial position in his evidence was '*I got onboarded around February and the project started in May*." Under cross examination, the claimant's position was that he had been unemployed for around 6 months, starting work in '*April or May*'. His evidence on when he began work changed during cross examination. Under cross examination, his evidence was that he '*received payment as soon as onboarded, from the end of March*.' He later said that '*started to work for the vendor'* at *'end March' or start of April'*. When pressed in cross-examination, the claimant's position was that he had received payment from the time he was '*onboarded'* in February 2024, and that '*at the end of March'* he had stated to '*work properly*'. His evidence then changed again, to having been onboarded in February, a process which took '*six to eight weeks'*, then undergoing *'training for the vendor*' from 9am until 5pm on working days from end March or beginning of April, during which time he did '*small tasks for the vendor like power points and got to know the company I was working for and their security*.' And that '*training was signed off end April or May*'. I accepted that there were financial pressures on the claimant to work and that his current work is at a lower level than his previous work. There was however evidence of the claimant being able to engage in new work at the latest from end March 2024 (after the initial 3 month limitation period). There was little evidence on the extent of the affect on the claimant's health in the initial 3 month limitation period(s). It was significant that the claimant relied on his health deteriorating from a time after that initial three month period (when he received the negative outcome of the treatment), and him substantively recovering from April or May 2024.

19. There was also inconsistencies within the claimant's evidence on the extent to which he was affected by the treatment. The claimant's initial evidence was that he was affected to a significant extent by his dismissal and the treatment, and the resultant financial and emotional burden. However, on the claimant's own evidence, his emotional state was more affected from the time

of the negative result of the treatment, in March 2024. His evidence on the effect being more significant at the time of that negative result was consistent with the claimant's position in his completed Agenda form. The claimant's initial position in his evidence was that the negative outcome of the treatment, received in March 2024, caused him to become more '*anxious and stressed out further*' and that it then *'took a couple of months to regain my state of mind*'. The claimant's initial evidence was that he had recovered *'about May or June, when I started working."* And that it was then that he had first spoken to friends about his dismissal, carried out an internet search, and then contacted CAB and ACAS. The claimant's evidence changed on when that negative result was. Under cross examination his evidence was that he received a negative result from the treatment in April or May 2024 and that the effect of that was '*even worse than before'*.

20. On the claimant's evidence, the stressful effects of the treatment became worse after the negative result in March or April / May 2024. On either version, that negative result, and worsening stress, was after the expiry of the initial time limits and after the time when the claimant was able to secure new employment. Despite that worse effect, even on the basis of the claimant's position that he was approached with an offer of employment in February 2024 and that it was a '*really easy process'* for him to be '*onboarded*', the claimant was able to engage with a new employer, including having a discussion with them for around half an hour about his skill set and experience, and was then able to start a new job, albeit at a lower rate.

21. The claimant was also inconsistent in relation to his contact with the GP. His initial position was that he had contacted the GP in June 2024. Under cross examination, the claimant's position was that he had contacted the GP surgery *'a few weeks prior'* but couldn't get an appointment with the doctor who knew about the treatment. The claimant's position in evidence that he had been offered medication from his GP but decided not to take this. That position is not reflected in the terms of the letter from the GP (at Page 30) . Under cross examination, the claimant accepted that he contacted the GP to obtain the letter for support, rather than for treatment. The claimant accepted under cross examination that he contacted the GP after he first spoke to CAB

and ACAS about submitting the claim, then changed his evidence to being that he had contacted the GP after speaking to the CAB advisor, but before speaking to ACAS. That changed position is inconsistent with the GP letter being dated 10 June 2024 and the ACAS ECC being issued on 5 June 2024. Under cross examination the claimant accepted that by 5 June 2024 he knew how to submit his claims but that he waited until after he obtained the letter from the GP.

22. I accepted that the claimant had no expert knowledge of employment law. (Although noted that the claimant did rely on a considerable number of authorities at this PH). I accepted that the claimant had not been involved with Employment Tribunal proceedings prior to bringing this claim. I accepted that as at the time of his dismissal the claimant was unaware of the time limits for bringing a claim to the Employment Tribunal.

Relevant Law

23. The Employment Rights Act 1996 ('ERA') at section 111 sets out provisions for making a complaint of unfair dismissal to an Employment Tribunal. Section 111(2) states:-

> *"[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 3 months beginning with the effective date of termination, or*
>
> *(b) Within such other 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."*

24. The leading authority, particularly for claims involving a professional advisor, is *Dedman v British Building and Engineering Appliances 1974 ICR 53 CA*, where Ld Denning said *'Ignorance of his rights – or ignorance of the time limit – is not just cause or excuse, unless it appears that he or his advisers could*

not reasonably have been expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and they must take the consequences." In *Northamptonshire County Council v Entwhistle 2010 IRLR 740, EAT*, Mr Justice Underhill, (then President of the EAT) confirmed that *Denham* principle and emphasised that the question of reasonable practicability is one of fact for the tribunal that falls to be decided on the particular circumstances of the case.

25. The existence of an impending internal appeal is not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit (*Bodha v Hampshire Area Health Authority 1982 ICR 200, EAT,* expressly approved by the Court of Appeal in *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA.*

26. Where a claimant has a debilitating illness or condition, that may usually only constitute a valid reason for extending the time limit if it is supported by medical evidence. Such medical evidence must not only support the claimant's illness; it must also demonstrate that the illness prevented the claimant from submitting the claim on time (*Pittuck v DST Output (London) Ltd ET Case No.2500963/15*)*.* Following guidance from the EAT in *Cygnet Behavioural Health Ltd v Britton 2022 IRLR 906, EAT*, there requires to be consideration of what the claimant was able to do during the period between his dismissal and the expiry of the time limit, including appealing against his dismissal, contacting ACAS about his potential claims and working.

27. For the unlawful discrimination claims under the Equality Act 2010, the legal test to be applied is in respect of reasonably practicable, and the burden of proof is on the claimant to show that it was not reasonably practicable for him to have lodged the claim within the relevant time period. Section 123 of the Equality Act 2010 sets out the provision on the time limits for submitting a claim for unlawful discrimination. This states:

> *(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.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

28. In *British Coal Corporation v Keeble 1997 IRLR 336*, the Court of Appeal set out the factors to be taken into consideration when considering whether it would be just and equitable to extend the three month time limit. These were taken from the guidance on application of s33 of the Limitation Act 1980, in relation to the extension of time limits applicable to personal injury claims. The Tribunal should consider the prejudice which each party would suffer as a result of refusing or granting the extension of time and should have regard to all the relevant circumstances, including:

i. The length of and reasons for the delay;

ii. The extent to which the cogency of the evidence is likely to be affected by the delay;

iii. The extent to which the party sued has co-operated with any requests for information;

iv. The promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action;

v. The steps taken by the Claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

29. The guidance from the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR D5, CA* was that it is not necessary for the factors set out in *British Coal Corporation v Keeble and ors* to be used as the framework for considering of the decision on whether to allow an extension of time on just and equitable grounds under section 123 EqA. The guidance there from the Court of Appeal was that the best approach for a tribunal in considering the exercise of the discretion is to assess all the factors in the particular case that it considers relevant, including in particular, as Mr Justice Holland noted in *Keeble*, the length of, and the reasons for, the delay. Following the guidance from Mr Justice Langstaff, then President of the EAT, in *Habinteg Housing Association Ltd v Holleron EAT 0274/14*, a multi factorial approach should be applied to the application of extension of time under section 123 of the Equality Act, with no one factor being determinative.

30. The onus is on the claimant to convince the tribunal that it is just and equitable to extend the time limit. This was made clear in the Court of Appeal's decision in *Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*, which stated that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EqA, '*there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.*'

31. The 'just and equitable' test to be applied under section 123 of the Equality Act 2010 was considered by the Court of Appeal in *Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA*. The Court of Appeal there noted the wide breadth of the discretion given to employment tribunals to proceed in accordance with what they think is just and equitable.

The guidance was that it is important that all relevant factors are taken into account by the employment tribunal in making its decision. In *ABM University Local Health Board v Morgan,* Langstaff P confirmed that it is for the claimant to persuade the ET that it is just and equitable to extend time. Langstaff P set out (at paragraph 52) that the relevant questions are (1) why was it that the primary time limit had been missed (2) Why after expiry of the of the primary time limit was the claim not brought sooner than it was? The guidance from Langstaff P at paragraph 52 in *ABM University Local Health Board v Morgan,* was considered by HHJ Eady KC in *British Transport Police v Norman UKEAT/0348/14,* particularly at paragraph 24. Her guidance was that the answers to the questions posed by Langstaff P in *ABM University Local Health Board v Morgan* are fact and case sensitive and cannot be assumed. Also adopting the approach taken in *ABM University Local Health Board v Morgan,* the Court of Appeal in *Chief Constable of Lincolnshire Police v Caston 2010 IRLR 327, CA* considered that the question that must be asked of on appeal in respect of an Employment Judge's exercise of their discretion under section 123 is whether there was material on which the tribunal could properly exercise its discretion. There must then be an evidential basis to support a finding in fact on the reason for the delay.

Submissions

32. Both parties made submissions, In furtherance of the overriding objective in Rule 2 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ('the Procedure Rules'), it was agreed that the respondent's representative would present their submissions first, with the claimant then replying. Both parties relied upon authorities.

33. The respondent's representative spoke to their written skeleton submissions (9 pages) and relied upon the following authorities:-

Westward Circuits Ltd v Read [1973] 2 All ER 1013

Dedman v British Building & Engineering Appliances Ltd [1974] ICR 53

Porter v Bandridge Ltd [1978] ICR 943

Palmer and Saunders v Southend-on-Sea Borough Council [1984] ICR 372
Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434

Asda Stores Ltd v Kauser EAT 0165/07

Northumberland County Council and anor v Thompson EAT 0209/07

Chief Constable of Lincolnshire Police v Caston [2009] EWCA Civ 1298

Nolan v Balfour Beatty Engineering Services EAT 0109/11

British Transport Police v Norman UKEAT/0348/14

Miller and ors v Ministry of Justice and ors and another case EAT 0003/15

Pearce v Bank of America Merrill Lynch and ors EAT 0067/19

Wilson Barca LLP v Shirin [2020] UKEAT/0276/19

Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23

Cygnet Behavioural Health Ltd v Britton 2022 EAT 108

Jones v Secretary for Health and Social Care [2024] EAT 2

34. The respondent's representative also relied upon the position in Harvey on Industrial Relations and Employment Law (Issue 318, August 2024, Division at PI(1)(f)): §229.01 and §281.05

35. The claimant relied upon the position set out in a paper submitted with his completed Agenda form and the following authorities:-

Palmer and Saunders v Southend-on-Sea Borough Council [1984] ICR 372

Dedman v British Building & Engineering Appliances Ltd [1974] ICR 53

Asda Stores Ltd v Kauser EAT 0165/07

Johnson v London Fire and Civil Defence Authority

Northumberland County Council v Thompson [2007] EAT 7

Abercrombie v Morgan

Khan v Derby Law Centre

Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23

Chief Constable of Lincolnshire Police v Caston [2009] EWCA Civ 1298

Krishnan v Pizza Express

36. Parties' submissions are dealt with in the 'Decision' section below.

Burden of Proof

37. The burden of proof is on the claimant to show that his claim was lodged within the time period provided for in each of the Employment Rights Act 1996 section 111(2)(b) and the Equality Act 2010 section 123). The test is on the balance of probabilities.

Decision

38. It was accepted that the claimant was exited from the respondent on 13 October 2023 and that he was paid until 20 October 2023. The claimant relies on his treatment in respect of the dismissal as being unlawful discrimination on the grounds of his race and / or religion. The relevant three-month period for the claimant to bring the unfair dismissal claim (under ERA section section 111) expired on either 12 January 2024 or 19 January 2024. The three-month time frame for the claimant to bring the unlawful discrimination claim expired on 19 January 2024. I accepted the respondent's representative's position that (in respect of all claims) as the primary time limit had already expired when the claimant contacted ACAS on 5 June 2024, the claimant has no benefit from the extension provision. The ET1 was presented to the Tribunal on 12 June 2024. I accepted the respondent's representative's submission that the unfair dismissal claim was presented to the Tribunal either 152 or 145 days out of time. The unlawful discrimination claim was presented 145 days out of time.

39. The claimant relied upon his health as the reason for the delay in submitting the claim. On the evidence before me, the claimant did not prove that in the

three months after his dismissal he was incapacitated to such extent that it was not reasonably practicable for him to have submitted his unfair dismissal claim.

40. As set out above, the claimant's evidence on when he became able to submit his claim was inconsistent. I accepted the claimant's position that the treatment, job loss and *'ensuing emotional and mental health struggles*' were all factors that impacted the claimant. On the evidence before me, and the findings in fact I did not accept that that impact was to such extent that it was not reasonable practicable for him to have submitted his unfair dismissal claim within three months of either 13 October or 20 October 2023. In that three month period, the claimant was not certified as unfit for work and did not attend his GP in relation to any mental health issues. I took into account that the ET1 which the claimant had submitted was in short form and that as it the time it occurred, the claimant was aware of the events relied on in the two substantive paragraphs of Box 8 of his ET1 application form. On the evidence before me, the claimant did not prove that it was not reasonably practicable for him to have submitted his unfair dismissal claim by either 13 October or 20 October 2023.

41. Ignorance of the law does not satisfy the reasonably practicable test. On the evidence before me and on application of the test set out in section 111(2) of the ERA, I accepted the respondent's representative's submissions that it was reasonably practicable for the claimant to present the unfair dismissal claim within the relevant 3 month period, and it was not presented in a reasonable period thereafter.

42. With regard to the claims under the Equality Act, the burden is on the claimant to show that it would be just and equitable to extend time, and so where a contentious matter is relied on, there must be some evidential basis for it (*British Transport Police v Norman* UKEAT/0348/14). The evidence before me, including the letter from the GP, did not provide an evidential basis for a just and equitable extension. I took into account that the claimant has not been diagnosed with any mental health condition. I accepted the respondent's representative's reliance on the terms of the letter from the GP and in

particular that it states that the claimant informed the GP that he was unable to put in a claim, rather than stating the GP's own evidence based opinion that the claimant was unable to submit a claim. I accepted that there was no medical evidence before me on the claimant's capacity in the initial three month period. I accepted the respondent's submissions that there was no diagnosis of a debilitating medical condition.

43. In applying section 123 EqA, I took into account what the claimant was able to do in the initial 3 month period after the acts complained of, and in the period between then and the time of the claim being lodged. I had regard to the relevant law, as set out above. I considered the length of, and reason for the delay. I considered the balance of prejudice to the parties. I took into account that the respondent's representative relied upon *Miller and ors v Ministry of Justice and another* and specifically noted the comments there of Mrs Justice Laing (as she then was) that there are two types of prejudice a respondent may suffer if the limitation is extended: (1) legal prejudice of facing an otherwise time-barred claim and (2) forensic prejudice and that if there is no forensic prejudice to the respondent, that is not decisive in favour of an extension, nor will it necessarily be relevant. The respondent's representatives did not submit that the delay in submitting the claim would cause additional difficulties to the respondent in respect of their defence of the claim (e.g. identification of relevant witnesses or their ability to make relevant enquiries or recover relevant documents). It was not submitted that the delay has resulted in any 'forensic prejudice' to the respondent's defence of the claim. The prejudice to the respondent would be the legal prejudice of facing an otherwise time-barred claim. If allowed to proceed, there would be further preliminary issues in this claim, given the respondent's position is that they dispute that the claimant was employed by them. The prejudice to the claimant would be the loss of pursuing otherwise time barred claims. There would be likely to be further preliminary issues, particularly with regard to whether the claimant was an employee of the respondent.

44. With regard to the guidance in *ABM University Local Health Board v Morgan,* the primary time limit was missed because the claimant considered himself to not have the capacity to deal with making a claim to the Employment Tribunal

at that time. There was a lack of evidence before me to support the claimant's position that he did not have that capacity at that time. For that reason, the claimant did not show that it would be just and equitable to extend time.

45. As set out above, there was inconsistent evidence from the claimant as to why, after expiry of the primary time limit, the claim was not brought sooner than it was. There was not material sufficient to support the proper exercise of my discretion under section 123. There was not an evidential basis to support a finding in fact on the reason for the delay in submitting the claim after the expiry of the initial limitation period. On the claimant's own evidence, he had recovered by the end of April or beginning of May. The claimant did not prove that his health was the reason why, after expiry of the of the primary time limit the claims under the Equality Act were not brought sooner than 12 June 2024. On the claimant's own evidence , he delayed submitting his claim until he had obtained a letter from his GP.

46. In all these particular facts and circumstances, I was not persuaded that it would be just and equitable to extend the limitation period so as to give the Employment Tribunal jurisdiction to hear these claims under the Equality Act 2010, and the claims are dismissed.

C McManus
Employment Judge

23 October 2024
Date of Judgment

Date sent to parties **24 October 2024**