



EMPLOYMENT TRIBUNALS

Claimant: Mr C Winkless
Respondent: Leicester City Council

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE
On: 6 March 2025
Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: In person
For the respondent: Ms H McDade, solicitor

JUDGMENT

UPON hearing from the parties,

IT IS THE TRIBUNAL'S JUDGMENT THAT the claims for disability discrimination and for harassment related to disability were not presented in time. It is just and equitable to extend time however so they are deemed presented in time. Therefore the Tribunal has jurisdiction to hear and decide them and they may proceed accordingly.

REASONS

1. Listed by order of Employment Judge Rachel Broughton on 30 October 2024, the purpose of this preliminary hearing is to decide if it is just and equitable to extend the time within which the claimant might present his claims for disability discrimination and for disability-related harassment. It is accepted that they are out of time.
2. At the hearing, the claimant represented himself and Mrs H McDade, solicitor, represented the respondent. There was a bundle of 89 pages. I also considered the Tribunal's file. There was one page in it of relevance and to which I referred the parties – otherwise it took this hearing no further forward. The claimant had not prepared a witness statement himself, but his wife had done so. She was not giving evidence to the Tribunal, however. By agreement we proceeded on the basis of the claimant adopting his wife's statement as his own. I also asked him questions to give him a chance to provide more information. He was then cross examined by the respondent.

At the end, each party made closing oral submissions. I have taken into account all of this when making my decision.

3. We took a mid-morning break. Plenty of water was made available to the claimant by way of a reasonable adjustment. No other adjustments were requested, and there is nothing during the course of the hearing that gave me reason to believe any were required. Neither party has suggested it was unfair hearing, and I am satisfied it was a fair hearing.
4. The claimant said that he found it easier to process information in writing. Therefore rather than deliver an oral judgement I have reserved my decision. This is that decision.
5. Employment Judge Rachel Broughton listed this hearing on the assumption that the various acts complained of are a continuing act for the purposes of the **Equality Act 2010**: see paragraph 31 of her case management order. I proceed on that basis without objection.
6. The Learned Judge had also directed the claimant to send to the Tribunal a schedule of the acts complained of. The claimant has done this. The first act in his list is dated 26 June 2022, and the last act he cites in that schedule is dated 21 September 2023. At the hearing, the claimant said it was in fact 12 October 2023 and he had written the wrong date. What he told me corresponds with the date of the last act that he told the Learned Judge at the last hearing. We were unable to resolve the issue today. I will proceed on the basis most favourable to the claimant.
7. With that in mind I turn to making findings of fact on the balance of probabilities and bearing in mind the claimant was an honest and credible witness before me.
8. The respondent employed the claimant as a stone mason until his retirement on ill health grounds on 20 December 2023. There is no legal complaint about the termination of employment itself.
9. The claimant is married. His wife is qualified in human resources and works in recruitment. He confirmed she has therefore some familiarity with employment law.
10. In April 2021, the claimant's son passed away. That had devastating impact on the claimant's mental health. At least since then the claimant has had depression. He told me that in the 3 or so weeks around certain anniversaries, he becomes depressed, retreating into himself and not engaging with others or with his affairs he does not need to attend to. This is not supported by medical notes as such, though I saw no medical evidence that undermined this either. However it fits with becoming an involuntary patient. It fits with his long term absence. It fits with his general credibility. He did not suggest that he was unable to do anything in the 6 weeks about these anniversaries. The fact he attended the meeting of 20 December 2023 shows this. Overall, I was left with the impression that there was a deterioration to towards the anniversaries and then an improvement afterwards. This tallies with the dates in the documents, the gaps in this case and the steps he told me he took.

11. I therefore find as a fact that in the 3 or so weeks preceding an anniversary his mental health deteriorates significantly, and then after that particular anniversary it improves over 3 or so weeks. I accept his evidence and find as a fact that those anniversaries are his son's birthday (11 November), Christmas and his son's death.
12. On 11 May 2022, the claimant became an involuntary patient under the mental health legislation for a while. This was because of the impact of the anniversary of his son's passing. The claimant did not return to work after this date.
13. The claimant alleges that after this, and after he ceased to be an involuntary patient, there were a series of harassing or discriminatory communications from his manager connected to his disability. The details do not matter for today's purposes. However his wife advised him to keep a record of each communication in case it developed into something. Given her background and the nature of the suggestion, I infer and find that at least one of the reasons was to gather evidence in case it be needed for a claim to the Employment Tribunal.
14. On 7 June 2023, there was a long-term sickness meeting between the claimant and his manager. The claimant was not represented but in the meeting confirmed his representative was a trade union representative and he intended to discuss matters with him after the meeting.
15. In fact at some point his membership had lapsed. He only found out after the meeting when he phoned his union. Therefore they could not advise him on this case.
16. Based on my earlier findings of fact, I find that in the weeks leading up to and coming after 11 November 2023, the claimant's mental health had deteriorated because it was about the time of his late son's birthday.
17. At the meeting on 20 December 2023, the claimant referred to passing on information to his representative. That was a reference to having a solicitor. He did not actually have a solicitor then, but afterwards approached one. I find as a fact he was clearly intending to take legal advice. He took advice from a solicitor in the middle of January 2024.
18. On 25 January 2024, and after seeing his solicitor, he sent to the respondent what is in substance a grievance alleging discriminatory treatment. Because he managed to present the grievance I find as a fact that he was capable of presenting a claim or contacting Acas to commence early conciliation about this time too.
19. The respondent replied on 6 February 2024 dismissing his grievance.
20. On 8 February 2024 he commenced early conciliation. This concluded on 21 March 2024. There was nothing procedurally irregular about this early conciliation. However he commenced it again on 28 March 2024 and it ended on 2 April 2024. Even after hearing the evidence I do not understand why he did so. On 2 April 2024 he presented his claim.
21. The claimant did not have access to legal advice through an insurer e.g. his household insurer or through another trade union. He did not do any research online because he found it overwhelming to search for and to

process the information. He says he was unaware of the time limits. He had reasonable opportunity to find out. He could have asked his wife. Even if he found research overwhelming, he could have easily read the Acas site. He could have asked his solicitor (assuming they did not tell him). I accept that at Christmas 2023 his mental health deteriorated like it did for November 2023. However the fact he attended the meeting on 20 December 2023 leads me to conclude he had enough personal strength to do the most basic research. He had been keeping notes throughout with a view to a potential case before the Employment Tribunal. It was a known possibility. It would have been reasonable to have looked up at least the time limit at some point.

22. The law is as follows. The **Equality Act 2010** provides a claim must be presented within 3 months of the act complained of. Where there is a series of continuing acts, then the 3 months begins on the date of the last of those acts. The act provides that the Tribunal can extend time if it be just and equitable to do so.
23. It is for the claimant to persuade the Tribunal to extend time: **Robertson v Bexley Community Centre [2003] IRLR 434 CA** amongst other cases.
24. The Tribunal has a wide discretion. It should take into account all the circumstances including the length of the delay, reasons for the delay and whether the respondent has been prejudiced: see (amongst other cases) **Southwark LBC v Afolabi [2003] ICR 800 CA**, **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194 CA** and **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**.
25. Applying the law to this case, I conclude that it is just and equitable to extend time so that the claimant's claim is deemed in time. My reasons are as follows
 - 25.1. If I assume the last act was in fact 21 September 2023, which is the last date in his schedule, then the deadline for presenting the claim would have been 20 December 2023. The delay therefore in presenting this case to 2 April 2024 is in the order of 3 months and 2 weeks, ignoring early conciliation. I do not consider that to be a significant period of time in the context of this case.
 - 25.2. Based on my findings of fact, his mental health would have adversely affected his ability to act in the weeks around 11 November 2023 and Christmas 2023. He could not act with the swiftness one might reasonably expect of someone without his mental health issues. This is supported by the fact that by 25 January 2024 he had taken advice and was clearly well enough to set out his complaint, because he had raised an internal grievance.
 - 25.3. I conclude these anniversaries are good reasons for a significant portion of the delay.
 - 25.4. However it was only a short delay before he did contact Acas 8 February 2024 (2 weeks from his grievance and 2 days from its outcome. In the period that followed until 21 March 2024, he

would have been unable to present the claim because the law required completion of the early conciliation. I do not consider therefore that this period of the delay is one that can be properly held against the claimant. That is significant because it accounts for about 6 weeks of the delay.

- 25.5. The claimant was able to present a claim in the period thereafter. There is no good reason for the further early conciliation with the respondent. However in total there are only 12 days between first period early conciliation ending and the presentation of the claim. I conclude that is a reasonable period in which to prepare and present the claim in any event when taking into account the claimant's mental health.
26. The respondent avers the claim is weak because they followed the absence procedure, as detailed in their grounds of response. I cannot find as a fact that they did, nor that they did not. The procedure is not in the evidence before me. A bare assertion they did so is not evidence. In any case I do not consider it relevant because the claim is focused on the communications and whether they are discriminatory or harassing, and not on the dismissal itself.
27. The respondent also says that there is prejudice because of the passage of time. I accept as a general principle memories tend to fade with time. However there is no specific evidence that means those memories cannot be refreshed from documents, or that there is any particular difficulty beyond the difficulties the passage of time usually causes. The respondent cites that if time is extended then it will be addressing issues from 2022. I am able to accept that will not be as easy as addressing issues that are more recent. However the claim relates to his absence and communications between him and his manager, and so is of a theme which is different to disparate acts involving disparate people. It involves mostly if not totally one person – his manager. No particular prejudice is evidenced. I find this unpersuasive.
28. I had cause to hesitate over the fact he could have reasonably discovered the time limit and because of his wife's knowledge which would have been available to him. However in the context of this case's timeline, and in particular his mental health and the impact of the anniversaries in November and at Christmas, I do not think this outweighs the other circumstances that point to me exercising my discretion.
29. The claim therefore may proceed. I will direct there be a case management hearing to finalise the list of issues and to give directions.
30. As an aside, if the final act were 12 October 2023, then the justification for extending time would be stronger in my view because the delay would be even shorter.

Approved by the Judge

Employment Judge Adkinson

Date: 6 March 2025

JUDGMENT SENT TO THE PARTIES ON

.....19 March 2025.....

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FOR THE TRIBUNAL OFFICE

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Appeals

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