EMPLOYMENT TRIBUNALS

Claimant: Miss N Bakouse

Respondent: London General Transport Services Limited (t/a Go Ahead London)

Heard at: London South Employment Tribunal, Croydon (by video)

On: 7 March 2025

Before: Employment Judge Abbott (sitting alone)

Representation
Claimant: not in attendance
Respondent: Mr Jack Feeny, barrister

JUDGMENT ON TIME LIMITS

1. The Tribunal does not have jurisdiction to hear the claimant's complaint of unfair dismissal, and such complaint is therefore dismissed.

2. The Tribunal does not have jurisdiction to hear the claimant's complaint of breach of contract (notice pay), and such complaint is therefore dismissed.

3. The Tribunal does not have jurisdiction to hear the claimant's complaints under the Equality Act 2010, and such complaints are therefore dismissed.

REASONS

Background

1. This claim came before me for a Preliminary Hearing today further to an order of Employment Judge Hart ("**EJ Hart**") dated 24 October 2024 to consider whether the Tribunal had jurisdiction to hear the claimant's complaints in view of time limit issues.

The claimant's postponement request

2. The hearing was listed to commence at 10:00am this morning. At 7:49am the Tribunal received an email from the claimant (not copied to the respondent) in the following terms:

> "Good morning
>
> Apologies for the ever so late reply however I have been unable to submit or complete any paper work dime to the ill health of a close relative which as become my priority. Therefore, I am unable to attend today's hearing.
> Can I ask that be rescheduled in order to complete and submit any necessary paper work
>
> Thank you in advance for you understanding"

3. Upon being provided with this email, I instructed that an email be sent to the claimant (copied to the respondent) in the following terms – this was sent at 9:58am:

> "I have been forwarded your email of 7.49am this morning. I note that it was not copied to the Respondent's representatives.
>
> You have been on notice of today's hearing since 24 October 2024. On that same date, EJ Hart ordered that you (1) send all documents relevant to the issues for this hearing to the Respondent by 10/01/2025 and (2) provide an explanation for why the claim was not submitted in time by 21/02/2025.
>
> Your email gives a reason for why you cannot attend today, but no supporting evidence has been provided.
>
> Please by return email:
>
> 1. confirm whether you have complied with points (1) and (2) of EJ Hart's order and, if not, why not?
> 2. provide evidence to support your reasons for not being able to attend today, and for non-compliance with EJ Hart's orders (if the answer to (a) is that you have not complied).
>
> I will delay the start of the hearing until 11am to await your response. I encourage you to join in any event so that I can discuss with you and the Respondent's representatives how to proceed, taking account of the overriding objective to deal with cases fairly and justly."

4. No response was received by 11:00am, nor did the claimant log-on for the video hearing. At around that time, the Tribunal clerk spoke to the claimant by telephone and the claimant said that she would respond to the email in the next few minutes. I delayed starting the hearing until 11:15am to await a response. A response was received by the Tribunal at 11:06am and reached me and the respondent shortly after the hearing began. It reads as follows:

> "Morning,
>
> Due to the long term illness of my father I have had to prioritise his well being and health after several issues with his heart. Therefore I have been unable to find the

time or manage mentally with the stresses, my father is currently in hospital after having another relapse. Evidence can be provide later (ie as requested from medical staff)

Thank you for your patience and understanding in this matter."

5. I asked Mr Feeny, who appeared for the respondent, for his oral submissions in response to the claimant's postponement request. He resisted the request on the basis that it was not compliant with the Presidential Guidance on Seeking a Postponement of a Hearing, in particular because the claimant's emails provided insufficient information as to why the claimant could not attend today.

6. In circumstances where a postponement request is made less than 7 days before the hearing, the request is not consented to, and there is no act or omission on the part of the respondent or the Tribunal necessitating the request, the postponement can only be granted if there are "*exceptional circumstances*" (Rule 32(2)(c)). This can include ill health relating to an existing long term health condition or disability (Rule 32(4)(b)). However, I accept the submissions of Mr Feeny that the lack of evidence provided by the claimant means that exceptional circumstances are not made out here. The Presidential Guidance has not been complied with. The claimant has been aware of this hearing for many months and, in her own words, her father's health issues are "*long term*". In those circumstances it is not sufficient, on the morning of the hearing itself, to request a postponement relying on those health issues and providing no evidential support. I therefore refused the request for a postponement.

7. Having refused the postponement request, and with the claimant not attending the hearing, Rule 47 was applicable. That Rule gives the Tribunal two options: dismiss the claim or proceed with the hearing in the claimant's absence. The information available to the Tribunal as to the claimant's reasons for not attending has been summarised already above. Mr Feeny submitted that the overriding objective was better served by proceeding in the claimant's absence than simply striking the claim out due to the claimant's non-attendance. I agreed that approach best served the overriding objective.

The time limits issues

8. Time limits issues arise in this case because, as is explained in paragraphs 5-10 of the Grounds of Resistance (which analysis I accept), all of the complaints made are brought outside of the relevant primary time limit imposed by the relevant legislation.

    a. The claim was presented on 30 August 2024.

    b. For the unfair dismissal complaint, the relevant date is her effective date of termination – she resigned without notice on 14 May 2024 and (presumably) alleges constructive dismissal. Taking account of the provisions of section 207B of the Employment Rights Act 1996 ("**ERA**") which extend time for the presentation of a claim in respect of the ACAS early conciliation period, that claim should have been

presented by 29 August 2024. It was one day late.

c. For the complaints under the Equality Act 2010 ("**EqA**"), the relevant dates are the dates of the relevant acts. In respect of alleged pregnancy and maternity discrimination, the acts referred to in the claim occurred in 2022 (the claimant was due to return from maternity leave in March 2022). Further events are mentioned in the claim that occurred during 2023 and up to the outcome of a grievance against a union rep that was delivered on 21 April 2024, though the legal basis of a claim based upon those allegations is unclear - they are perhaps better understood to form part of the constructive unfair dismissal claim rather than being EqA complaints. But, in any event, any EqA claim based on any of the events mentioned in the claim would still have been out of time (in respect of the pregnancy and maternity complaints, very considerably so) before ACAS early conciliation was begun on 23 July 2024.

d. The breach of contract (notice pay) claim is somewhat unclear – there is an indication in the claim form that it might relate to issues that arose in around September 2022 when she was reinstated having been dismissed in July 2022. But, even if it is assumed that there is a notice pay claim arising following her resignation on 14 May 2024, it is one that crystallised on that date and therefore is out of time by 1 day on the same basis as for the unfair dismissal claim.

9. In the absence of the claimant, I heard oral submissions from Mr Feeny on behalf of the respondent. I also considered the documents in the 170-page hearing bundle, the chronology prepared by the respondent, and the claimant's emails from today referred to above.

<u>The law: unfair dismissal & breach of contract time limits</u>

10. Section 111(2) ERA, which concerns remedies for unfair dismissal complaints, 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 three months beginning with the effective date of termination, or
> (b) 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."

11. Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, which concerns remedies for breach of contract complaints, is (so far as relevant) in similar terms:

> "Subject to article 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—
> (a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or
> […]
> (c) where the tribunal is satisfied that it was not reasonably practicable for the

complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable."

12. In other words, in circumstances where an unfair dismissal or breach of contract complaint is brought more than 3 months after the effective date of termination (as is the case here, even once the extension provided by s.207B ERA is accounted for), it can only proceed if the Tribunal is satisfied that (1) it was not reasonably practicable for the complaint to be presented within the 3 month period and (2) it was then presented within a reasonable period after the 3 month period expired.

Application: unfair dismissal and breach of contract time limits

13. The provisions set out above place a burden on the claimant to show that it was not reasonably practicable for her to present her claim in time. No evidence has been presented to discharge that burden. Nor is there anything in the claim form, or elsewhere in the documents available to the Tribunal, to assist. From the point at which she received the ACAS Early Conciliation Certificate on 29 July 2024, the claimant had 1 month to file her claim. She failed to do so. There is no evidence before me upon which I could properly conclude that it was not reasonably practicable for her to do so within that period.

14. Accordingly, I find that the Tribunal has no jurisdiction to consider the unfair dismissal and breach of contract complaints, and those complaints must be dismissed.

The law: Equality Act time limits

15. Section 123(1) EqA, which concerns complaints to the employment tribunal under the EqA, states:

> "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."

16. Under s 123(1)(b) EqA the Tribunal has a broad discretion. There is no set list of factors to consider; the Tribunal can take account of any factors it considers to be relevant. However, two factors which tend to be most important are (a) length and reasons for delay and (b) prejudice to the Respondent caused by the delay: see the observations of Leggatt LJ in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194, CA §§18-20:

> "[18] First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in

> section 33(3) of the Limitation Act 1980 (see *British Coal Corporation v Keeble* [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see *Southwark London Borough Council v Afolabi* [2003] EWCA Civ 15; [2003] ICR 800, para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998: see *Dunn v Parole Board* [2008] EWCA Civ 374; [2009] 1 WLR 728, paras 30-32, 43, 48; and *Rabone v Pennine Care NHS Trust* [2012] UKSC 2; [2012] 2 AC 72, para 75.
>
> [19] That said, 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).
>
> [20] The second point to note is that, because of the width of the discretion given to the employment tribunal to proceed in accordance with what it thinks just and equitable, there is very limited scope for challenging the tribunal's exercise of its discretion on an appeal. It is axiomatic that an appellate court or tribunal should not substitute its own view of what is just and equitable for that of the tribunal charged with the decision. It should only disturb the tribunal's decision if the tribunal has erred in principle – for example, by failing to have regard to a factor which is plainly relevant and significant or by giving significant weight to a factor which is plainly irrelevant – or if the tribunal's conclusion is outside the very wide ambit within which different views may reasonably be taken about what is just and equitable: see *Robertson v Bexley Community Centre t/a Leisure Link* [2003] EWCA Civ 576; [2003] IRLR 434, para 24."

Application of the law to the facts: Equality Act time limits

17. It seems to me that the following factors are relevant in this case.

18. First, the length of the delay. As noted above, all allegations in respect of pregnancy and maternity discrimination date back to 2022. They are years out of time. Even if the allegations relating to incidents in 2023 and 2024 can properly be understood as EqA complaints, they are many months out of time.

19. Second, the lack of any reason being advanced for the delay, either in the claim form or in advance of this hearing. I accept Mr Feeny's submission that this is a very weighty factor. I have taken due notice of the fact that the claimant was off sick from work at various points in 2022, 2023 and 2024. However, there is nothing available to tie together such ill health with an inability to bring a timely Tribunal claim. As Mr Feeny noted in submissions, the claimant was able to bring an internal grievance in 2024. She also had trade union support at various times in the chronology.

20. Third, the staleness of the claim, which prejudices the respondent. As pleaded, the core allegations (at least as regards pregnancy / maternity discrimination) took place in 2022. The claim will not come on for a final hearing until 2026 at the earliest, if allowed to proceed. Plainly there will be a degree of prejudice to the respondent in dealing with matters said to have occurred many years earlier. Witness memories will have faded. Mr Feeny also pointed to the respondent's email retention policy, pursuant to which

emails are automatically deleted after 12 months. The delay in the claimant raising her issues necessarily hinders the respondent in gathering the relevant evidence.

21. I take account of the fact that the claimant will be prejudiced by the loss of her claim if a "just and equitable" extension is not granted – but that is no different to the position of any claimant who has failed to meet the primary time limit.

22. Taking account of these factors, in my judgement, the additional time that the claimant took to bring her EqA complaints after the expiry of the 3 month primary period was not a period that is just and equitable. Accordingly, the Tribunal does not have jurisdiction to hear those complaints, and they must be dismissed.

Conclusion

23. The consequence of my decision is that all of the claimant's complaints are dismissed. The claimant's claim is therefore at an end.

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Employment Judge Abbott
Dated: **7 March 2025**

JUDGMENT SENT TO THE PARTIES ON
14 March 2025
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FOR THE TRIBUNAL OFFICE

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