EMPLOYMENT TRIBUNALS

Claimant: Mr Ralph Hadley

Respondent: Haier Smart Home UK & I Limited

Heard at: Cardiff **On:** 24 April 2025

Before: Employment Judge S Jenkins

Representation
Claimant: In person
Respondent: Mr A Galvin (Solicitor)

JUDGMENT

1. The Claimant's unfair dismissal complaint was not brought within the period of three months beginning with the effective date of termination of his employment, when it was reasonably practicable for the complaint to have been brought within that period. The complaint is therefore dismissed.

2. The Claimant's complaint of direct age discrimination was not brought within the period of three months beginning with the date of the act to which his complaint related, and it is not just and equitable to extend time. The complaint is therefore dismissed.

3. The Claimant's application to amend his claim to add complaints of breach of contract and harassment related to age is refused.

REASONS

Introduction

1. An earlier preliminary hearing had taken place in relation to this case, coincidentally before me, on 24 January 2025. In that, it was identified that the Claimant's claim had, on the face of it, been brought out of time, and that it would therefore be appropriate for a preliminary hearing to be held to consider whether the Claimant's claim should nevertheless be permitted to proceed. This hearing was then scheduled to deal with that matter.

2. Also in that preliminary hearing, it was discussed that the Claimant wished to apply to amend his claim to include a complaint of age-related harassment.

I gave directions on the making of such an application. In the event, the Claimant submitted an application to amend his claim to add a complaint of breach of contract as well as a complaint of age-related harassment.

Issues to be determined

3. Notice of this hearing was then sent to the parties on 29 January 2025, in which it was recorded that the following maters would be determined at this preliminary hearing:

    a. Was it reasonably practicable for the Claimant to have presented the complaint of unfair dismissal within the time limit? If not, was it presented within a reasonable period?

    b. Would it be just and equitable to extend the time limit for presenting the complaint of direct age discrimination?

    c. If the claim was allowed to proceed, should the Claimant be permitted to amend his claim to include a complaint of harassment related to age involving derogatory comments said to have been to or about him by the Respondent's employees?

    d. If the Claim was allowed to proceed, further case management.

4. I addressed the time limit matters on the day of the preliminary hearing, giving oral judgment, deciding both points against the Claimant, together with reasons, which are confirmed in writing below.

5. As the Claimant indicated that he wished to proceed with the amendment application, I then proceeded to hear the parties' submissions on the amendment application, overlooking that the wording of the notice of hearing had indicated that that was conditional on the claim being allowed to proceed, which it had not. Both applications to amend were addressed, even though the notice of hearing had indicated that only an application to amend to add a complaint of age-related harassment was going to be made. The Claimant had made both applications, and the Respondent was on notice of both of them.

6. There was insufficient time for me to reach my decision on the amendment application during the hearing, and I therefore reserved it. When subsequently considering my decision, I noticed again the terms of the notice of hearing, i.e. that the question of allowing an application to amend would proceed "*if the claim was allowed to proceed*". On reflection, as the parties had been able to make representations on the amendment applications, and the fact that some claims have been concluded to have been brought out of time did not necessarily mean that other, different claims could be permitted to proceed, I considered that it would be in furtherance of the overriding objective for me to complete my deliberations on the amendment applications and reach a decision on them.

Background

7. I considered the documents in a hearing bundle spanning 167 pages to which my attention was drawn. Within that were two documents, which it was agreed would, in combination, serve as the Claimant's witness statement. They were; a letter dated 5 September 2024, and the first three pages of a document entitled "Personal Statement". Further evidence was then received by way of the Claimant's oral answers to questions from Mr Galvin, on behalf of the Respondent, and from me, and finally by way of answers to questions from Mrs Hadley by way of re-examination.

Law

Time Limits

Unfair dismissal

8. Section 111 of the Employment Rights Act 1996 ("ERA") provides that an Employment Tribunal should not consider a complaint 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 have been presented before the end of that three month period.

9. The three-month period is to be extended by virtue of any time spent pursuing early conciliation with ACAS, which essentially means that a claimant must make contact with ACAS for the purposes of early conciliation during that three months.

10. There has been a considerable amount of case law on this point over the years, and one point that has been made clear is that it is a strict test. It is for a claimant to justify the conclusion that the claim was not able to be reasonably practicably brought within time, and that then it was brought within a reasonable time thereafter.

11. The cases have made clear that a number of reasons for delay can arise in assessing the reasonable practicability question, including; ill health, whether the claimant was aware of the right to pursue matters before the Tribunal, and the fact that the claimant may have been unaware of factual matters which might justify a claim.

12. The issue of reasonable practicability includes an assessment of the Claimant's ignorance of rights, but any ignorance must be reasonable. Scarman LJ (as he then was), in ***Dedman -v- British Building Engineering Appliances Limited*** **[1974] 1 WLR 171**, noted that a Tribunal must ask the questions of, "*What were [the claimant's] opportunities for finding out that [they] had rights? Did [they] take them? If not, why not?*"

13. The appellate courts have also made clear that where a claimant is generally aware of their rights, ignorance of a time limit will rarely be acceptable as a reason for delay.

14. In terms of ignorance of fact, the Court of Appeal in ***Machine Tool Industry Research Association -v- Simpson*** **[1988] ICR 558**, noted that the claimant must establish three things; that their ignorance of the fact relied upon was reasonable, that they reasonably gained knowledge outside the time limit that they reasonably and genuinely believed to be crucial to the case and to amount to grounds for a claim, and that the acquisition of this knowledge was in fact crucial to the decision to bring the claim.

15. Underhill P (as he then was), in the Employment Appeal Tribunal in ***Cambridge and Peterborough NHS Trust -v- Crouchman*** **[2009] ICR 1306**, further distilled the relevant principles to be taken into account in assessing the issue of reasonable practicability where a claimant initially is not aware they have a viable claim, but changes their mind when presented with new information after the expiry of the primary time limit. These include

    (i) That ignorance of a fact that is crucial or fundamental to a claim will in principle be a circumstance rendering it impracticable for a claimant to present that claim.

    (ii) That a fact will be crucial or fundamental if it is such that when the claimant learns of it their state of mind genuinely and reasonably changes from one where they do not believe they have grounds for the claim to one where they believe that the claim is viable.

    (iii) The ignorance of the fact in question will not render it not reasonably practicable to present a claim unless the ignorance is reasonable and the change of belief in light of the new knowledge is reasonable.

16. With regard to illness, the cases make clear that a debilitating illness may prevent a claimant from submitting a claim in time, but usually this will only constitute a valid reason for extending time if supported by medical evidence which demonstrates not only the illness, but the fact that the illness prevented the claimant from submitting the claim in time. Although equally the cases do confirm that medical evidence is not absolutely essential.

17. If the decision is that it was not reasonably practicable for the claim to have been brought in time then the EAT confirmed, in ***Cullinan -v- Balfour Beatty*** **(UKEAT/0537/20)**, that consideration of whether the claim is brought within a further reasonable period will require an objective consideration of the relevant factors causing the delay and what period should reasonably be allowed in the circumstances having regard to the strong public interest in claims being brought in time.

<u>Discrimination</u>

18. The provisions relating to time limits in discrimination cases are set out in section 123 of the Equality Act 2010 (“EqA”). That provides that discrimination complaints within section 120 may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable.

19. There have been a number of appellate court decisions on the issue of

extending time in discrimination cases over the years. The Court of Appeal, in ***Robertson v Bexley Community Centre*** **[2003] IRLR 434**, noted that, whilst the test is not as strict as that for the reasonable practicability test for unfair dismissal, there is nevertheless no presumption in favour of extending time in discrimination claims and it is for the Claimant to convince the tribunal that it is indeed just and equitable to extend time.

20. The Employment Appeal Tribunal, in ***British Coal Corporation v Keeble*** **[1997] IRLR 336**, noted that the provisions of section 33 of the Limitation Act 1980, which apply to civil claims, should also be applied in relation to tribunal claims. That involves an assessment of the prejudice to each party and an assessment of all the circumstances of the case which include: the length of and reasons for the delay, the extent to which the cogency of evidence is likely to be affected, the extent to which the party sued has cooperated with requests for information, the promptness with which the Claimant acted once he knew of the facts and the steps taken by the Claimant to obtain advice. It is clear however that an assessment of all the circumstances is to be undertaken.

21. The Court of Appeal provided further guidance, in ***Adedeji v University Hospitals Birmingham NHS Foundation Trust*** **[2021] EWCA Civ 23**, that the guidance provided in the ***Keeble*** case should not be treated as a checklist, as that would lead to a mechanistic approach to what is meant to be a very broad general discretion. The Court of Appeal's guidance was that the best approach for a Tribunal in considering the exercise of its discretion is 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.

22. The EAT, in ***Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132****, noted that t*he merits of the claim can be taken into account in the assessment, but confirmed that any assessment of the merits formed at a preliminary hearing must have been properly reached by reference to identifiable factors that are apparent at the preliminary hearing, and taking proper account, particularly where the claim is one of discrimination, of the fact that the tribunal does not have all the evidence before it and is not conducting the trial.

Amendments

23. The Employment Appeal Tribunal ("EAT") noted in ***Chandok v Tirkey*** **[2015] ICR 527**, at paragraph 16, that:

> "*The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made - meaning, under the Rules of Procedure 2013, the claim as set out in the ET1.*"

24. With regard to amendments, the test to be applied involves the assessment

of the balance of injustice and hardship of allowing or refusing the amendment. The EAT, in ***Selkent Bus Co Ltd v Moore*** **[1996] ICR 836**, reiterated that point, which had previously been made in ***Cocking v Sandhurst (Stationers) Limited*** **[1974] ICR 650**, and noted a non-exhaustive list of relevant circumstances which would need to be taken into account in the balancing exercise, namely; the nature of the amendment, the applicability of time limits, and the timing and manner of the application to amend. Those points were subsequently encapsulated within the Employment Tribunals (England & Wales) Presidential Guidance on General Case Management (2018), Guidance Note 1, which noted, at paragraph 6 that:

"6. *The Tribunal draws a distinction between amendments as follows:*

6.1 those that seek to add or substitute a new claim arising out of the same facts as the original claim; and

6.2 those that add a new claim entirely unconnected with the original claim."

25. The EAT, more recently, in ***Vaughan v Modality Partnership*** **[2021] ICR 535**, gave detailed guidance on applications to amend tribunal pleadings. That confirmed that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application, but noted that the focus should be on the real practical consequences of allowing or refusing the amendment, considering whether the Claimant has a need for the amendment to be granted as opposed to a desire that it be granted.

26. The circumstances set out in ***Selkent*** were specifically referred to as being non-exhaustive, and other factors can be taken account in the balancing exercise. That may include the merits of the claim being sought to be added. The EAT, in ***Kumari,*** as well as addressing time limits, noted, in relation to amendments, that account can be taken of the merits of the complaint sought to be added. The Tribunal again noted that the assessment of the merits must have been properly reached by reference to identifiable factors that are apparent at the preliminary hearing, taking proper account of the fact that the tribunal does not have all the evidence before it and is not conducting the trial.

Findings

27. My findings of fact, relevant to the issues I had to determine are as follows. I noted various matters which occurred in the workplace and which gave rise to the Claimant's claim for contextual purposes, but they should not be taken as formal findings of fact on those matters which would bind any subsequent tribunal.

28. The Claimant was dismissed, ostensibly by reason of redundancy, on 31 March 2024. He was 71 years old at that time, and had worked for the Respondent and predecessor companies for 51 years. The Respondent is a domestic white goods manufacturer.

29. That date of termination of employment meant that the Claimant had to lodge

his claim, or at least make contact with ACAS for the purposes of early conciliation, by 30 June 2024.

30. The Claimant was latterly employed by the Respondent as Staff Shop Manager for 20 hours per week. In that role, he organised the sale to employees, of, and the transportation of, products purchased by employees through the Respondent's internal staff shop.

31. The Respondent's case is that, in June 2023, the purchase of some products by employees moved to an online platform, and, by March 2024, all such products had moved to an online platform or a "web shop". That led to the identification of the Claimant's role as redundant, and to consultation with him in February and March 2024, before his employment was ended on 31 March 2024, with payment of a redundancy payment and notice.

32. The Claimant did not appeal that decision, and nor did it appear to occur to him that his dismissal had been unfair or discriminatory until several weeks later. He confirmed in his oral evidence that he did not initially consider that there had been anything untoward in relation to his dismissal.

33. On 26 April 2024, the Claimant underwent day surgery, and also had to re-attend hospital on an emergency basis on 29 April 2024. He was then impacted by that to a large extent for approximately a month.

34. On 16 May 2024, the Claimant saw a BBC news bulletin in which it was reported that the whole factory operated by the Respondent was to close. He confirmed, in his witness statement, that, a couple of days or so later, he spoke to a former colleague still employed by the Respondent, who told him that employees had been offered an *ex gratia* sum of £3,000 to stay on at work until September 2024, and subsequently later.

35. The Claimant described this as the "*first realisation*" he had of any inkling that something untoward had taken place. In his oral evidence, he confirmed that his concern at the time was not over the dismissal itself, but over the fact that he had not received the £3,000 *ex gratia* payment, which he understood had also been paid to colleagues made redundant in previous years.

36. The Claimant noted, in his personal statement, that he felt that he could, and should, have been allowed to stay until the end, i.e. until the factory closed, and that he then realised that he had not been treated fairly. He commented that that realisation, triggered by the BBC story and his relief from severe pain after his operation, "*woke [him] up*" to what had happened, and prompted him to contact his union. He confirmed however, that he held back from doing so, noting that he did not know why, other than that he did not want to cause trouble, and still felt an affinity towards the Respondent.

37. Instead, the Claimant wrote to the Respondent's Head of HR Operations. The date of that letter was not clear, but the Claimant confirmed that the Head of HR Operations had replied approximately a month later, and that that letter had been received on 11 July 2024, which indicated that the Claimant's letter was sent on around 11 June 2024.

38. In late June or early July 2024, the Claimant contacted his union, the earliest

document in the bundle indicating such contact was an email from the Claimant dated 3 July 2024, but he noted in his oral evidence that he had contacted them shortly before that. The Claimant did not receive a response from the union, or further advice or guidance that he considered satisfactory, with the response from the union taking approximately a month.

39. The Claimant then contacted ACAS, with the date of notification for early conciliation purposes being recorded as 19 July 2024. ACAS attempted to conciliate, but without success, and the early conciliation certificate was issued on 15 August 2024.

40. At around that time, the Claimant contacted Citizens Advice, although the documentation around that contact suggested that it was made after the Claimant had submitted his Employment Tribunal claim. That was submitted on 21 August 2024, and the Claimant's communication with Citizens Advice appeared to commence on 28 August 2024.

41. The Claimant's claim form noted that he was pursuing a claim of unfair dismissal and age discrimination. He noted that he felt that his job could have continued, or that he could have been transferred to work in the Respondent's warehouse as he had worked there previously. He further noted that agency workers had been employed to work there. He commented that he could only think that, as his record of service was exemplary, that that was "*ageism*". He made no reference to having been subjected to derogatory comments about his age, nor did he make any mention of a breach of contract complaint arising from what he contended to have been a promise of indefinite employment.

Conclusions

42. Taking into account my findings of fact and the applicable law, my conclusions in relation to the issues I had to determine are as follows.

Time Limits

Unfair dismissal

43. I first considered the Claimant's unfair dismissal complaint. The primary time limit prescribed by section 111 ERA expired on 30 June 2024, the date falling at the end of the period of three months beginning with the effective date of termination of 31 March 2024. The Claimant therefore had to at least make contact with ACAS for the purposes of early conciliation by 30 June 2024, and he then had to submit his Tribunal claim form within such further period extended by that early conciliation.

44. The Claimant did not make that contact, and did not make contact with ACAS until 19 July 2024, nearly three weeks too late. On the face of it therefore, the unfair dismissal complaint had been brought outside the stipulated time limit, and the question for me to consider was whether it had been reasonably practicable for the complaint to have been brought in time. If it had been reasonably practicable, the complaint would go no further. If it had not, I would then need to move on to consider whether the complaint had been submitted within a further reasonable period.

45. I noted that the Claimant advanced several grounds to support his case that it had not been practicable for him to have submitted his complaint in time. The first put forward was debilitating illness.

46. In that regard, the Claimant underwent an operation on 26 April 2024, and had to return to hospital, on an emergency basis, three days later for further treatment. He was then in significant pain and discomfort for the next few weeks. However, the Claimant's own evidence was that he was in a position, by around late May to take steps in relation to his concerns about his dismissal, notwithstanding his health.

47. I noted the Claimant's realisation that he been treated unfairly had been triggered by the BBC news story and by his relief from severe pain after the operation, which would have arisen by around 20 May 2024. Whilst debilitating illness was therefore a potential explanation for why no steps were taken for much of May 2024, it did not provide a valid explanation as to why no steps were taken at the end of May 2024 or in June 2024.

48. The Claimant also appeared to base his arguments in relation to reasonable practicability on ignorance of facts which could cause him to consider that he had a potential claim. He noted in his oral evidence that he did not initially consider that he had been treated unfairly, and that it was only on seeing the BBC news report on 16 May 2024, and his subsequent conversation with a former colleague about the *ex gratia* payment that he had, as he described it, any inkling that something untoward had been done.

49. I noted the guidance provided by the Court of Appeal in ***Simpson*** and by the EAT in ***Crouchman***, and was not convinced that what the Claimant contended as giving him an inkling of the claim had rendered I not reasonably practicable for the claim to have been submitted in time.

50. I noted that much of the Claimant's actual claim focused on his contentions that his job was not properly redundant, and/or that he could have been transferred to the Warehouse instead of agency workers. His knowledge of those matters was not changed by his knowledge that the factory was to close entirely.

51. The Claimant's other main contention in his claim form focused on his missing out on the £3,000 *ex gratia* payment, but that would not, of itself, have made his dismissal unfair.

52. I was not therefore satisfied that the Claimant's knowledge, on or around 20 May 2024, of the factory closure and the payment of *ex gratia* payments to former colleagues, was crucial or fundamental to a changing of the Claimant's state of mind.

53. However, even if it had been, that state of mind would have been changed around 20 May 2024, and the Claimant still had well over a month to pursue his claim but did not do so. Again therefore, any ignorance of fact could not provide a valid explanation for why the Claimant took no action to pursue his claim at the end of May 2024 or in June 2024.

54. The Claimant's further arguments focused on being unaware of his ability to pursue claims, and on delays caused by failures on the part of the Respondent to respond to his letters, and by his trade union to respond to his request for support.

55. I was conscious of the clear guidance provided by the Court of Appeal in ***Dedman*** and ***Porter***, that the test is not whether the Claimant knew of his rights, but whether he ought to have known of them. As noted by Scarman LJ in ***Dedman***, I had to ask the questions, "What were the Claimant's opportunities for finding out that he had rights? Did he take them? If not, why not?".

56. The Claimant confirmed in his witness evidence that he had "woken up" to what had happened to him, i.e. to a view that he had been treated unfairly, by the BBC report, his conversation with a former colleague, and his relief from severe pain, by around 20 May 2024. He said that he felt upset by the way he had been treated, and felt prompted to contact his trade union, but did not do so. In his own words, the Claimant said, "*I held back I don't know why*", before noting a desire not to cause trouble and that he still felt an affinity towards the Respondent. He therefore instead wrote to the Respondent but did not get a response for about a month. He did not seek assistance from his trade union until after the Tribunal deadline had passed.

57. In terms therefore, of what opportunities the Claimant had to find out about his rights, he felt, by around 20 May 2024, that he had not been treated fairly. He could easily have made contact with his trade union at that time and sought advice. He could also easily have undertaken an internet search, which would have thrown up advice, not least from "Gov.uk", where the three month time limit would have been clearly highlighted.

58. Instead, the Claimant wrote to his former employer on around 10 June 2024. Even there, there were still approximately three weeks before the Employment Tribunal time limit expired, and yet the Claimant waited for the reply from his former employer. Had he taken reasonable opportunities to find out his rights to pursue a claim, even if he had given his former employer an opportunity to respond to his correspondence, he could still have made sure that he contacted ACAS by 30 June 2024.

59. I was also mindful in that regard, of several appellate cases relating to internal appeals, notably the Court of Appeal decision in ***Palmer v Southend-on-Sea Borough Council*** **[1984] ICR 372**, that make it clear that a claimant should not wait for an internal appeal to be concluded before progressing an Employment Tribunal claim. I considered that there was a parallel to be drawn with those cases in relation to waiting for a response to post-termination correspondence with a respondent.

60. Overall therefore, in my view, the Claimant could, and should, have taken steps to find out about his rights from around 20 May 2024, but did not do so. Had he done that, he would have been in a position to take the very straightforward step of contacting ACAS by no later than 30 June 2024. In my conclusion, notwithstanding the arguments put forward by the Claimant, it was reasonably practicable for him to progress this claim in time, and his unfair dismissal complaint therefore fell to be dismissed.

Direct age discrimination

61. The primary time limit in relation to this complaint was three months from the act complained of, that act being the Claimant's dismissal on 31 March 2024. Again therefore, contact with ACAS should have been made by 30 June 2024, but was not, such that the complaint was, on the face of it, out time.

62. The test for extending time was different to that applied in relation to the unfair dismissal compliant, and was whether it was just and equitable to extend time.

63. I noted the guidance of the Court of Appeal in ***Robertson***, that there is no presumption in favour of extending time, and that it is for the Claimant to convince the Tribunal that time should be extended.

64. I also noted the factors outlined in ***Keeble***, and the further guidance of the Court of Appeal in ***Adedeji***, that those factors should not be treated as a checklist, and that all relevant factors should be taken into account, in particular the length of, and reason for, the delay.

65. Many of my conclusions in relation to the unfair dismissal complaint were relevant here. As I noted there, whilst the Claimant's illness and lack of understanding of the basis of a claim may potentially have led to him not being able to pursue his complaints at the start of the period until around 20 May 2024, he did not then act promptly in pursuing matters, or even in taking advice, and he then took two more months to contact ACAS. In the Claimant's favour was the lack of response by the Respondent to the Claimant's letter sent around 11 June 2024.

66. In my overall assessment of the balance of prejudice to each party, I also considered it appropriate to consider the potential merits of the Claimant's direct age discrimination complaint. I was mindful of the Court of Appeal's guidance in ***Madarassy v Nomura International plc*** **[2007] ICR 867**, that, "*the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal "could conclude" that, on the balance of probabilities, the Respondent has committed an unlawful act of discrimination*".

67. In this case, I noted that the Claimant had no initial concerns over the fairness of his dismissal, and that his direct age discrimination claim did not advance anything other than the fact of his age, the Claimant being 71 at the time of his dismissal. On the other hand, the Respondent's contention that the Claimant's job had effectively disappeared would suggest a potentially cogent, non-discriminatory reason.

68. Whilst I was obviously not in a position to form firm conclusions on those matters, as I did not hear evidence about them, I considered that the Claimant would be unlikely to be able to substantiate a claim of direct age discrimination in the circumstances. I therefore concluded, on balance, that it would not be just and equitable to extend time, and that the Claimant's complaint of direct age discrimination should not be allowed to proceed

Amendment

69. I noted the core requirement of the ***Vaughan*** guidance, applying ***Selkent*** and ***Cocking***, which was to consider the balance of injustice and hardship in allowing or refusing the application, the focus being on the real practical consequences of allowing or refusing the amendment. I noted however that the ***Selkent*** non-exhaustive list of relevant circumstances remains relevant.

70. Looking at those circumstances, I concluded that the amendments sought were substantial, involving complaints not previously advanced, whether in fact or in law.

71. I also noted that the complaints, if allowed by way of amendment, had been brought significantly out of time. The Claimant first advanced an indication that he felt that there had been a breach of a contractual commitment to allow him to be employed indefinitely in the agenda submitted on 20 January 2025, in advance of the preliminary hearing on 24 January 2025. That contention was then particularised in a document submitted on 14 February 2025.

72. With regard to age-related harassment, the issue was raised by the Claimant in the preliminary hearing on 24 January 2025, and particulars of the alleged derogatory comments, albeit without dates, were provided in a document produced on 8 April 2025. The Claimant confirmed during the preliminary hearing, that the comments took place over the last eighteen months or so of his employment, with the latest comment having been made in January 2024.

73. With regard to time limits, Underhill J (as he then was) noted, in ***Transport and General Workers Union v Safeway Stores Ltd*** **(UKEAT/0092/07)** that the Tribunal should have regard to time limits when considering amendment applications, and, if out of time, should consider whether time should be extended. It was noted however that this is "*only a factor, albeit an important and potentially decisive one*".

74. It was also made clear, by the EAT in ***Galilee v Commissioner of Police of the Metropolis*** **[2018] ICR 634**, that, where a new claim is permitted by way of amendment, it takes effect for limitation purposes from the date on which permission to amend is given, and does not "relate back" to the date when the original claim was presented.

75. In that regard, I have already indicated my conclusions on the time limit issues by reference to the effective date of termination of the Claimant's employment and the date of the claim form. Any breach of contract complaint will have crystallised on the date of termination of employment, and the harassment complaint, proceeding on the presumption that the Claimant would be able to establish that there was a course of conduct extending over a period, would run from the date of the last act complained of, i.e. from January 2024.

76. Any breach of contract complaint would be subject to the same reasonable practicability test as applied in relation to the unfair dismissal complaint. Any complaint of age-related harassment would be subject to the same just and equitable test as applied in relation to the direct age discrimination complaint.

77. Also relevant, to my mind, in relation to the breach of contract complaint were the prospects of success. The core of the Claimant's contention appears to be that he was told by the Respondent's HR Director that he could work for as long as he wanted, provided that he gave one month's notice of when he wished to retire. Whilst I obviously did not hear any evidence on that, I doubted that, even if the Claimant can establish that such a conversation took place, it would be likely to be put at such a level as to form a contractual promise to, effectively, give the Claimant indefinite employment, subject only to his desire to bring it to an end. In my view, any such complaint would have limited prospects of success.

78. Overall, taking into account all the circumstances, I did not consider it appropriate to allow the Claimant's application to amend his claim by adding in a complaint of breach of contract. In my view, the balance of prejudice lay in favour of refusing the application to amend to add what is likely to be a weak claim, brought even further out of time than a complaint which I have already excluded as having been brought out of time, in circumstances where it had been reasonably practicable for it to have been brought in time.

79. With regard to the age-related harassment complaint, I similarly noted that such a complaint would be even further out of time than the complaint of direct age discrimination in relation to which I have already concluded it would not be just and equitable to extend time. That is the case both by reference to the earlier date of the act complained of, January 2024 as opposed to 31 March 2024, and the later date of the complaint, 7 April 2025, or even if the assessment is made from the date when the matter was first raised, 24 January 2025, as opposed to 21 August 2024.

80. I also noted that the proposed complaint relates to a period going back at least fifteen months, and, at its longest, some thirty months, and that many, if not all, those said to be involved, will have left the Respondent's employment, in relation to the closure of the factory, which I understand commenced in May 2024 but is proceeding over a period of some twelve to eighteen months.

81. I further noted, with regard to merits, that the Claimant does not appear to have raised any concern about the asserted comments at any time, even through they are said to have taken place over an eighteen-month period. Nor did he raise them in his claim form when submitted in August 2024. He may therefore face difficulty in establishing that the asserted conduct had the effect of violating his dignity as required by section 26 of the Equality Act 2010, where his perception, the other circumstances of the case, and whether it is reasonable for the asserted conduct to have had that effect, will be considered.

82. Overall, I considered that the balance of injustice and hardship lay in refusing the application to amend, as the Respondent would be faced with real, practical difficulties in having to defend a complaint which may not, in any event, be a particularly strong one.

Authorised for issue by
Employment Judge S Jenkins
17 April 2025

Sent to the parties on:

25 April 2025
For the Tribunal Office:

Katie Dickson

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/