



EMPLOYMENT TRIBUNALS

Claimant: Miss S Bada

Respondent: Alleyn's School

Heard at: London South

On: 6th November 2024

Before: Employment Judge Reed

Representation

Claimant: Dr Anna Loutfi, Counsel

Respondent: Ms Joanne Twomey, Counsel

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. This claim came before the Employment Tribunal on the above date in order to deal with the issues set out in the Tribunal's notice of 16th July 2024. In summary the purpose of the hearing was to identify the claims and issues, before determining a) whether the claims had been presented within the relevant statutory time limit and, if they had not, determine whether time should be extended.
2. On 9th October 2024 the claimant made an application to amend her claim. To a significant extent, this application provided more detail of age and race discrimination she had brought against the respondent. But it also sought to add two new claims, for constructive unfair dismissal and whistleblowing detriment under the Employment Rights Act 1996.
3. At the beginning of the hearing both parties agreed that it was sensible, at least initially, to take the issues of time limits and amendment together. The proposed amendment had usefully clarified the claims that the claimant wished to pursue, which was important when determining whether it was just and equitable to extend time. If it was just and equitable to extend time, I would then need to consider whether it was just and equitable to allow the amendment. Both, decisions, however, involved a very similar legal test and related to the same underlying facts. It was therefore sensible to deal with them together.

The claim

4. The ACAS Early Conciliation period began on 29th February 2024 and ended on 11th March 2024. Ms Bada submitted her claim to the Employment Tribunal on 11th March 2024.
5. The claim form contained claims of both age and race discrimination. As is common in this jurisdiction, the claim form was brief and did not contain much detail about the claim. The narrative section read as follows, p8:

Discrimination based on age and race that lead to my emotional decline. This was then used as grounds to deny me promotions and pay rises. A series of unfortunate and less favourable circumstances were forced on me to severely damage my ability to progress at the school.

6. A further account was given in the form in the 'Additional information' section:

I have a series of events and circumstances that detail my discrimination. I also have supporting images and emails. I am bringing this claim late because I have suffered a severe decline in my mental and physical health which is why I am bringing the claim so late. I was seeking counselling trying to get help after leaving work and was also seeking help with my housing. It was a series of negative instances which I can prove in a court that forced by hand to leave work after almost 6 years of being there.

I also have supporting medical information.

7. On the 9th October 2024 Ms Bada made an application to amend her claim. The application included a more detailed narrative of her claim.
8. In summary, Ms Bada said that she had worked at Alleyn's from 8th September 2016 to 31st August 2022. She had begun as a temporary agency receptionist, but became an employee after approximately a month of work. She alleged that, she had been the victim of bullying by a number of individuals during her employment. She alleged that her line manager had favoured another colleague over her, assigned her additional work and micromanaging her. She said that the working environment was a hostile one. She said that reception rota was changed so that she was the only receptionist on duty between 1pm and 6pm, when previously another receptionist was on duty until 3pm. Ms Bada said that this was problematic, because 1pm to 2pm was the lunch hour and the busiest time. Ms Bada said that her concerns about this were dismissed and, when the lack of staffing caused problems, she was wrongly blamed.
9. Ms Bada also wrote that she had applied for a Deputy Registrar position on 25th June 2018, but was not selected. On 18th August 2019 she applied for a pay rise, which was also refused. Ms Bada alleged that these decisions were based on the perception that she was falling out with colleagues. She said that, if there was a dispute, her managers held this against her, rather than her white colleagues, and this was because of her race.
10. In February 2022 a Senior Receptionist position became available, but Ms Bada was not appointed.

11. Ms Bada wrote that, as a result of these matters, she was forced to resign, because her working conditions had become intolerable.
12. As noted above, in addition to the claims for race and age discrimination the application to amend sought to add claims of 'constructive dismissal' and 'whistleblowing'.

The evidence

13. Ms Bada had not produced a witness statement for the purposes of this hearing. However on 10th of October 2024, she had sent an email to the tribunal which contained a letter setting out her request to extend the time limit. With the agreement of both parties, they stood as a sworn statement, page 68-69. Ms Bada was then asked questions by Dr Loutfi to expand upon this evidence, before being cross examined by Ms Twomey. The respondent did not call any oral evidence.
14. I was provided with a bundle of documents running to page 261. References to page numbers in these reasons are to that bundle, unless otherwise indicated.

The law

Time limit

15. The time limit to present a claim about discrimination in the work place (other than a claim for equal pay) is set out in section 123 of the Equality Act 2010.

123 Time Limits

- (1) Subject to section 140B, proceedings on a complaint under 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) [This subsection relates to claims brought by serving members of the armed forces and is not relevant to this case.]
 - (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.
16. S123 therefore establishes a statutory time limit of three months, starting from the act complained of. If, however, there is conduct extending over a period,

that three month time limit in relation to that conduct will only begin when that conduct ends. Conduct extending over a period is often referred to as a 'continuing act'.

17. Guidance on the correct approach to determining whether there has been conduct extending over a period has been provided by the Court of Appeal in *Hendricks v Metropolitan Police Commission* [2003] IRLR 96. This established that a conduct extending over a period requires that there a) be a series of incidents that are linked to each other and b) that these incidents reflect an 'ongoing situation or a continuing state of affairs'. This will often arise from the application of a discriminatory policy, rule or practice, but that is not required. Conduct extending over a period is to be contrasted with a succession of unconnected or isolated specific acts.
18. The time limit may also be extended where a claimant has entered into the ACAS Early Conciliation process before the statutory limit expired, see section 140B Equality Act 2010. If, however, the notification to ACAS is made after the statutory time limit, there is no extension of time.
19. Where a claim is presented late, time to present a discrimination claim may be extended where it is just and equitable to do so, see 123(1)(b). The question of whether it is just and equitable to extend time is a broad discretion, which should include consideration of all relevant circumstances, see *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194. This will generally include consideration of the length and reasons for the delay and the extent to which delay has caused prejudice to the respondent.
20. A tribunal may, in an appropriate case, consider the merits of the claim, but this must be done carefully, see *Kumari v Greater Manchester Mental Trust* [2022] EAT 132. Until there is a full hearing of a claim, the Tribunal will always be proceeding on the basis of limited / partial evidence. It is not possible, in the context of the consideration of a time extension at a preliminary hearing, to conduct a mini-trial. Merits should only therefore be considered where there are readily apparent features of the claim that point to potential weakness or obstacles, such that these can be safely regarded as having some bearing on the merits.
21. The new claims that the claimant seeks to add in her amendment (unfair dismissal and protected disclosure detriment) involve a different approach to time limits than the claims brought under the Equality Act 2010. The time limit in an unfair dismissal claim is three months from the effective date of termination, see section 111 ERA 1996. The time limit in a detriment claim is three months from the act of detriment (or, if there is a series of similar acts or failures, from the last of these), see section 48 ERA 1996. In relation to these claims, for time to be extended, the Tribunal must conclude a) that it was not reasonably practicable to present the claim within the statutory time limit and b) that it was presented within a reasonable period thereafter.
22. The definition of and approach to the concept of 'reasonably practicability' and extensions of time has been the subject of extensive appellate comment. I have considered in particular the guidance laid down in *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119, which concluded that the concept of 'not reasonably practicable' fell between the extremes of what is physically possible to achieve on the one hand and a simple question of what

was reasonable on the other. The focus is on considering broadly whether it was reasonably feasible to present the claim to the Tribunal within the time limit.

Applications to amend

23. In considering the application to amend, I had regard to the guidance laid out in *Selkent Bus Co Ltd v Moore* [1996] IRLR. In particular, I must take into account all the relevant circumstances in order to balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Selkent also identifies three categories of circumstance that are likely to be of particular relevance: the nature of the amendment and, in particular, whether it is minor or a substantial alteration, the applicability of time limits and the timing and manner of the application.

24. I have also borne in mind, however, the observations in *Vaughan v Modality Partnership* [2021] IRLR 97, which remind me that the decisive question must remain the balance of hardship. The factors identified in Selkent are tools to assist in answering that question, rather than a decisive or complete checklist.

25. When considering an application to amend that would lead to a new claim being presented whether the time limit to bring such a claim has already expired is likely to be a relevant factor. But the fact that the time limit has expired does not mean that the amendment must, axiomatically, be refused. The correct approach remains to balance the prejudice to the parties in the normal way, see *Safeway Stores v TGWU*, UKEAT/0092/07.

The facts

26. I considered the oral evidence and the documentary evidence to which I was referred. The facts I have found to be material to my conclusions are as follows. All findings of fact are made on the balance of probabilities, which means that that they are more likely to be true than not. Since this hearing dealt only with the time limit issues and the application to amend, my findings of fact are restricted to those relevant to these points.

27. In considering the application to extend time, at this stage, I have taken Ms Bada's underlying claim at its highest. This means that I presumed, for the purposes of this application, that her allegations would be found to amount to conduct extended over a period, ending at the point that she left the respondent's employment on 29th April 2022.

28. It follows that the deadline to submit her claim was 28th July 2022. The claim was submitted on 11th March 2024. As Ms Bada accepted, it was therefore out of time.

29. Ms Bada had handed in her notice on 24th February 2022. It was arranged that her last day would be Friday 29th April 2022, page 89-90. This was slightly longer than her contractual notice, but was agreed between her and the School. In the event, the last day that Ms Bada worked was the 22nd April 2022. This was because she had Covid in her last week of employment and was off sick.

30. Ms Bada relied on three main factors in support of her argument that it was just and equitable to extend time, although it is important to keep in mind that these factors are connected and interrelate. These were her physical health, her mental health and that her housing position had been precarious.
31. Ms Bada's evidence on these points was often somewhat vague, particularly in relation to the chronology and timing of events. I did not conclude that these resulted from an attempt to mislead me about what had happened, but rather from genuine difficulty in recalling. As dealt with below, these facts relate to a particularly difficult and sometimes disorganised period in Ms Bada's life. It is unsurprising that this had an impact on her ability to recall events. It does mean, however, that I have placed more reliance on the documentary evidence, particularly to reach conclusions about the timeline of events, than I might otherwise have done.

Physical Health

32. It was not in dispute that Ms Bada had some physical health issues at the relevant time. She had had been diagnosed with uterine fibroids in 2018, which caused menorrhagia (heavy menstrual bleeding).
33. I did not, however, accept that Ms Bada's physical health issues were sufficient to have a significant impact on her ability to present a claim to the Employment Tribunal. Ms Bada had been able to work consistently since the diagnosis. After her resignation she made considerable efforts to obtain new employment, making a significant number of applications, see page 203 to 224.
34. The GP letter produced by Ms Bada, dated 27th October 2024, suggested that the GP regarded the issue of fibroids closed in 2019 and suggested that Ms Bada's symptoms were adequately controlled using an oral contraceptive, page 260-261. There is evidence that Ms Bada had a hospital appointment in 2020 and sought a further appointment in November 2023, page 131-133 & 135-136.
35. Although Ms Bada's evidence referred to her physical health and to her diagnosis of uterine fibroids, she did not suggest that this condition was causing significant symptoms in 2022.
36. Overall, I concluded that Ms Bada did have some difficulty arising from her fibroid condition, including pain and discomfort. But she was not experiencing unusually difficult symptoms until late November 2023 when she did have a period of worsening pain which caused her to seek medical assistance. At no time were her physical symptoms such as to create any significant difficulty in presenting a claim to the Tribunal.

Mental health

37. It is not in dispute that Ms Bada has had some mental health issues at the relevant time. She was diagnosed with depressed mood in August 2022 by her GP. This was approximately four months after she left the School and I accept that she experienced symptoms of depression and stress before this.

38. On 7th February 2023 the Department of Work and Pensions concluded that Ms Bada had limited capability for work and work-related activity, in the context of her claim for Universal Credit, page 112-115. This meant that the DWP had found that Ms Bada was not well enough to be expected to work, but also unable to carry out the activities that she would normally be expected to do in order to prepare herself for work. I accept that it was her mental health issues that lead to the DWP reaching this conclusion.
39. Ms Bada undertook therapy with Black Minds Matter between 20th May 2024 and 18th August 2024.
40. I accept that Ms Bada was experiencing significant difficulties in her mental health towards the end of 2022 and that these made it more difficult for her to present a claim than it would otherwise have been. I do not accept, however, that her difficulties were so severe earlier in 2022.
41. As noted above, Ms Bada had been able to work during her notice period (save for a short period relating to Covid absence). She had then been able to apply for a number of different jobs. Making a claim to the employment tribunal can be a stressful and difficult task. But it does not seem to me significantly more stressful or more difficult than attending the workplace about which the claim relates. I note that Ms Bada had been able to write to the School's HR department on 23rd February 2022, articulating that she was thinking about resigning and setting out a summary of why. Although sending such an email is not the same as presenting a claim to the Employment Tribunal, it is a somewhat similar task. The email is a strong indication that, in February 2022, Ms Bada would have been able to present a claim to the Tribunal if she had chosen to do so.
42. Doing the best that I can, given the relatively limited evidence available, I have concluded that Ms Bada was experiencing some symptoms of stress and depression at the point that she resigned. But, at that time, they were not sufficiently serious as to cause difficulty in presenting a claim. They were more serious by August 2022 and, at that point, would have made it more difficult for her to present a claim, although she would have been able to do so. I accept that these problems continued to get worse in late 2022 and early 2023, which lead to the DWP's finding that she had limited capability for work related activity. At this point I accept that Ms Bada would have experienced real difficulty in presenting a claim.
43. In reaching those conclusions I take into account my findings in relation to Ms Bada's family situation, set out below. I find that it is likely that these contributed to the exacerbation of her mental health difficulties. It is therefore likely that there would have been some correlation between the worsening of her mental health and her difficult family circumstances.

Housing

44. Ms Bada evidence was that after she resigned from the School she had 'left in a hurry' and that she did not have another job lined up. This meant she was spending more time at home. She said that her Mother was 'really, really hard on me'. When Ms Bada had been working she had been able to help the family

financially. She said that her mother didn't understand why she was not able to to find another job.

45. Ms Bada also said that her younger sister became agitated and violent. She said that she found that her home environment was hostile and unsafe. This ultimately meant that she had to leave. It was not clear from her evidence when these problems occurred.
46. On 31st July 2023, Ms Bada applied to Lambeth Council for housing assistance. Lambeth concluded that she was homeless, eligible for assistance and in priority need, page 231. During her cross-examination Ms Bada said that she had applied for assistance at the point that she couldn't be sure where she was staying the night. She said that before 31st July 2023 there was a period where her housing was not secure, she was sometimes staying at home and sometimes with friends. Ms Bada's evidence was not entirely clear in the regard. This seemed to me to be natural when dealing with events some time ago, which were of a distressing nature and where there was not a single precipitating event, but rather a gradual change of position.
47. During her evidence I asked Ms Bada when she had first thought about bringing a claim in the Employment Tribunal. She said that it was around the point that she had been found by the DWP to have limited capability for work related activity, i.e. in February 2023. When I asked why she had not then presented a claim at that point, she said that her situation needed to be looked at holistically and that this was when her housing situation became difficult.
48. Overall, it seemed to me most likely that Ms Bada position at home became difficult after she resigned and that the stress / tension over time increased over time. It is likely that these issues contributed to the worsening of Ms Bada's mental health in the latter part of 2022.
49. It seems to me most likely that she began to experience serious difficulty in terms of her housing in early 2023, arising from a deteriorating relationship with her family, and that these difficulties increased leading up to July 2023 when she applied for housing assistance. That timeline is congruent both with Ms Bada's suggestion that it was her housing situation that meant she had not presented a claim in February 2023 when she had first considered it and the timing of her application to Lambeth.

Decision

50. This is a case involving a long delay in presenting the claim, particularly in the context of the short statutory time limit of three months.
51. I accept that there were a number of factors that made it more difficult for Ms Bada to present claim. In particular I accept that even as early as April 2020 she was experiencing significant stress that most likely contributed to her more serious mental health difficulties that occurred later in 2022. I also accept that her home life was difficult and that her relationship with her family was not good, although as set out above I have concluded that these problems only became acute in 2023.

52. I do not accept, however, that these amounted to an adequate reason to explain the delay. Following her resignation Ms Bada was able to continue work despite the problems she describes in her work environment for nearly 2 months. After leaving work in April, she was able to apply for jobs. She was also able to write to the School's HR staff, in February 2022, saying that she was considering resigning and setting out some of the reasons why. This is a significant indication that she was well enough, at that stage, to present a claim.
53. Ms Bada's evidence to the Tribunal was that, when she resigned, she did not think about her situation in terms of a legal claim. But there was in my view nothing stopping her from doing so or from presenting her claim within the statutory time limit.
54. While I accept that Ms Bada's difficulties, both in respect of her mental health and her family, worsened in 2023 this was a long time after the statutory time limit had already expired. This does not make them irrelevant to my consideration, but reduces their significance.
55. A delay of this length would, in any circumstances, amount to substantial prejudice to the respondent. The nature of this case, however, increases that prejudice. Ms Bada's allegations of bullying and harassment are not the type of complaints where there is likely to be substantial contemporaneous documentation. Resolving these issues would require subtle consideration of witness evidence. This will be made significantly more difficult by the delay, because memories will have been impaired by the passage of time. This is particularly the case when there has not been any earlier internal complaint or grievance that might have caused witnesses to focus on these matters at an earlier stage.
56. There is, inevitably, substantial prejudice in refusing an application to amend because it will prevent Ms Bada from pursuing her claims. That is the main factor in favour of extending time.
57. I do not consider that this is a case in which it would be appropriate to attempt to assess the merits of the underlying claim when considering an extension of time. This is therefore not a factor in my decision.
58. Standing back to balance all of the relevant practices together I have concluded that it is not just and equitable to extend time to present the complaints in particular I have found there was no good reason for the claim being presented late; the delay in bringing the claim has been a very substantial one and there would therefore be substantial prejudice to the respondent in allowing the claim to proceed. These factors outweigh the prejudice to the claimant of dismissing her application.

Applications to amend

59. In regard to the applications to amend relating to the claims under the Equality Act 2010, I conclude that the application to amend should be refused. As noted above, when considering whether time should be extended, I have taken the claimant's case at its highest and had regard to the allegations as set out in her application to amend. Given I have concluded that these claims are out of time and that time should not be extended, it would be wrong to grant the application.

60. In regards to the detriment and unfair dismissal claims I have also concluded that the application to amend should be refused. The legal test in relation to extensions of time is different in relation to these claims. But the balance of prejudice in regard to the amendment is against the claimant for the same reasons as in relation to the just and equitable extension of time. Further, I have taken account of the likely merits in relation to the reasonable practicability test that would apply to any extension of time. In my view, there is no reasonable prospect of the claimant convincing a Tribunal that it was not reasonably practicable to present these claims within the statutory time limit. This is a relevant factor to take into account when considering the balance of prejudice between the parties, and it is decisively against allowing the amendment.

Delay

61. These reasons have been significantly delayed and I apologise to both parties for this. The delay has arisen in part from the ill health of a close family member and in part from the pressure of other work.

Claimant's application to reconsider

62. On the 29th April 2025 I received an email from the Tribunal staff which included an email Ms Bada had sent on the 27th April 2025 requesting a rehearing and an email on 28th April 2025 containing a video file.

63. I did not consider these documents when producing the above reasons, since they were not part of the original hearing or decision

64. In substance, it seems to me that these emails are an application to reconsider the judgment. I considered whether it would be appropriate to invite the claimant to make further submissions in respect of the application having received the written reasons. I concluded, however, that it was right to deal with these matters now, primarily in order to avoid any further delay. I note, however, that the claimant is at liberty to make a further application for reconsideration on any point arising out of these written reasons. She should note, however, that the deadline for doing so is within 14 days of the date on which these written reasons are sent to the parties, see rule 69 of the Employment Tribunal Procedure Rule 2024.

65. Reconsideration of an Employment Tribunal's decisions is dealt with by rules 68 to 71 of the Employment Tribunal Rules 2024. The Employment Tribunal may reconsider a decision where it is in the interests of justice to do so, see rule 68(1).

66. Rule 70 sets a two-stage process for considering an application for reconsideration. First, the Tribunal must consider whether there is a reasonable prospect of the judgment being varied or revoked. If there is no reasonable prospect of this, the application must be refused. If the application is not refused, the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The application must then be determined

at a hearing, unless the Tribunal considers (having regard to representations by the party) that a hearing is not necessary in the interests of justice.

67. The cornerstone of any reconsideration consideration is the question of whether reconsideration is in the interests of justice. This is a broad concept, which is capable of encompassing a wide range of circumstances. The power must be exercised judicially. I must have equal regard to the interests and legitimate expectations of both parties, not solely the party applying for the reconsideration. I must also have regard to the importance of finality in litigation; that is the general principle that a decision made by a Tribunal or Court on a substantive issue is final and will not change. This rule is not absolute, substantive decisions may be reconsidered or appealed, but there must be adequate reason to depart from the principle of finality.
68. A common ground for an application to reconsider is that there is new evidence that should be considered by the Tribunal. Guidance on the approach to this situation has been given by the Employment Appeal Tribunal in *Outsight v Brown* [2015] ICR D11. This confirms that the Tribunal should have regard to *Ladd v Marshall* test, which sets out the general approach to new evidence in both Courts and Tribunals.
69. The *Ladd v Marshall* test establishes that in order for an judgment to be reconsidered on the basis of new evidence the Tribunal must conclude that:
- a. that the evidence could not have been obtained with reasonable diligence for use at the original hearing;
 - b. that it is relevant and would probably have had an important influence on the hearing; and
 - c. that it is apparently credible.
70. I have concluded that there is no reasonable prospect of the application to reconsider leading to the judgment being varied or revoked and that it should therefore be dismissed at this stage.
71. This is because the emails from the Claimant go no further than to reiterate the allegations of the underlying claim set out above. While I appreciate that Ms Bada's position is that she has suffered serious discrimination, this was a matter that was considered fully when considering the application to extend time. The more recent emails therefore do not add to the points that I have already considered. This does not provide any basis for reconsideration.
72. The video is a short one lasting just under two minutes. It shows Ms Bada speaking to the camera, apparently at home. She speaks about having had a difficult day, but being determined to press on. It is not clear from the video when it was taken, but Ms Bada's email indicates that it was taken in the final year she was employed by the respondent.
73. Having regard to the *Ladd v Marshall* test, I am satisfied that there is no reasonable prospect of the decision being reconsidered on the basis of this new evidence. Firstly, it seems clear that this is evidence that could have been obtained with reasonable diligence for use at the original hearing. It is a video of and taken by Ms Bada. There does not appear to be any suggestion that it was not in her possession at the time of the original hearing.

74. In any event, I do not consider that this video would have been relevant at that hearing. As set out above, the key issues that were considered in relation to the extension of time related to the reason for the delay and the balance of prejudice between the parties. These are not matters to which this video has any relevance.

75. I have considered whether the video might be relevant to the facts of Ms Bada's underlying claims. But I have concluded that it is not. The most that can be said on this point is that the video shows that Ms Bada has had a difficult day, but intends to press on. Her work is mentioned once, when she says 'I'm going to rest and tomorrow I will be back at work'. It is simply not evidence of Ms Bada's allegations against the respondent and would not have had an important influence on the previous hearing.

76. For all these reasons, it is not in the interests of justice to reconsider my judgment and the application for reconsideration is refused.

Approved by:

Employment Judge Reed

20th May 2025

JUDGMENT SENT TO THE PARTIES
ON

22nd May 2025

O.Miranda

FOR THE TRIBUNAL OFFICE