EMPLOYMENT TRIBUNALS

Claimant: Channel Campbell
Respondent: Dragados SA UK Branch

Heard at: London Central (by CVP)

On: 2025
Before: Employment Judge Mr J S Burns

Representation
Claimant: Mr H Giani (Counsel)
Respondent: Ms Davies (Counsel)

JUDGMENT

1. The Claimant's application to amend her claim to add a claim of automatic unfair dismissal is refused.
2. The Equality Act 2010 harassment claims are out of time and it is not just and equitable to extend time
3. The unfair dismissal and harassment claims are struck out

REASONS

1. The hearing today was listed to "*Consider and determine (if the Judge considers it appropriate) issues relating to time limits, and to make further case management orders".*

2. On 22/4/25 the Respondent made an application to strike out "aspects of the claim" on the grounds that they are out of time, and the unfair dismissal claim on the grounds of lack of qualifying service.

3. I consider a bundle of 113 pages which included, amongst other documents, a Claimant's witness statement and medical notes. I also read a further witness statement from the Claimant in the form of an email dated 6/6/25. Ms Davies did not have any questions for the Claimant so she was not cross-examined. I was a further document namely an email from the Respondent to the Claimant dated 17/5/2023.

The unfair dismissal claim

4. It is not in dispute that the Claimant was employed by the Respondent from 13/12/21 to 8/11/23 and hence had less than the two years' continuous service which is requisite for an "ordinary" unfair dismissal claim.

5. Her Counsel Mr Giani submitted that she had already stated enough in her original ET1 particulars of claim to make a claim for automatic unfair dismissal simply a relabelling exercise, and that although she conceded that she did require leave to amend to add

various essential averments for such claims, she should be given permission to amend simply to add these averments (although no draft or other written form of the proposed amendment had been produced,) thus resulting in a situation in which the Claimant was to be treated as having brought a recognisable and adequately pleaded automatic unfair dismissal claim.

6. I was taken to a recent decision of HHJ B Clarke in the EAT in Fong v Montgomery and Others : EA-2023-SCO-000004-DT in which the following useful guidance on this subject appears:

*"…2. Before looking at the case before the tribunal I will consider the relevant legal principles. They are as initially drawn from Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650 NIRC and most famously expounded in Selkent Bus Co Ltd v Moore [1996] ICR 836 EAT. Those principles, and the proper approach of the EAT to appeals involving such matters, have been summarised in two recent cases: Vaughan v Modality Partnership [2021] IRLR 97 EAT, paragraphs 4-28 (HHJ Tayler) and Cox v Adecco UK Ltd & others [2023] EAT 105, paragraphs 6-16 (Eady P).*
*As has been emphasised in cases such as Vaughan, the crucial exercise the tribunal must undertake, when exercising its discretion in respect of a proposed amendment, is to weigh in the balance the injustice or hardship of allowing or refusing it. The tribunal should do so having regard to all the circumstances. The "Selkent factors", as they are sometimes called, are not a checklist to follow, but a non-exhaustive list of some of the circumstances that may be relevant to the balancing exercise. They are: the nature of the amendment; the applicability of time limits; and the timing and manner of the application. The Employment Tribunal has a wide discretion when it comes to allowing or refusing an Judgment approved by the Court for handing down Fong v Montgomery, Cordiner and Low T/A Raemoir Trout Fishery © EAT 2025 Page 3 [2025] EAT 31 amendment. That decision takes the form of a case management order for the purposes of what was, at the relevant time, rule 29 of the Employment Tribunals Rules of Procedure 2013, and which is exercised having regard to the overriding objective as previously set out in rule 2. The EAT will not interfere too readily with the tribunal's exercise of that discretion; an appellant must show that the tribunal has erred in legal principle in exercising it, or failed to take relevant considerations into account (or taken irrelevant factors into account), or that no reasonable tribunal, properly directing itself, could have refused the amendment.*
*Central to this appeal is the first of the relevant circumstances in Selkent, namely the nature of the amendment, in which regard Mummery J (as he then was) said the following: "Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded, to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action."*
*It is common for a tribunal to be required to categorise the amendment application before it. This is because the parties often struggle to agree what kind it is; much rides on the distinction. Adopting the examples given in Selkent, the application may simply be an attempt to add factual details to existing allegations, or it may be an attempt to add or substitute other labels for facts already pleaded (usually described as "re-labelling"), or it may be an attempt to bring an entirely new complaint.*
*Typically, a claimant will say that a proposed amendment is the provision of further particulars or a mere re-labelling exercise, whereas a respondent may say that it is an*

*attempt to add a new complaint. The boundaries between these different categories can be difficult to draw. But they matter: they influence whether the tribunal must consider the applicability of a time limit that has usually expired by reason of the passage of time during the litigation. Time limit issues do not arise in respect of mere re-labelling; see Reuters Limited v Cole UKEAT/0258/17/BA (at paragraphs 12 Judgment approved by the Court for handing down Fong v Montgomery, Cordiner and Low T/A Raemoir Trout Fishery © EAT 2025 Page 4 [2025] EAT 31 to 15) and Foxtons Ltd v Ruwiel UKEAT/0056/08/DA (at paragraph 13). The fact a time limit has expired does not mean the amendment cannot be allowed (see Transport and General Workers Union v Safeway Stores Ltd UKEAT/0092/07), but it has been observed in many EAT cases that an amendment by way of re-labelling will more readily be permitted (see, for example, Cox [2023] at paragraph 11 and MacFarlane v Commissioner of Police for the Metropolis [2024] IRLR 34 at paragraph 52).*

*In seeking to categorise the type of amendment application made by a claimant, the tribunal must look at the ET1 form as a whole; see Ali v Office of National Statistics [2005] IRLR 201 EWCA, paragraph 39. The tribunal must consider, as a matter of construction, whether there is a causative link between the facts described in the ET1 and the proposed amendment (see Housing Corporation v Bryant [1999] ICR 123 EWCA at pages 130B-F, discussed further at paragraphs 23 and 24 of Evershed v New Star Asset Management UKEAT/0249/09 and affirmed on appeal at [2010] EWCA Civ 870).*

*When carrying out this exercise, the ET1 form must be given a fair reading (McLeary v One Housing Group Ltd UKEAT/0124/18/LA at paragraph 98). It sets out the claimant's essential case; it 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 on their say so" (Chandhok v Tirkey [2015] ICR 527 EAT, paragraph 16). Yet, at the same time, the "essential case" is not meant to possess the quality of a formal pleading in the senior courts. Putting forward the essence of a case in an ET1 form does not require a party to set out every fact and evidential matter in support of their case (Veizi v Glasgow City Council [2022] EAT 182, paragraph 61). Tribunals should look for the substance of a complaint, not its form; they should eschew approaching the issue in a technical, narrow or legalistic manner (Sougrin v Haringey Health Authority [1992] IRLR 416, paragraphs 9 and 32).*

*The fact that a claimant is professionally represented at the time they complete the ET1 form may provide relevant context to the tribunal's balancing exercise, not least in terms of the increased expectation for a clearer pleading in the first place and/or a clearly written proposed amendment. The converse is also true: the fact a claimant is without legal representation, or indeed may be vulnerable, also provides relevant context. In this regard, see Chaudhry v Cerberus Security and Monitoring Services Ltd [2022] EAT 197 at paragraph 19 and Cox v Adecco & others [2021] ICR 1307 at paragraph 27. Furthermore, the Equal Treatment Bench Book should be borne in mind; as it has made clear throughout its recent iterations, litigants in person may make "basic errors" including "describing their case clearly in non-legal terms but failing to apply the correct legal label, or any legal label at all" (see paragraph 31 of Chapter 1 of the current edition).*

*Although the point was not disputed before me, I should add that I agree with the conclusions of the EAT in Arian v Spitalfields [2022] EAT 67 and MacFarlane in preference to Pruzhanskaya v International Trade and Exhibitors (JV) Ltd UKEAT/0046/18/LA. That is to this effect: in this context, a complaint of "automatic" unfair dismissal (that is, dismissal for a prescribed reason) is a separate type of complaint to one of "ordinary" unfair dismissal and it may therefore – subject to the appropriate categorisation as discussed above – give rise to time limit considerations."*

7. In her ET1 presented on 12/4/24 the Claimant, then acting as a litigant in person, ticked the boxes for unfair dismissal, race and sex discrimination, "*other payments*" and "*another type of claim which the ET can deal with*" , (which she described as "*Mistreatment, intimidation, and unjustifiable conduct, resulting to bullying, harassment and unwarranted behaviors*"). She attached a "*letter to the court*" (her particulars of claim) which includes the following:

*"On the 6th July 2022, Gary a senior member of the team started to shout at me in an open-planned office, I was stunned and taken aback by his comment, as were my colleagues who were present. I tried to defend myself, but Gary continued to belittle me.*

*I was left feeling mortified and affronted by Gary's remarks. They caused me to question both my inherent value and my capability to make a meaningful contribution to our team, especially given the presence of senior leadership members who neglected to intervene. Furthermore, the incident generated within me a profound sense of unease, uncomfortable, unsafe, and insecurity within my working environment.*

*Following the incident, I duly reported it to HR, and they assured me they would take the necessary steps to investigate the matter.*

*On that particular day, a senior member of the leadership team came across a discarded bag of cocaine in the in-house men's toilet dedicated solely for the use of employees.*

*As you might envisage, this discovery aroused a great deal of consternation among the staff. It is exceedingly uncommon for illicit substances to infiltrate our office, and understandably so, everyone was deeply troubled. Considering this, I communicated my worries to the senior leadership figure, given that such conduct is categorically unacceptable in the professional environment and moreover, can have deleterious impacts on the welfare of our colleagues and could have proved pivotal in the occurrence of the incident.*

*In light of the above, I recommended that all employees who had access to the restroom after its last cleaning be subjected to screening the next day (this information could be obtained via their access cards). Regrettably, this suggestion was not implemented, and instead, a series of random drug tests were conducted several days after the incident.*

*On the evening of July 14th, 2022, at approximately 6:00 pm, I was preparing to depart when I spotted Gary quickly approaching me, instilling a profound sense of fear and unease in me, leading me to request an escort to safely exit the premises. Without delay, I promptly contacted a senior staff member to relay the details of the incident. I followed up with HR to ascertain the status of the matter and was informed that Juan had given tacit approval without informing or consulting those involved.*

*This occurrence generated within me a pervasive sense of vulnerability and disquietude concerning my safety and welfare in the workplace. In light of these concerns, I took extra measures to uphold my well-being and mitigate any potential harm. After that event, I began carrying a personal alarm with me whenever I was at work, which has ameliorated my sense of security. However, the incident at large has also engendered a sense of*

*apprehension and apprehensiveness regarding visiting the office. As a result, I requested permission to work remotely until the necessary safety measures were implemented.*

*I was later referred to a therapist by Dragados who informed me that my concerns were work-related and should be directed towards the HR department and it was crucial for the HR department to also address the issue and provide appropriate solutions on how to prevent similar incidents from happening in the future.*

*Following my initial report, Gary made repeated efforts to communicate with me outside of the agreed-upon parameters. Additionally, I was informed that my request to perform my job with meticulousness was considered problematic, which was demoralising. On multiple occasions, I was pressured to abandon the established protocols and continue working with Gary, who had threatened to leave the project.*

*This circumstance has resulted in their inability to complete my appraisal, which consequently led to my exclusion from receiving a commensurate pay rise given to other members of my team, as agreed upon with the management.*

*In the aftermath of said incident and throughout the subsequent months, senior management conveyed an uninterested and apathetic attitude toward my plight; a disposition which unfortunately trickled down to more junior members of the team, intensifying the situation and yielding an increasingly fraught and unsupportive professional climate. I was subjected to consistent instances of gaslighting on the part of management and instructed to undergo both a workplace 360 evaluation and a Facet 5 personality assessment, purportedly designed to appraise my behaviours and elicit colleagues' views of my performance.*

*After these evaluations had been conducted and the results demonstrated my proficiency, I was then requested to participate in Black History Month entitled "Being Black in the Construction Industry". I consented to this invitation under the condition that my views would be received openly and without modification. This request was granted seemingly without reservation, yet once it went live on the web, I was apprised that it would be taken down due to managements disapproval.*

*When HS2 stated that they were pulling the contract because of overspending, I raised my concerns, stating that it was because some employees had created fake consultant accounts that we were paying without having the consultants. Unfortunately, my team, which consisted of only three members when it should have been seven was informed it would not be affected by this situation, but this changed, and my role was made redundant.*

*This entire experience has been acutely taxing and agitating for me, particularly because I was pulled into performing the duties of three people, and had to consequently endure the subsequent substitution by another colleague. It has been an emotionally challenging and disheartening journey for me.*

*I wanted to bring to your attention an incident that occurred on March 28, 2023. At that time, a member of my team referred to my hair as "nappi", a term derived from slavery. This term was used by white people to assert their superiority over black people or slaves, based on the texture of their hair.*

*I reached out to HR on this matter who suggested I engage in a conversation with him to address the situation. As the individual who had been subjected to unwarranted behaviour, I had to assert unequivocally that such actions were wholly intolerable and had no place in our team or working environment. Furthermore, I underscored the imperative to establish a secure and inclusive workplace for everyone, irrespective of our disparate backgrounds, where all members of the team are regarded with respect, value, and inclusivity. Notably, I pursued this course of action without the assistance of any of our colleagues or personnel within the organisation or project.*

*Furthermore, this individual who joined our team without my approval was appointed due to their family connection to the ex-European director, and not based on their qualifications or experience.*

*I would like to bring to your attention the issue concerning my grievance that was raised on the 5th of February 2023. Please note that the grievance was resolved before I proceeded on long-term sick leave towards the end of April of the same year. I was not contacted about my health during this time in line with Dragados policy. However, I was notified and provided with a report attached to my case, which was issued only after my dismissal. It has become apparent that this matter was concluded without affording me any form of recourse, which has left me with a sense of unease.*

*It is imperative to note that the investigation was conducted by project employees who reported to the project director. However, I regret to inform you that no efforts were made to contact any witnesses, nor was any corroborating evidence presented upon conclusion.*

*The unfavourable working circumstances have induced an overwhelming sense of discomfort and anxiety, causing compromised sleep and work- related focus. Additionally, my pre-existing health condition of fibroids had become aggravated at an accelerated rate, leading to heightened discomfort and pain. As a result, I now harbour a sense of profound apprehension about my prospects of future work within the same industry, engendering a significant emotional burden.*

*I am respectfully requesting that Dragados compensate me for the following: …..”*

8. Following a previous CMPH on 6/2/25 the Claimant was directed by 17/3/25 to confirm in writing “ *.. if she is pursuing her complaint of unfair dismissal, whether she believes that their claim for unfair dismissal falls within any of the categories which do not require a 2-year period of qualifying service, and if so, which one. These are set out at section 108(3) of the Employment Rights Act 1996*”

9. In response the Claimant filed a statement on 17/3/25 which includes the following:

*“6.1 The claimant submits this statement in relation to her unfair dismissal claim, which is based on mitigating factors including racial discrimination and harassment. The claim falls within the exceptions outlined in Section 108(3) of the Employment Rights Act 1996, which exempts certain claims from the two-year qualifying service requirement. … 8.1 The claimant's department was initially not considered for redundancy; however, this decision was later reversed, and the claimant became the sole individual at risk within the team.*

*The claimant's detailed reports of harassment, gaslighting, and lack of support from management, coupled with incidents of racial discrimination, indicate that the redundancy selection may have been a strategic move by the defendant to divert attention from these serious issues. By presenting the dismissal as a routine business decision, the defendant could be attempting to avoid addressing the claimant's grievances and the toxic work culture that has been perpetuated.*"

*10.* On 22/4/25 the Respondent solicitors then applied to the ET as follows: "*The Respondent wishes to make an application for the unfair dismissal complaint to be struck out on grounds that the Claimant did not have a two-year qualifying period of service. The Claimant was employed by the Respondent from 13 December 2021 to 8 November 2023. This is not a point disputed by the Claimant in her witness statement. The Claimant has generally referenced at 6.1 of her witness statement that she believes her unfair dismissal claim "is based on mitigating factors including racial discrimination and harassment" but has not provided any relevant particulars on this point."*

11. On 6/6/25, shortly before the hearing today, the Claimant sent another email which included the following under the heading "*Section 108*"

*"Employment History: I was employed by Dragados from 13/12/2021 to 08/11/2023. During my employment, I held the position of Document Control Manager and worked on a joint venture project with Mace on HS2. Notably, my termination occurred just 1 month and 5 days short of completing 2 years of consecutive employment.*

*Incidents: Throughout my employment, I experienced several incidents that I believe contributed to my unfair dismissal, including:*

*On 06/07/2022, Gary Stevens, a senior team member, shouted at me in an open-plan office, causing me to feel mortified and affronted. I reported the incident to HR, who assured me they would investigate.*

*On the same day, a senior leadership team member discovered a discarded bag of cocaine in the in-house men's toilet. I communicated my concerns, but my suggestion for employee screening was not implemented. This situation violates the Health and Safety at Work etc. Act 1974, which requires employers to ensure the health, safety, and welfare of their employees.*

*On 14/07/2022, I felt threatened by Gary as he entered the sixth floor after standard working hours, resulting in me requesting an escort to safely exit the premises. A therapist later confirmed that my concerns were work-related.*

*Despite my efforts to address the issues, I faced repeated communication from Gary outside of agreed-upon parameters and was pressured to abandon established protocols.*

*I experienced gaslighting from management and was subjected to evaluations that demonstrated my proficiency.*

*In January 2023, the project announced redundancies. Although my department was initially unaffected, my role was selected for redundancy after I raised a formal grievance.*

*In February 2023 faced racial slurs from a team member, which I reported to HR. This team member was the son of the previous European Director, who is close friends with the current director. The racial slurs and harassment I experienced are in violation of the Equality Act 2010, which protects employees from discrimination, harassment, and victimisation based on protected characteristics, including race.*

*My grievance raised on 05/02/2023 was concluded without recourse or notification until my termination in November 2023.*

*In November 2023, I raised an appeal against my termination and never received a response. Additionally, I was informed there was no recourse to my grievance.*

*In February 2024, I made a claim to ACAS as I had not received a response from Dragados.*

*Request for Employment Files: On 22/11/2024, I requested my employment files from Dragados. When I received the files, they were heavily redacted, making it difficult to review the information. Additionally, they did not contain details of communication on the project I was assigned to, such as emails. This may be in violation of the Data Protection Act 2018.*

*Impact: These incidents and the lack of appropriate action by my employer caused significant distress and affected my mental health. My dismissal was unfair and that the incidents mentioned above contributed to my termination. Under Section 108 of the Employment Rights Act 1996, I am eligible to bring a claim for unfair dismissal.*

*Legal References:*

*Section 108 of the Employment Rights Act 1996*

*Equality Act 2010: This act protects employees from discrimination, harassment, and victimisation based on protected characteristics, including race. The racial slurs and harassment I experienced are in violation of this act.*

*Health and Safety at Work etc. Act 1974: This act requires employers to ensure the health, safety, and welfare of their employees. The discovery of illegal drugs in the workplace and the failure to address safety concerns are breaches of this act.*

*Public Interest Disclosure Act 1998: This act protects whistleblowers from retaliation. My report of the drug discovery and subsequent dismissal could be considered a violation of this act.*

*Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013: These regulations provide for the extension of time limits in cases where it is just and equitable to do so.*

*ACAS Code of Practice on Disciplinary and Grievance Procedures: This code emphasises the importance of timely responses to grievances.*

*Data Protection Act 2018: This act governs the processing of personal data and ensures that individuals have the right to access their personal data. The heavily redacted employment files I received may be in violation of this act.*

*Human Rights Act 1998: This act incorporates the European Convention on Human Rights into UK law. The lack of a fair hearing and the distress caused by the incidents may be in violation of Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life).'*

12. In submissions today, Mr Giani explained for the first time that the Claimant wished to bring/should be regarded as having already brought claims for automatic unfair dismissal under section 100(1)(c), 104(1)(b) and 105(1) read with 105(3) of the Employment Rights Act 1996. These provisions are as follows:

*100 Health and safety cases.*

*An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—*

*(1) (c) being an employee at a place where—*

*there was no such representative or safety committee, or*

*there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,*

*he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety'*

*……*

*104 Assertion of statutory right.*

*(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—*

*(b) alleged that the employer had infringed a right of his which is a relevant statutory right.*

*……*

*105 Redundancy.*

*(1)An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—*

*(a)the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,*

*(b)it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and*

*(c) it is shown that any of subsections (2A) to (7N) applies.*

*(3)This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 100 (read with subsections (2) and (3) of that section).*

Consideration

13. In her Particulars of claim the Claimant mentions her difficulties with Gary in July 22 and how this generated in her a sense of a lack of safety, and her concerns about cocaine being found in the mens' washroom, which she contends could have had a "*deleterious impacts on the welfare of our colleagues"* and that she reported both these matters to HR.

14. The Claimant does not state or suggest in her particulars of claim that (i) there was no H&S representative or safety committee, or (ii) there was such a representative or safety committee but it was not reasonably practicable for her to raise the matter by those means, (as required by section 100); that her complaints about Gary or the cocaine were a complaint about an infringement of a relevant statutory right of hers (as required by section 104); or (iii) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by her and who have not been dismissed by the employer (as required by section 105(1)(b)).

15. When I asked Mr Giani about these details he did not have any instructions on them - for example whether the Claimant would say for purposes of section 100 that there was no health and safety representative or safety committee, or whether she would say that there was such a representative or safety committee but it was not reasonably practicable for her to raise her complaints by those means.

16. Furthermore, the Claimant does not state or even imply in her Particulars of Claim that her complaints about Gary or the cocaine were the cause of her dismissal. When dealing in that document with the cause of her dismissal she made reference to a quite different reason, as follows: *"When HS2 stated that they were pulling the contract because of overspending, I raised my concerns, stating that it was because some employees had created fake consultant accounts that we were paying without having the consultants. Unfortunately, my team, which consisted of only three members when it should have been seven was informed it would not be affected by this situation, but this changed, and my role was made redundant…"*

17. On a fair reading of the particulars of claim and without the benefit of what the Claimant has sought to add afterwards, principally through her Counsel today, the complaints about Gary and the cocaine are either background or matters which she wishes to complain about as discrimination/harassment of some kind and are certainly not to be understood, even as a matter of substance, as a claim for automatic unfair dismissal.

18. It is clear that the Claimant did not intend in her ET1 to claim (even in litigant-in person terms) that she was automatically unfairly dismissed by reason of health and safety complaints (which complaints even on her case appear to have been made about 15 or 16 months before the dismissal). A reasonable person reading her ET1 and POC would not conclude that she had made such a claim.

19. It is only after the problem of the lack of two years' service has emerged that an attempt has been made retrospectively to recast the claim as something quite different.

20. I do not regard this as a case of a proposed relabelling exercise only, with no real change in the substance. To recognise or allow an automatic dismissal claim would require a significant amendment, change the substance by introducing a completely new alleged causation and factual matrix, and require the Respondent to consider its defence afresh, once the missing essential averments (which even today are not available even if they have been decided on) have been provided.

21. Any automatic unfair dismissal claim brought now would be significantly out of time. The manner of the application is informal, late and lacking any written form, and not even mentioned until half-way through the Claimant's submissions today.

22. For these reasons I refuse the amendment, find that the only unfair dismissal claim which the Claimant has brought is an ordinary unfair dismissal claim, and strike that claim out for want of two years' continuous service.

Equality Act 2010 claims

23. The relevant statutory provision is s.123(1) of the Equality Act 2010 which provides for a three-month time period for issuing tribunal proceedings, or starting ACAS early conciliation, or at such other period as the Employment Tribunal thinks just and equitable.

24. The relevant criteria to be applied in terms of whether it would be just and equitable to extend time are those set out in s.33 of the Limitation Act 1980. These criteria should not be followed slavishly but nevertheless represent a useful guide to tribunals in assessing whether an extension of time should apply. Potentially relevant factors include: the length and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected; the promptness of which the Claimant acted once she knew of the facts giving rise to the cause of action; and the steps taken by the Claimant to obtain appropriate professional advice once she knew of the possibility of taking legal action.

25. The length of, and reasons for the delay, and any prejudice to the Respondent, are "*almost always relevant to consider"* Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194, per Leggatt LJ at [19]).

26. Robertson v Bexley Community Centre 2003 IRLR 434 CA [25] per Auld LJ "*An employment tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. It is entitled to consider anything that it considers relevant. However time limits are exercised strictly in employment cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. On the contrary, a tribunal cannot hear a complaint unless the applicant convinces it that*

*it is just and equitable to extend time. The exercise of discretion is thus the exception rather than the rule*".

27. In so far as the Claimant asserts illness as a reason for delay, that will be a relevant factor to weigh in the balance when considering whether to exercise the discretion to extend time. However, there is no general principle that an individual with health problems (including mental health problems) is entitled to delay as a matter of course in bringing a claim: Department of Constitutional Affairs v Jones, 2007 EWCA Civ 894 per Pill LJ at [58].

28. As to conduct extending over a period (s.123(3)), the focus is on the substance of the complaints, and whether what is being complained of is ""*an act extending over a period*" *as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed*" (Hendricks v Commissioner of the Police of the Metropolis [2003] ICR 530 at [52] per Mummery LJ).

29. For limitation purposes, an omission occurs when the decision maker in question decided on it (s.123(3)(b)). In the absence of evidence to the contrary, the decision maker is to be taken to decide on a failure to do something when either (1) they do something inconsistent with it; or (2) the period in which the decision maker might reasonably have been expected to do it expires (s.123(4)).

30. In Aziz v FDA EWCA 2010 304 it was held that deciding a time limits issue relating to whether conduct extends over a period is permissible at a PH which receives evidence. The issue is whether at the PH a prima facie case is shown that conduct extended over a period. In that case events were grouped in different periods and it was concluded that it was not sensible to say that thee was conduct extended over the periods. The events in the individual periods made sense in themselves.

Consideration

31. I have set out in the Schedule to these reasons a chronology of events and allegations. This is based on the Equality Act 2010 harassment allegations as set out in paragraphs 45 and 46 of the Case Summary dated 6/2/25 (which the Claimant through her Counsel today agreed was a correct and exhaustive list of such claims) and other events the dates of which are not in dispute.

*32.* The CMPH case summary includes as an allegation of sex-harassment "*instances of gaslighting (to be particularised) including attempts to undermine the Claimants safety concerns"*. The Claimant was directed by 17/3/25 to provide "*if she is pursuing the relevant part of her claim, clarification of who attempted to gaslight her, setting out dates, times, location and manner in which this happened"*

33. In response the Claimant provided the following on 17/3/2025:

*"9.3 Management's Gaslighting and Lack of Support*

*Following my initial report, Gary Stevens repeatedly attempted to contact me outside the agreed-upon parameters via Microsoft Teams and in person. Management informed me that if I refused to communicate with him, he would leave, placing undue pressure on me to engage despite the circumstances. Requests for safer working conditions were dismissed as "problematic," further exacerbating an already hostile work environment.*

*Senior management demonstrated an apathetic and indifferent attitude, fostering a culture in which inappropriate behaviour was normalised. This included instances of gaslighting, such as referencing a separate incident where Gary Stevens had intimidated another female colleague by shouting and belittling the claimant in the middle of the office—yet dismissing my concerns by noting that she had not requested safety measures.*

*The defendant also referred me for counselling through a third-party provider, only for me to be informed that my concerns were classified as an HR matter, leaving me without meaningful support. Additionally, I was subjected to workplace evaluations, including a 360- degree evaluation and a Facet 5 assessment, despite both confirming my professional competence. These evaluations appeared to serve no legitimate purpose other than to subject me to additional scrutiny.*

*As the only Black female reporting line manager during the latter months of my employment on the HS2 project, it became evident that professional grace and social standing were not equally extended to me. Workplace norms that afforded others leniency and acceptance were systematically denied in my case.*

*Furthermore, Juan Ares, the Project Director, was visibly upset upon learning that I had successfully passed my probation. His reaction was not based on my performance but rather on personal bias. He openly chastised my line manager for allowing my progression, signalling that my presence in this role was unwelcome due to factors beyond merit."*

34. Thus the Claimant did not comply with the direction to set out the dates and times of her "gaslighting" allegations and these were not provided today either.

35. However what is not in dispute is that the Claimant was away from work on long-term sick leave from 24/4/23 onwards and that she never returned to work thereafter and was dismissed the day before the primary limitation deadline expired. What she has written suggests that the matters complained of as "gaslighting" all occurred before her sick leave, and Mr Giani did not suggest otherwise in submissions. The Claimant has failed, notwithstanding a clear direction, to particularise any "gaslighting" after her sick-leave commenced and I therefore conclude that none after that date is complained of.

36. While it is not possible to put a specific date on when the Respondent "*failed to interview the Claimants witnesses about her grievance"* (which is one of the allegations of sex-

harassment), the email of 17/5/23 shows that if this omission did occur, it did so before that date.

37. The Claimant has not provided any information or explanation to support any suggestion that the events complained of are part of a continuing act. The complaints are about different people at different (often widely separated) times doing different kinds of things.

38. The complaints of race harassment, relate to two matters (namely that *"(i) in Oct 22The Respondent took down the Claimant's contribution to 'Being Black in the Construction Industry' (brought to her attention by Paul Leighton in October 2022) and (ii) in 28/3/23 Nick Duggen referred to Cs hair as "nappi"*). These are two isolated allegations different from each other and not suggested to having been done by the same person. They are not each part of a single continuing act.

39. If the three sex harassment complaints about Gary Stevens relate to a continuing act, that act was completed in March 23. They do not seem to be related to the other complaints of sex harassment which are different in kind and were also all completed on my findings by May 23 at the latest, and most of them much earlier than that.

40. The Claimant has not shown a prima facie case that any of the events complained of were part of a continuing act extending to a date after the commencement of the primary limitation period which started on 2/11/23.

41. I conclude that the EA 2010 claims are out of time and the question is whether it is just and equitable to extend time. Mr Giani's submissions were made on that basis.

42. The Claimant refers to her medical leave which started on or about 24/4/23 following an "*open myomectomy*" operation as a factor making it just and equitable to extend time.

43. All the matters in respect of which the Claimant has identified specific dates were completed some time before the sick leave commenced, and most of them were in 2022. It is unlikely that her ability to bring claims in time in relation to those matters was impacted by any such leave.

44. The Claimant has not produced and GP or hospital records. The few fit notes she has provided state "*open myomectomy*" as the reason for absence. The Claimant has failed to provide proper information on the impact of the procedure on her. The fit notes demonstrate that the Claimant was unfit for work for the period from 3/5/23 to 30/11/23 but do not state or show that the Claimant was unable to engage with ACAS or any Tribunal process.

45. The Respondent during this period of absence did exchange emails with the Claimant and conduct regular check-ins with her as well as conducting a redundancy consultation with her.

46. The Claimant's last fit note expired on 30/11/23 but she did not commence ACAS early conciliation for a further two months, until 1/2/24.

47. The Claimant also relied on the fact that the outcome of her grievance was not given to her until 4/12/23. However, the grievance outcome and any delay in communicating it to the Claimant are not matters she has alleged as harassment, and there was no reason why the Claimant had to wait for the outcome before issuing her claim, particularly as she is now complaining in her ET1 about several matters which she did not complain about in the grievance, and vice versa.

48. The period of delay between the Claimant receiving the grievance outcome on 4/12/23 and her application to ACAS on 1/2/24 is not accounted for at all.

49. The Claimant did not suggest that she did not know her rights or how to claim.

50. Several of the alleged matters date from 2022. The alleged harassment which the Claimant wishes to complain about occurred in the range of about one year to one year and 9 months prior to her claim being presented This is a significant period of delay.

51. If these harassment claims were to be determined, the FMH would require a 6-day listing which could probably be accommodated no earlier than the second half of 2026, by which time the allegations would be even staler than they are now, essentially four years on from the alleged incidents. The ability of any relevant witness to accurately recall and respond to questions on (in many cases) one-off, discrete incidents from 2022 and early 2023 will be severely prejudiced by this years'-long time period.

52. I was also informed by Ms Davies that her instructions are that two of the alleged protagonists, Nick Duggen and Gary Stevens are no longer employed by the Respondent.

53. Hence the delay is likely to be prejudicial to a fair trial.

54. I find that it is not just and equitable to extend time and that it would be contrary to the overriding objective if I did so.

55. Hence the harassment claims are also outside the ET jurisdiction and must be struck out.

Employment Judge J S Burns
9/6/2025
For Secretary of the Tribunals
Date sent to parties
18 June 2025

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SCHEDULE

CHRONOLOGY

(Harassment allegations shown in italics)

| | |
|---|---|
| 13/12/21 | employment started |
| 6/7/22 | *Gary Stevens shouts at Claimant in open plan office (allegation of sex harassment)* |
| 14/7/22 | *Gary Stevens quickly walked towards C (allegation of sex harassment)* |
| Oct 22 | *The Respondent took down the Claimant's contribution to 'Being Black in the Construction Industry' (brought to her attention by Paul Leighton in October 2022) (allegation of race harassment)* |
| Sept/December 22 | *Jim Abbat instructed by S Holmes to undertake workplace evaluation (allegation of sex harassment)* |
| 5/2/23 | C raises grievance |
| 2022 until March 23 | *Gary Stevens continued to try to contact C outside parameters specified by HR (allegation of sex harassment)* |
| 28/3/23 | *Nick Duggen referred to Cs hair as "nappi" (allegation of race harassment)* |
| …… | *gaslighting (alleged sex-harassment)* |
| 24/4/23 | Claimant has an operation and is off sick subsequently and never returns to work |
| 17/5/23 | email confirms grievance investigation is completed (*claim of sex harassment that R failed to properly investigate in that none of C's witnesses were contacted)* |
| 25/9/23 | consultation re redundancy |
| 25/10/23 | consultation re redundancy |
| 1/11/23 | told being dismissed as redundant |
| 2/11/23 | primary limitation deadline for EA claims |
| 8/11/23 | employment ends |
| 27/11/23 | grievance meeting |
| 30/11/23 | last sick note expires |
| 4/12/23 | grievance dismissed |
| 1/2/24 | ACAS application |
| 14/3/24 | ACAS certificate |
| 12/4/24 | Claim presented |