EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 8002231/2024

Hearing held in Glasgow on 30 May 2025

Employment Judge: R Sorrell

Mr J Carswell	**Claimant** **In Person**
North Lanarkshire Council	**Respondent** **Represented by:** **Ms K Carrick** **Solicitor** **(In attendance** **Mr P Kolev)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

(i) Having considered the respondent application for reconsideration of the Judgment dated 31 March 2025, the reconsideration is granted and the Judgment is revoked.

E.T. Z4 (WR)

(ii) In accordance with Rule 68(3) of the Employment Tribunal Procedure Rules 2024 ("ET Rules"), having taken the decision again, the Judgment of the Tribunal is that it is not just and equitable to extend the time limit in which to lodge the claim and therefore the Tribunal does not have jurisdiction to hear the claim.

REASONS

Introduction

1 The claimant lodged a claim for disability discrimination on 30 December 2024 and referred to section 39 (1) of the Equality Act 2010, in that, an employer must not discriminate against a person in the arrangements it makes for deciding to whom to offer employment.

2 The respondent resists the claim.

3 Following a case management preliminary hearing held on 3 March 2025, a preliminary hearing was held on 27 March 2025 to determine the issue of time bar. A Judgment was issued on 31 March 2025 that it was just and equitable to extend the time limit in which to lodge the claim and therefore the Tribunal has jurisdiction to hear the claim.

4 On 10 April 2025, the respondent made an application under Rule 69 of the "ET Rules" for the Judgment to be reconsidered which it considered necessary in the interests of justice in terms of Rule 68 of the "ET Rules." The application was principally made on the basis that new evidence lodged by the claimant was fundamentally at odds with the oral evidence he gave at the preliminary hearing on time bar on 27 March 2025 which rendered the Judgment of 31 March 2025 unsafe as a result. (D65-71) The new evidence referred to was email correspondence from ACAS to the claimant dated 9 and 29 October 2024. (D83-4)

5 On 17 April 2025 the Tribunal notified parties that the application was not refused upon initial consideration and sought a response to it from the

claimant, as well as parties' views on whether the application could be determined without a hearing. (D72-3)

6 On 30 April 2025 the respondent informed the Tribunal that a hearing was preferred on the basis that it would be beneficial to test the claimant's evidence on why he failed to disclose the two key documents dated 9 and 29 October 2024 prior to the preliminary hearing on 27 March 2025. (D75)

7 On 11 May 2025 the claimant responded that the Tribunal has already obtained a decision on the time bar issue and he finds it perplexing that there are claims of significant disparities in the evidence presented. He was relying solely on the recollection of his memory and all the information he provides is offered in good faith.

8 In light of the new evidence that was not before the Tribunal at the preliminary hearing on time bar, I considered that it was necessary in the interests of justice to reconsider the Judgment and that a hearing should be fixed to determine the application. In reaching this view, I had regard to the authorities of ***Ladd v Marshall 1954 3 All ER 745, CA*** and ***Outasight VB Ltd v Brown 2015 ICR D11, EAT***.

9 As the claimant is a party litigant, at the start of the hearing I explained the purpose of and procedure for the hearing, as well as the possible outcomes.

10 The claimant first gave oral evidence under oath about the documents of 9 and 29 October 2024 that were not before the Tribunal at the preliminary hearing on 27 March 2025. Both parties thereafter made submissions.

11 The respondent lodged a bundle of productions.

1) <u>The Reconsideration Application</u>

Respondent's Submissions

12 I have read and digested the respondent's written submissions which Ms Carrick has lodged and spoke to at the hearing, and referred to them where relevant in my Conclusion.

Claimant's submissions

13 The claimant submitted that he accepts he did not provide all of his documents on time as he had difficulty accessing some of them. However, once he accessed them, they were sent timeously and courteously to the Tribunal and respondent. The last two emails he sent were detrimental to his case but he still sent them. He apologises to the Tribunal if he made any error of judgement regarding time-scales. He genuinely believed he always acted in good faith. He understands that the respondent rejects that, but lodging his claim 13 days late is less than two weeks and he would like to have the opportunity of having his case heard. He has been overwhelmed by all the information in this case. Even if he has made a few errors, his case should not be thrown out.

Relevant Law

14 Rule 68 of the "ET Rules" provides that (1) the Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. (2) A judgment under reconsideration may be confirmed, varied or revoked. (3) If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the same conclusion. Rules 69-70 of the "ET Rules" set out the procedure and process for reconsideration.

15 The authority of ***Outasight VB Limited v Brown UKEAT/0253/14*** provides further guidance: "*The interests of justice have thus long allowed for a broad discretion, albeit one that must be exercised judicially, which means having*

regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation." (Para 33)

16 When a party seeks to rely on the availability of new evidence in respect of reconsideration of a judgment, the party applying for reconsideration needs to satisfy three elements as laid out in ***Ladd v Marshall [1954] 1 WLR 1469***. First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the original hearing, second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive, and thirdly, the evidence must be apparently credible, though it need not be incontrovertible.

Conclusion

17 In determining this application, I considered the emails of 9 and 29 October 2024, the claimant's evidence and parties' submissions in view of the Judgment of 31 March 2025.

18 Prior to the preliminary hearing on time bar, on 12 March 2025 the claimant emailed four documents to the respondent that he intended to rely on at that hearing. (D87) In response, the respondent asked the claimant to confirm that these were the only documents he wished to refer to. (D87) The claimant responded that he would double check and that if there were any additional documents he would send them in good time as he would not ambush them with unseen documents. (D86)

19 The claimant did not provide the respondent with any further documents prior to the preliminary hearing.

20 After the Judgment of 31 March 2025 was promulgated, the claimant sent the respondent an email from his ACAS Conciliator to him dated 9 October 2024. (D83) This email advised the claimant that the clock has stopped ticking. It

also provided further information about that and included a link to information about employment tribunal time limits.

21 Having considered this email, I did not consider that the issue of whether ACAS had confirmed the clock has stopped ticking was new evidence in terms of ***Ladd ("supra")***. This is because while this document was not before the Tribunal at the preliminary hearing, I found at paragraph 18 of the Judgment that: *"During the early conciliation process, the claimant sought confirmation from ACAS that the process would stop the clock in terms of the time limit to lodge a claim.* ***ACAS confirmed to him that it would.****"*

22 The claimant further sent the respondent an email from ACAS to him dated 29 October 2024. (D84) This email informed the claimant that the early conciliation period will end on 1 November 2024 at which point the early conciliation certificate will be automatically issued to him by email and that once the certificate is received, the clock starts ticking to submit a claim to the Tribunal. They further advised that if he is unsure about the deadline to submit a claim, their guidance is to do so within one calendar month less one day of receiving the certificate. In addition, the email contained links for information about submitting a Tribunal claim as well as details of potential free advice sources.

23 I am satisfied that the email of 29 October 2024 was new evidence in accordance with ***Ladd ("supra")***. This is because despite the requests from the respondent to the claimant to provide all the documents he intended to rely on at the preliminary hearing and the claimant's understanding of the need for that, he did not disclose this evidence, which was credible correspondence from ACAS, that would probably have an important influence on the result of the case.

24 In reaching this view, I have noted my finding at paragraph 21 of the Judgment that the claimant was not told by ACAS that he needed to lodge his claim after the early conciliation process concluded. Yet, the email of 29 October 2024 informed the claimant that once he received the early conciliation certificate

on 1 November 2024, the clock starts ticking to submit a claim to the Tribunal and that their guidance was to submit a claim within one calendar month less one day of the receiving the certificate.

25 At the hearing, I found the claimant's evidence contradictory and unreliable on this issue. At paragraph 20 of the Judgment, I found that the claimant thought the time limit in which to bring a discrimination claim was 6 months less one day. However, at the hearing the claimant gave evidence that not only did he think the time limit in which to raise his claim was 3 months less one day, but that the time did not start to run until he received the early conciliation certificate on 1 November 2024, even though he had not given any indication in his evidence at the preliminary hearing that this was his understanding.

26 In this regard, I considered the claimant also gave irreconcilable evidence in cross examination, as he accepted he knew the clock had started ticking when he asked ACAS if it had stopped ticking, but said that was not what he was asking as he thought the clock would only start ticking after the early conciliation certificate was issued.

27 Under cross examination, the claimant further accepted the general guidance given by ACAS in their email about submitting a claim within one month less one day of receiving the conciliation certificate was not unclear, yet he could not explain why he did not submit a claim in terms of the guidance. Indeed, when asked whether he ignored the guidance, he responded that he did not have a credible answer for that and said he was not arguing the respondent was wrong about that.

28 Whilst the claimant did state during cross examination that perhaps he had a comprehension issue regarding the information ACAS provided to him about time limits, I did not find this evidence reliable. This is because it was not an explanation given at any point for his late claim at the preliminary hearing and there was no evidence before me to indicate the claimant had made any further inquiries with ACAS in this regard.

29 Having assessed all the evidence and parties' representations in the round, I decided that it was necessary in the interests of justice and the Overriding Objective under Rule 3 of the "ET Rules" to revoke the Judgment of 31 March 2025.

30 This is because in light of the email of 29 October 2024 and the claimant's evidence about that, the claimant has significantly damaged his credibility in respect of the reasons for lodging the claim when he did. Contrary to the evidence given by the claimant at the preliminary hearing and my finding in fact at paragraph 21 of the Judgment, ACAS clearly did inform the claimant that the clock started ticking to submit a Tribunal claim after he received the early conciliation certificate and provided general guidance that a claim should be lodged within one month less one day of receiving the certificate. Furthermore, I considered that this finding had been central to my assessment of the claimant's credibility in respect to his reasons for lodging the claim when he did and was a material factor in reaching the decision.

31 For these reasons, the Judgment of 31 March 2025 is revoked.

2) <u>The Remaking of the Decision</u>

32 In light of my decision to revoke the Judgment of 31 March 2025, I have proceeded to remake the decision in accordance with Rule 68 (3) of the "ET Rules."

Findings in Fact

The following facts are found to be proven or admitted;

33 The claimant's date of birth is 18 November 1961.

34 The respondent is a local authority.

35 On 5 July 2024 the claimant applied for the role of Safety and Wellbeing Assistant with the respondent.

36 In his application, the claimant indicated his status as a “Routes to Work” client, which is a supported employment partner of the respondent, and that he considered himself to have a disability.

37 The respondent operates a Guaranteed Job Interview Scheme whereby job applicants who indicate they have a disability and who meet all the essential criteria of the role applied for are guaranteed an interview.

38 The respondent rejected the claimant’s application on 6 August 2024 because they considered the claimant did not meet all the essential criteria of the role applied for.

39 On 7 August 2024 the claimant’s Case Worker at “Routes to Work” queried the reasons for rejection of the claimant’s application which the respondent replied to on 8 August 2024.

40 On 27 August 2024 the claimant complained about the rejection of his application in a letter to the respondent and has received a response to that.

41 On 20 September 2024 the claimant instigated the ACAS early conciliation process. (D81)

42 During the early conciliation process, the claimant sought confirmation from ACAS that the process would stop the clock in terms of the time limit to lodge a claim. On 9 October 2024 ACAS confirmed to him that it would. (D83)

43 On 29 October 2024 the claimant was informed by ACAS that the early conciliation period will end on 1 November 2024 at which point the early conciliation certificate will be automatically issued to him by email and that once the certificate is received, the clock starts ticking to submit a claim to the Tribunal. They further advised that if he is unsure about the deadline to submit

a claim, their guidance is to do so within one calendar month less one day of receiving the certificate. (D84)

44 On 1 November 2024 the ACAS early conciliation certificate was issued. (D3)

45 The claimant ignored the information and guidance he received from ACAS on 29 October 2024.

46 The extended deadline for the claimant to raise his claim was 17 December 2024.

47 The claimant lodged his Tribunal claim on 30 December 2024. (D4-17)

Relevant Law

48 In exercising their discretion to allow out of time claims to proceed, tribunals may have regard to the checklist contained in section 33 of the Limitation Act 1980, as modified by the EAT in the leading authority of ***British Coal Corporation v Keeble and ors 1997 IRLR 336***. This includes the consideration of the prejudice that each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case. In particular, the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has cooperated with requests for information, the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

Issue to be Determined by the Tribunal

49 The Tribunal identified the following issue required to be determined:

(i) Is it just and equitable in all the circumstances to extend the time in which to lodge the claim?

Conclusion

50 I have carefully considered all the evidence in the round and taken account of the relevant factors in terms of ***British Coal Corporation v Keeble and ors 1997 IRLR 336***. In doing so, I am satisfied that in applying these facts to the authorities of ***Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*** and ***Pathan v South London Islamic Centre EAT 0312/13***, it is not just and equitable in all the circumstances to extend the time in which to lodge the claim.

51 It was not in dispute that the claimant lodged his claim after the expiry of the statutory limitation period. Parties agreed that the date of the alleged discriminatory act was 6 August 2024 and that following the time extension under the ACAS early conciliation provisions, the statutory time limit expired on 17 December 2024.

52 I found that the claimant did not have a credible reason for lodging the claim when he did. Whilst he corresponded with and obtained information from ACAS about the early conciliation process and the time limits in which to lodge a claim, he did not dispute that he ignored the clear guidance they provided that a claim should be lodged within one month less one day of receiving the early conciliation certificate.

53 Furthermore, I did not find his evidence reliable that perhaps he had comprehension issues about this information or been overwhelmed by it, as he had not previously raised that and there was no evidence to suggest he had made any further inquiries with ACAS about the information if that was the case.

54 In terms of the prejudice that either party would suffer as a result of the decision reached, I found that the claimant would not suffer any prejudice if the claim was allowed to proceed, but would suffer prejudice if it were not allowed to proceed as he would be prevented from seeking legal redress.

55 In respect of the respondent, I found they would not suffer any prejudice if the claim were not allowed to proceed and that on balance would suffer more

prejudice if the claim were allowed to proceed than the prejudice the claimant would suffer if it were not allowed to proceed.

56 This is because while the claimant would suffer the obvious prejudice of being prevented from seeking legal redress for lodging a claim 13 days late which was not a substantial delay and the respondent did not suggest any forensic prejudice, the respondent would suffer the considerable and greater prejudice of having to meet a claim which, irrespective of the length of delay, had been lodged after the expiry of the statutory limitation period without any credible reason.

57 For these reasons, the Tribunal does not have jurisdiction to hear the claim.

58 Accordingly, the hearing fixed on Thursday 19 June 2025 to determine the issue of disability status and the Final hearing fixed for two days on Monday 21 July and Tuesday 22 July 2025 are cancelled.

Date sent to parties **11 June 2025**