EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001215/2024

Held in Glasgow via Cloud Video Platform (CVP) on 12 June 2025

Employment Judge Brewer

Mr S Rafiq	**Claimant** **In Person**
ICARE24 Group Ltd	**Respondent** **Represented by:** **Mr R Crabtree - Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the Tribunal does not have jurisdiction to hear the claimant's claims brought under the Equality Act 2010 and those claims are dismissed.

REASONS

Introduction

1. This was a preliminary hearing to consider whether the tribunal has jurisdiction to consider the claimants claims under the Equality Act 2010.

2. At the hearing the claimant represented himself and the respondent was represented by Mr Crabtree, a consultant.

3. I was provided with a bundle of documents running to 144 pages, a witness statement from the claimant and written submissions from Mr Crabtree.

4. The claimant provided oral evidence was cross examined by Mr Crabtree. I also asked the claimant some questions. At the end of the hearing, I reserved my decision which I set out below.

5. I add for the sake of completeness that on 11 and 12 March 2025 a preliminary hearing heard by Judge Doherty determined that the claimant's claims were submitted out of time (a matter which was not in dispute), and that in relation to his claims for constructive unfair dismissal brought under the Employment Rights Act 1996 and under regulation 11 of the Working Time Regulations 1998, the Tribunal did not have jurisdiction to hear those claims because it was reasonably practicable for the claims to have been brought in the primary three month time limit under the relevant legislation.

Issues

6. In relation to this hearing, the claimant brings claims for indirect disability discrimination, Discrimination arising from disability, failure to make reasonable adjustments and harassment related to disability.

7. It is accepted that the last possible date that any discrimination could have taken place was 29 February 2024, the date when the claimant left his employment with the respondent. The claimant made contact with ACAS for early conciliation on 7 June 2024. He received his early conciliation certificate on 18 July 2024, and he presented his Tribunal claim on 12 August 2024.

8. The issue therefore in this case is whether it is just and equitable to allow the claims to proceed.

Relevant Law

9. Section 123 of the Equality Act 2010 ("EQA") provides that:

"123 Time limits

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable."

10. Section 140B EQA permits an extension of time where ACAS early conciliation is undertaken in certain circumstances, but this is not relevant in this case.

11. In **Robertson v Bexley Community Centre t/a Leisure Link** 2003 IRLR 434, CA, Auld LJ stated, when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EqA, as follows:

"23. I turn now to the second issue. The decision by the employment tribunal not to exercise its discretion to consider the claim on just and equitable grounds. There are a number of basic propositions of law to which Miss Outhwaite has referred us which govern the way in which this exercise has to be undertaken. If the claim is out of time, there is no jurisdiction to consider it unless the tribunal considers that it is just and equitable in the circumstances to do so. That is essentially a question of fact and judgment for the tribunal to determine, as it did here, having reconvened for the purpose of hearing argument on it.

24 The tribunal, when considering the exercise of its discretion, has a wide ambit within which to reach a decision. If authority is needed for that proposition, it is to be found in Daniel v Homerton Hospital Trust (unreported, 9 July 1999, CA) in the judgment of Gibson LJ at p.3, where he said:

'The discretion of the tribunal under s.68(6) is a wide one. This court will not interfere with the exercise of discretion unless we can see that the tribunal erred in principle or was otherwise plainly wrong.'

25 It is also of importance to note that the time limits are exercised strictly in employment and industrial 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. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule. It is of a piece with those general propositions that an Appeal Tribunal may not allow an appeal against a tribunal's refusal to consider an application out of time in the exercise of its discretion merely because the Appeal Tribunal, if it were deciding the issue at first instance, would have formed a different view. As I have already indicated, such an appeal should only succeed where the Appeal Tribunal can identify an error of law or principle, making the decision of the tribunal below plainly wrong in this respect."

12. **Robertson** is thus authority for the proposition that the Employment Tribunal has a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere. The comments of Auld LJ relate to the employment law context in which time limits are relatively short and that that time limits should be complied with. But there remains a wide discretion permitting an extension of time on just and equitable grounds.

13. As to the exercise of the discretion, this was summarised by Leggatt LJ in **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640, [2018] ICR 1194 at paragraph 17-19:

"17 The board's other grounds of appeal all seek to challenge the decisions of the employment tribunal that it was just and equitable to extend the time for bringing (a) the claim based on a failure to make adjustments and (b) the claim alleging harassment by Ms Keighan. Before turning to those grounds, the following points may be noted about the power of a tribunal to allow proceedings to be brought within such period as it thinks just and equitable pursuant to section 123 of the Equality Act 2010.

18 First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has

chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see ***British Coal Corpn v Keeble*** *[1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see* ***Southwark London Borough Council v Afolabi*** *[2003] ICR 800, para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998: see* ***Dunn v Parole Board*** *[2009] 1 WLR 728, paras 30–32, 43, 48 and* ***Rabone v Pennine Care NHS Trust (INQUEST intervening)*** *[2012] 2 AC 72, para 75.*

19 That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).”

14. I also refer to the judgment in **Adedeji v University Hospitals Birmingham NHS Foundation Trust** 2021 ICR D5, CA. In that case, the Court of Appeal upheld an employment judge’s refusal to extend time for a race discrimination claim presented three days late. As to the length of and reasons for the delay, the judge had been entitled to take into account that, while the three-day delay was not substantial, the alleged discriminatory acts took place long before A’s employment terminated, and that he could have complained of them in their own right as soon as they occurred or immediately following his resignation. As for A’s assertion that he had mistakenly believed that he could benefit from

an automatic extension of time under the early conciliation rules, the judge was entitled to take the view that this did not justify the grant of an extension, given that A had left it until very near the expiry of the primary deadline to take advice and then chose not to act on that advice because he thought that the solicitors had misunderstood the position.

Findings in fact

15. There are detailed findings of fact set out by Judge Doherty in the judgment sent to the parties on 25 March 2025 which sets out the detailed background to the presentation of the claimant's claims and which I do not need to repeat here.

16. For the purposes of this hearing the key factual points to note are that the claimant had been taking Nitrazepam for his anxiety, but this was stopped by his GP at the end of March 2024. The claimant was therefore without medication at that point.

17. In his evidence the claimant asserted that the reason for the Nitrazepam being stopped was because it was only meant to be prescribed on a short-term basis however at the previous preliminary hearing it was clear that he had been taking Nitrazepam since 2019, a period of some five years.

18. I repeat the findings of fact made by Judge Doherty paragraphs 28 to 35 of the judgment sent to the parties on 25 March 2025.

19. I reiterate that the claimant accepted that he was aware at all times of the time limits for presenting his claims to this Tribunal.

Decision

20. Before discussing the principal issue before me I do want to refer to the claimant's evidence. At the previous preliminary hearing the judge formed the view that although the claimant did not set out to mislead the Tribunal, he had exaggerated his evidence, conflated matters or gave evidence which was inconsistent with the documentation and therefore that parts of his evidence lacked credibility and reliability.

21. I also do not consider that to the claimant set out to mislead the tribunal in the present hearing. But his evidence was, what I might call, convenient. Essentially the claimant said that after he resigned on 29 February 2024, he was not well enough to bring his claim but that by June, when he contacted ACAS, he was well enough to begin the process. He received his early conciliation certificate on 18 July 2024. I asked the claimant why he waited until 12 August 2024 to present his claim form, and his response was that he had not been well enough to do so. In other words, his invariable response to the question about why he delayed and why he did certain things at certain times was that this was down to his mental state but there's no evidence in the bundle to support the particular timeline in this case.

22. We know that during the period after he resigned, the claimant undertook some work, he was involved in setting up a company and was involved in a second company and although he says that these were not trading and indeed have never traded, given that his claim to the Tribunal consisted of completing the ET1 form and attaching his resignation letter, which is very detailed, it is difficult to understand why that could not have been done in June or July 2024.

23. Of course the question before me is whether it would be just and equitable to extend time but I cannot ignore the findings of the previous hearing and my own view that there is no evidence to suggest that the claim could not have been made in what by way of shorthand might be referred to as the primary time limit which inevitably impacts on my consideration of whether in those circumstances it is just and equitable to extend time.

24. To put it shortly, the delay is relatively lengthy in this case and the reasons for the delay do not appear to me to justify that delay because there is scant evidence that the claimant could not spend the short period of time it would have taken him to fill out the claim form and attach his resignation letter in circumstances where he was at least doing some hours work each week and therefore clearly had some ‘headspace’. The claimant's position was that whenever he tried to turn his mind to bringing his claim he was revisiting traumatic events, but reading his resignation letter, which forms the basis of his claim to the Tribunal, it is difficult to see in that, what there was which was

so traumatising that the claimant could not even fill out a fairly simple form or indeed contact ACAS within the first three months after he resigned.

25. Turning to the question of prejudice, in his cross examination of the claimant Mr Crabtree confirmed that the claimant's claims go back to 2022, and they are therefore already well over 2 years old. Furthermore, as pleaded, there is insufficient detail in the claim to enable this case to go forward without considerable further detailed particulars of these specific allegations of for example harassment. It is true that the two people accused by the claimant of perpetrating the discriminatory acts remain involved in the business, they would still be required to recollect detailed events which are already significantly dated.

26. To take one example of the difficulties which will be encountered, the claimant alleges that he was overworked and that this started in February 2022. He does not say what he means by overworked nor how this was measured, and it is difficult to see how come up without documentary evidence, anyone can remember the specific periods of work all times of work from several years ago yet this is a central part of the case brought by the claimant.

27. In my judgment I can see no good reason why the claimant did not contact ACAS and bring his claim in time. If this claim was to proceed, by the time it comes to a hearing, Bearing in mind a further preliminary hearing will be required and the claimant will need to provide significant further details, it is likely that some three years will have passed since the beginning of the chain of events which the claimant says led to his resignation all of which he says amounted to various forms of disability discrimination. It seems to me to be inevitable that the cogency of the evidence will be adversely impacted by the delay, and I consider that the balance of prejudice in these circumstances falls in favour of the respondent and that I should decline to exercise my discretion to extend time in this case.

28. For those reasons the claimant's claims under the Equality Act 2010 are dismissed.

Date sent to parties **16 June 2025**