THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Ms P Smith	**AND**	**Cumbria County Council**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

At & Following a Hearing at Carlisle **On: 1 November and 19 December 2016**

Before: Employment Judge Hargrove

Appearances

For the Claimant: **In person**
For the Respondent: **Mr P Brodie, Solicitor**

JUDGMENT

It is adjudged that the claimant's claim be struck out as having been presented outside the relevant time limit and the Tribunal has no jurisdiction to extend the time limit or to hear the claim.

REASONS

1 This is an application, made very late in the proceedings by the respondent, for the striking out of an equal pay claim on grounds that it was presented on behalf of the claimant out of time. The background facts are now largely not in dispute:-

1.1 The claimant's claim was brought on her behalf by Thompsons Solicitors, instructed by her trade union, as part of a sub-multiple of 103 claims presented under the lead name Sheelagh Armistead which was received on 25 July 2013. The names of the claimants other than the lead claimant Armistead are set out in a schedule attached to the claim form. In relation

to the claimant the schedule shows that she was to bring a claim in her capacity as a senior teaching assistant; that her employment start date was 2 September 1996; that her employment was continuing and had not ended; and that she was bringing claims for work rated as equivalent to her comparator(s) under section 1(2)(b) and/or of equal value to her comparator(s) under section 1(2)(c) of the Equal Pay Act 1970. In fact that was an error because the 1970 Act had, as from 1 October 2010, some three years before, been replaced by equivalent provisions in the Equality Act 2010. It is at least a possibility that the claim form lay around in the solicitor's office for 3 years before it was eventually submitted to the Tribunal in 2013. Three separate claims were identified in the claim form, claim 1 being a claim relying upon male dominated comparator work groups in receipt of bonus payments and other enhancements amounting to as much as 60% of their basic weekly pay; the second, claim 2 being reliance upon higher paid male dominated comparators' jobs rated under the green book job evaluation study in respect of pay protection; and claim 3 was a claim in reliance upon the new green book job evaluation study which was relied upon to establish equality of value in relation to the male dominated comparators' jobs in the period prior to the implementation of the job evaluation study.

1.2 I accept that the claimant had some reason to believe that the claimant's claims had in fact been instituted much earlier than 2013 on the basis of information consisting largely of internal e-mails and letters from the trade union which could fairly be interpreted as indicating that her claim had in fact been presented to the Tribunal earlier when it had not in fact. I have caused enquiries to be made by the Tribunal of the Tribunal's records to establish whether it is, or might be, true that the claimant's claims were in fact presented earlier under a different claim number but there is no record whatsoever of any earlier claim. In respect of the claim which was presented in July 2013, in 2015 Thompsons notified the Tribunal that it was coming off record as acting for Ms Smith, as a result of which a letter of enquiry was sent by the Tribunal to the claimant on 14 August 2015. In response the claimant wrote to the Tribunal on 22 August 2015 asking for further time to seek advice from a legal representative, which was granted to 30 September 2015. A request was made of the claimant on 21 September 2015 for further information about her claim, but no reply was received to that letter. On 24 November 2015 a strike out warning letter was sent to the claimant by the Tribunal to which the claimant responded on 2 December stating that she was actively pursuing the claim and was communicating with Thompsons Solicitors. She was granted until 14 January 2016 but did not reply by that date. The claimant was then given a further extension to 9 February and a letter of enquiry was also sent to the respondent. On 26 January the claimant wrote to the Tribunal stating that she had been in contact with her union, Unison, asking for further time. On 7 February the claimant wrote to the Tribunal notifying the identity of comparators including road workers 2 and 3 under the white book. Reminder letters were sent to the respondent who had not responded to the earlier correspondence from the Tribunal. In May 2016 the claimant e-mailed the Tribunal asking for the first time for a copy of the

ET1 form referred to above. The claimant responded by letter received on 7 June stating that the claim form appeared to be for Sheelagh Armistead and not for her. The Tribunal responded on 7 June and stated that the claim form was generic form with the claimant's name in the schedule attached. A case management hearing was listed in all of the outstanding cases for 7 June. On 1 July 2016 the claimant wrote to the Tribunal in a letter received on 4 July indicating that the claimant had been employed as a senior teaching assistant from September 1996 to September 2012. She set out some further details of her claims. It was not until 26 January 2017 that the respondent e-mailed the Tribunal, possibly prompted by the earlier correspondence from the claimant which indicated that her employment had ended in September 2012, claiming that the claim had been presented to the Tribunal out of time as the employment had in fact ceased on 31 August 2012 and the claim was not submitted until 15 July 2013 (in fact the latter date is wrong, the correct date is 25 July 2013). The respondent asserted that the claimant's claim should be struck out as the Tribunal did not have jurisdiction. That letter was copied to Ms Smith who responded on 2 February 2017 stating that she did not contest the dates provided by the respondent but would ask the Judge to exercise his discretion in the matter and allow her case to continue. In addition she stated that she was a lay person representing herself; that she was not aware of the time limits applicable to her case and that at the time that she was made redundant in 2012 she also discovered that her father was seriously ill and he passed away in May 2013. In that e-mail she also noted that a claim brought in the High Court had been allowed to proceed within six years of the date of termination. She asked for some further time to take professional advice. She was granted until 3 March to seek advice and to respond. On 5 March she e-mailed again asking for the Tribunal to exercise its discretion and allow the case to continue. She repeated the background circumstances also set out in her previous e-mail.

2 It seems therefore to be the case that the claimant's employment with the council, certainly her employment as a senior teaching assistant, which is the job in respect of which she brings her claim, came to an end on 31 August 2012. Her claim was not presented to the Tribunal, as set out above until 25 July 2013. The Tribunal now sets out the relevant parts of the Equality Act which deal with the time limits for bringing equal pay claims in a Tribunal. The time limit for bringing claims for equal pay is essentially different from any other type of discrimination claim. In relation to all discrimination claims other than for equal pay the time limit is three months starting with the date of the act to which the complaint relates but the Employment Tribunal is given a discretion to extend that three months period if the Tribunal thinks that it would be just and equitable. See section 123 of the Act. The time limits for bringing equal pay claims are however set out in section 129 and are different. The difference dates back to the coming into force of the Equal Pay Act 1970, in 1975. Section 129(2) provides that proceedings on the complaint or application may not be brought in an Employment Tribunal after the end of "the qualifying period". There is then a box which sets out how the qualifying period is to be calculated in relation to different circumstances. In a <u>standard case</u> the qualifying period is the period of

six months beginning with the last day of the employment. In a stable work case it is the period of six months beginning with the day on which the stable working relationship ended. In a concealment case it is the period of six months beginning with the day on which the worker discovered or could with reasonable diligence have discovered the qualifying fact. In an incapacity case it is the period of six months beginning with the day on which the worker ceased to have the incapacity and in a case which is a concealment case and an incapacity case it is the period of six months beginning with the later of the days on which the period would begin if the case were merely a concealment or an incapacity case. It is regrettable that the test for assessing whether a claim is brought within time is of such complexity, but it is necessary to analyse whether or not the claimant's case is a standard case or one of the other cases.

3. The claimant's case is in fact a standard case and not any of the others. A stable work case is one in which there maybe a series of changes in a particular job over a period of years. Those changes do not cause the six months time limit to start to run provided the working relationship remains stable throughout the period and the claim is brought within the period of six months from which the working relationship ended. A concealment case occurs where the employer deliberately conceals the truth of an essential fact for example that a comparator is in receipt of higher pay, and the claimant could not with reasonable diligence have discovered the true facts. The claimant's case is not a concealment case because it has never been asserted in the course of the present proceedings, when many claimants have been professionally represented via the union that the union was deliberately misled as to the fact that comparators were earning higher pay. Indeed, many of the comparators were also members of the unions and their rate of pay would have been well known to the unions. An incapacity case is one where a claimant is under a mental disability so that they cannot manage their affairs or the conduct of proceedings. Clearly that does not apply to the claimant. Finally there are very rare cases where someone under a disability because of their mental health, for example, has concealed from them by an employer essential facts from which a decision could be made to bring a claim.

4. As the claimant's case is a standard case and the time limit expired exactly six months after her employment ended on 31 August 2012 namely on 28 February 2013. Her claim was thus presented some five months out of time. The Equality Act does not contain any provision which gives the Tribunal a discretion to extend that six month time limit. The Tribunal has no jurisdiction to consider or further consider the claimant's claim. It appears to be the case that the claimant's union may not have realised when they presented the claimant's claim as part of the 103 claims under the lead name of Armistead that her employment had ended. That would explain why they asserted that the claimant's employment was continuing at that time. It may be that the claimant's representative ought to have known that her employment was about to end or that it had ended, much earlier. That however makes no difference to the test which the Tribunal has to apply. It is a matter for the claimant but not for the Tribunal to take up with her union. Finally, I acknowledge that the time limit for bringing an equal pay in the High Court is indeed 6 years, not 6 months. There are historical reasons for that difference. It does not however affect the time limit for bringing a claim in the Employment Tribunal.

EMPLOYMENT JUDGE HARGROVE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
16 March 2017
JUDGMENT SENT TO THE PARTIES ON

17 March 2017

AND ENTERED IN THE REGISTER

P Trewick

FOR THE TRIBUNAL