Case No: : 2600591/2023

EMPLOYMENT TRIBUNALS

Claimant: Mr J Fletcher

Respondent: Blachford UK LTD

Heard at: Nottingham **On:** 19 February 2024

Before: Employment Judge McTigue

Representation
Claimant: Mr Steel, Solicitor
Respondent: Mr Warren-Jones, Solicitor

JUDGMENT having been sent to the parties on 21 February 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant, Mr Fletcher, was diagnosed with Leukaemia in 2013. The respondent concedes that the claimant is a disabled person within the meaning of section 6 Equality Act 2010. He started work for the respondent on 1 February 2017, when he was TUPE transferred across to it. The claimant then became a Production Manager in August 2019.

2. He claims that his dismissal in 2022 was unfair and that he was also subject to disability discrimination. There is a dispute between the parties as (a) whether the claimant was dismissed and (b) if he was, the effective date of termination. ACAS was notified of the early conciliation procedure on 6 February 2023 and the certificate was issued on 2 March 2023. The ET1 was presented on 22 March 2023.

Issues

3. A preliminary hearing was held before Employment Judge Fredericks-Bowyer on 1 November 2023. He recorded the following:

> "23. The claimant was employed by the respondent from 1 February 2017 until a disputed date in late 2022. His continuity of service runs from 16 June 2014 as his employment transferred by the operation of TUPE on 1 February 2017. The claimant says he did not learn of him being dismissed until he received written confirmation of it on 10 November 2022. The respondent says that, firstly, he was not dismissed because the employment was mutually terminated. Second, it says that he received his P45 on 28 October 2022. Ultimately, in the alternative, the respondent says that if the claimant was dismissed then he knew of the dismissal because he had been involved in discussion about it.
>
> 24. Early conciliation started on 6 February 2023 and ended on 2 March 2023. The claim form was presented on 22 March 2023. If the claimant is found to be correct in that he only learned of his dismissal on 10 November 2022, then his complaints were presented on time. If the respondent is correct that the claimant knew his employment had ended, for whatever reason, no later than 28 October 2022, then his complaints were presented out of time."

4. In light of these observations, the following issues were listed by Employment Judge Fredericks-Bowyer for determination at the preliminary hearing before me. Those were (and I adopt his numbering):

> "**4.1 In relation to the claimant's unfair dismissal complaint –**
>
> 4.1.1 Was the claimant dismissed?
>
> 4.1.2 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
>
> 4.1.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
>
> 4.1.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
>
> **4.2 In relation to the alleged failure to make reasonable adjustments complaint –**
>
> 4.2.1 Given that the claimant says the substantial disadvantage caused by the alleged PCP was dismissal, was the claimant dismissed?
>
> 4.2.2 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
> 4.2.3 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
>
> 4.2.3.1 Why were the complaints not made to the Tribunal in time?

4.2.3.2 In any event, is it just and equitable in all the circumstances to extend time?

4.3 Other matters –

4.3.1 To case manage any claim or part of claim remaining, including identifying and settling the list of issues; and

4.3.2 Any other matters that the Employment Judge at the preliminary hearing considers relevant."

5. The claimant had also submitted an application to amend his particulars of claim prior to the start of the preliminary hearing before me. It was agreed with the claimant's representative that I would deal with the issues of dismissal and time before considering the application to amend, if it still remained necessary.

Procedure, docs and evidence heard

6. I heard evidence from the claimant. Evidence was also heard from Ms Sara Guest, HR Adviser, on behalf of the respondent. Both witnesses had produced witness statements. Both affirmed their evidence and were also cross examined. There was a tribunal bundle of approximately 61 pages. Both representatives made oral submissions and supplied copies of authorities they sought to rely on in respect of the question as to whether the claimant was dismissed. The claimant provided me with copies of **Francis v Pertemps Recruitment Partnership Ltd EATS 0003/13** and **Sandhu v Jan De Rijk Transport [2007] EWCA Civ 430.** The respondent provided me with a copy of **Riley v Direct Line Insurance Group plc [2023] EAT 118**. I carefully considered the evidence, law and submissions before reaching a decision.

7. The claimant's daughter was ill on the day of the hearing. He was happy to proceed with the hearing but asked if he could leave straight after his evidence. That was not problematic and, in any event, his representative remained for the entirety of the hearing.

Findings of Fact

8. The claimant was employed by the respondent from 1 February 2017. He was diagnosed with Leukaemia in 2013. His continuity of service runs from 16 June 2014 as his employment transferred by operation of TUPE on 1 February 2017.

9. In March 2020 the claimant was placed on furlough. It was envisaged that the claimant would return to the workplace in November 2021 but that did not happen.

10. On 18 January 2022 Ms Guest telephoned the claimant. The claimant indicated that he wished to return to work and it was agreed that a phased return would be facilitated and that the claimant would return as

Production Manager. A note of this conversation appears at page 36 of the bundle.

11. On 8 February 2022, it was agreed between Ms Guest and the claimant that he would return to work on 14 February 2022. The claimant did not return to work on that date A note of this appears at pages 37 and 38 of the bundle.

12. On 15 February 2022 the claimant informed Ms Guest that he was not ready to return to work due to his anxiety. This is documented on page 39 of the bundle.

13. On 12 September 2022 Ms Guest wrote to the claimant to request his consent for a GP medical report (pages 46 to 49). The claimant did not respond to this request.

14. On 29 September 2022 Ms Guest sent the claimant a WhatsApp message (page 50) and arranged to call him later that day. The claimant stated that he was not well enough to return to work in any role but asked if he could reach a settlement agreement with the respondent. Ms Guest indicated that she would discuss this with the company directors. In this meeting, the claimant also stated that he did not consent to the respondent obtaining a GP medical report. Ms Guest's notes of that conversation appear at page 51 of the bundle.

15. On 13 October 2022 Ms Guest telephoned the claimant and informed him that the directors would not offer him a settlement agreement. The claimant was informed by Ms Guest that he was going to be dismissed and that he would receive eight weeks' notice pay. The claimant was also informed that his final day of employment was to be 31 October 2022 and that he would receive a letter confirming his dismissal in writing in due course. There was also a discussion as to how much annual leave was still owed to the claimant. As Ms Guest was not in receipt of the information regarding annual leave she stated she would communicate that information at a later date. Ms Guest's notes of that meeting appear at page 53 of the bundle.

16. Due to the death of her mother Ms Guest was then absent from work from 20 to 25 October 2022 and so the claimant's dismissal letter was not progressed.

17. On 26 October 2022 the claimant chased Ms Guest asking when he might receive the letter confirming his dismissal and seeking clarification as to how much annual leave was owed to him. Ms Guest clarified the position later that day, confirming that he was owed 14 days annual leave. She also stated that she would email the claimant his letter of dismissal either later that day or the next day. These communications are recorded in WhatsApp messages which appear in the bundle at page 55.

18. Ms Guest posted the claimant a copy of his P45 on 28 October 2022. That appears in the bundle at page 61 and records the claimant's leaving date as 31 October 2022.

19. On 31 October 2022 the claimant was £6,941 in lieu of two months' notice pay and 14 days' accrued but untaken holiday.

20. Ms Guest was again absent from work between 3 to 8 November 2022.

21. On 7 November 2022 the claimant emailed Ms Guest chasing his letter of dismissal. That email is in the bundle at page 56a.

22. It was only on 10 November 2022 that Ms Guest eventually emailed the claimant a letter confirming his dismissal in writing. This confirmed to him the discussions which had taken place over the telephone on 13 October 2022. The letter again confirmed that the claimant's last day of employment was 31 October 2022. The claimant was informed of his right to appeal his dismissal, he elected not to.

Law

Dismissal or termination by mutual agreement?

23. The employment relationship is based on a contract between the employer and employee. Like any contract, it is capable of being terminated by either party, or by both parties agreeing to bring it to an end. If the employer terminates the contract, that is a dismissal of the employee, but if employment terminates either by the employee resigning or by mutual agreement, there is no dismissal. However, because an employment relationship commonly involves an imbalance in power between the typically-more-economically-powerful employer and the typically more-economically-dependent employee, clear evidence is needed to demonstrate that an employment contract has been terminated by mutual agreement.

24. Termination by agreement can be first suggested by the employer and still be genuine, although the Tribunals will apply careful scrutiny to the facts to determine whether there was, in fact, a termination by agreement or a dismissal- **Hart v British Veterinary Association EAT 145/78, Riley v Direct Line Insurance Group plc 2023 EAT 118, Francis v Pertemps Recruitment Partnership Ltd EATS 0003/13.**

25. Whether an employee agrees to bring a contract to an end is a question of fact - **Martin v Glynwed Distribution Ltd [1983] ICR 511**, and the particular situation they find themselves in will be relevant to whether they can truly be said to have 'agreed' to terminate their employment.

26. As Lord Justice Ackner put it in the Court of Appeal case of **Birch and Humber v University of Liverpool [1985] IRLR 165**, the issue is one of fact and degree:

> *"Was there any pressure placed upon the employee to resign?; and if so, was the degree of pressure such as to amount in reality to a dismissal?"*

27. What starts off as an enforced resignation — i.e. a dismissal — may become a voluntary one if the employee negotiates satisfactory financial terms and leaves because of them. However, not all negotiated

termination payments will give rise to a finding of mutually agreed termination – **Sandhu v Jan de Rijk Transport Ltd 2007 ICR 1137, CA.**

Unfair Dismissal – Time Limits

28. Unfair dismissal proceedings must be started within time limit set out in section 111 of the Employment Rights Act 1996 (ERA). This states:

> **(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.**
> **(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—**
> > **(a) before the end of the period of three months beginning with the effective date of termination, or**
> > **(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.**

29. The 3-month period allowed by section 111(2)(a) is extended by the legislation governing the effect of Early Conciliation (see section 111(2A) of ERA). The period from the day after "Day A" (the day early conciliation commences) until "Day B" (the day the Early Conciliation certificate is received or deemed to be received by the claimant) does not count towards the 3-month period, and the claimant always has at least one month after Day B to make a claim.

30. If a claim is out of time and cannot be brought within the escape clause contained in section 111(2)(b) ERA then the Tribunal must refuse to hear the case.

31. S.111(2)(b) ERA (and its equivalents in other applicable legislation) should be given a 'liberal construction in favour of the employee' — **Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA.**

32. What is reasonably practicable is a question of fact and thus a matter for the Tribunal to decide. An appeal will not be successful unless the tribunal has misdirected itself in law or has reached a conclusion that no reasonable tribunal could have reached. As Lord Justice Shaw put it in **Wall's Meat Co Ltd v Khan 1979 ICR 52, CA**:

> *"The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive."*

33. The onus of proving that presentation in time was not reasonably practicable rests on the claimant. *'That imposes a duty upon him to show*

precisely why it was that he did not present his complaint' — **Porter v Bandridge Ltd 1978 ICR 943, CA**. Accordingly, if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal will find that it was reasonably practicable — **Sterling v United Learning Trust EAT 0439/14**.

34. In **Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372** the Court of Appeal decided that that the words 'reasonably practicable' in section 111(2)(b) ERA do not mean reasonable, which would be too favourable to employees, and do not mean physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'. In the Employment Appeal Tribunal case of **Asda Stores Ltd v Kauser EAT 0165/07** Lady Smith stated that, *'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'*.

Discrimination – Time Limits

35. The Tribunal now turns its attention to the law relevant to the time limit issues for the disability discrimination complaint. Section 123 of the Equality Act 2010 (EA) provides:

> **(1) Subject to sections 140A and 104B 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.**

36. The 3-month period allowed by section 123(1)(a) is extended by the legislation governing the effect of Early Conciliation (see section 140B of EA Act 2010). The period from the day after "Day A" (the day early conciliation commences) until "Day B" (the day the Early Conciliation certificate is received or deemed to be received by the claimant) does not count towards the 3-month period, and the claimant always has at least one month after Day B to make a claim.

37. There is no presumption that time will be extended. In respect of this, we note the following passages from the Court of Appeal judgment in the case of **Robertson v Bexley Community Centre [2003] IRLR 434**:-

> *"If the claim is out of time there is no jurisdiction to consider it unless the tribunal considers it is just and equitable in the circumstances to do so." (para 23)*
>
> *"…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."* (para 25).

These comments have been supported in **Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT** and **Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA**.

38. The words "just and equitable" give the Tribunal a broad discretion in deciding whether to extend the time allowed for making a claim. A summary of the case law and was given by the EAT in **Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] ICR 283** per HHJ Peter Clark:

> *"11. A useful starting point is the judgment of Smith J in **British Coal Corpn v Keeble [1997] IRLR 336**. That was a case concerned with the just and equitable extension of time question in the context of a sex discrimination claim. Smith J, sitting with members, in allowing the employers' appeal and remitting the just and equitable extension question to the employment tribunal, suggested that in exercising its discretion the tribunal might be assisted by the factors mentioned in section 33 of the Limitation Act 1980, the provision for extension of time in personal injury cases. The first of those factors, as Mr Peacock emphasised in the present appeal, is the length of and reasons for the delay in bringing that claim.*
>
> *12. However, as the Court of Appeal made clear in **Southwark London Borough Council v Afolabi [2003] ICR 800**, in deciding the just and equitable extension question, a tribunal is not required to go through the matters listed in section 33(3) of the Limitation Act 1980, provided that no significant factor is omitted. That principle was more recently reinforced in a different context by the Court of Appeal in **Neary v Governing Body of St Albans Girls' School [2010] ICR 473**, where the leading judgment was given by Smith LJ. There, it was held that a line of appeal tribunal authority requiring a tribunal to consider the factors in the CPR, rule 3.9(1), as it then was, when deciding whether or not to grant relief from sanction following non-compliance with an unless order, was incorrect. Following Afolabi it is sufficient that all relevant factors are considered.*
>
> *13. Section 33(3) of the 1980 Act does not in terms refer to the balance of prejudice between the parties in granting or refusing an extension of time. However, Smith J referred to the balance of prejudice in Keeble, para 8, to which Mr Peacock has referred me. That, it seems to me, is consistent with the approach of the Court of Appeal in the section 33 personal injury case of **Dale v British Coal Corpn**, where Stuart-Smith LJ opined that, although not mentioned in section 33(3), it is relevant to consider the plaintiff's (claimant's) prospect of success in the action and evidence necessary to establish or defend the claim in considering the balance of hardship. That passage neatly brings together the two factors which, Mr Dutton submits, were not, but ought to have been, considered by this tribunal in the proper exercise of its discretion: prejudice and merits. I shall return to those factors in due course.*
>
> *14. What has emerged from the cases thus far reviewed, it seems to me, is that the exercise of this wide discretion (see **Hutchison v***

***Westward Television Ltd [1977] ICR 279**) involves a multi-factoral approach. No single factor is determinative."*

39. The Court of Appeal considered the discretion afforded to Tribunals in **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640** at paragraphs 18 and 19, per Leggatt LJ:

> *"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 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 Corporation 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] EWCA Civ 15; [2003] ICR 800,** para 33. […]*
>
> *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)."*

40. Underhill LJ commented in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**, that a rigid adherence to any checklist of factors (such as the list in section 33 of the Limitation Act 1980) can lead to a mechanistic approach to what is meant to be a very broad general discretion. He observed in paragraph 37:

> *The best approach for a tribunal in considering the exercise of the "discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time including in particular…"The length of, and the reasons for, the delay".*

41. A lack of evidence from the Claimant about any delay is a relevant factor to consider in deciding whether or not to exercise discretion, but a not necessarily decisive one as seen in the case of **Owen v Network Rail Infrastructure Ltd [2023] EAT 106**.

Conclusion

42. To reach my conclusions, I return to the issues set out at the start of these written reasons. These were the pertinent issues that I had to determine. These conclusions have been reached taking into account the evidence heard. In terms of that evidence, the I preferred the evidence of the respondent over that of the claimant. The respondent's evidence was consistent and credible. Importantly it was also supported by documentation

created contemporaneously around the events in question. I have no reason to question the accuracy or provenance of those documents. The claimant freely admits that his memory of events around the time of dismissal is poor. That is understandable for an individual with anxiety and depression and so I bear in mind the principles enunciated in **Gestmin SGPS S.A. v Credit Suisse [2013] EWCA 3560** at paragraphs 15 to 22. Leggatt J, as he then was, stated:

> *"…the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*

Dismissal or termination by mutual agreement?

43. The first substantive issue is was the claimant dismissed? This is of relevance to both the unfair dismissal complaint and the complaint of disability discrimination. I conclude that the claimant was dismissed. I am not of the opinion that the facts of this case are sufficiently similar to **Riley v Direct Line Insurance Group plc [2023] EAT 118**. Quite simply, I have insufficient evidence that that claimant knew he was entering into an agreement to voluntarily terminate his contract of employment. The notes prepared by Ms Guest contain little information as to the assertion that this was a mutual termination of the contract of employment. I also take into account that the letter emailed to the claimant on 10 November 2022 uses the word dismissal on more than one occasion and gives the claimant a right of appeal against dismissal. There is insufficient evidence in that letter that this was a mutual termination of the contract of employment.

Unfair Dismissal – Time Limit

44. As the claimant was dismissed, I now consider the issues that arise in relation to the complaint of unfair dismissal. The first to consider is whether the claim was made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?

45. To answer this, I need to determined effective date of termination as there is a dispute between the parties on this. I find the effective date termination was 31 October 2022. There is clear evidence to support that. I have the claimant's letter of dismissal which reflects that on page 57. Although, this letter is dated 10 November 2022, I accept that it accurately reflects the conversation which took place between the claimant and Ms Guest on 13 October 2022. At that meeting the claimant was informed by Ms

Guest that he was going to be dismissed and that his final day of employment was to be 31 October 2022.

46. With regard to the meeting of 13 October 2022, I accept that the claimant fully understood that he was being dismissed and that his last day of employment was to 31 October 2022. I also have Ms Guest's note of that meeting in the bundle (at page 53). Ms Guest gave evidence, which I accept, that her typed notes would have been typed either at the same time as the meeting or if she had instead taken a handwritten note of the meeting, she would type the meeting note up later that same day. I also have in the bundle the P45 that was posted to the claimant on 28 October 2022. This clearly records the claimant's leaving dates as being 31 October 2022. The effect of this is that the claimant's claim was not made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination.

47. As the claimant's claim was not presented in time, I now consider if it was reasonably practicable for the claim to be made to the Tribunal within the time limit? I conclude that it was reasonably practicable for the claim to be made within the time limit. I accept that the claimant has cancer, anxiety and depression but I have insufficient evidence that either of these conditions meant it was not reasonably practicable for the claimant to present his claim form within the requisite time period. The claimant did not provide the Tribunal with GP medical evidence and there is insufficient evidence of any specialist mental health input being provided to the claimant around the time of dismissal. There is also insufficient evidence regarding this issue in the claimant's witness statement.

48. It is also clear to me that the claimant was familiar with technology. He communicated with the respondent both via email and WhatsApp messages. As a consequence of this, the Claimant would have been able to use a computer to research his employment rights and, in particular, ascertain the time limit for commencing an unfair dismissal claim. I therefore conclude that it was reasonably practicable for the unfair dismissal claim to be presented in time.

<u>Discrimination – Time Limit</u>

49. In relation to the complaint of discrimination, I have already determined that the claimant was dismissed so I turn to consider if the claim was made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates? The complaint here relates to the claimant's dismissal which took place on 31 October 2022. For the reasons given above, I again conclude that the claimant's complaint was not presented within three months (plus early conciliation extension) of the effective date of termination.

50. As the claimant's claim was not presented in time, I now consider if the claim was made within a further period that the Tribunal thinks is just and equitable. In determining this, I need to determine why were the complaints not made to the Tribunal in time. I also need to decide whether it is just and equitable in all the circumstances to extend time. I should also state I was not specifically addressed by the parties in relation to all the factors contained in s33 of the Limitation Act 1980 and so I shall not refer to all of them below.

51. In terms of the length of the delay, the effective date of termination was 31 October 2022 and the claimant was late in making his early conciliation referral to ACAS. The effect of this is that his claim should have been presented to the Tribunal by 30 January 2023. Instead, his claim was not presented until 22 March 2023 i.e., approximately seven weeks out of time. This is not a few days late but instead a somewhat considerable delay.

52. As to the reasons for the delay, the claimant gave evidence that it was his health, and specifically his mental health, which prevented him from submitting his claim on time. However, that is not something he addresses in any great detail in his witness statement. Whilst I accept that the claimant had anxiety and depression around the time of his dismissal, I have insufficient evidence that those conditions prevented him from presenting his claim to the Tribunal during the period October 2022 to January 2023. I have no GP medical records or evidence of input from other specialist mental health providers. Indeed, what evidence I do have indicates that around the time of his dismissal, the claimant was engaging in discussions with Ms Guest and that he had good cognition and insight. He was also motivated enough to chase his letter of dismissal by both WhatsApp on 26 October 2022 and email on 7 November 2022.

53. Turning to prejudice, I had little evidence from either party regarding this factor. However, I have carefully considered the prejudice that would be suffered to the respondent if an extension of time were allowed and balanced that against the prejudice that would be suffered by the claimant if he were not able to bring a complaint of disability discrimination. On balance, I am not satisfied that the prejudice suffered by the claimant if time were not extended outweighs the prejudice that would be suffered by the respondent if time were extended. Whilst the impact of not extending time on the claimant is significant in that he is unable to proceed with his complaint, the respondents will incur significant costs and disruption in defending a claim that it appears to me could, and should, have been presented to the Tribunal earlier.

54. Taking all of these factors into account, I consider it is not just and equitable in the circumstances to extend time.

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Employment Judge McTigue
Date: 29 February 2024

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE