



THE EMPLOYMENT TRIBUNALS

Claimant : Mrs P. Avuru

First Respondent: Favermead Limited

Second Respondent: Professor Nasser David Khalili

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL AT THE OPEN
PRELIMINARY HEARING**

HELD AT: London Central

ON: 6 June 2019

EMPLOYMENT JUDGE: Ms S. Sharma

Appearances

For the Claimant: Mr O Keeffe, Southwark Law Centre

For the Respondent: Mr. N.Caiden, of Counsel

JUDGMENT

The Tribunal determines that it does not have jurisdiction to hear the Claimant's claims of (1) unfair dismissal (2) wrongful dismissal (3) unlawful deduction of wages (4) redundancy payment and (5) direct and age discrimination as these were all presented outside the statutory time limits for the submission of these claims. All these claims are hereby dismissed.

**REASONS FOR THE JUDGMENT OF THE OPEN PRELIMINARY
HEARING**

A: BACKGROUND

1. By issue of a claim form received by this Tribunal on 17 Jan 2019, the claimant brought claims against both the First and Second Respondent (collectively the "Respondents") on 17 Jan 2019 for (a) unfair dismissal (b) wrongful dismissal (notice pay claim) (c) unlawful deduction of wages (the claimant alleging a failure to pay the minimum wage and failure to pay any wages from March 2017 to October 2017) (d) redundancy payment and (e) direct race/ age

discrimination .

2. There was no dispute between the claimant and the Respondents that all the claimant's claims were presented out of time.

3. For the claimant, there were two witnesses, namely the claimant herself and Ms Rosalind Ahatty. Both submitted witness statements as their evidence in chief. Ms Ahatty was not cross-examined by Mr. Caiden. The claimant also gave oral evidence. I took all such matters into account in making my decision. There were no witnesses for the Respondents.

4. The parties had agreed a bundle of documentation comprising 132 pages, which I took into account in making my decision. The numbers below in brackets refer to the page numbers of the bundle.

5. Mr O'Keeffe for the claimant explained to me at the start of the hearing that the claimant could not read. All parties agreed a procedure with myself, therefore, whereby somebody would sit next to the claimant to help with turn paging of the bundle. Mr Caiden would read out the relevant parts of the bundle before asking any questions during cross examination.

B: ISSUES

1 Does the tribunal have jurisdiction to hear the case by reference to the time limits for the submission of claims?

In relation to this issue the following matters need to be determined: –

(a) When did the time limit for each claim expire (the “**Date Time Limit Expired Issue**”)?

(b) For the unfair dismissal claim, unlawful deduction of wages claim and the wrongful dismissal claim, was it “not reasonably practicable “ for the claimant to bring the relevant claim within three months from the effective date of termination / last deduction of wages and if so, have the claims been brought within such further reasonable period (the “**Reasonably Practicable Issue**”).?

(c) For the discrimination claim, is it just and equitable to extend time (the “**Just and Equitable Issue**”)?

(d) For the redundancy pay claim, can time be extended (the “**Extension for Redundancy Pay Issue**”)?

I reminded the parties that the burden of proof was upon the claimant to show that it was not reasonably practicable to present her claims in time and in relation to the discrimination claim, it was for the claimant to show that it was just and equitable to extend time.

Extending time should be the exception rather than the rule.

C: FINDINGS OF FACT

1. The claimant presented her claim on 17 January 2019 after a period of early conciliation from 2 January 2019 until 17 January 2019. The claimant accepted that the claim form had been presented late. She contended that this was because of: –

- (a) The representations of the Second Respondent; and
- (b) Alleged erroneous legal advice, she allegedly had received from solicitors and ACAS.

2. The claimant is originally from Nigeria and is black. The claimant contended that on various occasions between 1980 and 2007, the Second Respondent would call the claimant “monkey”.

3. The claimant was born on 15 March 1946. Therefore on 29th March 2017 (namely the date the claimant contended that she received no further wages from the Respondents) she was 71 years old.

4. The claimant was employed by the Respondents from 1977 as a housekeeper and office cleaner and assistant. There was a dispute between the parties as to the precise start date of the claimant’s employment with the Respondents. She started work as a cleaner for an office block. What was agreed between the parties, however, was that from around May 2007, the claimant was employed by the First Respondent in the role of carer for Mrs Easton, the Second Respondent’s mother-in-law. She was a live-in carer.

5. On 26 March 2017, Mrs Easton died. The Second Respondent contended that on this date, he communicated to the claimant that her employment had ended. This is a matter disputed by the claimant.

6. It was the Respondents’ case (61) that on 29 March 2017, the claimant had been sent a P45 which showed (62) a leaving date of 31 March 2017. It was the claimant’s evidence that she received no further wages from the Respondents after 29th March 2017. The claimant contended that the last payslip she had in her possession was for the period ending 28 February 2017. It was the Respondents’ position that she received payment up to 31 March 2017. Both parties therefore agreed that the claimant received no further payment after 31 March 2017. The claimant contended that she did not receive the P45 until 23 August 2018. In cross examination, the claimant explained that after Mrs Easton’s death, she was very upset and therefore did not immediately return to her own home but stayed with her son. She moved back to her own home sometime in April 2017. When cross-examined on whether she could have overlooked her P 45 because she would have had a lot of post, the claimant said that this was not the case. The claimant confirmed in cross examination that the last P60 which she had received was for the end of the tax year of 5 April 2016.

7. On 5 April 2017 the Second Respondent’s three sisters wrote a letter to the claimant (64) thanking her for her care and support for their mother and enclosing three cheques in the total aggregate sum of £10,000. It was the Respondents’ contention that this payment constituted a redundancy payment. In relation to this letter, the Respondents did not state that the claimant’s employment was being terminated.

8. The claimant contended that she managed to speak to the Second Respondent in May 2017. He allegedly told the claimant to “go and rest until September” following which she could return to work for a number of days each week. The Second Respondent denied that this conversation ever took place. In cross examination, the claimant was asked if this was not an unusual situation namely that an employer would pay someone for a period when they were not working (namely, from April 2017 until September 2017). The claimant’s response was that she had been good and generous and therefore the Second Respondent had agreed to pay her, bearing in mind that she had been with him for nearly 40 years. In a “To Whom It May Concern” letter written on behalf of the claimant, she referred to this alleged conversation (67). In cross examination, it was put to the claimant that the claimant had not alleged in this letter that there was a guarantee

of a job or that they had been a promise to back pay the claimant. The claimant did not accept this. A further letter had been written on behalf of the claimant on 15 February 2018 and when referring to the alleged conversation of May 2017, she stated that she was told to take time off to recuperate and that she would be paid for this and that she could expect to start work again in September (69). In cross examination, the claimant explained that her niece's husband, Mr Ahatty, had written these letters.

9. It was not disputed between the parties that in April 2017, the claimant cleaned the Second Respondent's sons flat on two occasions. It was further accepted by both parties that other than this cleaning job, the claimant did not carry out any further work for the Respondents.

10. It was the claimant's own case that in September / October 2007, the claimant visited a firm of solicitors (88, 90, 92, and 95). It was the claimant's evidence that when the claimant explained to the solicitor that she had been pushed out and the Second Respondent had said that he had finished with her, the solicitor asked when she lasted work with the Second Respondent. When she responded in March 2017, the solicitor stated "oh no you are out of time. It's more than three months ago." When the claimant explained to the solicitor that the Second Respondent had informed her to rest until September, the solicitor suggested that she go to the CAB. It was the claimant's position that because the Second Respondent had not been clear on the claimant's employment status, this had led the solicitor to give erroneous advice.

11. It was the claimant's case that as she had heard nothing from the Respondents by October 2017, she attended the Second Respondent's office on 15 November 2017. At this visit, the claimant contended that she reminded the Second Respondent of what he had told namely that she would continue working for him a couple of days a week from September 2017. The Second Respondent allegedly responded by physically pushing her out of the door saying "I'm finished with you." The Second Respondent denied these actions. He contended that he said something along the lines of "we don't owe you anything, speak to Jonathan [Solomon, the accountant]." According to the claimant, Jonathan told the claimant to get out of the office and look for a lawyer.

12. In the claimant's letter to the Second respondent dated 15 November 2017 (66) the claimant referred to the alleged conversation that she should take time off until September. She referred to her pay been stopped by the First Respondent. In this letter, she stated as follows: "You advised me that I should take time off work to get over the passing away of Mrs Easton that I was caring for, but I should come and see you in the office in September 2017. Since you advised me to take some time off work i.e. immediately Mrs Easton passed on, my pay has been stopped by your office. I still believe that I'm an employee in your company."

13. On 2nd February 2018, the claimant visited the CAB. On this date, she was advised by the CAB that she "had passed the three month deadline for taking her case to employment tribunal." (100). The CAB called ACAS (99) and spoke to "Julia". Julia was not sure if the claimant "could be considered an employee as it had been a long time since she that she worked for them and she did not have anything in writing to confirm she was owed pay from over the summer. She could write to employer saying she still considers herself an employee.... Julia was not sure what else she could do as going through small claims court with a lawyer would be costly."

14. On 15 February 2018, the claimant wrote to the Second Respondent (69), where she stated that "I was told I should take time off to recuperate and that I would be paid for this. I was told I could expect to start work again in September."

15. On 20 February 2018, Mr Solomon responded to the claimant's letter of 15 February 2018 (70) where he stated as follows: "I understand that it was clearly stated in March 2017 that there was no further work available to you. You were paid to the end of the month and a sum of £10,000 was paid over to you as a redundancy settlement. You were also sent a P 45 dated 15 March 2017."

16. On 8 March 2018, the claimant visited the CAB (97), who sent a letter to the claimant on 8 March 2018 (71) setting out the claimant's two options namely:-

(a) Contacting ACAS for employment advice. The letter stated as follows: "ACAS have a 3 month time limit for any action; while it is longer than 3 months since you worked there, there is a possibility that this time limit could start again from the date of your employer's recent letter. You will have to call them to find out." or

(b) Take your former employer to court using the small claims system in an effort to recover any redundancy pay that may be owed.

17. Towards the end of March 2018, the claimant visited her MP, which resulted in the MP writing a letter to the Second Respondent (73). The MP requested evidence that the claimant's employment had ended in March 2017 and that redundancy money was paid.

18. Mr Solomon responded to the MP letter on 27 April 2018 confirming that a P 45 dated 29th March 2017 had been sent to the claimant's home address and if there was compliance with the Data Protection Act, then a copy would be sent to her (75).

19. On 4th May 2018, the claimant via her son-in-law, contacted a solicitor for an assessment (75C to 75E). The solicitor advised that her options were somewhat limited in light of the two-year qualifying period for unfair dismissal.

20. The claimant met with her new MP on 22 June 2018 and this resulted in her P 45 being provided to the claimant on 23 August 2018 (78). The claimant's MP put the claimant in touch with the claimant's current representative, Mr O'Keeffe from Southwark Law Centre on 27 October 2018.

21. The claimant's ET1 was presented on 17 January 2019. On 17 January 2019, the CAB's letter to the claimant repeated the options they had laid out in the letter of 8 March 2018.

22. I make the following findings of fact: –

22.1 Date Time Limit Expired Issue

Early Conciliation

22.1 .1 In relation to the period of early conciliation, this has no bearing on the time limit. The legislative mechanisms which provide for the period of early conciliation to not be counted when calculating the relevant time for bringing a claim, is of no relevance if time has already expired before the date when the claimant contact ACAS before instituting proceedings;

Effective date of Termination/Relevant Date

22.1.2 For the purposes of Section 111 (2), ERA, which states that a tribunal shall not consider a complaint unless it is presented before the end of 3 months beginning with the effective date of termination, it is necessary to identify the effective date of termination. Based upon the facts above, there are 3 contenders for the effective date of termination from when time began to run for the unfair dismissal claim and the wrongful dismissal claim:-

(a) 31 March 2017 (referred to as the leaving date in the P 45);

- (b) 15 November 2017 (when the Second Respondent allegedly stated that “I am finished with you”); and
- (c) 20 February 2018, (the date when Mr Solomon wrote to the claimant to confirm that in March 2017 it was clearly stated to her that there was no further work available).

22.1.3 I find the effective date of termination to be 15 November 2017 for the following reasons: –

- (a) 31 March 2017: If it is assumed that this is the effective date of termination, then time would have expired on 30th June 2017. Mrs Easton, for whom the claimant was a carer, died on 26 March 2017. So the requirement for the claimant to carry out work of a carer had ceased. The claimant was paid up to 31 March 2017. Other than the ad hoc cleaning she had done for the Second Respondent’s son on two occasions, it was agreed between the parties that she carried out no further work and received no further payment from the Respondents after 31 March 2017. It is the claimant’s position, however, that she did not see the P45 until 23 August 2018 which the Respondents contend was sent to her in March 2017. But for the alleged conversation which the claimant stated she had with the Second Respondent in May 2017 asking her to “go and rest until September”, all other factors point to her employment terminating on 31 March 2017. The alleged promise that she would be able to return to work in September and would be paid for the period whilst she was off was not referred to in the “To Whom It May Concern Letter” which the claimant wrote.

The two ad hoc cleaning jobs did not, in my view, demonstrate that the employment relationship was continuing in light of the other factors, primarily the purpose of the carer role now seized and the p45.

Nevertheless, as the claimant’s letter to the Second Respondent (66) shows, there was clearly some doubt in her mind (perhaps unreasonably) as to her position because of the alleged conversation she had with the Second Respondent. Further, the sisters’ letter of 5 April 2017 did not refer to the claimant’s employment being terminated even though the Respondents alleged that the £10,000 paid constituted a redundancy payment. This caused her to visit the Second Respondent’s office a couple of times in September 2017 (66). At this stage she still believed herself to be an employee.

- (b) 15 Nov 2017: I find the effective date of termination to be 15 November 2017 because if there was any doubt in the claimant’s mind as to her status prior to meeting the Second Respondent on 15 November 2017 then, it was clear to both parties that the employment relationship terminated on 15 November 2017, when the claimant alleged that she was pushed out of the door and the Second Respondent stated that he was finished with her. This would have made clear to the claimant or should have been made clear to the claimant that the employment relationship had come to an end. Therefore, I find that the employment relationship between the Respondents and the claimant came to an end on 15 November 2017 and the Second Respondent’s comments that he had finished with her would have made this clear to the claimant.

The termination in effect was without notice but on 15 Nov 2017, the termination took effect.

- (c): 20 February 2018: The claimant contends that the effective date of termination is 20 February 2018. I find this not to be the case; in Mr Ahatty’s email to the Trinity Mirror (66A) dated 26 December 2017, the 15 November 2017 incident of when the Second Respondent informed the claimant to go was referred to. By this date, therefore, and prior to 20 February 2018, it was clear to the claimant or should have been clear to the claimant that her employment with the Respondents had ended. The 15 November 2017 incident was repeated in the

claimant's "To Whom It May Concern" letter (67) dated 22 January 2018 and in a letter to the Evening Standard of that same date. Therefore by this date (and prior to 20 February 2018) it was clear or should have been clear to the claimant that her employment has ended.

22.1.4: On the basis of the effective date of termination being 31 March 2017, then time would have expired on 30 June 2017. If the effective date of termination was 15 November 2017, then time for presenting the unfair dismissal and wrongful claims would have been 14 February 2018. If the effective date of termination was 20 February 2018, then the claims should have been brought by 19 May 2018. The ET1 was presented on 17 January 2019. Thus, the three potential effective dates of termination would have given a delay of 18 months, 11 months or over 7 months, respectively. Even if therefore I am wrong and the effective date of termination was 31st March 2017 or even 20th February 2018, the delay in presenting the ET1 based on all such effective dates of termination was substantial.

22.1.5: In relation to the unlawful deduction of wages claim, by 15 November 2017, the claimant knew she was no longer an employee. Thus for this claim, time would have expired by 14 February 2018 making the claim 11 months late.

22.2 Reasonably Practicable Issue/Reasonable Period.

22.2.1 The claimant alleged that she did not bring her claims within time because she believed that she was still employed by the Respondents. It is because of this belief that it was not reasonable practicable for her to bring her claims. As at 31 March 2017, the purpose of being a carer had ceased. From 31 March 2017, the claimant received no further payment from the Respondents other than for the two ad hoc cleaning jobs. Based on these two factors alone, it was not in my view reasonable for the claimant to believe that she was still employed by the Respondents. By 15 November 2017, it was, however, clear to the claimant (or should have been clear to the claimant) that she was no longer employed by the Respondents. If, therefore, it was not reasonable practicable before 15 November 2017 to have brought her claims because she thought she was still employed after 15 November 2017 it was reasonably practicable as she was clearly told that the employment relationship had ended. Yet even then it took her 11 months after time had expired on 14 February 2018 to bring a claim. This was not in my view a reasonable period. This was a substantial period.

22.2.2: By the claimant's own evidence, in September/ October 2017, she visited a solicitor who informed her that she was out of time because of the 3 month time period.. Even after it was clear in November 2017 that her employment relationship had terminated, she then did not bring her claim within a reasonable period even though she was informed by a solicitor that there was a three month time period.

22.2.3: The claimant alleges that it was not reasonably practicable for her to issue her ET1 earlier because of erroneous legal advice (in addition to misrepresentations by the Respondents). Taking into account the advice received by the claimant from the solicitor she visited in September / October 2017, from the citizens advice bureau and from ACAS, I find that no erroneous advice was in fact given. She had received advice as far back as in September/ October 2017 that she was already out of time. At the point in time when she received this advice, even though she may have thought she was still employed, she was alerted to the 3 month time frame which should have made it reasonably practicable for her to make a claim when it should have been apparent to her that her employment terminated on 15 November 2017.

Mr O Keefe referred me to the Dedman principle (namely that a mistake by a solicitor does not

render it reasonably impracticable to present a complaint for unfair dismissal). He drew a distinction between advice from a solicitor and the CAB or ACAS who were not solicitors. A mistake by the CAB/ACAS therefore could render it reasonably impracticable to present a claim in time, he submitted.

Applying the Dedman principle, where a claimant consults a skilled adviser about his rights and received erroneous advice, he cannot rely upon this to say it was not reasonably practicable to present a claim in time. Mr O Keeffe submitted that the Dedman principle did not apply to the CAB/ACAS who were not skilled advisers.

I find that no erroneous advice was given to the claimant other than on 4th May 2017 when there was a reference to the claimant not having the 2 year qualifying period of employment. Action for this would rest with against the solicitor.

I find in any event that the Dedman principle would apply if erroneous advice had been given by the CAB/ACAS as the Dedman principle is not dependant on the adviser being a solicitor.

22.2.4 The reason why the claimant delayed in bringing her claim was because of her mistaken belief that her employment had not come to an end and alleging she had received erroneous legal advice. I find that her mistaken belief on these grounds was not reasonable.

22.3 Just and Equitable Issue Relating to Discrimination Claim

In relation to whether or not it is just and equitable to extend time in relation to the discrimination claim, I make the following findings: –

22.3.1 In relation to the claimant’s claim for direct discrimination, the last alleged acts of discrimination was Mr Solomon’s letter of 20th February 2018 .Time for this would have expired on 19 May 2018. The discrimination claim was presented almost 8 months late.

22.3.2 Length and reason for the delay: The delay by any standards was considerable. There are three potential acts of discrimination: –

- (i) 31 March 2017, when the Respondents states the claimant was dismissed; if this is the act complained of then there is a delay of 18 months; or
- (ii) 15 November 2017 when the claimant alleges the Second Respondent informed her that he was finished with her; if this is the act complained of then there is a delay of 11 months;
- (iii) 20 February 2018 by Mr Solomon stated that the claimant’s employment ended in March 2017 and she was paid the end of the month and a sum of £10,000; if this is the act complained of then there is a delay of eight months

If there was a promise to pay for the period between March 2017 and October 2017 by the Second Respondent then by 15 November 2017, it was clear to the claimant that her employment had been terminated. In the light of receiving advice from a solicitor that her claim was out of time, and further having the assistance of her niece’s son-in-law to write details and copious letters, I find that the reason for the delay was not reasonable. Thus even if there had been a misrepresentation by the Second Respondent and a promise to pay, by 15 November 2017, that situation was clear to the claimant. A delay of 11 months is considerable. Further, in relation to erroneous legal advice and this being the reason for the delay, I find that the only area of erroneous advice related to the qualifying period of two years relating to unfair dismissal. Action for the claimant would rest against the solicitor.

The claimant is not able to read. By her own admission, she was able to take advice from solicitors with the assistance of her family members, who also helped write the various letters (e.g. the “To Whom It May Concern” letter, the letter to the Evening Standard, making various contacts with the MPs). I find therefore that the claimant’s illiteracy was not the reason for the delay.

The legal advice received by the claimant both in September 2017 and February 2018 made it clear to her that she was out of time. Taking commencement of time even from 20th February 2018, it then took her almost a year to present the claim.

Taking the above matters into account based on the length and reason for the delay, I find that it is not just and equitable to extend time in relation to the discrimination claim.

(b) Prejudice / Cogency of evidence: Because of the considerable delay, I find it to be prejudicial for the Respondents to have to defend a claim relating to incidents as far back as 18 months ago. It is not just and equitable to extend time because the substantial passage of time would make it difficult and unjust and inequitable for the Respondents to have to defend claims based upon events which took place almost 18 months prior to the service of the ET 1.

(c) Merits of the case: The claimant is claiming race and age discrimination. The claimant referred to monkey comments made to her by the second respondent back in 2007 which were clearly out of time but the only comments which could allude to race discrimination. If Mr Solomon’s letter of 20 February 2018 was being relied upon as an act of discrimination, then I find that there was nothing to suggest that such a letter was written because of the claimant’s age and race. I find the claimant’s claim for discrimination to be weak and of little merit.

22.4 Extension for Redundancy Pay Issue

The redundancy pay time limits are set out in s 164 ERA.

In relation to the redundancy payment, if 31 March 2017 was taken as the relevant date, then the relevant step of presenting her ET1 should have occurred by 30 September 2017. If the relevant date was 15 November 2017 such relevant step should be taken by 14 May 2018. If the relevant date was 20th February 2018, then the relevant step of presenting her claim should have occurred by 19th August 2018.

I found the relevant date to be 15 November 2017 for the same reasons as I found the effective date of termination to be this date for the purpose of unfair dismissal and wrongful dismissal.

A relevant step as set out in s 164 (1), ERA needs to be taken before the end of the period of six months beginning with the relevant date, namely by 14 May 2018. Two potential contenders (although not wholly clear contenders) for the relevant step which potentially fall under s 164 (1) (b) ,ERA as the claimant making a claim for the payment by notice in writing given to the Respondents is the claimant’s letter dated 15 February 2018 (to which Mr Solomon responded on 20 February 2018) or the MP ‘s letter sent on behalf of the claimant on 26 March 2018. Both these were carried out before 14 May 2018.

Pursuant to s 164 (2) ERA, the claimant would then not be deprived of her right if during the period of 6 months after 14 May 2018, namely by 13 November 2018 a claim for the payment had been made or a claim to the tribunal had been presented and I found it to be just and equitable that the claimant receive a redundancy pay. I found that no such steps were taken by 13 November 2018. Thus, my discretion exercisable on a just and equitable basis was not

engaged.

Even if I am wrong on this point and the discretion was engaged, I find in the alternative that , because of the considerable delay in making a claim , it would not be just and equitable, taking account of the reason for the employee to take any clear steps and all the circumstances of the case for the claimant to receive a redundancy pay. Southwark Law Centre was engaged on 20 November 2018 yet the ET1 was not presented until 2 months later . This was a significant period of delay after the law centre had been engaged.

D: SUBMISSIONS

I am grateful to both Mr Caiden and Mr O’Keeffe for their very helpful submissions, both of which I took into account in making my decision to determine that this tribunal has no jurisdiction to hear all the claims made by the claimant in her ET 1. The submissions can be briefly summarised as follows: –

D1: Mr. Caiden’s Submissions

(1) The ACAS conciliation period which took place between 2nd January 2019 to 17 January 2019 has no bearing on the time limit because time expired before the ACAS early conciliation commenced.

(2) In relation to unfair dismissal and wrongful dismissal whether the effective date of termination is 31 March 2017 or 15 November 2017, the delay of 18 months and 11 months respectively were considerable.

(3) In relation to the unlawful deduction of wages claim, the claimant contended that she remained employed by the Respondents between March 2017 to at least October 2017. She was not paid the wages she was contractually entitled to in that period and therefore claimed an award for the outstanding wages. The event of 15 November 2017 made it clear to the claimant that she was no longer employed by the Respondents. Thus, taking this as the effective date of termination, time would have expired by 14 February 2018 making the claim out of time by 11 months.

(4) Redundancy pay: Whether the relevant steps needed to be taken within six months from 31 March 2017 or within six months from 15 November 2017, there was a considerable delay by the claimant in making this claim.

(5) Direct discrimination: If the last alleged acts of discrimination was the letter of 20 February 2018, then this claim was presented almost 8 months late.

(6) Reasonably practicable Issue: The burden of proof is upon the claimant to prove it was not reasonably practicable for her to present the claim in time and show why the claim was not presented in time. The reason why the claim was lodged out of time was because of her mistaken belief by being misled by the Respondents or by her solicitors /advisers. Based on the facts the claimant’s mistaken belief was not reasonable but in any event the “impediment” was removed by 15th November 2017 and based on this date, the claim was not brought in a reasonable period.

(7) In relation to erroneous advice, it is not clear that any erroneous advice was given. In the alternative and applying the Dedman principle, the claimant is stuck with any fault of those from whom she sought legal advice; a tribunal will hold that it was reasonably practicable to present

the claim in time.

(8) Southwark Law Centre had been engaged by 20 November 2018 yet there was then a further delay of almost 2 months.

(9) In relation to whether it was just and equitable to extend time, there is no presumption that a tribunal shall exercise its discretion to extend time; time limit provisions always protect the defending party. The reason for the claimant's delay was founded upon her mistaken belief first in relation to her employment coming to an end and then on the alleged erroneous legal advice.

I accepted the submissions made by Mr Caiden.

D 2: Mr O'Keeffe submissions

- (1) The case of *Rybak v Sorelle* [1991] ICR 127 was referred to where it was held that there was a "clear factual difference between advice from someone asked to advise and advice from an employee of the tribunal". This, Mr O'Keeffe submitted, described an ACAS conciliator in relation to whom the *Dedman* principle does not apply. *DHL Supply Chain Ltd v Fazackerley* EAT 0019/1815 was, Mr O'Keeffe submitted, a case directly on point where HHJ Barklem held "the employment Judge was entitled to take the view that the advice given by ACAS was erroneous... I find that there was no error of law in holding as the employment Judge did that the ACAS advice was something that rendered it not reasonably practicable to bring his claim within the primary time limit."
- (2) In relation to the redundancy payment, the claimant is someone who has taken a relevant step under s 164 (1) and s 164 (2), ERA does not apply. In any event, however, the claimant presented a tribunal claim within the following 6 months on 17th January 2019 as required by section 164 (2) (b), ERA.
- (3) In relation to the discrimination claims and balancing the prejudice to the Respondents, who even absent jurisdiction in the employment tribunal will face substantial and high value proceedings by this claimant, it is just and equitable that time be extended to allow her claims to proceed.
- (4) It was only after receipt of Mr Solomon's letter dated 20 February 2018 where he stated that there was "no further work available" and that the claimant had already been paid a redundancy settlement could it be reasonable for the claimant then to understand the employment had come to an end. Therefore the effective date of termination was 20th February 2018 with the time period for bringing the wrongful and unfair dismissal claims expiring on 19 May 2018.
- (5) Taking therefore the relevant date (as referred to in section 164 (1), ERA to be 20 February 2018, the latest date for making a claim for redundancy was 19th August 2018. The MP's letter dated 26 March 2018 to the Second Respondent stating that it was not the claimant's understanding that a redundancy settlement had been paid was a notice in writing from which the Second Respondent would understand that the claimant was seeking a redundancy payment.
- (6) In relation to the claimant's claims of age and race discrimination, taking the last discriminatory act i.e. the dismissal as taking place on 20 February 2018 so the 3 month period for submitting these claims expired on 19 May 2018.
- (7) The Respondents misled the claimant into believing she was to return to work September 2017. They were not frank about this position until at least 15 November 2017 but they only confirmed this position in writing on 20th February 2018.
- (8) The advice given by the solicitor in September / October 2007 was wrong when the

solicitor stated that her claims were out of time; this is because there was nothing in the claimant's discussion with the Second Respondent in March 2017 to suggest that she was dismissed. The Respondents' obfuscation was sufficient to confuse the solicitor, a subsequent adviser and several members of Parliament. The CAB adviser rang ACAS on 15 February 2018 and received advice from ACAS that the ET claims were likely to be out of time, time running from March 2017.

I did not accept the submissions made by Mr O Keeffe.

E: THE LAW

I applied the following in making my determination:-

Unfair Dismissal

S 97 (1) ERA:

Effective date of termination.

(1) Subject to the following provisions of this section, in this Part "the effective date of termination"

(a) In relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) In relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect,

S 111 (2) ERA: Complaints to an Employment Tribunal: This is the relevant provision for the time limits in bringing an unfair dismissal claim:-

..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.

Unlawful Deduction of Wages: The relevant time limits for the claim of unlawful deduction of wages are found in s 23,ERA

S 23

(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(3A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2).

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

Wrongful Dismissal:

The claim of notice pay, a wrongful dismissal claim, is set out in Art 7, Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994

Time within which proceedings may be brought

Art 7. An industrial tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—

- (a) Within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or
- (b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or
- (c) Where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

Redundancy Payment: The time limits for making a redundancy pay claim are set out in s 164, ERA

(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—

- (a) the payment has been agreed and paid,
- (b) the employee has made a claim for the payment by notice in writing given to the employer,
- (c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or
- (d) a complaint relating to his dismissal has been presented by the employee under section 111.

(2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—

- (a) makes a claim for the payment by notice in writing given to the employer,
- (b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or
- (c) presents a complaint relating to his dismissal under section 111,

and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

(3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to—

- (a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and
- (b) all the other relevant circumstances.

207B, ERA Extension of time limits to facilitate conciliation before institution of proceedings:

This sets out the provisions for ACAS early conciliation which applies to unfair dismissal, unlawful deduction of wages and claims for redundancy payments. (A similar provision relating to the wrongful dismissal claim is set out in Art 8 b Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.]

Age and Race Discrimination: The relevant time frame for making a discrimination claim are set out in

S 123 Equality Act 2010

(1) Subject to section 140A and 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.

The extension for ACAS early conciliation are set out in s 140B Equality Act 2010 and are materially the same as those set out in s 207B ERA.

F: CONCLUSION

I found this case to be very sad as the relationship between the claimant and the Respondents had ended in an acrimonious way after a 40 year employment relationship. My conclusions are nevertheless based upon applying the law to my findings of fact and I therefore conclude as follows:-

(a) When did the time limit for each claim expire (the “**Date Time Limit Expired Issue**”)? For the claims of unfair dismissal, wrongful termination and unlawful deduction of wages, I conclude that time expired on 14 February 2018 . For the discrimination claim, I conclude time expired on 19 May 18. For the redundancy pay, I found time expired on 14 May 18.

(b) For the unfair dismissal claim, unlawful deduction of wages claim and the wrongful dismissal claim, was it “not reasonably practicable “ for the claimant to bring the relevant claim within three months from the effective date of termination (“EDT”) / last deduction of wages and if so, have the claims been brought within such further reasonable period (the “**Reasonably Practicable Issue**”).?

I conclude that it was reasonably practicable to have brought the claims within the prescribed time limits and the ET1 had not been issued within a reasonable period.

(c) For the discrimination claim, is it just and equitable to extend time (the “**Just and Equitable Issue**”)?

I conclude it was not.

(d) For the redundancy pay claim, can time be extended (the “**Extension for Redundancy Pay Issue**”)?

I conclude that it cannot.

.....
Employment Judge Sharma

Date 20 June 2019

Sent to the Parties on

24 June 2019

For the Secretary of the Tribunals