



## EMPLOYMENT TRIBUNALS

***Claimant***  
***Respondents***

Mr PC Bale  
Ltd

AND

Royal Mail Group

1601552/ 2020(V)

**HELD AT:** Cardiff  
**ON:** 24 November 2020

**BEFORE:** Employment Judge Pearl

This was a hearing heard by full CVP video to which the parties consented.  
The bundle ran to 98 pages.

***Representation:***

**For Claimant:** Ms A Singh (Union rep)

**For Respondent:** Ms K Hall (Solicitor)

## JUDGMENT

**The Judgment of the tribunal is that:**

**1 There is no jurisdiction to entertain the claim.**

## REASONS

1 The question to be determined at this preliminary hearing is that of jurisdiction. The ET1 is in relatively sparse terms and at an earlier preliminary hearing it was recorded that the disability claims are of direct discrimination. At the outset, it was confirmed to me that these are the sole discrimination claims.

2 The Claimant is agreed to be disabled within the statutory definition because of type 1 diabetes and sleep apnoea.. He had 2 periods of absence from work in January 2018, the first of which is said to have been disability related. The

second is said not to have been, but is claimed to have “affected” his diabetes. On 7 February 2018 the Respondent issued a letter that stated that future disability-related absence “may also be counted towards future reviews.” Under the Respondent’s policies, disability-related absence will normally be disregarded, but there are circumstances specified when it can be taken into account. This is what the letter was referring to. The claim is that this letter is direct disability discrimination. It is agreed that 3 months from the date of the letter takes us to 26 May 2018. This ET1 was presented on 14 July 2020.

3 The manager who issued the letter in 2018 is a different manager from the person who managed the Claimant’s absence in 2020. In January/February 2020 the Claimant was absent from work because of stress and he says this impacted on the diabetes. On the preliminary issue, I heard evidence from the Claimant.

4 He accepted, when questioned, that the 2018 letter was a one-off act which had continuing consequences. As he is not legally trained, I discount the significance of this answer, however it is worth my noting at this point that this is an inevitable legal conclusion for the tribunal. It is not merely that the managers, 2 years apart, were different, with no connection between them. The whole thrust of the Claimant’s narrative is that the 2018 letter was a “line in the sand”, ie, a significant development that had future consequences for him. It is beyond any question that it was a free-standing act or event that triggered the 3 month period for bringing a claim. No act extending over a period is detectable on the Claimant's own case.

4 As to the claim arising from events this year, the ET1 says that the Claimant was given an attendance review on 26 February 2020; and in the notes the manager “referred to a letter given to me in 2018 which I believe to be discriminatory.” He says he could not correct matters in the subsequent grievance. The ET1 refers to a relevant date for the review in March, but this must be an error. All agree that the meeting was on 26 February. The formal review letter is dated the 19<sup>th</sup>, which must also be a mistake, but the Claimant signed the receipt slip on 27 February; and he raised his grievance on 4 March. Hence, the agreement at the hearing that the 3 month limitation period began to run on 27 February. It expired on 26 May and it was only after this that the Claimant started the early conciliation process. One reason he gives is that in an initial conversation with Acas, he was told to exhaust internal procedures. That process ended on 11 May 2020, a little over 2 months before the presentation of the claim.

5 It was only in re-examination that the Claimant disclosed that his Mother passed away on 19 June. She fell ill and was hospitalised just after the primary limitation period expired at the end of May. I accept that this sad event may excuse some of the delay before approaching Acas about early conciliation on 11 June. It does not explain the missing of the 3 month period in the first place. The Claimant accepts that he had access to the internet to research this and also that he had union representation. He also disclosed that until Mr Singh became involved, he was being assisted by a local union official and he more or less said in terms that he had not been properly advised about limitation at

that earlier point. Further, no explanation emerged in evidence for the delay between the issue of the early conciliation certificate (3 July) and issue of the claim (14 July.)

### *Conclusions*

6 I am grateful for the submissions of both parties. As to the general principles, I need not recite the law. The tribunal has a broad discretion in applying the just and equitable test, but extension of time requires some explanation from the Claimant, as a bare starting point. I agree with Ms Hall that no explanation has emerged for the 29 months' delay in claiming about the 2018 letter. Although that alone is sufficient to dispose of the jurisdictional point, the other relevant facts only confirm this conclusion. The Claimant knew this was his 'line in the sand' letter. It came with an explicit warning that it could be used, potentially, to disadvantage him in the future. It was, therefore, unreasonable to wait for something to happen before claiming in the tribunal. I do not suggest that the Claimant took a positive decision to do this. He has not said that. I am left with the only inference to draw, which is that he had no intention of claiming in 2018. It would be neither just nor equitable to permit him to do so over 2 years later.

7 Turning to 2020, there are factors that might explain some of the delay, although the absence of accurate advice, or possibly any advice, from the initial union representative may well be the real reason. There is the delay between 11 May and 11 June; and the further delay between 3 July and 14 July. Unlike the position in 2018, there is no reason to think that the delay affects the cogency of evidence and if discretion were to be exercised in the Claimant's favour, it would have to be on a very broad basis. Poor advice and his personal circumstances would need to be cited to justify an extension.

8 In deciding whether to extend time in the Claimant's favour, there is one factor that I am entitled to take into account and which I consider tells against him. This is the inherent merit or otherwise of the claim. I was at pains to establish the form this claim took and there is no doubt it is a claim that the Respondent treated the Claimant less favourably because of disability by requiring him to attend the meeting of 26 February 2020. This was after an absence which was not caused by disability, but which the Claimant says affected it. There is nothing in the pleadings or the paperwork to suggest that a direct discrimination claim could succeed. The thrust of the Claimant's complaint is that the 2018 letter should be expunged. It seems to me to be highly tendentious to argue (as the Claimant must at trial) that the action taken by the employer in late February this year could have been because he was disabled or because he has diabetes or sleep apnoea. They may, perhaps, have been the "setting" for the 2018 letter but it is difficult to see their relevance for February 2018. In any event the setting is quite distinct from the reason for acting, or the motivation for so doing. The claim is so weak on its face that this

decides me against extending time. To do so would deprive the Respondent of a limitation defence in an ostensibly weak claim. The balance of justice and equity is against exercising the discretion in the Claimant's favour and I decline to do so.

9 The consequence is that the entirety of this claim is out of time and there is no jurisdiction for it to proceed further.

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Employment Judge Pearl

Dated: 24 November 2020

Reasons sent to the parties on: 1 December 2020

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For the Tribunal Office