



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Harpreet Pabla

v

MBDA UK Ltd

Heard at: Cambridge Employment Tribunal

On: 18th May 2021

Before: Employment Judge King

Appearances

For the Claimant: In person

For the Respondent: Ms Niaz-Dickinson (counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was (V) video having been conducted by CVP. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

1. The claimant's claimed are dismissed.
2. The Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal as it was presented out of time and it was reasonably practicable for the claim to be presented in time.
3. The Tribunal does not have jurisdiction to hear the claimant's claims for race discrimination as they were presented out of time and it is not just and equitable to extend time.
4. The claimant's claim for breach of contract is dismissed upon withdrawal.

REASONS

1. This is the reserved judgment of the Tribunal in the above matter. The case was listed for a hearing on 18th May 2021 to deal with preliminary matters but the Tribunal reserved its judgment due to time constraints on the day of the hearing as there were errors in listing which meant the judge had to deal with two cases commencing at 10am that day so we lost hearing time.

2. The claimant was acting in person. The respondent was represented by Ms Niaz-Dickinson (Counsel). I heard evidence from the claimant. I heard no evidence from the respondent. The claimant and respondent exchanged documents in advance and prepared an agreed bundle of documents which ran from pages to 1 to 202 to which I have had regard.
3. The matter was heard via CVP. The case had been listed for a preliminary hearing following the respondent's application within its ET3 and further by email dated 11th December 2020 to consider whether the complaints were submitted in time. This was ordered to be listed by Employment Judge Laidler on 10th January 2021 and directions were given for orders to prepare for the hearing. In addition, the respondent made an application for a reconsideration of the Tribunal's decision to reject the respondent's breach of contract claim and the Tribunal confirmed that this would be dealt with at the preliminary hearing by letter dated 3rd March 2021.

The issues

4. At the outset of the hearing these issues were identified and agreed between the parties before evidence was heard as follows:
5. The claimant accepted that his claims were 13 days out of time so the issue was whether it was reasonably practicable to present the unfair dismissal claim in time and/or just and equitable to extend time in respect of the discrimination complaints.
6. Does the Employment Tribunal have jurisdiction to hear this claim and specifically:
 - 6.1 The claim for unfair dismissal having been presented out of time was it presented within such 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 under s111 ERA 1996;
 - 6.2 The claimant's claim having been presented outside the time limit under (s.123 (1)(a) Equality Act ("EqA") 2010), has the claimant presented his claim in such other period as the Employment Tribunal thinks just and equitable within the meaning of s123(1)(b) EqA 2010)?
7. Did the claimant bring a breach of contract claim and should the decision to reject the claim be reconsidered?

The law

Unfair Dismissal

8. The provisions concerning time limits in respect of unfair dismissal claims is set out in S111 Employment Rights Act 1996 as follows:

s111 Complaints to employment tribunal

- (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.*

9. The provisions concerning extension of time in order to facilitate ACAS early conciliation before institution of a proceedings are set out in s.207B of the Employment Rights Act 1996. Claims for unfair dismissal are relevant proceedings pursuant to s.18(1) of the Employment Tribunals Act 1996. Section 207B of the Employment Rights Act 1996 states as follows:-

s207B Extension of time limits to facilitate conciliation before institution of proceedings

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

Discrimination

10. The provisions concerning time limits in respect of discrimination claims are set out in s123 of the Equality Act 2010 as follows:

- (1) *Subject to sections 140A and B, proceedings on a complaint within 120 may not be brought after the end of—*
 - (a) *the period of three months starting with the date of the act which the complaint relates; or*
 - (b) *such other period as the employment tribunal thinks is just and equitable.*
 - (2) *...*
 - (3) *For the purposes of this section—*
 - (a) *Conduct extending over a period is to be treated as done at the end of the period;*
 - (b) *Failure to do something is to be treated as occurring when the person in question decided upon it.*
 - (4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on a failure to do something—*
 - (a) *when P does an act inconsistent with doing it; or*
 - (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*
11. The provisions relating to the extension of time to facilitate early conciliation before instituting proceeding are set out in s.140B of the Equality Act 2010. Discrimination complaints are relevant proceedings within the meaning of s.18(1) of the Employment Tribunals Act 1996. Section 140B of the Equality Act 2010 states:

140B Extension of time limits to facilitate conciliation before institution of proceedings

- (1) *This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).*
- (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 the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.*
- (4) *If the time limit set by section 123(1)(a) or 129(3) or (4) 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) *The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.*
12. The issue over whether the respondent's claim should have been rejected and reconsideration of the same is set out in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013/1237.
13. Rule 23 confirms as follows:

23. Making an employer's contract claim

Any employer's contract claim shall be made as part of the response, presented in accordance with rule 16, to a claim which includes an employee's contract claim. An employer's contract claim may be rejected on the same basis as a claimant's claim may be rejected under rule 12, in which case rule 13 shall apply.

14. Rule 12 concerns rejection of a claim as follows:

12.— Rejection: substantive defects

(1) *The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—*

- (a) *one which the Tribunal has no jurisdiction to consider; [...]*
- (b) *in a form which cannot sensibly be responded to or is otherwise an abuse of the process;*
- (c) *one which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies;*
- (d) *one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;*
- (da) *one which institutes relevant proceedings and the early conciliation number on the claim form is not the same as the early conciliation number on the early conciliation certificate;*
- (e) *one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates; or*
- (f) *one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate to which the early conciliation number relates.*

(2) *The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a) [, (b), (c) or (d)] of paragraph (1).*

(2ZA) *The claim shall be rejected if the Judge considers that the claim is of a kind described in sub-paragraph (da) of paragraph (1) unless the Judge considers that the claimant made an error in relation to an early conciliation number and it would not be in the interests of justice to reject the claim.*

(2A) *The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made [an] error in relation to a name or address and it would not be in the interests of justice to reject the claim.*

(3) *If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the Judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.*

15. Rule 13 concerns reconsideration of a claim as follows:

13.— Reconsideration of rejection

(1) A claimant whose claim has been rejected (in whole or in part) under rule 10 or 12 may apply for a reconsideration on the basis that either—

- (a) the decision to reject was wrong; or
- (b) the notified defect can be rectified.

(2) The application shall be in writing and presented to the Tribunal within 14 days of the date that the notice of rejection was sent. It shall explain why the decision is said to have been wrong or rectify the defect and if the claimant wishes to request a hearing this shall be requested in the application.

(3) If the claimant does not request a hearing, or an Employment Judge decides, on considering the application, that the claim shall be accepted in full, the Judge shall determine the application without a hearing. Otherwise the application shall be considered at a hearing attended only by the claimant.

(4) If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.

16. The respondent's counsel referred to a number of cases to which I have had regard namely:

Robertson v Bexley Community Centre [2003] EWCA Civ 576

British Coal Corporation v Keeble [1997] IRLR 336.

Asda Stores v Kauser UKEAT/0165/07

Palmer & Another v Southend on Sea Borough Council [1984] IRLR 119

Cortel Telecom Ltd v Mr Shah UKEAT/0252/18/00

17. I have also had regard to the list of factors in the Limitation Act 1980 s33 as referred to by the respondent's counsel but noted the caution given by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23. I have also considered the case of *Porter v Bandridge Limited* [1978] ICR 943.

Findings of fact

18. The claimant was employed by the respondent from September 2015 to 13th April 2020 having resigned on 13th January 2020 and worked part of his notice period until he was placed on garden leave on 17th March 2020.
19. The claimant alleged that he had been victimised and harassed by management between April 2019 and 17th March 2020. He was placed on a capability procedure which led to a first written warning being issued in October 2019. The claimant appealed the decision to issue him with a written warning by letter dated 4th November 2019 and received the outcome on the 13th March 2020.
20. At the outset of the hearing, we determined what the claimant considered to be acts of discrimination/harassment in order to determine the timeline for the discrimination complaints. The timeline for the unfair dismissal claims was clearer as the effective date of termination was 13th April 2020 following his resignation back in January 2020.

21. The claimant confirmed that the following were all acts/omissions he relied on in respect of race discrimination. These have not been tested in evidence but taken at their highest for the purposes of establishing the dates only these are as follows:
 - 21.1 That the first incident was in May 2018 concerning being shouted at.
 - 21.2 In February 2019 he was removed as a database administrator.
 - 21.3 In June/July 2019 there was a change in his reporting line.
 - 21.4 In August 2019 his line manager reported false tasks and performance issues to HR.
 - 21.5 In October 2019 he was given the first written warning for performance management.
 - 21.6 On 13th March 2020 he received the outcome of his appeal which was denied.
 - 21.7 The last incident the claimant complains of relates to being placed on garden leave on 17th March 2020.
22. The claimant was a Workplace & Equalities Representative for Unite the union from the middle of 2018 until when he left his employment. He was therefore aware of his rights in respect of discrimination complaints given his union role.
23. The claimant commenced ACAS early conciliation on 6th July 2020 and his certificate was issued on 4th August 2020. He submitted his claim to the employment tribunal on 17th September 2020.
24. The claimant confirmed that before ACAS early conciliation commenced he was aware of the three month limit to lodge his claims. He confirmed that he did have a laptop as at 26th May 2020 and indeed was able to lodge his claim electronically in September 2020.
25. The claimant indicated that part of the reason why he did not submit his claims on time was he was waiting for information from the respondent by way of the data subject access requests he had made. In evidence this was explored with the claimant and that he had made a number of data subject access requests. The claimant received his first data subject access request material on 25th July 2019, the second on 20th August 2019 and the last prior to termination employment on 16th January 2020.
26. He accepted that he had received the largest number of files in the January 2020 receipt. He indicated that it took him six or seven weeks to review some of the files due to the format in which it was provided. It is however clear from his evidence that by the appeal in March 2020 he had identified issues over the GDPR information provided sufficient to raise these with his employer. Indeed, the one email he relied on heavily which referenced "more ways to skin a cat" was in his possession and he produced it during the appeal process in March 2020. This was referred to in his claim form.

27. When the claimant did submit his claim to the employment tribunal this did not extensively rely on any subsequent data received. Indeed, it was short of detail. He further confirmed in evidence that the last data subject access request information was in his possession by August 2020. This would have enabled him to submit his claims in time.
28. The claimant was placed on garden leave from 17th March 2020 to the effective date of termination on 13th April 2020. The claimant gave oral evidence that between August and September 2020 he had to undertake a period of COVID-19 isolation. This was not outlined in his witness statement. He confirmed he did not have any symptoms in August/September 2020. His statement also confirmed another isolation period with symptoms of COVID19 in April 2020. He also set out in his statement that he suffered from depression with little contact my family or friends. At the start of September, he said that he felt fatigued and had problems with memory and concentration (“brain fog”). The claimant had not produced any medical evidence in respect of depression or COVID symptoms.
29. With regard to advice, the claimant confirmed that he had sought advice from his unite representative as early as May 2019. He also spoke to his union representative before handing in his notice and sought guidance in January 2020. Given the claimants own union role and that he was seeking Unite advice it was clear that he was aware of his rights at the relevant time.
30. The claimant confirmed under cross examination that it was feasible for him to submit his claim before he did. He confirmed it was 100% feasible to submit his claim that it would have been possible in January 2020.
31. The claimant started a new role in June 2020 and he had applied for new roles in May/June 2020 and he confirmed in evidence that after he left in April 2020 he had to find alternative work and this was critical. He believed that he applied for around 5 jobs and got offers for 3 or 4 of them and took one of those. He had been at work since 15th June 2020 full time but he had not been attending the office in that period due to the COVID restrictions. He secured alternative employment within 9 weeks. He was not too ill to apply for, interview or secure alternative employment. He did not take any time off work during this period for the symptoms he describes in his witness statement of depression, fatigue and problems with memory and concentration.
32. The claimant accepted in his claim form ET1 that his claim was late and provided additional information in section 15 to explain why the claim was late. He made reference to as the children had gone back to school last week he would like to raise his case with the tribunal. This was examined in cross examination by the respondent and the claimant accepted that the children referred to were not his own but that this referred to extended family and a niece and a nephew who did not live with him. He accepted

this was not a reason why the claim was not submitted on time. This really related to the GDPR information which I have dealt with above.

33. The claimant confirmed in evidence that he had bought a breach of contract claim in his claim form but that this was now withdrawn.
34. The Employment Tribunal rejected the respondent's counter claim as it determined that the claimant had not brought a breach of contract claim and that decision cannot now stand as the claimant has confirmed that he did bring such a claim.

Conclusions

Does the Employment Tribunal have jurisdiction to hear this claim and specifically:

Unfair dismissal

The claim for unfair dismissal having been presented out of time was it presented within such 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 under s111 ERA 1996;

35. Turning first to deal with the unfair dismissal claim in respect of time. Taking into account the period for early conciliation the claimant's unfair dismissal time was 13 days out of time which he accepted. Given the findings of fact above and indeed the agreed facts in this matter, the claim for unfair dismissal was presented outside the ordinary time limit for bringing such claims in accordance with s.111 of the Employment Rights Act 1996 taking into account the extension provided for under the ACAS early conciliation extension under s207B set out above.
36. The onus of proving that the presentation in time was not reasonably practicable rests on the claimant. There is a duty imposed upon the claimant to show precisely why it was that he did not present his complaint on time in accordance with *Porter v Bandridge Limited [1978] ICR 943*.
37. The claimant's claim was presented 13 days outside the ordinary time limit for such claims. It is therefore clear and indeed agreed that the claimant's claim is out of time.
38. I turn now to whether it was reasonably practicable for the complaint to be presented within the time limit. Given the findings of fact above, it is clear that the claimant was in receipt of advice at the relevant time from his union, he is a professional individual with the capacity to submit the claim on line and use IT resources and the internet if he was in any doubt as to the need to submit his claim promptly. Indeed, the claimant confirmed that he was aware of the three month time limit in which to submit his claim.

39. This is not a case where the claimant was ignorant of his rights to claim unfair dismissal. All the facts were known to the claimant at the relevant time. Indeed he spoke to the union before he resigned so he must have had in mind back in January 2020 that he had a constructive unfair dismissal case as he resigned in response to the respondent's alleged conduct having spoken to the union.
40. I have seen no relevant medical evidence to suggest that the claimant was suffering from a mental health condition or disability which prevented him from bringing proceedings within the relevant time. Indeed, the claimant was able to apply for and secure alternative employment within the first nine weeks of leaving the respondent, he was able to correspond frequently with the respondent concerning his data subject access request. Any ill health was minor and did not lead to incapacity of a nature that it prevented the claimant from submitting his unfair dismissal claim on time.
41. The claimant had sufficient information from three GDPR requests to submit his claim even allowing for six/seven weeks after receipt of the January 2020 GDPR requests as indicated in his witness statement to review it. There is nothing in his ET1 claim form that could be said to come from later data subject access requests such that he received new information after the time limit had expired. His internal appeal processes had concluded before his effective date of termination and there is no reason why the claimant could not bring his claim on time for the purposes of the unfair dismissal claim as set out in the statutory test. The claimant accepted it was 100% feasible for him to for his claim earlier in cross examination.
42. Take into account all the information before me, I believe that it was reasonably practicable for the claimant to present his unfair dismissal claim on time. It therefore follows that the tribunal does not have jurisdiction to hear the complaint of unfair dismissal.

Race Discrimination

The claimant's claim having been presented outside the time limit under (s.123 (1)(a) Equality Act ("EqA") 2010), has the claimant presented his claim in such other period as the Employment Tribunal thinks just and equitable within the meaning of s123(1)(b) EqA 2010)?

43. The parties all agree that the claims are out of time. Having exploring the acts the claimant complains of as acts of race discrimination it in fact transpired that the claim was more out of time than originally thought. The claimant noted on his claim form that the claims were 13 days out of time. However, in respect of the discrimination complaints the last act relied on is being placed on gardening leave on 17th March 2020 and the claimant did not attend work after this time. If this date is taken as the last in time and even assuming that the earlier events set out are made out as a course of conduct extending over a period to bring the older complaints in

time, then the claim was out of time before the claimant submitted his request for early conciliation.

44. If the last act was 17th March 2020 as indicated by the claimant then ACAS early conciliation should have commenced by 16th June 2020 not 6th July 2020. This would mean that there was a further delay therefore of three months by the time the claimant submitted his claim as the claimant cannot benefit from the extension of time from the ACAS early conciliation if his claim is already out of time.
45. In accordance with *Robertson v Bexley Community Centre* [2003] EWCA Civ 576 the onus is on the claimant to establish that it is just and equitable to extend time and the time limits need to be construed strongly. I have taken into consideration all the evidence in this case and that the claimant is a litigant in person. He has not provided medical evidence of his depression and COVID symptoms.
46. I have in mind the factors in the *British Coal Corporation v Keeble* [1997] IRLR 336 case as a background although they are not to be used as a checklist. I must consider all the evidence in the round.
47. The claimant should have commenced ACAS early conciliation by 16th June 2020 to benefit from the time provisions that pause the limitation clock and he failed to do so. He did not commence ACAS for another 20 days. ACAS early conciliation lasted 28 days and then did not submit his claim for another 44 days. By the time the claim was submitted it was 92 days out of time in total.
48. The claimant relies on the GDPR information needing to be processed and his ill health as the reason for the delay.
49. The claimant said that he had some ill-health issues but was able to apply for roles, attend interviews, secure alternative employment, correspond with his employer and seek advice. Limitation periods should be observed strictly.
50. I had no evidence of cogency of the evidence being affected by the delay.
51. The respondent had provided information from at least three GDPR before the effective date of termination. The respondent had cooperated with those requests and engaged in correspondence with the claimant. The respondent having complied with numerous GDPR requests clearly cooperated and this was not a case where the claimant needed something additional to make the claims he eventually did in September 2020. There was no need to wait for any information from the respondent as he had everything he needed to submit his claim in time. He was not waiting for any internal processes to complete. He was ready to proceed but did not do so.

52. It is clear that the claimant knew of his legal rights, that the Tribunal was the appropriate forum for any race complaints and that ACAS early conciliation was required. He took advice from the union, tried CAB without success and was a Workplace and Equalities representative for Unite the union for the last 18 months – 2 years of his employment.
53. The claimant knew of his rights and had everything he needed to proceed before the end of May/middle of June but did not do so. He was busy during that period securing alternative employment which of course he had to regard as a priority but this did not mean he did not have any time to submit his claim. He had IT access and was able to submit his claim online.
54. Of course, there is a public interest in having any allegation of discrimination scrutinised by the tribunal. All claimants deserve this but it is not a reason alone for me to exercise my discretion. The onus is on the claimant to establish that it is just and equitable to extend time if he presents his claim outside the primary limitation period as statute intended and he has failed to establish this.
55. The claim is 92 days outside the primary time limit which is almost three months. The delays in this case are instead not indicative of lack of information or ill health preventing him from proceeding rather it is indicative that it was not a priority and he chose not to proceed at that time. He indicated in his ET1 form that he had chosen to submit his claim in September as the schools had returned last week but in fact this was not a valid excuse in his personal circumstances. He accepted this was not the reason he did not submit the claim in time.
56. The claimant has failed to establish that it is just and equitable to extend time in the circumstances of his case. Most of the acts complained of actually relate to a further period back in time in 2019 and even with the more recent events the claim is still out of time and the claimant has not provided cogent evidence to explain this delay.
57. On balance having taken everything into account I do not consider it just and equitable to extend time under s123 (1)(b) Equality Act 2010 and as such the Tribunal does not have jurisdiction to hear this claim.

Did the claimant bring a breach of contract claim and should the decision to reject the claim be reconsidered?

58. The claimant confirmed in evidence that he did in fact bring a breach of contract claim but he no longer wished to pursue this claim and withdrew it at the hearing.
59. It was confirmed in the correspondence with the tribunal that the Tribunal's decision to reject the respondent's counterclaim within the ET3 would be considered a preliminary hearing.

60. Under rule 23 of the Employment Tribunal's (Constitution of rules of procedure) Regulations 2013 an employer's contract claim can be made as part of a response to claim which includes an employee's contract claim. An employer's contract claim may be rejected on the same basis as a claimant's claim may be rejected under rule 12 in which rule 13 shall apply. The tribunal rejected the claim under rule 12(1)(a) as it considered the claimant's claim did not contain a claim for breach of contract.
61. It is now clear from the claimant's confirmation in the hearing that this was incorrect and that the claim should have been accepted. Under rule 13 the respondent applied for a reconsideration on the grounds that decision to reject it was wrong. It must follow that the decision to reject the claim was wrong.
62. The respondent referred me to the case of *Cortel Telecom Ltd v Mr Shah UKEAT/0252/18/00* to which I have had regard. This is authority for the proposition, that the respondent's breach of contract claim survives the claimant's withdrawal of his breach of contract claim. The respondent's counter claim should not have been rejected and therefore the decision to reject it was wrong.
63. The respondent's counterclaim for breach of contract should therefore now be served on the claimant in accordance with the case management orders made by this tribunal separately and the matter will proceed to a short fast track hearing to determine whether that claim should succeed.

Employment Judge King

Date:16.08.2021.....

Sent to the parties on:

.....
For the Tribunal Office