



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101822/2023 and 4101823/2023

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Held via Cloud Video Platform (CVP) in Glasgow on 28 March 2023

Employment Judge N Buzzard

10 **Ms Madlena Pavlova**

**Claimant
In Person**

15 **Glasgow City Council**

**Respondent
Represented by:
Ms A McFarlane -
Solicitor**

20 **JUDGMENT** having been sent to the parties on 15 May 2023 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

25 **Issues**

1. The claimant presented two claims to the Employment Tribunal. These were presented on 13 December 2022 (claim number 4101822/2023) and on 12 January 2023 (claim number 4101823/2023). These two claims were in substance identical, save that in the second claim form the claimant ticked the box to indicate that a claim of race discrimination was made.
2. The preliminary hearing was convened to consider whether the claimant's claims were presented to the Employment Tribunal in time, or if not presented in time, whether it would be just and equitable to extend time such that the

claims would be within the jurisdiction of the Employment Tribunal to determine.

3. At the outset of the hearing the relevant dates were discussed with the parties and agreed to be as follows:

5 a. The claimant's claims related to alleged acts of discrimination both of race and disability discrimination which occurred whilst she was on placements during academic studies. The placements were scheduled to conclude by no later than 24 February 2022, although it appears that at least the second placement may have concluded earlier.

10 b. The claimant approached ACAS on 4 December 2022. Early conciliation was concluded on 6 December 2022. The claims were presented on 13 December 2022 and 12 January 2023.

4. Based on these dates the claimant accepts that her claims were presented out of time. The issue to be determined at this hearing was whether it would be just and equitable to grant the claimant an extension of time.
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Relevant Law - When is it Just and Equitable to Extend Time?

5. When, as here, a claim is presented outside the normal time limit for presenting a claim, the Tribunal has the power and discretion to extend time if it is found to be 'just and equitable' to do so.

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6. There is guidance on the exercise of this discretion. In **Robertson v Bexley Community Centre (trading as Leisure Link)** CA 11 March 2003 the Court of Appeal stated:

25 *'It is of also importance to note that 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.'

7. The guidance of the EAT in **British Coal v Keeble** [1997] IRLR 336 is also of
5 relevance to the exercise of this discretion. This guidance suggests that factors to be considered when considering extending time should include (but are not limited to):
- a. The length of, and the reasons for, the claimant's delay.
 - b. The extent to which the cogency of the evidence is likely to be affected
10 by the delay.
 - c. The extent to which the respondent had co-operated with any requests for information.
 - d. The promptness with which the claimant acted once she knew of the facts giving rise to the cause of action.
 - e. The steps taken by the claimant to obtain appropriate professional
15 advice once she knew of the possibility of taking legal action.
8. It is not normally just and equitable to extend time because the claimant was waiting for an internal complaint of grievance process to conclude. In **Apelogun-Gabriels v Lambeth LBC** (CA) [2002] ICR 719 Peter Gibson LJ
20 stated:

*'It has long been known to those practising in this field that the pursuit of domestic grievance or appeal procedures will normally not constitute as sufficient ground for delaying the presentation of an appeal. The very fact that there have been suggestions made by
25 eminent judges in 1973 and in 1982 that the statutory provisions should be amended demonstrates that, without such amendment, time would ordinarily run whether or not the internal procedure was being followed. For my part, therefore, I can see no error whatever in what Lindsay J said in the present case in relation to this matter, that is to*

say that the fact, if it be so, that the applicant had deferred commencing proceedings in the tribunal while awaiting the outcome of domestic proceedings is only one factor to be taken into account.'

5 Evidence

9. The claimant presented evidence on her own behalf. The Tribunal was also referred to a bundle of documents that had been produced by the parties and was relied on in evidence.
- 10 10. In addition to this evidence, the Tribunal had the benefit of hearing oral submissions made by the claimant herself and by Ms McFarlane for the respondent.

Factual Findings

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11. The claimant informed the Tribunal under cross examination that she is a well-educated woman who has multiple degrees. As part of one of those degrees, the claimant stated that she had studied a legal module. The claimant conceded in her evidence under cross examination that she was, at all relevant times, aware of what Employment Tribunals are and further that there are generally limitation periods applicable in any litigation.
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12. The claimant's position, which is not disputed, is that she submitted complaints before making her claim to the Employment Tribunal. The first of these was an internal complaint to the academic institution where she had undertaken the relevant placement. This complaint was submitted on or
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- around 22 February 2022. The outcome of this complaint was confirmed to the claimant on or around June 2022. The claimant then complained to an education ombudsman, within around a week of this outcome being delivered to her, namely in or around June 2022. The claimant agrees that she set out
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- the majority of the issues which she now seeks to raise in this claim in these complaints, albeit she concedes that she did not mention race discrimination

in those complaints. The claimant's complaint to the ombudsman concluded with an outcome on or around 29 November 2022.

13. The claimant was asked in cross examination why she had not presented her claims in time, or earlier than she did. The claimant was clear both in her responses under cross examination and in her oral submissions that the only reason she had not made a claim earlier was that she was awaiting the outcome of her other complaints (to the academic institution and then the education ombudsman). Specifically, the claimant suggested that because she did not have any witnesses to assist her in proving the allegations she makes, she was hoping that she would obtain evidence via the ombudsman's investigation which would back up her allegations and assist her in proving her claims.

Findings

14. Dealing with the factors identified as potentially relevant in the guidance of the EAT in **British Coal v Keeble** in turn:

a. *The length of the delay and the reasons for the delay.*

There is no doubt that the delay in this case was substantial. The delay was from February 2022 until December 2022, some ten months. That is more than three times the normal allowed time limit.

The only reason that the claimant gave for the delay was that she was awaiting the outcome of two complaints. The first of these was her complaint to the university, the academic institution she was studying at, and subsequently a second complaint to the education ombudsman when her first complaint was rejected.

Awaiting the outcome of such complaints, which fall into the category of '*domestic complaints*' discussed by Peter Gibson LJ in **Apelogun-Gabriels v Lambeth LBC**, to use his words "*will normally not constitute as sufficient ground for delaying*".

The claimant's assertion that she needed to somehow obtain evidence from the ombudsman is not convincing or compelling. The claimant herself stated that she had undertaken a significant period of legal education as part of her past studies. The claimant should have been aware, and if she had made any straightforward enquiries, would have been aware, that whatever evidence the ombudsman was able to obtain would have been fully disclosable and available to her as part of these proceedings in any event. Accordingly, a desire to find evidence via complaints prior to presenting her claims does not, of itself, constitute a sufficient ground for delay.

b. The extent to which the cogency of the evidence is likely to be affected by the delay

The claimant herself, whilst under cross examination at this hearing was, on multiple occasions, unable to recall relevant details. This indicates that the extensive delay which has occurred has already impaired the cogency of the claimant's own recollection of relevant dates and events.

These claims relate to two short placements. These were in two different schools. They were a long time ago. The significant delays in this case, unsurprisingly, appears to have had a material impact on the cogency and accuracy of any potential witness's evidence and his or her recollection of events.

c. The extent to which the respondent had co-operated with any requests for information.

It is correct that the claimant states that she was awaiting the outcome of her complaints before making her claim to the Employment Tribunal. This was stated to be in the hope that the complaints process would provide evidence to assist her in proving her claims.

There does not appear to be any suggestion that the claimant was not fully aware of the matters she complains of from, at the latest, the date

of her first '*domestic*' complaint. Accordingly, there is no basis to conclude that the claimant was unable to present her claim on time, or indeed earlier, because she was awaiting '*information*' from the respondent which would allow the claim to be presented, or which would have made the claimant aware of the facts of her claim.

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d. The promptness with which the claimant acted once she knew of the facts giving rise to the cause of action

As noted above, the claimant was aware of the facts giving rise to her claim from at the latest the date she submitted her first '*domestic*' complaint. The claimant delayed for around 10 months from that date before presenting her claim. Such a delay cannot, on any basis, be described as prompt.

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e. What steps did the claimant take to obtain advice or assistance prior to taking legal action.

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The claimant is a well-educated woman who has multiple degrees including a significant period of legal study. The claimant candidly admitted in cross examination that she was at all times aware of the existence of employment tribunals. She knew that litigation carried time limits to presenting claims. She knew of the Citizens Advice Bureau and in fact had utilised their services in the past in other regards.

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The claimant was fully aware of all the relevant facts of her claim, she was fully aware that she believes that she had been subjected to treatment which she should not have been subjected to from, at the latest, the start of her first complaint. The claimant appears to have taken no action to seek advice or assistance.

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Conclusions

15. Taking all of the above into account, this is not a case where the claimant has presented or submitted evidence, the basis upon which it would be just and equitable to extend time.
16. The balance of prejudice that the two parties will suffer is an important consideration. It is always the case if a claimant is not granted an extension of time, that they will not be able to pursue their claim. It is noted in this case that the claimant has been able to pursue her complaint both internally with her academic institution and thereafter with the education ombudsman. The fact that her complaints have been considered in these forums mitigates the prejudice to the claimant.
17. The respondent would, if an extension of time was permitted, be required to defend themselves against allegations where memories of the relevant events and details have already faded. Based upon her cross examination at the preliminary hearing it appears that the claimant's own recollection has already faded on key points. This creates a significant difficulty and prejudice for the respondent.
18. Balancing these prejudices and factoring in the lack of a sufficient ground for what is a very significant delay, it would not be just and equitable to extend time. Accordingly, all of the claimant's claims are found to have been presented outside the jurisdiction of the Employment Tribunals to consider and are dismissed.

Employment Judge: N Buzzard
Date of Judgment: 31 July 2023
Entered in register: 01 August 2023
and copied to parties