



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107180/2023

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Held in Glasgow on 25 April 2024

Employment Judge D Hoey

10 **Mr Henry Halpin**

**Claimant
Represented by:
Ms A O'Donnell -
Solicitor**

15 **Robertson Facilities Management Limited**

**Respondent
Represented by:
Ms F Meek -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal decides that in terms of section 123 of the Equality Act 2010, proceedings on a complaint brought within section 120 were brought after the end of the period of three months starting with the date of the final act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable, and as a result the claim is dismissed.

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REASONS

1. This case called as an open preliminary hearing to determine time bar. Both parties had solicitors who had worked together to agree productions running to 191 pages. The issue to determined had been focused. The parties had agreed the question to be determined, namely given the last act of discrimination relied upon by the claimant occurred on 1 July 2022, and the claim was accepted on 11 December 2023, was the claim raised within such other period as the Tribunal thinks just and equitable. The claim had been raised around 14 months late.

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2. The Tribunal heard evidence from the claimant and his daughter and Mr Whannell who had heard the claimant's appeal.

Facts

3. The Tribunal is able to make the following relevant finding of facts from the evidence that was led.

Background

4. The claimant began working for the respondent in May 2022 as mobile plumbing engineer. On 2 July 2022 the claimant was taken to hospital and underwent a number of tests. The claimant was told he had transient global amnesia. The effect of this was that the claimant had severe memory loss. The claimant did not leave the house much for a few months and had become anxious and nervous.
5. On 1 July 2022 the claimant had an altercation with colleagues at work. The claimant's daughter had seen how her father had been affected. He had become more lethargic and was not sleeping.
6. The claimant's daughter discovered that her dad was unhappy in connection with the incident that arose at work. He also disclosed to his daughter that there were other incidents at work which had been playing on his mind.

Claimant lodges a detailed grievance with daughter's help

7. The claimant's daughter discussed matters at length with her father over a period of time. She worked as Vice President HR for a large company and understood HR (and employment law). She used the information her father had given her to draft a lengthy grievance letter (running to 4 pages). That document said that unreasonable pressures at work, both from the behaviour of colleagues and volume of work, led to the claimant being unwell and being admitted to hospital.
8. The grievance referred to an altercation on 1 July 2022. The grievance also referred to "discriminatory comments" from 2 colleagues and it was asserted that age related comments had been made to the claimant which "purely

related to our age". The letter concluded by saying the letter had set out examples of intimidation, bullying and harassment and the claimant felt he had been singled out.

9. A grievance meeting was arranged for 15 September 2022 at which the claimant attended. He was permitted to bring along his daughter for support. The meeting lasted for 1 hour 45 minutes. The claimant was able to discuss the issues arising and why he was concerned, having spent time with his daughter in advance planning their approach at the meeting.

Grievance is dismissed

10. On 31 October 2022 the respondent issued the outcome letter dismissing the grievances. An investigation had been undertaken in relation to a conversation the claimant said had occurred. The investigation discovered that a heated discussion had taken place between the claimant and 2 colleagues. There were only 2 employees who were in the office on the day in question who were still employed by the company and they could not assist. While it was clear a discussion had taken place, the investigation did not find any evidence that the discussion related to age. The letter stated "this was a poor joke rather than a reference to your age".
11. While the grievance was not upheld, training and support was offered to the claimant upon his return to work, an occupational health referral had been made to support the claimant with a return to work and mediation would be arranged between the claimant and his colleague.
12. The claimant was told that he could appeal against the grievance within 5 working days.

Grievance appeal

13. The claimant and his daughter worked together upon an appeal and the claimant's daughter worked up a 4 page appeal letter, having spoken to her father and identified the points of appeal. That appeal letter was submitted within the time required. The appeal letter stated that the claimant's

colleagues had not told the truth about the altercation that had taken place. There were also a number of inconsistencies as to what had occurred.

14. The appeal letter also raised a data subject access request to receive personal data about the claimant as he wished to obtain information held about him (and in particular communications referring to him and his colleagues). The appeal letter also stated that he felt the discriminatory comments had not been properly investigated as the claimant believed his colleagues had enjoyed humiliating and mocking him and that the comments were “purely related to age”. It was said that their behaviour was unprofessional and discriminatory.
15. The appeal meeting took place on 22 November 2022 and was lengthy. The claimant was in attendance with his daughter and the appeal was heard by Mr Whannell (manager) and Mr Linton (head of HR). The claimant was able to articulate his concerns and point to specific issues that had arisen and explain his position fully. Mr Whannell is a mental health first aider and had no concerns about the claimant or his ability to conduct himself at the meeting.
16. By letter dated 1 December 2022 the claimant’s appeal was partially upheld. The letter noted that it was clear the claimant had been offended by the comments that had been made and while it was found to be offensive and inappropriate there was no evidence to suggest the comment had been related to age or that it had been discriminatory. The respondent undertook to take remedial steps to ensure no such inappropriate jokes were repeated in the team.
17. The remainder of the points the claimant had raised were fully taken into account but the decision had not changed. An occupational health discussion was to take place to work with the claimant to facilitate a return to work. The claimant was told he would report to a different supervisor and be given the support needed to perform his role and training would be offered. If the claimant wished to progress mediation that would be arranged. The letter noted that was the final decision and there was no further appeal.

Occupational health referral

18. On 23 December 2022 an occupational health report was issued following a telephone assessment that had taken place on 23 November 2022. The occupational health advisor noted that the claimant had been diagnosed with global transient anaemia caused by stress. The claimant had been under the care of his GP. The symptoms were poor memory recall. Headaches, poor sleep and symptoms of anxiety. The claimant had reported ongoing difficulty sleeping, reduced ability to focus and concentrate, anxiety and headaches. There were no other relevant health issues
19. The claimant was considered to be immediately unfit for a return to work but was likely to be fit within 8 weeks or so with a phased return to work recommended. A return to full work was expected within 3 months. With treatment and a resolution of the workplace stressors a full resolution is anticipated. The trigger was predominantly work related due to a high workload and challenging relationship with colleagues. The claimant was fit to attend workplace meetings in the meantime.

Attendance review meetings

20. The claimant had been off work from 2 July 2022. Following receipt of the occupational health report and workplace review meeting was arranged for 24 February 2023. The claimant was in attendance with his daughter with Mr Whannell. The claimant had been advised of changes in the business. The claimant had confirmed the occupational health report was accurate and the claimant was told that a supported phased return would be offered to him.
21. The claimant explained that he still felt let down by the respondent. He did not feel that the appeal outcome was justified and that he was not believed. He was still not sleeping well. The claimant felt the issue he raised had not been resolved.
22. The claimant was able to fully interact during the meeting and set out his position fluently and articulately.
23. During the meeting the claimant's daughter advised the respondent that the claimant had been consulting citizens advice and they were in the process of

identifying a solicitor to deal with matters given the treatment the claimant had suffered. A personal injury claim was mentioned. The claimant's daughter referred to a potential settlement with agreement on a figure and her dad leaving employment. It was noted that the company owner might not wish a claim on the back of his knighthood. The claimant was told that issue would be considered.

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24. The meeting ended by the claimant's daughter saying that her father was off sick and was not resigning and if the company could explore settlement sooner that would be considered as the claimant was "very motivated to go further" which meant progress with a claim against the company.

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25. On 6 Mach 2023 an outcome of the attendance review meeting was sent to the claimant. The claimant was advised that the company was not willing to consider enter into a settlement agreement as they wished to work with the claimant to support a return to work on a phased based to allow the claimant to continue being a valued member of the team.

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26. The claimant was told that if he wished to discuss a return to work that can be arranged. If he wished to resign that would be processed. The claimant was reminded that the company offered a confidential employee assistance programme and was given information about this.

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27. A further attendance review meeting took place on 16 June 2023 with the claimant and his daughter and Mr Whannell. The claimant noted that he had received positive news on the health front with everything being good (and matters to be assessed again in a year). The claimant was asked if he was now ready to return to work. He said he still did not know. He said things that happened at work had taken its toll even after nearly a year on. The claimant said he would "probably have to resign" as he did not want to go back from where he had come. His family and friends had told him not to return.

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28. The claimant was able to articulate his situation clearly and fluently and explain why he was unhappy as to what had happened to him. The claimant was a good worker. The claimant was told that the business and dynamics of the teams had changed and things would be different for him. A discussion

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took place as to the business and the role. He was offered the chance to go into the business and see for himself.

29. He was asked what he wanted to do or whether he wanted to think about things. He said he wanted to resign and the respondent confirmed matters would be set out in writing which it was on 20 June 2023.

Claimant sees community link practitioner

30. The claimant continued to meet with his GP. He also had fortnightly meetings with a community links practitioner which commenced on 17 August 2023 following a referral from his GP. The claimant had presented with stress, difficulty processing events and problems sleeping. The claimant was constantly ruminating about the events that had occurred and felt unable to return to work safely and had chosen to resign. The practitioner was helping the claimant move on with his life and continues to do so.

Advice and support given to the claimant

31. The claimant had been working with his daughter as to his options during the challenging issues he encountered at work. Given the change in her father, the claimant's daughter was to ensure the issues he had at work were properly dealt with such that the claimant could get back to his normal self.

32. The claimant had been told by his daughter about taking matters to a Tribunal and about time limits. Due to the ongoing issues, the focus was in relation to improving the claimant's health (and ideally seeking a settlement). The claimant's daughter had believed it was better to "put things behind him" rather than progress a claim given the issues arising and the need to focus on his health.

33. The claimant had been told by his daughter about time limits and that a claim in respect of discrimination was time barred. The focus was in relation to the other issues. The claimant's daughter supported her father throughout and had told the claimant that he could have gone to a Tribunal and she could have assisted him as she did in relation to the grievance and attendance review meetings. That was not something the claimant wished to do.

34. In July 2023 the claimant had a telephone consultation with his GP and he told his Doctor that he had “handed his notice in” and was considering a claim against his employer. The claimant knew about Employment Tribunals and time limits (and had been told by his daughter that the time limit for a discrimination claim has passed). The claimant and his daughter had also been considering raising other claims, including a personal injury claim,
35. The claimant had contacted ACAS in early to mid August 2023 and knew that he needed to progress matters and was given the telephone number for ACAS. He did not receive a return call in August 2023 and decided not to at further at this time.
36. On 4 September 2023 the claimant had been told to contact ACAS or an employment lawyer to see if he had a case or not to allow him to move on. No action was taken by the claimant at this time.
37. On 18 September 2023 when the claimant was discussing matters with his community links practitioner he was told to contact a lawyer to see if he had a case or not as he needed to move on with his life.
38. On 9 October 2023 the claimant had a further discussion with his practitioner. ACAS had not got back to him and he felt it was taking over his life and he was having difficulty sleeping. He still felt aggrieved. His daughter had advised him to “let it go” A call was made to the Glasgow Law Centre who had advised that there was a 3 month time limit and it looked like the claimant’s case would be out of time. The claimant told his practitioner that he had called ACAS before he had resigned but not followed it up. The claimant understood that a discrimination claim would be out of time.
39. On 26 October 2023 the claimant met his practitioner again and had followed up. The claimant spoke again with his daughter and it was agreed to take matters to a Tribunal, despite knowing the time limit had long since expired.
40. The claimant contacted ACAS on 27 October 2023 to commence early conciliation which ended on 13 November 2023.

41. A Tribunal claim was drafted by the claimant's daughter and first presented to the Tribunal on 30 November 2023. As there was an error on the form, it had to be re-presented which it was on 11 December 2023 when it was accepted.
42. The matters raised in the claim form broadly replicate the general matters that had been raised in the grievance. A further and better particulars document had been submitted which included further information, not all of which had been considered by the respondent at the time. The claimant would seek to introduce a further act that had not been foreshadowed in the claim form if the claim is to proceed.
43. Neither party in this case was able to say precisely what had been discussed from witnesses at the time. Given the issues arising related by and large to things that had been said at the time, there was no contemporaneous documents to consider. It was unclear if any of the statements that had been obtained would be of assistance in determining the issues if the claim was allowed to proceed.
44. The relevant individuals who would be required to give evidence in relation to the issues are no longer employed by the respondent. Steps had not been taken by either party to assess whether or not the contact details were still correct. One of the witnesses may be out of the country.

20 **Observations on the evidence**

45. Each of the witnesses gave evidence to the best of their recollection and belief. There were no real disputes on any of the material issues in this case and the issue to be determined required the Tribunal to exercise its discretion judicially in determining whether the claim was raised with a time that was just and equitable.
46. It was clear that the claimant remained affected by the issues that faced him in July 2022. The claimant was unhappy with how he felt he had been treated by the respondent. He believed the altercation he had at work together with the other matters he raised in his grievance had detrimentally affected him. One of the key issues was that the claimant believed he had not been believed

and he wanted closure, which in part was in essence a finding that what he had said happened, had in fact occurred.

47. The claimant accepted that in fact he could have raised a claim within the statutory time scale or shortly following it if he had wished to do so. That was particularly so given the claimant's daughter who was well versed in HR and employment related issues. The claimant accepted that he could have raised a claim. He had instead focused on other matters and did not wish to progress a Tribunal claim sooner, as he was entitled to do. The issue to be considered was the impact that had given the passage of time.

48. It was clear that the claimant's focus, naturally, was in relation to trying to help the claimant improve his health and get back to normal. It had clearly been hoped that a resolution could have been achieved by way of a settlement agreement, with the claimant leaving his role with some money. The respondent had not wished to do so. The claimant had been supported by his daughter and knew of his options, which included other litigation, such as an action for personal injury (which is still open to him).

49. Mr Whattan had explained that it was clear that the claimant and his daughter were seriously considering raising a claim and had made this clear when they raised the issue of a settlement agreement. He believed that if a settlement agreement was not something the respondent wished to offer, the claimant and his daughter were intent on raising proceedings. It was clear that the claimant and his daughter were unhappy at the time and knew of their rights.

Law

50. The time limit for Equality Act claims appears in section 123:

“(1) *Proceedings on a complaint within section 120 may not be brought after the end of –*

(a) *the period of three 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 ...”*

51. When considering whether it is just and equitable to hear a claim notwithstanding that it has not been brought within the requisite three month time period, the Employment Appeal Tribunal has said in the case of **Chohan v Derby Law Centre** 2004 IRLR 685 that a Tribunal should “have regard to” the Limitation Act 1980 checklist as modified in the case of **British Coal Corporation v Keeble** 1997 IRLR 336 which is as follows:
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- a. The Tribunal should have regard to the prejudice to each party.
- 10 b. The Tribunal should have regard to all the circumstances of the case which would include:
- i. Length and reason for any delay
- ii. The extent to which cogency of evidence is likely to be affected
- iii. The cooperation of the respondent in the provision of information requested
- 15 iv. The promptness with which the claimant acted once he knew of facts giving rise to the cause of action
- v. Steps taken by the claimant to obtain advice once he knew of the possibility of taking action.
- 20 52. In **Abertawe v Morgan** 2018 IRLR 1050 the Court of Appeal clarified that there was no requirement to apply this or any other check list under the wide discretion afforded to Tribunals by section 123(1). The only requirement is not to leave a significant factor out of account. Further, there is no requirement that the Tribunal must be satisfied that there was a good reason for any delay;
- 25 the absence of a reason or the nature of the reason are factors to take into account. A key issue is whether a fair hearing can take place.
53. In the case of **Robertson v Bexley Community Services** 2003 IRLR 434 the Court of Appeal stated that time limits are exercised strictly in employment

law and there is no presumption, when exercising discretion on the just and equitable question, that time should be extended. This is a matter which is in the Tribunal's discretion. The Court of Appeal in **Chief Constable of Lincolnshire v Caston** 2010 IRLR 327 observed that although time limits are to be enforced strictly, Tribunals have wide discretion.

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54. In **Rathakrishnan v Pizza Express (Restaurants) Ltd** 2016 ICR 283 the Employment Appeal Tribunal held that in that case the balance of prejudice and potential merits of the reasonable adjustments claim were both relevant considerations and it was wrong of the Tribunal not to weigh those factors in the balance before reaching its conclusion on whether to extend time.

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55. See too the judgment of Underhill LJ in **Lowri Beck Services v Brophy** 2019 EWCA Civ 2490 and in particular at paragraph 14. Ultimately the Tribunal requires to make a judicial assessment from all the facts to determine whether to allow the claims to proceed and in particular assess the respective prejudice.

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56. And also the principles set out by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust** 2021 ICR D5. The Court emphasised that it would be wrong to rigidly apply the "Keeble factors" since that would lead to a mechanistic approach to what is meant to be a very broad general discretion. The correct approach in considering the exercise of the discretion is to assess all the factors in the particular case that it considers relevant, including in particular the length of, and the reasons for, the delay.

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Discussion and decision

57. The Tribunal required to consider the evidence that had been led in light of the applicable law. The parties were reminded the issue is not whether the claimant could have raised a claim within the time limit but rather whether having balanced all the relevant factors and ignored the irrelevant factors, it was just and equitable to allow the claim to proceed. Both parties made detailed oral submissions which have been fully taken into account. The Tribunal considered the factors which the parties considered to be relevant in this case.

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Prejudice and hardship

58. The claimant's agent argued that the claimant had a stateable claim. It was
5 clear that conduct had occurred, given the grievance appeal had been
partially upheld. Not allowing such a stateable claim to proceed was
prejudicial to the claimant. The claimant wanted closure and this could only
be achieved by an independent adjudication of his claim.

59. The respondent's agent noted while the grievance appeal had been partially
10 upheld there was real prejudice to the respondent since the issues arising in
the claim are not identical to the issues that were raised at the time. Given the
issues would be determined by oral evidence, the passage of time would
affect the respondent more than the claimant since clearly the issues were in
the claimant's mind on a regular basis. It was not clear what, if any, witnesses
15 the respondent would be able to secure given the passage of time to fairly
depend the position. That caused greater prejudice to the respondent and
prevented the respondent from fairly defending the position and in effect
prevented a fair hearing from being possible.

Length and reason for any delay

20 60. The claimant's agent argued that the claimant was unfit and unable to raise a
claim sooner than when he did. While a long period of time had passed, once
the claimant knew about the position and was able to do so, he took action.
The medical position was not something that was the fault of the claimant.

61. The respondent's agent argued that there was in fact no medical evidence
25 that supported the assertion that the claimant was unfit to raise a claim or
done so sooner. As his community practitioner had not become involved until
August 2023, he was unable to assist in relation to issues prior to that time.

62. The Tribunal considered that there was no evidence that supported the
assertion the claimant could not have raised a claim sooner. The medical

evidence and the evidence the claimant gave, showed that the claimant did not want to consider a claim and was instead focussing on getting back to normal. However, there was no bar on his progressing a claim if he had wished to do so. The claimant had been told, clearly, by his daughter as to his options and he had made a choice at the relevant time.

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63. In this claim the claimant had the benefit of a professional HR adviser, a very senior practitioner (the claimant's daughter) who was able to skilfully assist the claimant in the drawing of his grievance and appeal and assist him at meetings, including workplace meetings. The claimant's daughter had made it clear to the respondent that litigation was being considered (particularly if a settlement agreement was not offered). She knew the applicable time limits and had told her father about these. Rather than take action, it was decided to try and get her father back to where he had been before the issues in this case occurred. The claimant's father could have decided to have taken action sooner, with the help of his daughter, but had decided not to do so.

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64. The delay in this case was very lengthy. The claimant had known about the time limits and existence of a Tribunal and of the ability to have his claims independently adjudicated upon but had focussed, not unreasonably, upon his health and looking forward and not back. However, by so doing, the passage of time naturally impacted upon the respondent's ability to present a response to any claim the claimant thereafter brought.

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The extent to which cogency of evidence is likely to be affected

65. The passage of time had an impact upon the evidence. This was a significant issue in this case. While the claimant's agent argued the evidence in this case had been captured at the investigation stage and as such there was little impact upon the evidence, in fact no one actually knew precisely what had been captured. Neither the claimant's agent nor respondent's agent had taken any steps to assess what evidence actually existed. It was therefore possible the investigation material did not assist either party and substantial reliance would require to be placed on the memories of the witnesses (in relation to matters that occurred over 2 years ago).

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66. This is a key issue given the passage of time. This was not a claim on which documentary evidence would assist in determining the issues since the claim related in large part to what the claimant said he had been told and things he said had happened to him in 2022. The issues would be determined from assessing credibility of those who were present at the time.
67. The claimant's concern during the grievance process and beyond was that his position had not been preferred. He was unhappy as to the conclusions drawn from the altercation the claimant had and what he said had been communicated to him by his colleagues.
68. Those colleagues were no longer in the business and it was possible one of the witnesses may be out of the country. Neither agent had taken any steps to assess whether any of individuals were even contactable from the contact information they had (which was not recent).
69. While the investigation material would undoubtedly help, there were other matters within the claim that would have no written material available (since they had not been specifically raised at the time). Determining those issues would require an assessment of the oral evidence. While the claimant clearly recalls what he said happened, it was highly unlikely the other witnesses would have such a clear recollection. The passage of time is likely to affect the ability of those individuals to recall what had been said in July 2022, assuming they could be located. That is something that requires to be placed in the balance in considering this issue,

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

70. The difficulty in this case is that the claimant had known about the facts giving rise to his claim since July 2022. He had raised a grievance and focussed on an internal process. The claimant had known about the claim he had (age discrimination) since 2022 and had made repeated reference to it.
71. He had also known about Tribunals and that there was a way in which his claims could be independently determined. Rather than progress matters, he

focused upon trying to improve his health. That is understandable but by not taking steps to act and seek to enforce his rights, he placed the respondent at a disadvantage given the passage of time.

Steps taken by the claimant to obtain advice once he knew of the possibility of taking action

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72. This case was unusual because the claimant had a senior HR practitioner who was helping him throughout his process – his daughter. She clearly had her father’s best wishes at heart and wanted to help him. But she could only do what he wanted. It was clear that a decision had been taken not to progress matter formally to a Tribunal. That was because it was known the time limit in
10 respect of raising a Tribunal claim had passed when the matter was being considered. Consideration was being given to raising a claim for personal injury or hoping to agree matters and enter into a Settlement Agreement.

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73. Even when it was clear that a settlement agreement was not being offered, the claimant did not take action, even although the claimant and his daughter had made it clear that was something in respect of which they were seriously motivated to do.

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74. Even when the claimant had been told by those supporting him of ways to seek advice, it took time for the claimant to actively progress matters, While had tried to make some contact he did not seek out a solicitor until after a claim was lodged. There was no reason given as to why an employment lawyer could not have been engaged at the very outset to protect the claimant’s position.

Was a fair hearing possible

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75. The claimant’s agent argued a fair hearing was possible as the pleadings set out “most” of the points which had already been investigated and there was no real prejudice to the respondent.

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76. The respondent’s agent disagreed arguing the passage of time had a material impact upon the respondent’s ability to respond to the issues and a fair hearing was not possible.

77. The Tribunal had a concern that the passage of time could significantly affect whether or not a fair hearing was possible given the impact the passage of time has upon the evidence and position as to witnesses.

Balancing the factors and whether the claim was raised in a period that was just and equitable

78. The Tribunal takes the foregoing facts into account and carefully balances them in determining whether the claim was raised in such period as was just and equitable on the facts of this case, in light of the applicable law. The Tribunal took a step back to assess the evidence in deciding whether the claim was raised within a period that was just and equitable. The Tribunal recognises the impact matters had upon the claimant and the very serious medical issues and challenges the claimant had. The Tribunal also recognises the desire the claimant now has to seek closure via the Tribunal process. The claimant naturally focussed on getting better rather than progressing matters formally.

79. However, by delaying matters for the time he did, the claimant made it more difficult for the respondent to be able to fairly respond to the claim that was later brought. The difficulty for the claimant was the fact he was not believed at the time. It was clear that the issue in this case would be to determine from the evidence led at the Hearing whose position was to be preferred. The issue in this case would be determined by oral evidence. It was unclear the extent to which any documentary evidence would assist. It was entirely likely that there would be no documentary evidence in respect of some of the issues to be determined.

80. The claimant had known of the right to bring a claim and of the ability to have it independently determined for many months. This had been set out to him on numerous occasions and he had taken some steps to enforce his rights. He only progressed matters properly at the end of October 2023 when he initiated early conciliation and had his claim accepted on 11 December 2023.

81. It is important that in assessing justice and equity regard is had both to the claimant and the respondent. The outcome needs to recognise the impact upon both parties. Clearly the claimant wishes to have his claim considered

and strongly believes his position would be preferred. The passage of time is such in this case that the Tribunal considers the respondent is likely to be placed at a substantial disadvantage. Had the claimant raised his claim earlier, in 2022 or even in the first half of 2023, it was likely that the respondent would have been able to capture relevant evidence from those witnesses and take steps to locate the individuals to ascertain the position. The passage of time has materially affected the position. The impact of the delay is material and seriously affects the issues in this case.

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82. The Tribunal took into account what has been pled from both parties and the evidence led. The Tribunal recognises the importance of this matter to the claimant and his desire to bring closure. The Tribunal also recognises the importance of ensuring both parties are placed on an equal footing such that a fair hearing is able to take place.

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83. Having considered all of the factors in this case, the Tribunal has decided that the claim was not raised within such other period as was just and equitable. As a result, the claim is dismissed.

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Employment Judge: D Hoey
Date of Judgment: 26 April 2024
Entered in register: 29 April 2024
and copied to parties