Case Number: 2302779/2017

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Miss R Razmaite

Respondent
DFDS (Guernsey) Limited

and

PRELIMINARY HEARING

Held at Ashford on 31 August 2018

Representation
Claimant: In Person
Respondent: Mr N. Moore, Consultant

Employment Judge Harrington

JUDGMENT

1 The Tribunal does not have jurisdiction to hear the Claimant's claim of unfair dismissal and accordingly, the claim is dismissed.

2 The Tribunal does not have jurisdiction to hear the Claimant's claim of an unlawful deduction from earnings and accordingly, the claim is dismissed.

3 The Claimant's application to amend her claim to include a further complaint of victimisation is permitted.

4 The Claimant's claims of discrimination shall proceed to a full merits hearing.

REASONS

Introduction

[The numbers within square brackets refer to pages within the bundles, with 'R' referencing the Respondent's bundle and 'C' referencing the Claimant's bundle.]

1 By an ET1 received by the Tribunal on 8 October 2017, the Claimant brings claims of unfair dismissal, an unlawful deduction from earnings and sex discrimination. The matters arise from the Claimant's employment as a stewardess in the duty free shop onboard vessels operated by the Respondent, DFDS (Guernsey) Limited.

2 On 11 January 2018 a Preliminary Hearing (Case Management) was held by telephone. As part of the Case Management Order made following that hearing, the Claimant was required to provide further information about her claim of discrimination by 1 February 2018. It is relevant to note that the Claimant did provide further information in a document dated 31 January 2018 [R29A-29G] and in a table on 6 March 2018 [R30-38].

3 The Case Management Order also provided for a further Preliminary Hearing to be listed to determine the following matters:

a) Whether the Tribunal has jurisdiction to consider the Claimant's unfair dismissal claim having regard to section 199 of the Employment Rights Act 1996, in particular whether the Claimant was at material times ordinarily resident in Great Britain;

b) If the Tribunal concludes that the provisions above do not apply to bar its jurisdiction, whether the Claimant was dismissed for the purposes of section 95 of the Employment Rights Act 1996;

c) Whether the Tribunal has jurisdiction to consider the Claimant's claim of unauthorised deductions having regard to:

i. Section 199 of the Employment Rights Act 1996, in particular whether the Claimant was at material times ordinarily resident in Great Britain; and / or
ii. Sub-section 199(1) of the Employment Rights Act 1996 as amended by Regulation 3 of the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014.

d) Whether all or any of the Claimant's claims under the Equality Act 2010 were presented within the time limits set out in section 123 as amended by section 140B;

e) With regard to the applicable time limits relating to all the Claimant's claims, whether the requirements of section 18A of the Employment Tribunals Act 1996 have been complied with;

f) If all or any of the Claimant's claims are permitted to proceed, the Tribunal will make case management orders for the future conduct of the proceedings and list the case for a final hearing.

4 At the Preliminary Hearing today, the Claimant represented herself and Mr Moore, Consultant, represented the Respondent. I was referred to two bundles of documents, a bundle from the Respondent paginated 1-117 and a bundle from the Claimant paginated 0 - 33. I heard oral evidence from the Claimant, limited to matters relevant to the issues I needed to determine and both parties made closing submissions. At the conclusion of the hearing, I reserved my judgment.

Application to Amend

5 During the afternoon of the Preliminary Hearing, the Claimant made an application to amend her claim. I carefully noted the amendment she wished to make as follows:

> 'The Claimant says that she wishes to amend her claim to add a further complaint of victimisation. The Claimant says that she carried out a protected act on 21 January 2017. The Claimant told the Captain that she was being harassed by Jonibal Carrasqueira ('JC').
>
> On 6 April 2017 the Claimant repeated these complaints in writing to Michael Stig, the Respondent's Human Resources manager.
>
> The Claimant alleges that by reason of carrying out these protected acts, she was subjected to the following detriment: receiving the email on 27 February 2018 informing her that the employment relationship had terminated.'

6 In making her application, the Claimant submitted that she had not sought any legal advice about her case but that she had mentioned this alleged detriment within the table of further information she provided on 6 March 2018 [R38]. In that table she wrote *'On 27th February 2018 DFDS emailed me that I was dismissed backdated. I consider this as victimization.'* She submitted that her complaints and the termination of her employment were linked.

7 On behalf of the Respondent, Mr Moore strongly objected to the application to amend. He referred to the delay in making the application even after the Claimant had provided further information in March. He also submitted that there was absolutely no evidence that the communication in February 2018 was motivated by the Claimant's complaints of harassment and that it was very unlikely that it would ever be established as an act of victimisation, particularly in

the context of the communications at the time which had been attempting to get the Claimant back to work.

8 In deciding whether to exercise its discretion to grant leave to amend, a Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

9 In Selkent Bus Co v Moore 1996 ICR 836, the Employment Appeal Tribunal stated that relevant circumstances include:

a. The nature of the amendment, i.e. whether the amendment sought is a minor matter such as the correction of clerical and typing errors, the addition of factual details to existing allegations or the addition or substitution of other labels for facts already pleaded or, on the other hand, whether it is a substantial alteration making entirely new factual allegations which changed the basis of the existing claim.

   i. When considering applications to amend that arguably raise new causes of action, Tribunals should focus on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old pleading – the greater between the factual and legal issues raised by the new claim and the old, the less likely it is that the amendment will be allowed; see: Abercrombie v Aga Rangemaster Ltd 2013 IRLR 953 CA.

   ii. For the exercise to be truly a re-labelling one, the claim form must demonstrate the causal link between the unlawful act and the reason for it. See: Foxtons Ltd v Ruwiel EAT 0056/08.

b. The applicability of statutory time limits. If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions.

   i. The Tribunal must consider time limits as at the date the application is made unless the Claimant seeks to add or substitute a Respondent, in which case the application to amend dates back to the original application. See: Cocking v Sandhurst (Stationers) Ltd 1974 ICR 650.

   ii. Although the applicability of the relevant time limit is an important factor, the weight of authority suggests that it is not determinative. Thus the fact that the relevant time limit for presenting the new claim has expired will not exclude the discretion to allow the amendment. This might be the case, for example, where the new claim being brought by

way of amendment is so closely related to the claim already the subject of the claim form; see: British Newspaper Printing Corporation (North) Ltd v Kelly 1989 222 CA; Ali v Office of National Statistics 2005 IRLR 201 CA. Also see paragraph 10(1) of the Presidential Guidance on the General Case Management for England and Wales, July 2014.

iii. The situation where an amendment is sought, and in respect of which Parliament has not laid down any rules imposing time limits, is different to the situation in which a claim is already underway and to which statutory time limits and the just and equitable extension principle applies; see: Charles v Kuehne and Nagel Ltd EAT 0363/12. Indeed, it is likely to be appropriate to treat an application as one of amendment rather than one of extension of time to ensure the Tribunal appreciates the potential range of relevant factors; see: Mouteng v Select Services Partner Ltd EAT 0059/08. Note however that in Ali v Office of National Statistics 2005 IRLR 201 the Court of Appeal concluded that it was impossible to think, and it would be difficult to conceive, of circumstances where the just and equitable test, as opposed to the balance of injustice and hardship test, would lead to a different result.

c. Where the amendment is simply changing the basis of, or re-labelling the existing claim, it does not matter whether the amendment was brought within the time limit. See for example: London Borough of Hammersmith and Fulham v Jesuthasan 1998 ICR 640 CA.

d. The timing and manner of the application. Although the Tribunal rules do not lay down any time limit for the making of amendments, and an application should not be refused solely because there has been a delay in making it, it is relevant to consider why the application was not made earlier. An application for amendment made close to a hearing date usually calls for an explanation as to why it is being made then and not earlier, particularly where the new facts alleged must have been within the knowledge of the Claimant at the time the claim was presented.

i. The main question is not whether the Claimant's conduct is reprehensible but whether justice overall to both parties, balancing the hardship to each, requires that the amendment be granted.

ii. The Tribunal will have regard to the overriding objective and the Tribunal will consider, for example, whether delay would ensue, and whether unrecoverable additional costs might be incurred by reason of delay or longer hearing.

10 If the Tribunal can be sure that the proposed amendment asserts an utterly hopeless case, it is permissible to take the merits of that proposed new claim

into account as a reason for not allowing the amendment, since to allow it in such circumstances would be pointless. However, in all other cases it should be assumed that the new claim is arguable and therefore the apparent merits of the claim are irrelevant to the consideration of whether or not the amendment should be allowed. This is so particularly because at the point when it is sought to introduce a new claim by amendment, usually the evidence which goes to support or undermine that specific head of claim will not yet be before the Tribunal, as such evidence will normally only be gathered, prepared and introduced after the amendment has been allowed. See: Woodhouse v Hampshire Hospitals NHS Trust [2012] UKEAT 0132.

11 Where a claimant asserts that there has been a discriminatory policy or regime, they may have further complaints of discrimination which post-date the presentation of their claim to a tribunal. In such circumstances a claimant will have a choice as to whether to bring a new claim on the basis of the discrimination which does not form part of the original claim (subject to the usual rules of time limits and jurisdiction) or they can apply to amend the original claim to include the later discriminatory acts. As the EAT held in Chaudhary & others v Platt EAT/1100/01 (20 December 2001, unreported), the correct position in law is that it is open to a court or tribunal to permit an amendment to raise allegations which post-date the originating complaint. However, the Tribunal's usual discretion as to amendment applies. Whilst it is open to the Tribunal to allow such an amendment, it is also open to the Tribunal to disallow it. The usual guidelines as to amendments set out in the case of Selkent Bus Co Ltd v Moore [1996] IRLR 66 will be applicable. In Prakash v Wolverhampton City Council UKEAT/0140/06 it was held that there is no reason in principle why a cause of action that has accrued after the presentation of the original claim form, and could therefore not have been included when the claim form was originally presented, should not be added by amendment if appropriate and that such an amendment may be allowed even 'where the original cause of action is bad'.

12 In applying the relevant principles and taking into account all of the circumstances, I am satisfied that the Claimant's application to amend her case to include a claim of victimisation, as set out in paragraph 5 above, should be allowed. In reaching this decision I have had particular regard to the following matters:

12.1 The amendment is a substantial alteration making a new factual allegation of victimisation by the communication sent on 27 February 2018. However the allegation does not involve a substantially different area of enquiry to the original pleading. The issues raised by the new claim flow from the existing claim and form part of the same narrative. The amendment arises from the final correspondence between the Claimant and the Respondent following the conclusion of the internal investigation procedure.

12.2 The amendment concerns a communication sent on 27 February 2018 and therefore as at the date of the application, the complaint was out of time. I acknowledge that this is an important factor but it is not determinative of the application. I am satisfied that the new claim being brought by way of amendment is closely related to the claim already the subject of the ET1 and that it is appropriate to exercise my discretion to allow the amendment.

12.3 I have considered the timing and manner of the application. I have applied the overriding objective and am content that no additional delay will ensue by the making of the application at the Preliminary Hearing and that balancing the injustice and hardship to each party of allowing or refusing the application, it should be allowed.

12.4 I acknowledge that the Respondent has strong arguments in response to the claim of victimisation. However I am not in a position today to conclude that the proposed amendment asserts an utterly hopeless case. Accordingly, at this stage it should be assumed that the new claim is arguable with the complete and detailed evidence to support or undermine the claim not yet before the Tribunal.

12.5 I have taken into account the principles set out in Chaudhary & Others v Platt EAT/1100/01 (20 December 2001, unreported) and Prakash v Wolverhampton City Council UKEAT/0140/06. It is entirely appropriate to allow an amendment where the cause of action accrued after the presentation of the original claim form.

Relevant Factual Background

13 I turn now to the factual background relevant to the preliminary issues. The Claimant principally gave evidence on three matters: her residency, her alleged dismissal and why she brought her claim before the Employment Tribunal in October 2017 and not earlier.

14 The Claimant is ordinarily resident in Lithuania. This was expressly confirmed by the Claimant at the commencement of the hearing.

15 With regards to her dismissal, the Claimant initially asserted that she had been dismissed on 17 July 2017 (on the telephone), on 21 September 2017 and also on 27 February 2018. However, during her oral evidence the Claimant told me that she was not dismissed on 17 July 2017 - rather, in a telephone call on that day an offer of a severance package was made by the Respondent, which the Claimant did not accept.

16 In relation to the email received on 21 September 2017, the Claimant said that she also did not consider she had been dismissed by this communication. Actually the Claimant treated herself as still being employed after this letter as

evidenced by the fact that she continued to discuss her return to work with the Respondent.

17 The Claimant stated that she considered she had been dismissed by an email dated 27 February 2018 [C27]. It is the Respondent's case that the Claimant was notified that her employment was treated as being terminated in an email of that date. The email confirmed an effective date of termination of employment of 21 September 2017. I have found it unnecessary to determine whether this amounted to a dismissal of the Claimant for the purposes of section 95 of the Employment Rights Act 1996.

18 By a document dated 31 January 2018 and a table provided on 6 March 2018, the Claimant provided further details in respect of her discrimination claim. The Claimant also provided further clarification today.

19 In summary, she complains of:

19.1 Harassment by the alleged conduct of her manager, Jonibal Carrasqueira, in January 2017;

19.2 Victimisation, as a result of complaining about the alleged harassment, with the following alleged detriments:

a) treatment received from 8 - 22 February 2017;

b) a negative statement made about the Claimant by Captain Mount on 21 April 2017;

c) the Respondent's investigation into the alleged harassment;

d) the email communication sent to the Claimant on 27 February 2018.

20 The Claimant has not received legal advice about her claim and the process of identifying the entirety of her discrimination claim was difficult. However, that her claim has always referred to complaints about the Respondent's process of investigation is clear. In her ET1, the Claimant refers to the investigation carried out into her complaints of harassment in box 8.2. She states,

'Investigation did not address the harassing issue in anyway instead everything I said or did was distorted.' [R6]

Within the additional information section of the ET1, she continues as follows,

'Unfortunately employer did not answer my questions about harassment, Investigation process and employers changing positions. I feel that no harassment investigation was done. Investigation was about simulating my professional misconduct and sabotaging my reputation. The time extended, I

am afraid it was premeditated (I would get answers in few or more weeks if any).' [R8]

21 The Claimant began the Early Conciliation process on 8 May 2017 ('Day A') and a certificate was issued on 8 June 2017 ('Day B').

22 The Claimant tells me that she thinks her claim was presented out of time when it was received by the Tribunal on 8 October 2017. She asks the Tribunal to exercise its discretion to extend time.

23 In her oral evidence the Claimant stated that she wished to have the internal investigation concluded before she brought her ET claim. That investigation finished on 25 September 2017. From that date until 8 October 2017, the Claimant told me that she waited. She described being upset about matters and that it took a lot of courage and strength to bring the claim. The Claimant confirmed that she was aware of the 3 month time limit for bringing a claim.

Legal Summary

24 Section 199 of the Employment Rights Act 1996 ('ERA 1996') refers to the jurisdiction of the Tribunal in cases of employment on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995. Sections of the Act relating to claims of unfair dismissal and an unlawful deduction of earnings apply to such employment if and only if,

(a) the ship's entry in the register specifies a port in Great Britain as the port to which the vessel is to be treated as belonging,

(b) under his contract of employment the person employed does not work wholly outside Great Britain, and

(c) the person employed is ordinarily resident in Great Britain.

(section 199(7) ERA 1996)

25 The fact that section 199(7) applies to both unfair dismissal and an unlawful deduction from earnings is clear from sections 199(8)(f) and (b) respectively.

26 Section 199(1) of the ERA 1996 states as follows,

'Sections 1 to 7, Part II and sections 86 to 91 do not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State [or an agreement specified in regulations under section 32(a) of the Merchant Shipping Act 1995].'

27 Section 123(1) of the Equality Act 2010 provides that a complaint 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 Tribunal thinks just and equitable.

28 Under section 123(3)

(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 on it.

29 In Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686 the Court of Appeal held that when determining whether an act extended over a period of time (expressed in current legislation as conduct extending over a period) a Tribunal should focus on the substance of the complaints that an employer was responsible for an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably on the grounds of a protected characteristic. This will be distinct from a succession of unconnected or isolated specific acts for which time will begin to run from the date when each specific act was committed. One relevant but not conclusive factor is whether the same or different individuals were involved; see: Aziz v FDA 2010 EWCA Civ 304 CA.

30 The proper approach to an assessment at a preliminary hearing of whether there is or is not an act extending over a period is that set out in Aziz v FDA [2010] EWCA Civ 304 CA in which it was said:

"34. *One issue of considerable practical importance is the extent to which it is appropriate to resolve issues of time bar before a main hearing. Obviously there will be a saving of costs if matters outside the jurisdiction of the ET are disposed of at an early stage. On the other hand a claimant must not be barred from presenting his or her claim on any issue where there is an arguable case.*

35. The Court of Appeal considered the correct approach to this matter in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548. In that case the claimant complained of 17 incidents of racial discrimination over a period of many months. The question of time bar was dealt with at a pre-hearing review. The claimant gave oral evidence on that occasion. Having heard the claimant's evidence, the ET allowed five of the claimant's complaints to proceed but dismissed the other 12 complaints as being out of time. The EAT and the Court of Appeal both upheld that decision. Hooper LJ gave the leading judgment, with which Hughes LJ and Thorpe LJ agreed. Hooper LJ stated that the test to be applied at the pre-hearing review was to consider whether the claimant had established a prima facie case. Hooper LJ accepted

counsel's submission that the ET must ask itself whether the complaints were capable of being part of an act extending over a period.

36. Another way of formulating the test to be applied at the pre-hearing review is this: the claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs: see Ma v Merck Sharpe and Dohme Ltd [2008] EWCA Civ 1426 at paragraph 17."

31 It is implicit in the decision of the Court of Appeal that where an employee surpasses the "reasonably arguable" threshold at a preliminary hearing, then it remains open to a respondent to revisit the point once all of the evidence is presented at the full hearing.

32 With regards to section 123(1)(b), in Robertson v Bexley Community Centre [2003] IRLR 434 the Court of Appeal stated that when Employment Tribunals consider exercising the discretion there is no presumption that they should do so unless they can justify failure to exercise the discretion. A Tribunal cannot hear a complaint unless the Claimant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

33 In accordance with the guidance set out in British Coal Corporation v Keeble [1997] IRLR 336, the Tribunal might have regard to the following factors: the overall circumstances of the case; the prejudice that each party would suffer as a result of the decision reached; the particular length of and the reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the Respondent has cooperated with any requests for information; the promptness with which the Claimant acted once he / she knew of facts giving rise to the cause of action; and the steps taken by the Claimant to obtain appropriate advice once he / she knew of the possibility of taking action. The relevance of each factor depends on the facts of the individual case and Tribunals do not need to consider all the factors in each and every case. It is sufficient that all relevant factors are considered. See: Department of Constitutional Affairs v Jones [2008] IRLR 128 CA; Southwark London Borough Council v Afolabi 2003 ICR 800 CA.

34 As identified in Miller v Ministry of Justice UKEAT/003/004/15 at paragraph 12, there are two types of prejudice which a Respondent may suffer if the limitation period is extended. They are the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and the forensic prejudice which a Respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents, and losing touch with witnesses.

35 If a Claimant advances no case to support an extension of time, he / she is not entitled to one. However, even if there is no good reason for the delay, it might still be just and equitable to extend time. See for example: Rathakrishnan v Pizza Express Restaurants Ltd UKEAT 0073/15. In Apelogun-Gabriels v Lambeth London Borough Council [2001] EWCA Civ 1853 it was said that that the fact that a Claimant deferred commencing proceedings in the Tribunal while awaiting the outcome of internal proceedings is only one factor to be taken into account when considering an application to extend time.

Conclusions

Unfair Dismissal and Unlawful Deduction from Earnings

36 It is clear that the Claimant may only proceed with her claims of unfair dismissal and an unlawful deduction from earnings if she is able to satisfy the requirements set out in section 199(7) of the Employment Rights Act 1996.

37 With regards to the claim of unfair dismissal, the first two requirements are satisfied – the relevant ships are registered to the Port of Dover [109, 111] and, taking into account that the vessels travel from Dover and Dunkirk, the Claimant was regularly working in the Port of Dover and English territories. However the third requirement is not established. The Claimant is not ordinarily resident in Great Britain and was not, at all material times. The Claimant herself accepted this expressly; she is resident in Lithuania. Accordingly, the Claimant is unable to proceed with her claim of unfair dismissal as the Tribunal does not have jurisdiction to consider it.

38 With regards to the claim of an unlawful deduction from earnings, the Claimant is again unable to proceed with her claim because she is not ordinarily resident in Great Britain and was not, at all material times. The Tribunal therefore does not have jurisdiction to hear the claim.

39 I acknowledge the fact that the Respondent provided a second argument as to why the Tribunal was unable to consider the Claimant's claim of an unlawful deduction from earnings relying upon section 199(1). Mr Moore submitted that even if the Claimant satisfied the residency requirement, she was employed under an agreement specified in regulations under section 32(a) of the Merchant Shipping Act 1995 and therefore the relevant part of the ERA 1996 (Part II) did not apply to the Claimant's employment. Due to the Claimant's express evidence and full acceptance of the fact that she did not satisfy section 199(7)(c) of the ERA 1996, I have felt is unnecessary to consider this additional argument. It is clear that the Tribunal has no jurisdiction to consider the Claimant's claim of an unlawful deduction from earnings.

Discrimination: Harassment (Section 26 of the Equality Act 2010 and Victimisation (Section 27 of the Equality Act 2010)

40 I now turn to the Claimant's claims of discrimination. It is accepted that the Equality Act 2010 applies and that the Tribunal has jurisdiction to consider such claims brought in time or, if brought out of time, claims where the Tribunal exercises its discretion to extend time to such other period as the Tribunal thinks just and equitable.

41 During the hearing, the Claimant identified her complaints of harassment and victimisation, which occurred in January and February 2017 respectively. She also raised allegations concerning the conduct of the Respondent following her complaints. It is clear from an examination of the Claimant's ET1 that she refers to the Respondent's conduct of the investigation into her grievance as part of her claim. I have set out examples of this at paragraph 20 above. The Claimant also sets out the particulars of this complaint in her table. These particulars include the statement,

'I believe that company's internal investigation was an extension of victimisation.' [R37]

42 Accordingly, the Claimant's claims of discrimination relate to alleged conduct in January and February 2017, the alleged conduct of the Respondent in their investigation of the Claimant's complaints which, on the Claimant's case continued until her appeal was dismissed on 25 September 2017 and then the correspondence received in February 2018 (as set out in the amendment to the claim which I have allowed).

43 I have carefully considered section 123(3) of the Equality Act 2010 and I have focused on the substance of the Claimant's complaints of discrimination against the Respondent. I am satisfied that the Claimant raises a reasonably arguable basis for alleging that the complaints are to be considered as an ongoing situation or a continuing state of affairs. The Claimant has set out a narrative today covering the initial alleged harassment and then an ongoing situation of an alleged discriminatory response by the Respondent to her complaints. This establishes a prima facie case that the complaints form an act extending over a period.

44 I am satisfied, following this Preliminary Hearing, that the claims should proceed to a full merits hearing. It will be at this hearing, at which the Tribunal will hear the entirety of the evidence, when the issues of time limits including the question of continuing act and the exercise of the Tribunal's discretion to extend time will be determined.

Further Case Management

46 Further case management is now required of the discrimination claims, set out in paragraph 19 above, which shall proceed to a full merits hearing.

47 A telephone Preliminary Hearing shall be listed to enable identification of the issues arising in the claims and for directions to be made including listing the case for a final hearing. The parties are to advise within 21 days of the promulgation of these Reasons whether they have any dates to avoid for the telephone hearing. The parties are also to use their best endeavours to provide an agreed list of issues to be determined at the final hearing within 28 days.

Employment Judge Harrington
9 November 2018