THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE C HYDE (sitting alone)**

BETWEEN:

Claimant

MISS E MASTERS

AND

Respondent

LONDON UNDERGROUND

ON: **11 February 2020**

APPEARANCES:

For the Claimant: **In Person**

For the Respondent: **Miss I Ferber, Counsel**

PRELIMINARY HEARING JUDGMENT

The Judgment of the Employment Tribunal is that:

The claim was struck out on the ground that the Tribunal did not have jurisdiction to determine it because it was presented out of time.

REASONS

1. Written reasons for the above Judgment were requested by the Claimant at the hearing. Further, reasons are provided only to the extent that the Tribunal considered it necessary to do so in order for the parties to understand the reasons for the decision above.

2. Further, they were provided only to the extent that it was proportionate to do so having regard to the overriding objective in the Employment Tribunals Rules of Procedure.

3. All findings of fact were reached on the balance of probabilities.

4. This open preliminary hearing was originally listed as a closed preliminary hearing but following representations by the Respondent as to an issue which they believed needed to be dealt with, the hearing was converted to an open preliminary hearing. The purpose of the hearing was to determine whether the claim had been presented out of time. The parties were notified of this by a letter from the Tribunal dated 3 February 2020.

5. The Claimant was employed by the Respondent in October 1969 and continues in her employment as a Trains Manager.

6. As set out at page 7 of her claim form, she described having made a disclosure of whistle-blowing on 27 April 2018 by way of an email grievance and that the Respondent informed her in May 2018 that they considered that the allegations that she was reporting were too old, relating to events which had occurred in 2011/2012. They proposed facilitated discussions which eventually took place up to 20 December 2018 with Mr Boots.

7. The claim form was presented on 18 August 2019. In the claim form at page 7, section 8.2, the Claimant describes how on 27 April 2018 she submitted a grievance within which she made what she says were whistle-blowing disclosures. She then describes a process whereby she says that the Respondent took no action or the expression that she has used during this hearing that they 'stone-walled' her. She described spending some months chasing matters up and then making representations to the Managing Director who then referred her to a senior member of staff, Mr Boots, with whom she had two meetings in October and November 2018.

8. The wording of the claim form in this section makes it clear that the Claimant understood (and she has repeated it in submissions to me today) that when Mr Boots wrote to her on 20 December 2018, she was being told that the grievance would not be investigated and that no further action was being taken by the Respondent. I reviewed the letter from Mr Boots which is in the bundle which was helpfully prepared by the Claimant for today's hearing at pages 35-38 and it is clear that he gives no further suggestion of an appeal or that the Claimant could have recourse to any further process.

9. The Claimant then wrote to the new Managing Director on 12 March 2019 effectively asking him to look at the issue again and he responded by letter dated 21 March 2019. He referred her back to the fact, as he characterised it, that the matter had "been investigated". The Claimant first of all says that it was reasonable for her to raise the matter with the new Managing Director given that the discussion with Mr Boots had taken

place as a result of the previous Managing Director having referred her to Mr Boots. She argued further, that the new Managing Director was incorrect when he referred to the matter having been investigated given that the outcome in December 2018 was that the grievance would not be investigated.

10. The issues that I had to consider were what the claim related to, when time began to run in relation to that complaint, and whether the claim was presented out of time.

11. I was referred by Miss Ferber to the relevant provisions under the Employment Rights Act 1996, namely section 48 in relation to the time limits for bringing complaints about whistle-blowing detriments.

12. It appeared to me that the point that the Claimant was making was that she believed that the grievance that she submitted in which she 'blew the whistle' was not investigated either at all or properly, the Respondent did not follow its procedures because she had blown the whistle and the Respondent did not want to lift the lid on the issues that she was reporting. Indeed, in the claim form she refers to various, as she says, instances of this 'stone-walling' or obstruction up to the meeting with the Head of HR (Mr Boots). It seemed clear to me however that by 20 December 2018 at the latest, the Claimant knew, and it was made clear to her by the Respondent, that no action would be taken by the Respondent. That was the end date of any allegation of 'stone-walling', as that is the date on which the decision to take no action in relation to the grievance was communicated to the Claimant. She attended a meeting at which she was told this and this was followed up in a letter.

13. The subsequent action by the Claimant of writing to the new Managing Director on 12 March 2019 appeared to me to be simply an attempt by the Claimant to revive a matter about which she was aware that the Respondent had already made a decision. Further, it was clear from the text of the response from the new Managing Director dated 21 March 2019 that he was not making any further decision but simply referred the Claimant back to the fact that the matter had been concluded in December 2018.

14. If one were to follow the Claimant's logic then she could, for example, could have written to the Managing Director again yesterday and then suggested that this revived the matter.

15. It appeared to me that the Respondent's decision about which the Claimant complained was certainly made by 20 December 2018 and that is the date from which time ran. The effect of that is that time expired on 19 March 2019.

16. There was no dispute in this case that the Claimant used the early conciliation process between 19 June and 19 July 2019 and she presented her claim form on 18 August 2019. As the early conciliation

process was commenced after the limitation period under the 1996 Act had expired, it did not have the effect of extending time.

17. The basic test in relation to time applied therefore: was it reasonably practicable for the Claimant to have presented her claim before the end of the period of three months of the date of the failure to act? There was nothing before me to suggest that it was not reasonably practicable for her to have done so. Indeed, the fact that the Claimant was able to write a letter to the new Managing Director on 12 March 2019 before the limitation period had expired on 19 March 2019, was further confirmation of that.

18. In all the circumstances, I concluded that the Tribunal did not have jurisdiction to hear the claim because it was presented outside of the statutory time limit and the claim was therefore struck out.

19. The Tribunal considered a bundle produced by the Claimant which ran to approximately 45 pages and which the Tribunal marked [C1].

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Employment Judge Hyde

Dated: 30 March 2020

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