Case Number: 2401516/21

EMPLOYMENT TRIBUNALS

Claimant: Miss K Rai

Respondent: The Christie Hospital Foundation Trust

Heard at: Manchester (in person) **On:** 18 May 2022

Before: Employment Judge Leach (sitting alone)

Representatives

For the claimant: In person

For the respondent: Mr M Wright, Solicitor

RESERVED JUDGMENT- PRELIMINARY HEARING

1. The claim was presented outside of the time limits applicable to the complaints made in the claim.

2. It was reasonably practicable for the claimant to have presented her complaints for automatic unfair dismissal within the 3 month time limit at section 111(2)(a) Employment Rights Act 1996.

3. It was reasonably practicable for the claimant to have presented her complaints of being subjected to detriments on the grounds she made protected disclosures within the 3 month time limit at section 48(3)(a) Employment Rights Act 1996.

4. In relation to the claimant's complaints under the Equality Act 2010, it is not just and equitable to extend time under section 123(b) Equality Act 2010.

5. The claim is therefore dismissed.

REASONS

Introduction

1. This preliminary hearing was held to determine various preliminary issues including the determination of time limit issues, the subject matter of this judgment.

2. Miss Rai is the claimant named on the claim form and (as is now clear) the details of the claim provided with the claim form are mainly relevant to her claim.

3. Professor Wardley is an additional claimant named on the same claim form relying on Rule 9 of the Employment Tribunal Rules of Procedure 2013 (ET Rules). Professor Wardley has also issued separate proceedings under case number 2402430/21. An order was made that the cases should be heard together and this preliminary hearing determined issues relating to both claimants. However, it is appropriate that I provide this judgment on the time limit points affecting the claimant, Miss Rai, only.

4. The parties provided a file (bundle) of documents for the hearing. References below to page numbers are to this bundle.

The Time Limit Issues

5. In her claim form, the claimant brings 3 types of complaint:

   a. Automatic unfair dismissal (claimant alleging that the reason for dismissal was that she made protected disclosures) under s103A Employment Rights Act 1996 (ERA).
   b. Being subjected to detriments on the grounds that the claimant made protected disclosures (under s47B ERA).
   c. Discrimination complaints (protected characteristic, race) under the Equality Act 2010 (EQA).

6. At a previous preliminary hearing on 4 February 2022 ("February Hearing") we identified that the claims appear to have been made out of time, applying the relevant time limits relevant to each claim (I detail these under the heading *"relevant law"* below). The claimant was aware of the time limit issues to be considered at this preliminary hearing on 18 May 2022. She provided evidence at the hearing and was questioned by Mr Wright.

7. I have made relevant findings of fact having heard the claimant's evidence and considered relevant documents.

Findings.

Detriments (protected disclosures)

8. The claimant's employment with the respondent ended on 10 September 2020. By that date the claimant claims to have made various protected disclosures to the respondent.

9. Identifying the alleged detriments which form part of the claimant's claim has not been straightforward. Attached to the claim form is a document in which the claimant provides a narrative of relevant events (pages 17 to 21) (I refer to this as the first particulars document). It is very difficult to understand from this document exactly what detriments are being alleged and when they took place.

10. In September 2021 the claimant provided a particulars of claim document (pages 90 - 105). An issue with this document is that it includes details of complaints that had been raised in the claim form as well as complaints that had not been raised in the claim form. I refer to this as the second particulars document.

11. A third particulars of claim document was provided in November 2021 (170-181). Again this merged complaints that were (or potentially were) part of the existing claim form with those that were not, even though the claimant appears to have produced this third document in response to a requirement to provide details only of those complaints which were to be the subject of an application to amend her claim.

12. According to the 3 particulars documents :-

a. the claimant made various disclosures from September 2019.

b. The disclosures raised very serious concerns about the respondent organisation, including criminal activity, misuse of funds, breach of legal obligations and concealment of wrongdoings.

c. The disclosures were made to senior personnel including directors of the respondent.

d. Once raised, the claimant saw that the senior personnel were taking no or insufficient action and escalated her concerns to a more senior level including the respondent's Chief Operating Officer who, in October 2019, ignored risks that the claimant had raised.

e. As the claimant continued to raise her concerns she was met with harassment, bullying and victimisation from October 2019 (para i. page 173) and, from 16 October 2019, was excluded from meetings (para l, page 173).

13. At the February Hearing we worked through the claimant's particulars and identified the various alleged detriments and the dates that they occurred. The dates were all in October and November 2019 (para 4. of draft list of issues at page 196).

14. The claimant was provided with an opportunity to comment on the draft list of issues produced after the February Hearing which included the list of alleged

detriments in October and November 2019. The claimant provided the following comment in her letter dated 19 March 2022 (page 223):-

> "*Date- The date of the last act is 27 October 2020 by me to email to Chair of Board [CO].*
>
> *Brief description of the act – this email collates all concerns across*
>
> *1. CRF (Clinical Research Facility) – race discrimination faced by Karen Rai, her fellow black and Asian nurse colleagues and European nurses by Ms [SH]*
> *2. Roche programme- governance allegation.*
> *3. Misuse of charitable donations – BOBC- The Trust used funding for my role to deliver a health inequalities project to fund a capital build project …..*
>
> *Why is it unlawful? The Chair of Board did not invite me to an initial meeting or conversations to explore the allegations or try to understand these allegations further despite the serious nature of the allegations.*

15. In a further letter sent by the claimant shortly before this hearing (dated 13 May 2022) the claimant commented on her protected disclosures complaints, stating that:

> *"the Claimant's last known act of whistleblowing to the respondent or acting parties was an email exchange between the CO (Chair of the Board) dated 27 October 2021.* [I have taken this date to be an error – and that it should read 27 October 2020]
>
> *The claimant asserts the respondent's solicitor has been fully aware of the timescales and the events due to their involvement in the Maxwellisation process during a period of April 2021 through to December 2021.*
>
> *The claimant's application is in time and in accordance with the overriding objective of the Tribunal office should be heard. It is important that after judgment being served, justice is also served to the claimant."*

16. The claimant did not, at the preliminary hearing in February 2022, refer to a detriment that followed an email sent by the claimant on 27 October 2020. That detriment is not referred to in any of the 3 particulars documents either (most importantly for current purposes, it is not referred to in the first particulars document). The closest reference in any of the 3 documents to the claimant's email exchange in October 2020 is probably in the final 2 paragraphs of the first particulars document (page 21)

> *"In August 2020 I authored an email to* CH [chair of the board] *making her aware of my concerns and took the matter to NHSI/E who launched an independent inquiry. This inquiry is still ongoing and due to conclude in April 2021.*
>
> *In November 2020 the Christie hospital launched its own commissioned inquiry through Prof Andrew Hughes whose report vindicated me and supported others in*

raising concerns but did not demonstrate the suffering we were subjected to because of whistleblowing."

17. I also note the reference in the second particulars document (para 39) to an email dated 11 August 2020 to the chair of the board and the claimant's decision to escalate further her concerns after 7 days of no response. Similarly, in the third particulars document (para 12) I note a reference to the claimant contacting the chair on 11 August 2020 and the commencement of an independent inquiry on 22 October 2020.

18. Although the claimant now asserts that her claim includes an allegation of detrimental treatment (not being invited to a meeting) after she made more protected disclosures on 27 October 2020, I find that it does not. Further, having regard to the lack of such an allegation in the second and third particulars document I am concerned that the claimant has now raised this concern, having recognised the time limit issue she faces, as an attempt to bring her complaints within the applicable time limits. On balance, I find that is what she has done.

Race Discrimination

19. It is necessary to establish what EQA complaints are (and are not) included in the claim form itself, so that the time limit issues can be considered and determined.

20. As with the protected disclosure (detriment) claims above, identifying the particular complaints of race discrimination made in the claim form has been far from straightforward, given the terms of the 3 particulars documents as explained above. Indeed, following this latest hearing, I am concerned the complaints made in the claim form may not yet have been fully or accurately identified to the claimant's satisfaction.

21. Prior to the preliminary hearing in February 2022, the claimant wrote to the Tribunal stating that she wanted to amend her claim to include complaints of harassment and victimisation (under s26 and 27 EQA) – see letter of 7 January 2022 at page 148. This application was in part at least in response to the observations of the Judge at the first preliminary hearing in September 2021, including observations about complaints of harassment and victimisation as set out in the second particulars document.

22. Although in January 2022 the claimant applied to add complaints of harassment and victimisation, the claimant now argues that complaints of harassment and victimisation were already included in her original claim form and therefore no such application is necessary.

23. I have considered the first particulars document; this includes a long and unspecified list of complaints. 2 of them are "victimisation" and "bullying and harassment". However, it is very difficult from this first particulars document to identify any such complaints brought under the EQA. There are plenty of allegations of unacceptable behaviour towards the claimant in there but the document describes circumstances which appear to make clear that the allegations are that the claimant was treated detrimentally because of protected disclosures made. There are potentially 3 exceptions to this where EQA complaints appear to be raised:-

a. "*I spoke to colleagues; it was suggesting raising protective disclosures was a crime and individuals were not surprised or shocked in what I was facing. It was considered the "norm. " [WD] and [RS] who had decided to remove me from my role out of line with trust's policies or the trust's SFIs. I was being discriminated against in every aspect of the handling of my employment contract."*

b. "*I shared the historical concerns and outstanding paperwork around my employment contract with [SH] I explained my support requirement and requested a stress assessment I was distraught and increasingly worried about the heightened bullying and discriminatory behaviour I was being subjected to. Instead I was subjected to micromanagement with unnecessary weekly 121s ….."*

c. "*I was excluded from the divisional operation meetings, appropriate to my grade and faced obvious and overt discrimination compared to other employees."*

24. I find that on any reasonable understanding of the first particulars document, the terms "victimisation" and "bullying and harassment" appearing in the list near the beginning of that document (see pages 17 and 18) are other ways of describing the unacceptable treatment the claimant claims she suffered as a result of the protected disclosures she claims to have made. There are no complaints under s26 and/or 27 EQA. That was also the claimant's position when writing her letter dated 7 January 2022 (page 148) in which she listed the complaints/jurisdictions already included in the claim form and those she wanted to add.

25. In addition to the claimant's use of the word "discrimination" in the first particulars document (see relevant extracts above), the claimant made clear at part 8.2 of the claim form that she brought complaints of race discrimination. At the preliminary hearing on 4 February 2022 I discussed this with the claimant and listed in a draft list of issues, those race discrimination claims that we determined were included in the claim form. The most recent of these are dated May 2020 (allegations 6.1.4 and 6.1.5 at page 199) and possibly as late as early August 2020 (the claimant raises various complaints regarding the handling of the grievance that she lodged in February 2020, and (according to second particulars) the outcome of which was communicated to her on 11 August 2020. Having identified all the claims at the hearing in February 2022, I raised with the claimant that all of the race discrimination complaints appeared to be out of time. That is reflected in the record of preliminary hearing that followed (pages 188-215, particularly para 9 at page 189). The claimant did not disagree with me at the hearing.

26. The claimant wrote to the Tribunal by letter dated 19 March 2022 with some comments following the preliminary hearing in February 2022. This is what she said in relation to the Race Discrimination claim:

" The acts of race discrimination are linked and continuous acts. For the purposes of the 3-month time rule the last recorded act is:

1. Date – the last known act occurred on 20 December 2020.

Brief description of Act. Chair of Board [CO] *commissioned an investigation on 14 November 2020. This investigation was to investigate the concerns in my letter dated 18 August 2020 including race discrimination*.

Why this is unlawful. Karen Rai was the key witness to these allegations and the only staff member left. She was not invited to provide evidence or contacted [by] Chair of Board [*CO*] *to provide evidence of the race discrimination allegations.*

We request the judge takes the Hendricks v. Metropolitan Police Commissioner [2002] EWCA Civ 1686 case into consideration with considering the time limits of m race discrimination claim. This case is relevant here as the Trust was responsible for an ongoing situation regarding the whistle blowing and continual harassment, victimisation and discriminatory situation in which linked acts of discrimination were faced by me over an extending per

Karen Rai's race discrimination claim is within the 3 month rule of bringing a claim to the Tribunal office."

27. There is no reference in the claim form or the first particulars document (attached to the claim form) to such a complaint. There is a paragraph referencing complaints made by the claimant to the Chair of the Board but it merely informs of the investigation commissioned:-

"In August 2020 I authored an email to CO (Chair of the Board) *making her aware of my concerns and took the matter to NHSI/E who launched an independent inquiry. This inquiry is still ongoing and due to conclude in April 2021."*

28. Any complaint concerning the actions of CO on or about 20 December 2020 after CO commissioned an external investigation in November 2020 is not included in the claim form. It is not included either in the second or third particulars document. I am concerned that the claimant has now raised this as a concern, having recognised the time limit issue she faces, as an attempt to bring her complaints within the applicable time limits. On balance, I find that she has.

Unfair Dismissal complaint.

29. The claim form includes a complaint of unfair dismissal. She has less than 2 year's service. This was accepted as a complaint of automatic unfair dismissal under s103A ERA (the claimant alleging that the principal reason for her dismissal was that she made protected disclosures).

Issuing Tribunal claim form

30. The claimant was dismissed on 10 September 2020. She did not commence ACAS early conciliation until 10 December 2020.

31. In her letter to the Tribunal dated 19 March 2022 (following the February hearing) the claimant explained what she says happened when she presented the

claim. She also answered question at the hearing. I summarise below the claimant's version of events:-

a. In November 2020 the claimant contacted the Tribunal office and asked for advice on submitting a claim. She explained what she had gone through and that she was unsure whether she should await an investigation outcome. The claimant was told that such a decision cannot be made by Tribunal staff and she was provided with information about submitting a claim form.

b. The claimant accepts that she was told about the role of ACAS by the Tribunal staff. Her version of events is that she was told if there was room for resolution through the early conciliation process then she should consider it but that her response was that the Trust had not responded at all.

c. On 1 December 2020 the claimant contacted the Tribunal office again and at that stage they clarified with the claimant that the correct form was an ET 1 form. The Tribunal staff also provided a summary of the ACAS process. According to the claimant she replied that the employer was not engaging with her and she did not think the ACAS service would be useful.

d. The claimant then went on-line and submitted a claim form.

e. On 10 December 2020 the claimant received a letter from the Tribunal rejecting her claim (page 252). The letter states:-

> *"the Judge's reasons for this decision are that in section 2.3 of the claim form*
>
> *(1) You have not given an early conciliation number*
> *(2) Although you have ticked a box to explain why you don't have an early conciliation number, the explanation appears to be incorrect, in that ACAS does have the power to conciliate this type of claim."*

f. The claimant was suffering from trauma at the time related to events during her employment.

32. I accept most of the claimant's description of her discussions with Tribunal staff. However, I consider it unlikely (as the claimant suggests) that the claimant will have been told that ACAS was an option and she would not need to contact them if she decided not to.

33. I also note as follows:

a. The wording on claim forms. At part 2.3 of a claim form, next to the question *"Do you have an early conciliation certificate number"* is the following *"Nearly everyone should have this number before they fill in a*

claim form. You can find it on your ACAS certificate. For help and advice call ACAS on 0300123 1100 or visit www.acas.org.uk"

b. The easy access to guidance and instruction about how to issue an Employment Tribunal claim for example on the ACAS website (to which the claimant was signposted by the claim form) and the government website.

34. I have considered the information provided by the claimant concerning her illness. She has provided 2 letters from her GP. The first is dated 15 March 2022 (page 258) and notes that the claimant has sick notes on her medical record for various periods. This includes a period before her claim was issued

"13.07.20-05.08.20: Subjected to and observed work place bullying behaviour."

And a period after her claim was issued

"09.03.21 – 11.04.21: Anxiety undergoing treatment.

No sick notes were issued between 06.08.20 and 08.03.21

35. The second letter (17 March 2022) (page 257) notes that the claimant has been registered with the GP surgery since November 2021. It states that the claimant was seen by her previous doctor on 13 July 2020 (comments consistent with the reference above), that she was seen on 26 January 2021 and prescribed anti-depressants and, as at March 2022 was still taking these. It also states as follows *"I have been through her previous computer records which we have on our system since 29 October 2018 and I can confirm that Miss Rai has been diagnosed with PTSD (post traumatic stress disorder) by a private consultant psychiatrist as per the consultation from her records from 23 March 2021."*

36. The psychiatrist report of 23 March 2021 was not in the bundle of documents and therefore not considered by me.

Other factors relevant to knowledge/lack of knowledge about complaints and time limits.

37. The claimant told me that she had not engaged solicitors to assist her as she could not afford to.

38. The claimant was in dispute with the respondent, her employer at the time, from late 2019. During her employment the claimant was a member of a trade union although the claimant told me that she did not continue with membership following the termination of her employment. In November 2019 the claimant challenged a decision to terminate her employment. That challenge included reference to "HR Legislation" and ACAS guidelines.

39. According to the second particulars document at page 103 and 104, as early as 27 November 2019 and again in May 2020, the claimant was highlighting to her line manager and then the respondent's clinical director the *"sex and race discrimination she was being subjected to."*

Relevant law

Time Limits - EQA

40. Section 123(1)(a) EqA provides that complaints may not be brought after the end of 3 months "*starting with the date of the act to which the complaint relates"*. This is modified by section 140B, which provides for early conciliation.

41. Section 123(1)(b) provides that claims may be considered out of time, provided that the claim is presented within *"such other period as the employment tribunal thinks just and equitable."*

42. Section 123

43. I note the following passages from the Court of Appeal judgment in the case of **Robertson v Bexley Community Centre 2003 IRLR 434**:-

> *"if the claim is out of time there is no jurisdiction to consider it unless the tribunal considers it is just and equitable in the circumstances to do so."* (para 23)
>
> *"…the 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."* (para 25 of the judgment)

44. The EqA itself does not set out what Tribunals should take into account when considering whether a claim, which is presented out of time, has been presented within a period which it thinks is just and equitable.

45. In **British Coal v. Keeble EAT 496/96** the EAT advised, when considering whether to allow an extension of time on just and equitable grounds, adopting as a checklist the factors referred to in s33 of the Limitation Act 1980. These are listed below:-

- the length of and reasons for the delay;
- the extent to which the cogency of the evidence is likely to be affected by the delay;
- the extent to which the party sued had co-operated with any requests for information.
- the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action.
- the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

46. **Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] ICR 283, EAT**. This case noted that the issue of the balance of prejudice and the potential merits of

the (in that case) reasonable adjustments claim were relevant considerations to whether to grant an extension of time.

47. What is clear is that Employment Tribunals have a wide discretion in determining time limit questions under section 123. They are not bound to consider all of the factors set out in section 33 of the Limitation Act (above) and not restricted to those factors either.

48. Paragraph 18 of the Court of Appeal's judgment in **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640** says as follows:-

> *"18. … [I]t is plain from the language used ('such other period as the employment tribunal thinks just and equitable') that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980 , section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see [Keeble]), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark LBC v. Alofabi [2003]EWCA Civ 15;.."*
>
> *19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."*

Time Limits – ERA.

35 Section 111(2) of the ERA provides that a complaint of unfair dismissal must be

"*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.

36 Section 48 (3) ERA applies the same time limit requirements to complaints under s47B (detrimental treatment on protected disclosure grounds). Section 48(4) ERA provides that where an act (of detrimental treatment) extends over a period of time or where there is a series of similar detrimental acts or failures, the time limit

applies from the last of these.

37 Section 18A(8) of the Employment Tribunals Act 1996 prohibits an individual who wants to commence “relevant proceedings” in the tribunal , to do so unless that person has gone through the ACAS early conciliation process and obtained a certificate.

38 Section 207B of the ERA extends the time limits at s111(2) and 48 ERA to take account of the statutory requirement for early conciliation, but only where the claimant has contacted ACAS within those time limits. That did not occur in this case and therefore the claim was not presented in time.

39 Where a complaint for unfair dismissal and/or being subjected to detriments has not been presented in time, an Employment Tribunal must consider whether or not it was “reasonably practicable” for the claim to have been presented in time. That is a decision that must be made on the facts.

40 The term reasonably practicable mean neither “reasonable”, nor “something that is physically capable of being done”. The term means somewhere between these 2 (see **Palmer v Southend on Sea BC 1984 IRLR 119).** I also note the following from paragraph 35 of Palmer:

> *What, however, is abundantly clear on all the authorities is that the answer to the relevant question is pre-eminently an issue of fact for the Industrial Tribunal and that it is seldom that an appeal from its decision will lie. Dependent upon the circumstances of the particular case, an Industrial Tribunal may wish to consider the manner in which and reason for which the employee was dismissed, including the extent to which, if at all, the employer's conciliatory appeals machinery has been used. It will no doubt investigate what was the substantial cause of the employee's failure to comply with the statutory time limit; whether he had been physically prevented from complying with the limitation period, for instance by illness or a postal strike, or something similar. It may be relevant for the Industrial Tribunal to investigate whether at the time when he was dismissed, and if not then when thereafter, he knew that he had the right to complain that he had been unfairly dismissed; in some cases the Tribunal may have to consider whether there has been any misrepresentation about any relevant matter by the employer to the employee. It will frequently be necessary for it to know whether the employee was being advised at any material time and, if so, by whom; of the extent of the advisors' knowledge of the facts of the employee's case; and of the nature of any advice which they may have given to him. In any event it will probably be relevant in most cases for the Industrial Tribunal to ask itself whether there has been any substantial fault on the part of the employee or his advisor which has led to the failure to comply with the statutory time limit. Any list of possible relevant considerations, however, cannot be exhaustive and, as we have stressed, at the end of the day the matter is one of fact for the Industrial Tribunal taking all the circumstances of the given case into account.*

Conclusions

Complaints under ERA

41 The claimant was dismissed on 10 September 2020. Applying the relevant provisions of the ERA (see above) the claimant must have issued her claim by 9 December 2020 (subject to applicable extension under s207B ERA to take account of early conciliation). She did not do so until 2 February 2021. Her claim was issued outside of the applicable time limits and therefore it is necessary to consider whether or not it was reasonably practicable for the claim to have been presented in time, applying s 111(2)(b) ERA.

42 I find that it was reasonably practicable for the claimant to have brought her complaints under the ERA in time. The claimant knew well in advance of the expiry of the time limit that she needed to present her complaint to the Employment Tribunal. As stated above, I do not accept that the claimant was misled by Tribunal staff about ACAS being an option, not a requirement. However, even if it was not made clear enough to her that she needed to proceed with early conciliation, the wording on the claim form itself makes that clear. The claim form "signposts" potential claimants to ACAS.

43 I do not find, on the basis of the evidence provided, that the claimant's state of health prevented her from presenting her complaint on time to the Tribunal. In fact the claimant did present her complaint on time; but it was not validly presented. Whilst the claimant did not seek to argue this directly, for the avoidance of doubt, I do not accept that the claimant's health prevented her from understanding the requirement to first contact ACAS through the early conciliation process.

44 The claimant's complaints of automatic unfair dismissal under s103A ERA and detrimental treatment (protected disclosures) under s47B ERA are therefore dismissed.

Complaints under EQA

45 I do not accept that the claimants claim includes a complaint that she was subjected to discrimination at some time after 27 October 2020 by her employer. Her race discrimination complaints that are within the claim form date back to early August 2020. Even assuming a course of continuing conduct, the primary 3 months' time limit ran out in early November 2020. Yet the claim was not issued until 5 February 2021.

46 I need to decide therefore whether it is just and equitable to extend time. My decision is that it is not. In reaching this decision I have taken account of the following:-

46.1 That the claim was presented well outside of the primary 3 month time limit.

46.2 The claimant has not explained why she issued her claim so far out of time. Instead she has sought to explain that the claim was not presented out of time at all as her claim form includes a complaint of

discrimination that occurred on 20 December 2020. That is untrue.

46.3 My findings in relation to the issue of the claim. (see my conclusions at 41-43 above).

46.4 My finding in relation to the claimant's attempt to include the complaint of 20 December 2020 being within the existing claim form (see para 28 above).

46.5 The availability to the claimant of union support during her employment and her understanding from late 2019 that she was making allegations of unlawful sex and race discrimination

46.6 The prejudice that the delay will cause to the respondent were I to allow the race discrimination complaint to proceed. The complaint is that there was a continuing course of conduct dating back to late 2019. A final hearing in this case is unlikely before the end of 2023. Such a delay is likely to have some adverse impact on the ability of witnesses to recall details of those events.

46.7 The prejudice that the dismissal of the complaints causes to the claimant. The claimant will not be able to advance her complaints. However, whilst I recognise this clear prejudice to the claimant, taking in to account the various factors above, my decision is that these are such that the balance is in favour of refusing to extend the time limits.

47 I am also concerned about the confusion caused by the terms of the claimant's pleaded claim and the difficulty in determining the complaints brought. Even following a lengthy preliminary hearing when attempts were made to identify all complaints in the claim form, there is still no agreement from the claimant that the complaints identified are all of the complaints raised. The 2 further particulars documents add considerably to what is already a confusing picture. This confusion has been caused by the claimant. Were I to allow the complaints to proceed, further delay and case management would be required adding further to the respondent's costs, not just in relation to various applications to amend the claim but also potentially in identifying complaints within the framework of the existing claim form. That is a factor which I have taken some account of, although I am satisfied on the basis of the factors listed at 46 alone, that it is not just and equitable to extend time.

48 The claimant's complaints of race discrimination are therefore dismissed.

Employment Judge Leach

8 June 2022

Case Number: 2401516/21

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

9 June 2022

FOR EMPLOYMENT TRIBUNALS