



EMPLOYMENT TRIBUNALS

Claimant: Mr H Allen

Respondents: (1) Accenture (UK) Limited
(2) Bow & Arrow Limited

Heard at: East London Hearing Centre (in public by video)

On: 30 May 2022

Before: Employment Judge Moor

Representation

Claimant: in person

Respondent: Mr M Salter, counsel

RESERVED JUDGMENT

The Tribunal has no jurisdiction to hear the claims of direct race discrimination and victimisation because they were brought out of time and it is not just and equitable (fair) to extend time. All the claims are dismissed.

REASONS

1. This was a preliminary hearing to decide the following issues:
 - 1.1. Were the claims or any of them brought within the primary time limit;
 - 1.2. If not, is it just and equitable to extend time to allow the claims or any of them to be heard;
 - 1.3. Should the second respondent be dismissed from the claim.
2. I first clarified the issues in the claim. The Claimant was clear that he was not bringing a claim for unpaid annual leave or breach of contract claim. This is because he ultimately received his entitlements.

3. The remaining claims are brought under the Equality Act 2010 and are for direct race discrimination in relation to the following (as set out in the ET1 claim form):
 - 3.1. being the subject of racial insensitivity and micro aggressions from Mr Slater;
 - 3.2. bullying by Mr Slater and Mr Carragher;
 - 3.3. refusal of support by Mr Bene and Mr Slater.

The Claimant contended that this conduct had started from his joining the Respondents in December 2020. It ended with the decision to terminate his contract early. The three named individuals are senior managers.

And for victimisation in relation to:

- 3.4. the delay of termination payments (only rectified in June 2021). The Claimant explained to me (and in his witness statement for this hearing) that his claim will be that this delay was because of a 'protected act', namely the feedback he had given to his managers on discrimination and that he had said that he had felt and experienced race discrimination verbally to Mr Bene in March and April 2021 and by email in May 2021. He argues he was not paid until 25 June 2021 whereas another contractor dismissed at the same time was paid on 14 May 2021.
4. If these claims are allowed to proceed the Claimant accepted that he will have to provide Further Information (more factual detail) in order for the Respondents to respond to them.

Legal Principles

5. Section 39(2)(d) of the Equality Act 2010 ('EQA') provides that employers must not discriminate against their employee by subjecting them to any detriment. Employee in that section is interpreted broadly to mean essentially 'worker': someone who provides personal service to the employer who is not a customer of his business. The claimant claims direct race discrimination contrary to section 13 EQA: that he was treated less favourably because of race. The Claimant will say he was the only black employee in his team.
6. Section 39(3) EQA provides that employers must not 'victimise' their employee by subjecting them to any detriment. Section 27(1) EQA defines victimisation. It is to subject a person to a detriment because they have done a 'protected act' or because they are believed to have done or may do a protected act. A 'protected act' includes making an allegation that another person has contravened the EQA.
7. Section 41 EQA affords the same protections against direct race discrimination and victimisation by a 'principal' towards 'contract workers'. A principal is defined at section 41(5) as *'a person who makes work available for an individual who is (a) employed by another person, and (b)*

supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it)'. Section 41(7) defines a contract worker as 'an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b)'.

8. The Respondents contend that the Claimant did not have a contract with them but was employed by Guidant Global. The First Respondent contends, if it is wrong about that, the Second Respondent, although a separate company, is not a proper Respondent because its business was transferred to the First Respondent in May 2020 including all of its employees. It says those people working under the banner Bow & Arrow were working for the First Respondent.
9. The parties disputed the effective date of the termination of his contract (whomever it was with). Where notice is given to one party of a contract that the other party intends to terminate it, the contract will terminate at the end of the period of notice given. Some contracts expressly state that an employer may make a payment 'in lieu of notice': in other words dispense with the giving of notice and make a payment instead, but this does not happen in every contract. Whether notice to terminate has been given or whether termination happened immediately are questions of fact.
10. Section 123 EQA sets out the time limits for the bringing of claims under its Part V (including claims to do with work brought under sections 39 and 41). It provides that '*Proceedings ... may not be brought after the end of the period of 3 months starting with (a) the date of the act to which the complaint relates or (b) such other period as the employment tribunal thinks just and equitable.* (my emphasis)
11. Section 123(3) provides: '*For the purposes of this section –*

(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 upon it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.'
12. The EQA requires me to start counting the time limit with the date of the act complained of. In other words, I must include this date in the calculation. If the act complained of is on 13 June, then I count three months including that day. Those three months therefore end on 12 July. A complaint brought on 13 July would be out of the primary time limit because the 13 July would be the first day of the fourth month because counting starts with the date of the act itself not the day after. The Claimant queried the correctness of this with me, but the words of section 123 are plain enough, see also Hammond

v Haigh Castle & Co Ltd [1973] ICR 148 in relation to a different Act, but setting out the calculation principles.

13. This primary time limit rules have been adjusted by the requirement first to go through Early Conciliation via ACAS. By the last day of the primary time limit the Claimant must start Early Conciliation. If not, any claim ultimately presented to the Tribunal will have been brought beyond the primary time limit.
14. If the claim is out of the primary time limit, then I must extend time if it is just and equitable (i.e. fair) to do so. In considering this question I should consider relevant factors.
15. Mr Salter referred me to the observations of Auld LJ in Robertson v Bexley Community Centre (t/a Leisure Link) [2003] IRLR 434 CA that the exercise of the discretion to extend time is the exception to the rule and time limits should be observed strictly in the Tribunal. I agree with the observations of Sedley LJ in Chief Constable of Lincolnshire v Caston [2010] IRLR 327 CA that I must apply the words of the statute and the matter is a question of fact and judgment. What is strict or what is an exception can mean different things to different Tribunals and those tests are an unhelpful gloss on the statutory wording. Counsel explained that he referred to Robertson only to show the Claimant has the burden of proof: it is the Claimant who must persuade me to extend time. I agree.

Reasons for delay

16. It is always relevant to consider the reason why the primary time limit has not been met. I should also consider the reason why time has elapsed since the primary time limit, see Abertawe Bro Morgannwg University Local Health Board v Morgan EAT/0305/13.
17. Where a party claims ignorance of the time limit or not to have understood how it is calculated, I should consider how genuine and reasonable that lack of knowledge or misunderstanding is. I can consider what advice the Claimant had or whether he has taken steps to obtain any.

Effect of any delay on the Evidence

18. I may need to consider whether the cogency of evidence has been affected by the delay or any other impact on the final hearing of the delay.

Balance of hardship

19. I will also consider what is called the 'balance of hardship'. In other words, I look at the hardship both sides will experience by a decision one way or another. I can look at the merits of a claim in assessing this, but I bear in mind that there is rarely direct evidence of race discrimination and much depends on the inferences that are drawn once all the facts are known. It can therefore be difficult to make a clear assessment of the chances of success early on in such claims.

Findings of Fact

20. In late November 2020 the Claimant was engaged by Carlisle Staffing plc trading as 'Guidant Global' ('Guidant') to do work as a Strategy Lead for Accenture, the First Respondent. He was engaged on a fixed term contract due to end on 30 June 2021. Ms Noble of Guidant informed him about this in an email of 23 November stating '*I have received a request from Accenture to offer you a contract starting on 30 November 2020*'. She explained in this email that Accenture '*outsource their contractor recruitment*' to Guidant. He was sent a written contract from Guidant, which the Claimant has not produced for this hearing.
21. Once engaged, the Claimant joined a team at Bow and Arrow. He had a 'welcome call' with them on 7 December 2020. He was given email addresses for both Accenture and Bow & Arrow and represented himself as doing work for Bow & Arrow (for example at p47 of the bundle). Employees at Bow & Arrow directed the Claimant's work and were his managers. I find that the Claimant did work for Accenture, the first Respondent, under the banner of Bow & Arrow.
22. The business of Bow & Arrow Limited had been transferred to the First Respondent on 1 May 2020 (before the Claimant was engaged). All of its employees had been TUPE transferred to the employment of the First Respondent. Bow & Arrow Limited is in the process of liquidation. Thus, I am clear that, if the Claimant had a contract with a company other than Guidant for the work he was doing at Bow & Arrow, it can only have been with Accenture, the First Respondent. This is not something, however, the Claimant is likely to have been aware of during his time at Bow & Arrow.
23. Guidant paid the Claimant's wages, but only after they had been approved by Accenture.
24. During his engagement the Claimant complains he was bullied and left unsupported by senior managers (named in the issues above). I do not decide whether this was the case or not at this hearing.
25. On 4 May 2021 the Claimant was informed verbally that his contract would not be 'continued'. This was confirmed in an email from Ms Liram, managing director, who also had a Bow & Arrow email, under the subject: '*confirming our conversation – contract notice*'. She confirmed a conversation on the same day that: '*we will not be continuing your contract*', referring to '*gaps in your core skill set that mean you are not meeting our requirements for the role.*' She went on '*To confirm next steps:*
- *Your notice period starts today for which you will be paid in full*
 - *Your last day in the office will either be today or Friday 7 May depending on your choice. ...'* (my emphasis)

She thanked the Claimant for his contribution (pages 58-59).

26. The Claimant's last day at work was 7 May 2021. He sent a good-bye email on that day in which he informed his colleagues how difficult it was to be the only black employee and that he felt his attempts at improving diversity and

inclusion were met with resistance. He said he was even told that he was 'playing the race card' as a defence mechanism against feedback. This is a lengthy and articulate email. The Claimant clearly felt that he had been discriminated against. He encouraged colleagues to stay in touch.

27. It is agreed that the Claimant was entitled to 30 days' notice of termination. But there is a dispute as to whether he was given notice or to be paid in lieu of notice. He relies on the 4 May email from Ms Liram and another internal Accenture email at p66. Its subject is 'contractors 30 Notice'. It stated *'please note that we have given the 30 days' notice to the below employees as of Tuesday 5 May 2021 [sic], they are employed by Guidant and working for Bow & Arrow – they will be paid their notice period. They will be working up until Friday 7 May but will no longer need access after that.'*
28. The Claimant's evidence at the full hearing will be that he complained about race discrimination during his engagement and, because of this, his termination payments were delayed. The Claimant will compare himself to another contractor given notice on the same day, who received termination payments on 14 May 2021.
29. On 11 May the Claimant wrote to Accenture, including Ms Austin with the subject 'payment in lieu of notice & holiday'. He asked about the *'logistics of our payment in lieu of notice ... how should we expect to be paid for the month starting Tuesday 4 May?'* He also asked about holiday pay.
30. The Respondent relies on the internal emails of 11 May 2021 in which Ms Austin queries how three contractors, including Mr Allen, are paid their notice (asking whether they have to use IQN to process timesheets or whether notice is paid automatically). On holiday pay she asks *'Guidant Global has advised them regarding holiday pay they will first need to be paid out for the full month of notice and then they can be paid out, is there anything that needs to be done to assure this happens?.'* On 12 May 2021, using the subject 'contractors 30 notice', Chris Tompkins of the First Respondent responds that *'In regards to notice payment the individuals will need to load their final timecards into IQN in order for the notice to be paid in the same way they would if they continued to work.'*
31. Ms Austin let the Claimant know this information and he replied on 13 May 2021 (p69) saying *'Thank you so much for getting back to me Eileen! When I try to add time to my profile I get this error message...'*. The Claimant chased on 24 May asking for an update. Ms Austin replied the same day and said she thought it had been resolved but would look again. Later that day she informed him *'I have just had confirmation that this issue has been resolved'* and asking him to speak to Guidant on payment. The Claimant thanked her stating he could see the time sheets had been added but were waiting approval and asked her to chase. On 1 June he wrote again saying *'I can see in IQN that the timecards have been approved, but no payslips have been generated. Can you confirm the remaining to do list items are with Guidant Global to process our timesheets?'*. On 2 June Ms Austin informed him: *'I have spoken to the contractor team and the payments will be made I believe this Friday [ie 4 June] and holiday payout and P45s will then follow in due course after that as you are being paid in lieu of notice'*

which is 4 June. The Claimant thanked her. He complains in his claim, that he was not ultimately paid until 25 June 2021.

32. The Claimant started to think about what to do about work as soon as he had been given notice on 4 May 2021. He decided to become self-employed and took steps to do so by networking. It was obviously important for him to seek paid work quickly.
33. The Claimant chose not to take legal advice about this claim because, he told me, he knew already about the time limits.
34. By 19 July 2021 pandemic restrictions in London had been lifted. I have not heard any specific evidence in this case that suggests any delay in bringing the claim was because of pandemic restrictions. This is unsurprising given that the Claimant knew all the facts that led to him having a claim and was able to research online at home, contact ACAS online or via telephone, and make an online claim.
35. The Claimant started early conciliation through ACAS with the Second Respondent on 3 September 2021.
36. ACAS advised the claimant to start early conciliation with First Respondent on 3 October 2021. This ended on 13 October 2021.
37. The claim form was presented on 23 October 2021.
38. The Claimant knew that there were a time limits for bringing a discrimination claim in the employment tribunal. He had particular and recent knowledge about the time limits because he had brought an unfair dismissal and a race discrimination claim against another respondent in the London Central tribunal in 2020 (case number 2206121/2020). In that case a preliminary hearing was held on 23 April 2021 to decide whether the Tribunal had jurisdiction to hear the claims because they had been brought beyond the primary time limit. The Claimant attended, representing himself. EJ Walker decided not to extend time. The written decision with reasons was sent to the claimant on about 4 May 2021 by email. In essence, the Tribunal rejected as adequate the Claimant's explanation that he had only been able to process what had happened to him by September 2020 (when the primary time limit had expired on 16 May 2020) (paragraphs 70 and 71 of EJ Walker's reasons). The judge balanced the other relevant factors and balance of hardship but found this lack of reasonable explanation to be the weightiest factor and did not therefore extend time. The Claimant knew therefore how important it was to meet the primary time limit, to avoid having to show a reasonable explanation for delay or other reason why it was fair to extend time.
39. EJ Walker explained at paragraph 43 of that decision how the primary time limit was calculated as follows: *'The time within which the Claimant should have applied to the Employment Tribunal was three months after the date of dismissal of 17 February 2020. The provisions for ACAS certification would have enabled the Claimant to extend that, provided he had applied to ACAS within that period. He did not do so. In consequence the primary time limit expired on 16 May 2020.'*

40. The Claimant contended before me that the primary time limit of 'three months' starting from the date complained of meant that time expired on the same date 3 months later. His calculation method is not mathematically correct, given that he is counting 3 months plus a day. I accept, however, at the time the Claimant had thought that was how time was calculated. I must consider how to take into account that on about 4 May he had received EJ Walker's written reasons showing clearly at paragraph 43 how time was actually calculated. He had plenty of time to refer to that decision when deciding whether and when to present this claim.
41. In his witness statement the Claimant says that he experienced '*exacerbated mental health challenges, acute gastrointestinal problems as a result of deep stress and workplace bullying, as well as racial trauma which manifested as physical, mental, and emotional pain.*' He had not produced any further evidence about this nor set out the details. He knew, from the earlier case in Central London, that ill health is a factor the Tribunal can take into account for any explanation about delay. At that earlier hearing, the judge saw medical records and found that the Claimant experienced Generalised Anxiety Disorder, OCD and Depression. I accept therefore that the Claimant experienced mental ill health. When I asked him about what his 'mental health challenges' were, the Claimant referred to EJ Walker's judgment and said he had ADHD (not referred to in EJ Walker's decision). and that this led to him procrastinating and waiting. He wanted to process all the information and make the right decision about whether to bring a claim. His anxiety made him check whether he had the resolve and strength to do so. Overall, his evidence was that it took him some time to decide whether this was a claim he wanted to push. In my judgment, the Claimant's description to me of his decision-making process was one many potential claimants make. It is a significant step to bring a claim and one that bears thinking about carefully. This is what the Claimant described to me that he did. On balance and on the evidence before me, I do not find the Claimant was procrastinating here: he had calculated a deadline by which he thought he needed to start Early Conciliation and met that deadline. In my judgment the Claimant's mental ill health did not impair to any material extent, his capacity to make decisions about his claim and did not contribute to any failure to meet primary time limit. It was the Claimant's misunderstanding about how the time limit was calculated that led him not to meet it.
42. In his witness statement, the Claimant referred to the disproportionate impact of the pandemic on BAME communities. I asked him how the pandemic had affected him to see if it had any impact on the timing of the presentation of his claim. He said that he had found working at home isolating and that this had not helped his mental health. In his witness statement he stated that because more people were needing it, mental health support was less available. I accept this in general terms. I have to ask, however, how this problem impacted on his ability to present the claim. I have concluded on the evidence I have heard that it did not. This is because the Claimant was well able to communicate with the Respondent about final payments and pursue this; he was able to start to set up as a freelance worker. He was articulate and clear in his goodbye email about the problems he had faced and encouraged his, soon-to-be ex colleagues to communicate with him. As a matter of fact, I find he did not have the

degree of mental ill health that have made it more difficult for him to present the claim without first receiving support. Nor has the Claimant provided me with any specific evidence about whether he sought support in the time relevant to my enquiry or when any support was first obtained. In my judgment, any lack of therapeutic support was not the reason for the delay in bringing the claim. There is nothing in the facts here about mental health support that would lead me to conclude it was easier for the Claimant to start ACAS Early Conciliation on and after 3 September rather than earlier in August 2020.

43. The Claimant had gastro-intestinal symptoms from around December 2020. They lessened slightly once he was told in May 2021 his work was to end. He had three medical appointments in July and August 2021 and a colonoscopy as a day procedure in September 2021. I do not find that his gastro intestinal problems or the time taken for these appointments had any influence on his ability to meet the deadline: the Claimant did not assert that they were the reason for the delay: he had a date in mind by which to put the claim in and he met that date; they did not stop him from developing his work as a freelancer, the parts of 4 days that the medical appointments took up were not an obstacle to his bringing the claim in time.
44. The Claimant described the trauma and emotional disturbance he had experienced as a black person because of the unlawful killing of black people in the UK and in the US. I acknowledge those appalling cases of injustice impacted the Claimant's experience of life and his feeling of well-being. It is not to lessen the significance of those injustices that I find, however, the impact upon him was not such as to cause him to delay in bringing his claim: he has been clear throughout about the discrimination he felt he had suffered and aimed to bring a claim about it. He had a date in his mind by which to bring that claim and did so. This evidence does not show he was under any kind of difficulty in bringing his claim in August or earlier in September.

Submissions

45. The Claimant argued that his claim was brought within the primary time limit because he had started ACAC Early Conciliation with the Second Respondent 3 months after the expiry of his notice period.
 - 45.1. He argued he was the only one who had used the phrase pay in lieu of notice and the emails and facts showed he had in fact been given 30 days' notice. That his last day at work was 7 May was not relevant to this question.
 - 45.2. He calculated that this notice expired, as he had first thought, on 3 June.
 - 45.3. He argued that section 123 should be interpreted to mean the primary time limit expired on 3 September.
 - 45.4. Alternatively he referred to the email at page 66 to show the Respondents thought the notice had been given on 5 May and he was 'happy to concede that' therefore the notice expired on 5 June

and his Early Conciliation with the Second Respondent had been started in time.

46. He argued the delay in payments was until 24 June and depended on the Respondents approvals, regardless of the help Ms Austin had given him. Time for the victimisation claim therefore started to run from 24 June his claim was therefore in time.
47. The Claimant made clear to me in his submissions that he was not arguing that he did not understand the time limits.
48. Even if he was wrong about them, the Claimant submitted that it was just and equitable for time to be extended. He relied on a number of points:
 - 48.1. if his method of calculation was incorrect then, in any event, his complaint about events running up to 4 May was only 1 day out of time and depended upon his error in calculation;
 - 48.2. his mental ill health meant he procrastinated and left his decision to the deadline;
 - 48.3. the Respondent was not prejudiced by such a short delay. They had known about his concerns when he raised them during his employment;
 - 48.4. the Respondent's delay in providing him with documents for this hearing meant that they could not fairly rely on any delay in bringing his claims.
49. Mr Salter for the Respondent submitted that the claim had been brought out of the primary time limit:
 - 49.1. The Second Respondent was not the appropriate Respondent as all of its employees were engaged by the First Respondent after the TUPE transfer of business.
 - 49.2. Mr Salter undertook that the First Respondent would not argue, at the final hearing, that the Second Respondent should be the proper respondent.
 - 49.3. Mr Salter acknowledged that he could not sensibly resist the argument that the Tribunal had jurisdiction to hear discrimination claims under section 41 of the Equality Act.
 - 49.4. ACAS Early Conciliation had only been started against the First Respondent on 3 October. Thus, even if the victimisation claim date did not start until June, this, too was out of time.
 - 49.5. The delay was particularly long in respect of the pre-termination claims: the last date the Claimant could have been bullied was 7 May 2021.
50. He argued time should not be extended because it was not just and equitable to do so.

- 50.1. The burden was on the Claimant to persuade me.
- 50.2. The Claimant knew all of the facts supporting his claim by the 4 May (except for the delay in payments claim).
- 50.3. The Claimant's mistake about the time limits was not reasonable. He had had the benefit of legal advice earlier in the year; he had received EJ Walker's reasons setting out how time limits were calculated.
- 50.4. His mental ill health did not provide a good reason for the delay: the evidence showed that the Claimant was well able to make decisions and act on them for example by starting to set up as a freelancer in May/June 2021. There was no supporting medical evidence.
- 50.5. The victimisation claim was weak: the emails with Ms Austin showed the Respondents were seeking to resolve the problem.

Application of facts and law to Issues

Should the Second Respondent be Dismissed as a Respondent?

51. The Claimant was working in the business of Bow & Arrow: while engaged, he represented himself as working for Bow & Arrow via things like his email address and signature. Guidant informed him the contract would be with Accenture in November 2020. He also had an Accenture email address. He had also entered into a written contract with Guidant, who paid him. Bow & Arrow is still a limited company. But it is effectively a shell because its business had transferred to Accenture in May 2020. The Claimant is not likely to have known this.
52. I can well understand the Claimant's confusion about who he was working for: he had been told he had a contract with Accenture; he was working in a team under the banner Bow & Arrow and he was paid by Guidant
53. I am asked to dismiss the Second Respondent from the proceedings on the basis that the Claimant had no contract with it.
54. In my judgment it is strongly arguable that the Claimant and First Respondent were in a principal/contract worker relationship and therefore it is strongly arguable that, subject to the time point, there will be jurisdiction to hear his claim under section 41 of the Equality Act 2010 against the First Respondent. This is not a matter I have been asked to determine and it will be for the final hearing.
55. I cannot however dismiss the Second Respondent from the proceedings. It is a separate legal entity and there is equally evidence that the Claimant worked for that company as a contract worker. There are good reasons why it would be sensible for the Claimant to direct his fire at the First Respondent, given the TUPE transfer and the fact the Second Respondent is unlikely to have any money, but those are not reasons in themselves for me to dismiss the Second Respondent from the proceedings.

Jurisdiction – Limitation

When did time start to run?

56. The last date upon which pre-termination acts of race discrimination from his managers could have taken place was 7 May 2021. After that time the Claimant had stopped working. The last possible date by which Early Conciliation should have been started with the First or Second Respondent was therefore **6 August 2021**. These claims have therefore been brought outside the primary time limit and I shall consider later in my decision whether it is just and equitable to extend time.
57. On the facts I have found, I conclude that the Claimant was given 30 days' verbal notice of the termination of his 'contract' on 4 May 2021. That much is clear from the email from Ms Liram confirming this on the same day. How the parties characterised the matter afterwards is less weighty evidence as to whether notice was given.
- 57.1. That the Claimant understood he was to be paid 'in lieu of notice', is not determinative if notice had in fact been given. If there were any doubt about Ms Liram's email, this assertion by the Claimant might weigh more heavily, but in my judgment it is clear the Claimant was given 30 days' notice rather than told he would be paid in lieu of notice having been given.
- 57.2. Nor does the error the First Respondent later made about the date notice was given, change when it was actually given. Notice was given on 4 May 2021.
- 57.3. The Claimant is right that his last day of work in the office is not the effective date of termination, if longer notice had been given.
58. The day the Claimant's contract ended is 30 days *from* the date notice was given. In this 'from' calculation (rather than a 'starting with' calculation) the date is not included. Thus, the effective date of termination was 3 June 2021. It will be for the Tribunal to conclude whether the Claimant had a contract with either Respondent as an employee. In any event, however, if they were principal and the Claimant was contract worker, there is no doubt that the effective date of termination of that relationship was on 3 June 2021.
59. In relation to the claim that the alleged race discrimination culminated in the decision to terminate the contract/relationship, then time started to run from the effective date of termination, which is 3 June and the primary time limit expired on **2 September 2021**. Thus this claim is also brought outside the primary time limit.
60. What of the alleged delay in termination payments (the last month's pay and outstanding holiday pay)? The Claimant's case is that his comparator was paid on 14 May 2021. Time starts to run for an omission from the date when the person complained about does an act inconsistent with it. The inconsistent act is the paying of a comparator. On the Claimant's case therefore (even though notice had not yet expired) time started running on 14 May 2021. The primary time limit for this claim therefore expired on **13 August 2022**.

Should Time be Extended?

61. The first ACAS Early Conciliation (with the Second Respondent) was started on 3 September 2021 and with the First Respondent on 3 October 2021. I shall concentrate first on whether it is just and equitable to extend time to the 3 September 2021. Only if it is, do I need to go on to consider the next period, for which in any event the claimant has likely a good reason for delay, given the understandable confusion over which company was his principal.
62. It follows from my findings of fact the explanation for the failure to meet the primary time limit is that the Claimant counted his claims starting from the end of his notice period and made a mistake about the calculation of the primary time limit. The problem for the Claimant is that, on the very particular facts of this case, this was not a reasonable misunderstanding. He was well-aware of the process for presenting claims from his experience in his 2020 London Central claim. From this he was also well-aware of the jeopardy created by not starting Early Conciliation within the primary time limit. He had the benefit of earlier advice. He had also been given timely and very clear guidance in EJ Walker's written decision as to how the time limit was calculated (para 43). I have therefore reached the conclusion that his misunderstanding was not a reasonable one.
63. Nor do I consider that the Claimant was misled by the Respondent's later error about the day on which he was given notice. The Claimant was clear in his written evidence and his ET1 form that this was 4 May and it was only in submissions before me that he seized on this error as a factor. It did not make any difference to his approach to presenting his claims at the time.
64. I have decided that the Claimant's mental ill health and earlier lack of therapeutic support and the pandemic and his response to the murder of George Floyd and others, were not factors in him not meeting the primary time limit.
65. I conclude there is no reasonable reason for the failure to meet the primary time limit. In respect of one claim the delay is one day; in respect of the other claims the delay is about 3 and 4 weeks.
66. I then go on to consider the other factors and whether they weigh towards it being fair to extend time or against. It seems to me that all of the other factors are neutral.
67. First, the merits: the emails I have seen show Ms Austin of the First Respondent making appropriate efforts to ensure that the Claimant was paid along with two other colleagues given notice on the same day. It does not appear she, at least, sought to single him out in relation to pay. But ultimately it was obviously not Ms Austin's decision as to when to approve the relevant timesheets or approve the pay and this is what the Claimant complains about. On the evidence I have heard I cannot therefore judge the chances of success of the victimisation claim and it is a neutral factor.
68. Second, the balance of hardship in relation to my decision is even. Either the Claimant has the hardship of not being able to pursue his claims; or the Respondents will have the hardship of having to defend them. That Mr Bene

has since left the First Respondent's employment is a neutral factor: he can still give evidence on its behalf.

69. The Claimant argues that the Respondents knew about his complaints back in May 2021. To some extent this is correct, but only in general terms. They still do not know the details. The Respondents say the Claimant knew the facts of his claims back in May and this too is correct. These factors it seems to me cancel each other out.
70. I conclude that it is not just and equitable to extend time, even by one day. The Claimant has the burden of persuading me to extend time: he has not provided a reasonable explanation for not meeting the primary time limit and no other factor points towards it being fair to extend time.
71. The Tribunal therefore has no power to hear the claims and they are dismissed.

**Employment Judge Moor
Dated: 16 June 2022**