



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr R Magnus**

**v**

**Car World (Cambs) Ltd**

**Heard at:** Cambridge  
**On:** 6 October 2023  
**Before:** Employment Judge Andrew Clarke KC

## **Appearances**

**For the Claimant:** In person  
**For the Respondent:** Mr Flood, counsel

## **JUDGMENT**

1. No judgment in favour of the claimant having been issued it was unnecessary for me to consider whether or not to set such a judgment aside.
2. The claim for unlawful disability discrimination was presented outside the three month primary limitation period. It is just and equitable to extend that period from 25 (or 28) February 2021 to 1 March 2021 such that the claim was presented in time and the tribunal has jurisdiction to hear it.

## **REASONS**

1. This public preliminary hearing was set down by Employment Judge Postle at a hearing on 21 November 2022 which had been intended to be the full merits hearing. This hearing is to deal with two matters:
  - 1.1 The possible setting aside of a judgment under Rule 21 dated 23 May 2021, and
  - 1.2 Whether or not the tribunal has jurisdiction to hear this claim it having been raised for the first time before Judge Postle that the claim appeared to have been presented one day outside the primary limitation period.
2. The claim form in this case was presented on 1 March 2021, a notice was then sent to the respondent giving it until 2 April 2021 to provide its response.

3. On 29 March 2021 those then representing the respondent made an application in writing to the tribunal to extend time for the presentation of the response. That application was a reasoned application the reasons being associated with covid and the furloughing of relevant staff. That application does not appear to have been dealt with by the tribunal at the time.
4. On 15 April 2021 the response from the respondent was submitted.
5. On 23 May 2021 the tribunal, on the instruction of Employment Judge Ord, wrote to the parties as follows:
  - 5.1 In a letter directed to the respondent (copied to the claimant) it was noted that the response had been received out of time and that no application had been made to extend time.
  - 5.2 In a letter to the claimant (copied to the respondent) it was noted that the tribunal could give judgment as no response had been presented in time but that the tribunal needed further information to be provided by the claimant before this could be done.
6. I note that despite Employment Judge Postle asserting that there was a Rule 21 judgment issued on 23 May, there was no such judgment.
7. On 24 May the respondent's then representatives reminded the tribunal of the 29 March application to extend time by way of response to the assertion that no application had been made. That letter from those representatives also asked that the judgment be reconsidered. The representatives were a trade body and not legally qualified as they themselves note in subsequent correspondence. It appears to me that they had misread the letter from the tribunal to the claimant which did not assert the judgment had been issued but that one could be issued.
8. On 5 July 2021 the employment tribunal wrote noting the presentation of a response and noted that there had been an application to extend time with reasons given and gave the claimant the opportunity to respond to that application.
9. So far as I can tell, the claimant did not avail himself of that opportunity. In any event, on 25 September 2021, Employment Judge Ord extended time for the presentation of the response.
10. On 1 April 2022 Employment Judge Tynan gave case management orders and directions to set the matter down for a full merits hearing on 21 November 2022.
11. As I have already noted, the matter came before Employment Judge Postle on that day and rather than hearing the matter, he decided that there needed to be a further preliminary hearing to deal with the possible setting aside of the judgment (which did not exist) and also to deal with a claim in time point.

12. That claim in time point had properly been raised by Mr Flood on behalf of the respondent. It was agreed between counsel and the Judge that the claim ought to have been presented on or before 28 February 2021. It may be that this was incorrect and that, in fact, the claim ought to have been presented on or before 25 February. It does not appear to me that it is material to consider those two possibilities separately or to resolve which of the two ways of analysing the sequence of events and the impact of the law is correct.
13. Pausing there, I can deal easily with the first of the two points which are before me today. There having been no judgment issued in May 2021 there is no judgment for me to set aside. Had there been a judgment issued it is plain and obvious to me that that judgment would have had to be set aside for the very reasons which caused Employment Judge Ord to grant an extension of time for the presentation of the response.
14. Hence, I turn to the second question of whether the claim was presented in time. This will necessitate me looking at the possible invocation of the secondary limitation period for claims for discrimination. That period can be invoked if it is just and equitable to do so. It is necessary for me to look to see what was the reason for the delay. It is necessary for a claimant in such circumstances to put before me evidence of the reason for delay.
15. In this case I have the benefit of a witness statement of 23 March 2023 in which the claimant explains why the claim was presented a little late. Mr Flood, very sensibly in the circumstances, did not find it necessary to cross examine the claimant as to what is said in his witness statement.
16. I can summarise what he says very quickly. During the primary limitation period Mr Magnus suffered from cancer; he was undergoing chemotherapy until 31 December 2020, he was “very unwell” during the whole of that period and was “upset and stress[ed]” as a result of his dismissal which he regards as an act of discrimination .
17. I am satisfied that he has explained the delay.
18. I remind myself that the extension of time into the secondary limitation period is the exception rather than the rule in such cases and that the burden is on the claimant to satisfy me that it is just and equitable to extend time up to the date of presentation of the claim. I have also had regard to the factors set out in s.33 of the Limitation Act 1980, in accordance with the guidance given by the Employment Appeal Tribunal In British Coal Corporation v Keeble [1997] IRLR 336.
19. In this case I have had particular regard to the length of and reason for the delay, to the impact on the cogency of the evidence likely to be required and the overall prejudice to each of the parties.
20. The delay was short and is, in my view, explained adequately by the witness statement to which I have referred.

21. I very much doubt that the delay of either four days or one day would have had any impact on the cogency of the evidence in this case. I note in passing that any such impact would be likely to be far less than the delay resulting from the respondent's failure to put in its response in time and the unfortunate chronicle of misunderstanding and confusion which led to this case not being heard, as it should have been, in November 2021.
22. Undoubtedly there is some prejudice to the respondent; it faces a claim which, if I did not extend time, it would not face at all. There is, in my view, far greater prejudice to the claimant. He has produced a reasoned claim. I express no view as to its prospect of success but it is certainly not a claim which has no, or little, prospect of success on the face of the materials that I have so far seen. I am of the view that it is a claim which the tribunal ought to hear and that in all the circumstances will hear.
23. In those circumstances, I am satisfied that it is just and equitable to extend time for the presentation of the claim to 1 March 2021. Hence, the claim was presented in time and the tribunal has jurisdiction to hear it.
24. I shall go on to consider the relisting of the claim for a full merits hearing and the orders originally made by Employment Judge Tynan in due course, but that listing and any consequential impact on the orders are matters which I propose to deal with in a separate record of a preliminary hearing.

Employment Judge Andrew Clarke KC

Date: 24 October 2023.....

Sent to the parties on:  
15 November 2023.

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For the Tribunal Office