EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms K Jhuti	**- V -**	Royal Mail Group Ltd

Heard at: London Central **On**: 16 November 2018

Before: Employment Judge Baty
Mr M Simon
Mr D Eggmore

Representation:

For the Claimant: Mr M Jackson (Counsel)
For the Respondent: Mr S Gorton QC (Counsel)

RESERVED JUDGMENT

1. The claimant was subjected to a detriment by the respondent's deliberate failure to provide an outcome to the claimant's grievance/appeal in a timely manner because it put the investigation in relation to that grievance/appeal on hold from early May 2015 until 5 August 2015. This detriment was done on the ground that the claimant had made protected disclosures (being both her grievance of 13 October 2014 and the other earlier disclosures she made in relation to TMIs which we found in the reasons for our judgment on liability to have been protected disclosures). This complaint under section 47B Employment Rights Act 1996 ("ERA") therefore succeeds.

2. Whilst the other failures by the respondent in relation to the adequacy of the investigation and to providing an outcome in a timely manner (which, like the detriment referred to in paragraph 1 above, are also referred to at paragraph 340 of the reasons for our judgment on liability) amounted to subjecting the claimant to a detriment, we do not find that they were done on the ground that the claimant made a protected disclosure or disclosures.

3. The proven detriment at paragraph 1 above formed part of a series of similar acts or failures with the proven detriments found in our judgment on liability (at paragraphs 2(e) and (f) and 5(g) and (i) of the agreed list of issues), such that all of those complaints were presented in time. The tribunal, therefore, has jurisdiction to hear all of those complaints.

4. Had we not found as we did in the paragraph above, we would have found that it was not reasonably practicable for the claimant to have presented her claim (or commenced ACAS early conciliation) within three months of the period ending 30 March 2014 but that, the claimant having failed to do that, she did not then present her claim within such further period as was reasonable. Therefore, had we not made the finding which we made in the paragraph above, we would have found that the claimant's complaints at paragraphs 2(e) and (f) and 5(g) and (i) of the agreed list of issues were presented out of time and that the tribunal did not have jurisdiction to hear them.

5. <u>The parties' attention is drawn to the order set out in the last paragraph of the reasons for this decision.</u>

REASONS

<u>Background</u>

1. The original hearing on liability in this claim took place in September 2015, with the reserved judgment and reasons for the tribunal's decision on liability having been sent to the parties on 12 November 2015. In that judgment, we found that four of the claimant's protected interest disclosure ("PID") detriment complaints succeeded but that the remainder of her PID detriment complaints and her PID unfair dismissal complaint failed.

2. There were then various appeals to the EAT and to the Court of Appeal on a number of different issues, none of which it is necessary to detail here, save for the last of these, which resulted in the decision of the EAT (Simler P sitting with members) handed down on 19 March 2018. At that EAT hearing, the parties were represented by the same representatives who have represented them at this hearing.

3. The EAT determined that, for the four proven PID detriment complaints to be in time as being part of a series of similar acts or failures for the purposes of section 48(3) of the Employment Rights Act 1996 ("ERA"), there needed to be at least one in time proven complaint. In our decision on liability, there was no such in time proven complaint. However, in relation to a cross-appeal, the EAT also found that we were in error in "sticking slavishly" to issue 7a of the agreed list of issues for the liability hearing as originally formulated and consequently that we did not

do justice to the parties. Issue 7a alleged that the claimant was subjected to the following PID detriment:

> "failing to investigate and provide an outcome to her grievance."

We had found that this detriment was not proven as an investigation had taken place and an outcome had been provided. However, the EAT referenced the claim form itself and various findings which we made at paragraph 340 of our reasons and, in short, decided that the scope of what we were required to determine was broader than what the allegation in the list of issues stated. Accordingly, it upheld the cross-appeal.

4. It therefore remitted three issues to us "for consideration (or reconsideration)". These are set out below. In addition, in a subsequent order, the EAT ordered that no further evidence should be submitted in relation to any of these issues and that they should be dealt with by way of submissions alone.

The Issues

5. The three issues remitted by the EAT, and which were agreed between the parties and the tribunal at the start of this hearing to be the issues which we would determine, were as follows:

> 1. Whether the detrimental acts relating to the grievance found at paragraph 340, were done on the ground of the protected disclosure (or disclosures) made by the claimant.
>
> 2. If so, whether there was a series of similar acts for the purposes of s. 48(3)(a) ERA so that time is extended, and all detrimental acts found proved are to be treated as in time.
>
> 3. If not, whether time should be extended under s. 48(3)(b) ERA because it was not reasonably practicable for the claimant to have made her claim within three months of the period ending 30 March 2014. *If not, was the claim made within such further period as the tribunal considers reasonable.*

6. The last sentence in the third of these issues above (set out in italics to distinguish it) was not included in the EAT order setting out the issues to be remitted. However, the parties agreed with the tribunal that its addition reflected fully the statutory test and that therefore it should be added.

7. The parties are in agreement that the date of 30 March 2014, referred to in the third issue above, is the date on which the last of the PID detriments which we found in our judgment on liability to have been proven took place and that, therefore, subject to any finding we might make in relation to the first of the issues remitted to us, time for presentation of the claim ran from 30 March 2014.

8. Whilst this point is not something we consider to be controversial, the reference to the claimant's "grievance" in the first issue (and indeed in issue 7a of the agreed issues from the original liability hearing) is in reality a reference to the claimant's grievance and appeal against dismissal, as the two were by agreement between the parties combined and considered by the same individual (Ms Anita Madden).

Today's hearing

9. In accordance with the EAT's direction, no further evidence was heard at this hearing.

10. Both representatives produced written submissions for this hearing, which the tribunal read. Both representatives then made oral submissions.

11. The tribunal reserved its decision.

The Law

Time limits in PID detriment complaints

12. The relevant section of the ERA in relation to time limits in PID detriment complaints is as follows.

48 Complaints to employment tribunals

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(2) On a complaint under subsection (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

13. In addition, both parties referred us to Arthur v London Eastern Railway Ltd [2007] ICR 193, as being the authority for the issue of whether there was a series of similar acts for the purposes of section 48(3)(a) ERA. We set out below the same passages of Arthur quoted by the EAT at paragraph 34 of its decision.

> **"29. Parliament considered it necessary to make exceptions to the general rule where an act (or failure) in the short three-month period is not an isolated incident or a discrete act. Unlike a dismissal, which occurs at a specific moment of time, discrimination or other forms of detrimental treatment can spread over a period, sometimes a long period. A vulnerable employee may, for understandable reasons, put up with less favourable treatment or detriment for a long time before making a complaint to a tribunal. It is not always reasonable to expect an employee to take his employer to a tribunal at the first opportunity. So an act extending over a period may be treated as a single continuing act and the particular act occurring in the three-month period may be treated as the last day on which the continuing act occurred. There are instances in the authorities on discrimination law of a continuing act in the form of the application over a period of a discriminatory rule, practice scheme or policy. Behind the appearance of isolated, discrete acts the reality may be a common or connecting factor, the continuing application of which to the employee subjects him to ongoing or repeated acts of discrimination or detriment. If, for example an employer victimised an employee for making a protected disclosure by directing the pay office to deduct £10 from his weekly pay from then on the employee's right to complain to the tribunal would not be limited to the deductions made from his pay in the three months preceding the presentation of his application. The instruction to deduct would extend over the period during which it was in force and the last deduction in the three months would be treated as the date of the act complaint of.**
>
> **30. The provision in section 48(3) regarding complaint of an act which is part of a series of similar acts is also aimed at allowing employees to complain about acts (or failures) occurring outside the three-month period. There must be an act (or failure) within the three-month period, but the complaint is not confined to that act (or failure. The last act (or failure) within the three-month period may be treated as part of a series of similar acts (or failures) occurring outside the period. If it is, a complaint about the whole series of similar acts (or failures) will be treated as in time.**

> **31. The provision can therefore cover a case where, as here, the complainant alleges a number of acts of detriment, some inside the three-month period and some outside it. The acts occurring in the three-month period may not be isolated one-off acts, but connected to earlier acts or failures outside the period. It may not be possible to characterise it as a case of an act extending over a period within section 48(4) by reference, for example, to a connecting rule, practice, scheme or policy but there may be some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them. Section 48(3) is designed to cover such a case. There must be some relevant connection between the acts in the three-month period and those outside it. The necessary connections were correctly identified by Judge Reid QC as (a) being part of a "series" and (b) being acts which are "similar" to one another.**
>
> **…….**
>
> **35. In order to determine whether the acts are part of a series some evidence is needed to determine what link, if any, there is between the acts in the 3 month period and the acts outside the 3 month period. We know that they are alleged to have been committed against Mr Arthur. That by itself would hardly make them part of a series or similar. It is necessary to look at all the circumstances surrounding the acts. Were they all committed by fellow employees? If not, what connection, if any, was there between the alleged perpetrators? Were their actions organised or concerted in some way? It would also be relevant to inquire why they did what is alleged. I do not find 'motive' a helpful departure from the legislative language according to which the determining factor is whether the act was done 'on the ground' that the employee had made a protected disclosure. Depending on the facts I would not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure."**

14. We further quote the EAT's interpretation of these passages, which immediately followed its quoting of these passages in its judgment, and which we also regard as binding authority:

> "In other words, a series of disparate acts that are apparently unconnected may be treated as similar and as forming part of a series where the evidence establishes a connection between them. Whether or not there is a relevant connection is a question of fact. All the circumstances surrounding the acts will have to be considered. As Mummery LJ observed (and Sedley LJ agreed at paragraph 41), depending on the facts, that connection may be no more than that they were all done on the ground of a protected disclosure."

Conclusions on the issues

15. We make the following conclusions, applying the law to the facts found in relation to the agreed issues. Where it is necessary to find further

facts, or to reference any additional legal provisions not set out in our summary of the law above, we do so as we go along issue by issue.

Issue 1: Whether the detrimental acts relating to the grievance found at paragraph 340, were done on the ground of the protected disclosure (or disclosures) made by the claimant?

16. In relation to this issue, it is worth first setting out paragraph 340 of the reasons for our decision and the surrounding paragraphs to put it in context, all of which the EAT quoted in its judgment. In those paragraphs we determined issue 7a of the agreed list of issues and made the findings in paragraph 340 referred to by the EAT. Those findings also reflect earlier findings made in the "findings of fact" section of the reasons for our judgment.

> **"Failing to investigate and provide an outcome to her grievance**
>
> **339. On the issue as set out, the treatment alleged did not occur. There was no failure to investigate the claimant's grievance. Ms Madden did carry out an investigation into that grievance. Furthermore, there was no failure to provide an outcome to her grievance. She did provide an outcome on 28 August 2015. Therefore, this complaint fails.**
>
> **340. Had the issue before us been that there was a failure to investigate adequately or to provide an outcome in a timely manner, that treatment would have been made out. We have already found that, in relation to the investigation, there were several important witnesses whom Ms Madden failed to interview and whom she admitted in cross-examination she should have interviewed. Furthermore, the length of time between the grievance being lodged in October 2014 and the outcome in August 2015 was extremely lengthy and not timely. The main reason for the excessive delay was that the respondent ordered that the investigation be put on hold for reasons, connected to TMIs, which were never explained to us.**
>
> **341. This complaint therefore fails."**

17. The alleged treatment therefore comprises two elements: first, that there was a failure to investigate adequately; and secondly that there was a failure to provide an outcome in a timely manner.

Detriments?

18. At the start of this hearing, it was indicated to us that there may be some dispute as to whether or not these failures amounted to detriments at all for the purposes of section 47B (as opposed to whether they were done on the ground that the claimant made a protected disclosure or disclosures, an issue on which we made no finding in the reasons for our judgment). This point was not returned to in submissions. However, it is certainly explicit in the wording of the issue remitted to us by the EAT that

the EAT considers that these were detriments (the EAT describes them as "detrimental acts"). Furthermore, for the avoidance of any doubt, we find that the claimant was indeed subjected to a detriment by these acts/deliberate failures to act. Both the inadequacy of the investigation into her grievance and the fact that she had to wait such a long time for it were clearly detrimental to her; what she would have wanted would have been an adequate investigation and one carried out in a timely manner. Furthermore, in terms of them being failures to act, they were deliberate: in terms of the adequacy of the investigation, Ms Madden was able to choose who she did and didn't interview; in terms of the delay, Ms Madden was able to determine when she produced a report in terms of the early stages and, thereafter, she was prevented from completing a report by a deliberate instruction from the respondent to put the matter on hold. Therefore, in relation to both, the claimant was subjected to a detriment.

Done on the ground of the protected disclosure (or disclosures)?

19. We turn first to the issue of the inadequacy of the investigation. The inadequacy which we identified was that there were several important witnesses whom Ms Madden failed to interview and whom she admitted in cross-examination she should have interviewed. However, there is nothing to indicate to us that the reason she failed to interview or contact Ms Mann, Ms Oakes, Ms Lunney or Ms Rock was because of any protected disclosure which the claimant made. Ms Madden had interviewed others, including Mr Widmer and Mr Reed, who were arguably more important people to interview then those she left out. We heard her evidence and there was nothing which indicated to us that she was somehow deliberately trying not to do her job properly; by contrast, we thought that she was trying to do her job to the best of her abilities, albeit we considered that she should have carried out these further interviews. We therefore find that the reason for not carrying them out, and therefore the reason for the inadequacy of her investigation, was inadvertence or a wrong judgment on her part and was not in any way because of any protected disclosure which the claimant made.

20. We turn to the issue of the delay in the investigation. This falls into two sections.

21. First, and we refer to paragraphs 227-228 of the reasons for our original decision in this respect, she forwarded copies of her interview notes to the claimant's solicitors on 13 December 2014 but inadvertently forgot to include the notes of Mr Widmer's interview. As we have found, this was due to inadvertence; it was nothing to do with any protected disclosure made by the claimant. Then, she got a reply from the claimant's solicitors on 19 January 2015 but, as this email went to her junk mailbox, she did not pick it up at the time and only found it when she checked that box later in April 2015, at which point she forwarded Mr Widmer's interview notes to the claimant's solicitors on 20 April 2015. These were, therefore, the reasons why Mr Widmer's interview notes were

not sent until April 2015; those reasons are nothing to do with the protected disclosures made by the claimant. We reiterate that, having heard Ms Madden's evidence, we have no reason to believe that the way she carried out her investigation of the grievance/appeal was done because the claimant had made protected disclosures.

22. However, and we refer to paragraphs 229-231 of the reasons for our original decision in this respect, the delay after that, from early May 2015 until 5 August 2015, was not due to Ms Madden but was because she was advised by her line manager, Ms Hayley O'Shea, that the respondent had requested that the investigation into the claimant's appeal and grievance be put on hold as they were considering an issue related to TMIs; and Ms Madden was subsequently informed on 5 August 2015 that it was okay to continue the appeal and grievance, which she duly did. No reasons apart from this reference to TMIs were given to her, or to this tribunal, for this delay.

23. We were told at this hearing that Ms O'Shea is a member of "group legal". However, we do not know whose decision it was to put the investigation on hold (whether it was Ms O'Shea's or whether she was instructed by anyone else at the respondent) or why (other than the reference to "an issue related to TMIs").

24. First, the delay was certainly a "deliberate failure to act" inasmuch as the failure to progress the investigation of the grievance/appeal during that period was as a result of a deliberate instruction by the respondent. Or, to put it in an alternative way, the decision to delay the progression of the investigation was a deliberate "act" in terms of the act of the respondent actively instructing that the investigation be put on hold. Either way, it falls within the wording of the statute.

25. Mr Jackson rightly reminds us that the burden of proof, under section 48(2) ERA is on the employer to show the ground on which the act or deliberate failure to act was done. The respondent has failed to do that. Whilst Ms Madden could tell us that she was told that it was because of an issue related to TMIs, she was not able to tell us any more. The respondent was in a position either to supply her with that information such that she could have informed the tribunal, or indeed to call another witness, perhaps Ms O'Shea, to explain exactly why the investigation was put on hold by the respondent; however, it did not do so. It has not therefore discharged that burden. That in itself would be reason enough for us to conclude that the reason was because of the protected disclosure or disclosures made by the claimant. Even if Ms Madden had not been able to tell us that it was put on hold because of an issue related to TMIs, such that no reason whatsoever for the delay was given, we would under the burden of proof provisions conclude that the respondent had not discharged its burden and that the reason was because of the protected disclosure or disclosures made by the claimant.

26. However, the information that we do have to go on (and indeed the only information which we have to go on) is that the reason for the investigation being put on hold was an issue related to TMIs. All of the proven protected disclosures made by the claimant were about TMIs, and specifically her belief that they were being abused by employees at the respondent; indeed, that was the main subject matter of the grievance which Ms Madden was investigating, the investigation of which and outcome of which was now being put on hold. Given this connection, and in the light of the failure by the respondent to provide us with any other information for putting the investigation on hold, we conclude that on the balance of probabilities, the reason why the respondent put this investigation on hold was because the claimant made her protected disclosures about TMIs, both in her grievance and in the earlier proven protected disclosures.

27. This PID detriment complaint therefore succeeds.

Other submissions on this issue

28. We deal now with a number of other submissions which were made in relation to this issue.

29. First, Mr Gorton made the point that, as set out in the list of issues for the main hearing, the alleged detriment at issue 7a was linked only to the one protected disclosure, namely the grievance which the claimant submitted on 13 October 2014. As the list of issues reads, that is correct: issue 6 asks whether the claimant made a qualifying disclosure by raising this grievance; and issue 7 then states:

> "If so, was the claimant subjected to the following detriment on the grounds that she made that disclosure contrary to section 47B ERA 1996:
>
> a) failing to investigate and provide an outcome to her grievance"

(our emphasis in the underlining).

30. However, if we adopted this literally, we feel confident that we would be accused further by the EAT of "sticking slavishly" to the issues, in a situation where we found that the detriment was done because of the earlier proven protected disclosures rather than the grievance protected disclosure, particularly given that the subject matter of all of those disclosures is essentially the same, namely the abuse of TMIs. As it is, it doesn't matter, as we have found that the claimant was subjected to this detriment on the ground of all of these proven protected disclosures, including the proven protected disclosure in her grievance of 13 October 2014.

31. Mr Gorton also submitted that we were not entitled to find that the instruction to put the investigation on hold was done on the ground of any protected disclosure because the alleged detriment was about Ms Madden's handling of the grievance and not about the actions of anyone

else at the respondent, whether that be Ms O'Shea or otherwise. However, we do not accept the submission. First, Mr Jackson referred us to the wording of the claim form itself at paragraph 25 (which was also quoted by the EAT) as follows:

"25. The Respondent has not revised its decision and as part of its investigation, it failed/made no attempt to carry out interviews with a number of key individuals, including but not limited to: (i) Mike Widmer; (ii) Nicola Mann; (iii) Sarah Oakes; (iv) Leger Holidays; and (v) **Rita Rock. Furthermore, to date the Claimant has still not received a grievance outcome."**

32. The allegation in relation to the grievance is clearly about what the respondent did or did not do; it is not limited to Ms Madden. It therefore encompasses the actions of others, be they Ms O'Shea or anyone else on behalf of the respondent.

33. Mr Gorton also argued that we are not entitled to make the above finding because it wasn't put in cross examination during the main hearing. However, it was put in cross examination. Ms Madden was asked about why the investigation was put on hold and she was unable to give details because she hadn't been told why, other than that it was an issue related to TMIs; all of that, which is reflected in our findings of fact at paragraphs 229-231, came out of Ms Madden's evidence. As to the question of "was the reason that the dismissal was put on hold because the claimant made a protected disclosure", that could not be put because there was no one giving evidence at the original hearing who could answer it (including Ms Madden). This does not, therefore, prevent us from making the above finding.

34. Mr Gorton submitted that the submissions of Mr Paxi-Cato, who was representing the claimant at the original hearing, focused on Ms Madden's actions rather than the instruction (by someone else) to put the investigation on hold. We were taken to Mr Paxi-Cato's submissions document. In the section concerning the grievance, the focus is predominantly on the actions of Ms Madden. As to the delay because of the instruction to put the investigation on hold, Mr Paxi-Cato referenced that Ms Madden told the tribunal that she didn't question her line manager and so when told to stop investigation she did just that and never queried why for three months there was an internal issue as to TMIs. Even there, the focus is on Ms Madden's behaviour, rather than submitting that the decision (of someone else) to put the investigation on hold was made because of the protected disclosure or disclosures. Having said that, we find it an unattractive argument to rely on any potential inadequacies in the closing submissions of counsel when, as is clear from our paragraph 340, we have specifically referenced that the main reason for the excessive delay was that the respondent ordered the investigation to be put on hold for reasons, connected to TMIs, which were never explained to us. Furthermore, that is the section of our findings which the EAT has focused upon and specifically asked us to address under the first issue before us

today. We do not consider that we are bound to depart from that task because of the submissions of claimant's counsel at the original hearing. We do not, therefore, accept Mr Gorton's submission in this respect.

Issue 2: If so, whether there was a series of similar acts for the purposes of s. 48(3)(a) ERA so that time is extended, and all detrimental acts found proved are to be treated as in time?

35. The PID detriment complaint which we found proven above either took place in early May 2015 or took place over a period from early May until 5 August 2015. It does not matter which for these purposes; under either scenario, that complaint was presented in time. The other proven PID detriment complaints were, prima facie, presented out of time. Those complaints, in summary, were: being bullied and harassed and intimidated by Mr Widmer; being performance managed by Mr Widmer; being offered a three-month payoff by Ms Rock; and being offered a one-year payoff by Ms Rock. As we found, all were done because of the protected disclosures regarding TMIs which the claimant made. We accept that the first two were carried out by Mr Widmer; the next two by Ms Rock; and the final (in time) detriment was carried out by a person or persons unknown at the respondent. However, the disparity of actors misses the point: these were all done because the claimant raised issues about the abuse of TMIs. That is the thread which runs through these detriments from start to finish.

36. We know that TMIs were a big issue for the respondent, as is evident from the behaviour of the likes of Mr Widmer and Mr Reed in relation to the claimant, and Ms Rock offering a year's pay to an individual who didn't even have the qualifying service to bring an unfair dismissal claim. Furthermore, we refer again to paragraphs 136-7 of the reasons for our original decision and the claimant's conversation with Mr Roberts, the "architect of TMIs", who told her that TMIs were being abused by the media specialists by not being used appropriately and indicated that this was known throughout senior management at the respondent. We therefore conclude that all of these proven complaints, from Mr Widmer's actions at the beginning, through to the delay in the investigation towards the end, were all linked as being related to the claimant's disclosures about the abuse of TMIs; and that abuse which was already known to management. We refer again to the authority in Arthur that even a series of apparently disparate acts could be shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure. We do not even find that the proven complaints referred to are "apparently disparate". However, they were certainly all, as we have found, done on the ground of the claimant's protected disclosure or disclosures. We therefore have no hesitation, in the factual circumstances that we have found, in finding that they form part of a series of similar acts or failures for the purposes of section 48(3) and, as such, all of these complaints were presented in time and the tribunal does have jurisdiction to hear them.

Issue 3: If not, whether time should be extended under s. 48(3)(b) ERA because it was not reasonably practicable for the claimant to have made her claim within three months of the period ending 30 March 2014? If not, was the claim made within such further period as the tribunal considers reasonable?

37. It is not, therefore, strictly necessary for us to determine the final issue. However, and particularly as the parties have specifically asked us to do so whatever the outcome on the other issues, we set out our conclusions on this issue below.

38. The reason submitted on behalf of the claimant as to why she did not put a claim in earlier was that her mental and physical state meant that she was not in a position to deal with matters and was unable to issue proceedings. That is the only reason put forward by her.

39. Mr Gorton has taken us through the examples of the claimant's correspondence with the respondent in the three-month period immediately after 30 March 2014. During that period, the claimant is emailing individuals at the respondent regarding her bullying and harassment complaint. Furthermore, she is sending updates to the respondent regarding her illness. In addition, we refer to the around 50 emails which she sent to Ms Vickers between 11 and 14 July 2014 which are lengthy, often incoherent and difficult to understand and appear irrational at times, in contrast to the much more measured and coherent emails which the claimant was writing earlier in her career at the respondent (see paragraph 208 of the reasons for our original decision). They are powerful evidence of the claimant's state of mind around that time, not just at that particular point in July 2014. We accept, therefore, that, during the three-month period from 30 March 2014 and beyond, the claimant was unwell and was not in a fit state. For this reason, we find that it was not reasonably practicable for her to have presented her claim (or to have contacted ACAS) in the three-month period immediately post 30 March 2014.

40. However, after that, she was instructing solicitors and had done so by 11 August 2014, as there are various emails from her to the respondent referencing her lawyers. She was therefore legally advised from early August at the very latest, and possibly earlier. Her lawyers corresponded with the respondent. In due course they put in the detailed grievance on 13 October 2014. Given that she had solicitors advising her from August 2014 onwards, who would be able to explain the rules on employment tribunal time limits to her, there is no reason why from that point onwards she, or her solicitors, could not have submitted a tribunal claim, notwithstanding the claimant's health issues (she was clearly capable of giving them instructions so that they could submit the detailed grievance on her behalf).

41. When one looks at the timing (termination of employment (21 October 2014); first contacting ACAS (19 January 2015); end of ACAS

early conciliation (19 February 2015); presentation of claim (18 March 2015)), it simply looks as if the claimant, or her solicitors, have decided to commence proceedings mindful of the tribunal time limits but by reference to the date of termination of her employment. That does not, however, make it impracticable or even difficult, in relation to the complaints up to 30 March 2014, to have submitted a claim earlier.

42. We therefore find that, in relation to those complaints, the claimant could reasonably have submitted a claim no later than August or September 2014 and that, by submitting her claim when she did in March 2015, she did not submit it within such further period as we consider reasonable. Therefore, had we not made the finding which we have done in relation to the second issue, we would have found that the four earlier complaints were presented out of time, that time should not be extended and that the tribunal did not have jurisdiction to hear those complaints.

Next steps

43. The tribunal became aware during the hearing that there remained an outstanding appeal, in relation to the PID unfair dismissal complaint, which was due to be determined following a hearing in the Supreme Court on 12 and 13 June 2019. At the end of the present hearing, the judge asked the parties how, depending on our decision, they would like to proceed going forward and, in particular, whether they would wish the tribunal to list any remedies hearing (if appropriate) prior to the outcome of the appeal to the Supreme Court. Mr Jackson said that the approach would depend on our decision, although both parties acknowledged that there would be a lengthy delay if the tribunal did wait for the Supreme Court decision which might, for example, not be available until say October 2019.

44. In the light of our decision above, the parties are ordered to write to the tribunal within 14 days of this decision being sent to the parties to confirm each of the following:

1. whether they wish the tribunal to list a remedies hearing as soon as possible or to wait for the outcome of the Supreme Court case;

2. whether there is still any outstanding costs application by the claimant (or any other party) which ought also to be determined at such a hearing;

3. for how many days they consider such a remedies (and, if appropriate, costs) hearing should be listed (such time frame to include reasonable time for tribunal deliberation); and

4. what are the parties' dates to avoid for the next nine months?

_____
Employment Judge Baty

Dated: 30 November 2018

Judgment and Reasons sent to the parties on:

3 December 2018

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For the Tribunal Office