



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondents**

**Mr M Majidy**

**v The School of Oriental and African  
Studies**

**Heard at: London Central Employment Tribunal (CVP)**

**On: 14 July 2023**

**Before: Employment Judge Brown**

**Appearances**

**For the Claimant:**

**In Person**

**For the Respondent:**

**Ms K Barry, Counsel**

## JUDGMENT AT A PUBLIC PRELIMINARY HEARING

The Judgment of the Tribunal is that:

1. The Claimant presented the first claim, case number 2201386/2022, out of time. It is not just and equitable to extend time for it. The Tribunal does not have jurisdiction to consider it. It is dismissed.
2. The allegation in the second claim, case number 2210937/2022, that “the Respondent subjected the Claimant to race discrimination and/or victimisation because of doing a protected act (issuing the first claim) by placing an underage student in the Claimant’s teaching group causing potential safeguarding issues and putting the Claimant in a difficult situation, in Summer 2022”, is struck out because it has no reasonable prospects of success.
3. The remaining allegations in the second claim are not struck out, nor are they made the subject of a deposit order. They will proceed to a final hearing for 3 days on 24 – 26 January 2024.

## REASONS

**This Hearing**

1. This Public Preliminary Hearing was listed to decide the following matters:

- 1.1. whether the first claim was presented out of time, and whether time should be extended for it;

- 1.2. or whether the allegations may comprise a continuing act and the matter of time should be determined at the final hearing;
  - 1.3. whether the second claim and/or part of the first claim should be struck out because it had no reasonable prospects of success;
  - 1.4. whether the second claim should not have been accepted because there was no ACAS certificate;
  - 1.5. whether to order the Claimant to pay a deposit as a condition of continuing to advance any allegation in either case;
  - 1.6. to identify the issues; and
  - 1.7. to make case management orders.
2. The Respondent did not pursue the argument that the second claim should not have been accepted. It acknowledged that the Claimant had had an ACAS certificate before he presented that claim.
  3. At the start of the hearing the Claimant told me that he considered that documents – in particular, emails - were missing from the Public Preliminary Hearing Bundle. It was agreed that the Claimant had sent his documents to the Respondent late, but that the Respondent had included all the documents he had sent, before sending the complete Bundle to the Claimant. I decided that the Claimant had had the opportunity to include all the documents on which he wished to rely in the Bundle and that it would be fair to proceed on the basis of that Bundle. It would not be fair to add further documents at this stage, when the Respondent had not had a chance to consider them.
  4. I read the witness statements of the Claimant and of Jo Bland, the Respondent's Deputy HR Director. Both those witnesses also gave live evidence, including in cross examination.
  5. The Respondent had prepared a detailed skeleton argument, which the Claimant had been provided with for a previous preliminary hearing on 5 June 2023.
  6. It was agreed that I should determine whether the first claim was presented out of time, first, before considering the other issues.

## **Background**

7. By a first claim, Claim Number 2201386/2022, presented on 21 March 2022, the Claimant brought complaints of direct race discrimination against the Respondent, his employer.
8. By a second claim, claim number 2210937/2022, presented on 8 December 2022, the Claimant brought complaints of race discrimination and victimisation.
9. The second claim was accepted after reconsideration on 3 March 2023.
10. The Claimant relies on being Kurdish and/or not being Arabic in his race discrimination claims
11. The allegations in the first claim were clarified at a Private Preliminary Hearing on 5 June 2023:

### **Race Discrimination / Harassment Allegations:**

- 11.1. That in March 2005, Ghinwa Mamari, the former coordinator of Arabic, racially harassed the Claimant by commenting "Why speaking pure Arabic? Do you want to hide something? which referred to the Claimant not being an Arab;

- 11.2. That in October 2006 Sulafa Nashawa commented on Saddam Hussein's appearance during his first trial for genocide, where the judge was a Kurd and Kurdish forces were involved and that she said in the Claimant's face that "they are traitors";
  - 11.3. That in 2009, during the selection process for a lecturer in Arabic in the Middle East Department, Mr Muhammad Saeed, Mr Muaath Salih interrupted and asked questions during the Claimant's presentation, contrary to protocol and offered the job to a comparator, Ahmed Al-Khashim, who was Arab and/or Syrian, rather than to the Claimant, who is Kurdish.
  - 11.4. That in 2012, Saliha Faliche told the Claimant he was a 'stingy Jew' and had 'minority syndrome';
  - 11.5. That in the academic year 2014/2015 the Claimant expressed his interest in re-offering and teaching Kurdish, but Dr Anil Biltoo refused this stating that the language centre was going under review and under such circumstances the centre could not offer a new language;
  - 11.6. That in September 2014, the Claimant was given a one term contract with 20 hours of teaching for an academic year, compared with other colleagues who were offered more teaching hours and longer contracts;
  - 11.7. That in September 2014, the Claimant's concerns regarding the allegation at [11.4] were made public by a Union official Abdul Garoub;
  - 11.8. That in August 2015, Anil Biltoo sent an email to the Claimant about student feedback which the Claimant alleges was manipulated;
  - 11.9. That on 6 December 2016, Amal Ali she asked the Claimant: "izzay Erbil?" meaning "how is Erbil?" (Erbil is the capital city of Kurdistan), out of the blue, with no greeting or other interaction. The Claimant smiled and replied "zayy el-'3asal" meaning: it is very good. She said: izzay el-3alaga ma3a el-Emrican? "how are the relations with the Americans?" The Claimant said "why are you asking me this question? I am not a politician and I am here to work... but all Middle Eastern and Arab presidents have ties with the Americans." Amal Ali said that all Arab leaders were "gazma" means "shoe". The term "shoe" is used to describe the most humiliated person. Amal Ali therefore implied that Kurds are considered as low as their "shoes".
  - 11.10. That in 2017 the Claimant received very brief, contradictory and unhelpful feedback as to why he had not been successful for the post of acting coordinator. He was given no feedback as to how he might improve for future applications. The Respondent did not provide the Claimant with scores, despite him asking for these;
  - 11.11. That in 2018, the Claimant did not receive his salary for January – March 2018;
  - 11.12. That in 2019 the Language Centre did not act on the Claimant's request that they arrange a shadowing opportunity;
  - 11.13. That in January 2019 the Kurdish course was cancelled due to not reaching the quorum, whereas Arabic courses were confirmed on the week term started, 2 days before the start of the course;
  - 11.14. That in February 2020 Ahmad Al-Khashem referred to Kurdish Peshmerga fighters being 'horrible'; and
  - 11.15. In October 2021 the Respondent rejected the Claimant's application for the post of Senior Lecturer in Arabic, at the shortlisting stage, without properly considering it. The Respondent appointed a person of Arabic ethnic origin, who was less well qualified and experienced than the Claimant, to the post.
12. The last matter the Claimant alleges in the first claim is the shortlisting matter in October 2021.
  13. The allegations in the second claim were established at the 5 June 2023 as follows:

Race discrimination and/or victimisation because of doing a protected act (issuing the First Claim):

- 13.1. In August 2022, the Respondent refused funding for the Claimant to attend a conference for no logical reason;
- 13.2. On 10 October 2022, the Head of Department Ilham Salimane removed the Claimant from teaching a course after an internet interruption; and
- 13.3. In Summer 2022 an underage student was placed in the Claimant's teaching group causing potential safeguarding issues and putting the Claimant in a difficult situation.

### **Facts Relevant to Time**

14. I made the following findings for the purposes of this preliminary hearing. They are not intended to bind the final hearing on any substantive matters of liability.
15. The Claimant commenced ACAS conciliation in relation to the first claim, 2201386/2022, on 4 January 2022. The ACAS early conciliation certificate was issued on 14 February 2022.
16. He presented his first claim on 21 March 2022.
17. It was not in dispute that the Claimant applied for the role of Senior Lecturer in Arabic on 8 October 2021 and was informed of the decision not to shortlist him on 19 October 2021.
18. Chronologically, the last allegation in his first claim relates to the rejection of his application for that role.
19. As the primary 3 month time limit for presenting a claim based on an allegation dated 19 October 2021 would have expired during the period of Early Conciliation, the Claimant had a further month, after the end of Early Conciliation, in which to present his claim. The last day to issue the claim in time, accounting the Early Conciliation period, under S.207B Employment Rights Act 1996, was 14 March 2022.
20. When the Claimant presented his claim on 21 March 2022, it was therefore presented 7 days out of time.
21. The Claimant agreed in evidence that there were large gaps between the allegations he had brought in his first claim. He said that, while the names of the alleged discriminators were nearly all different, they were all Arabic teachers known for their nationalist attitudes.
22. The Claimant gave evidence that he had not brought his first claim earlier than he did because he was a refugee and it was not easy for him to confront people. He said that his language skills were "not great" in the early stages of his employment. He said that he was worried about being dismissed if he brought a claim.
23. However, the Claimant did email his colleague directly in February 2012 complaining about that colleague's alleged statement that the Claimant "was a 'stingy Jew' and had 'minority syndrome'", p229. The Claimant also raised the allegation of being called a "Stingy Jew" and "American collaborationist" with the Head of the Respondent's Language Centre in a meeting on 22 June 2018 regarding teaching allocations, when the Claimant was accompanied by a union member, p232.
24. The Claimant brought a grievance about discrimination in 2019. He was represented by a Union representative, from the UCU Union, during the grievance process, including when he received the grievance outcome. He told me, however, that he believed that the Union was an agent of the employer and that his Union representative had lied for the employer.

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25. The grievance outcome letter, dated 7 November 2019, confirmed that the Claimant had alleged discrimination in relation to the following matters: "... discrimination in the allocation of teaching work and failings in the conduct of two Recruitment and Selection processes carried out by the Language Centre. ... Regarding the allocation of teaching, specifically you allege that Ilham (and perhaps others) discriminated against you by favouring other staff, who in some cases were less qualified for the work concerned. Regarding the Recruitment and Selection processes, you allege that you were not given adequate feedback after you were interviewed for the post of Acting Coordinator of Arabic in 2017 and you were not shortlisted for the Language Specialist post earlier this year... ." p292.
26. The grievance therefore related to some of the matters the Claimant brought in his first claim in March 2022.
27. It appeared, therefore, that the Claimant had felt able to raise complaints, including complaints of discrimination, both directly with alleged discriminators, and in a grievance process, more than 2 years before he presented his claim.
28. The Claimant agreed that he had continued to be a member of the Union after 2019 and that he could theoretically have had access to advice from the Union.
29. The Claimant presented a further grievance in December 2021, p213, which he amended in February 2022, p213. He told me that he had never received an outcome to this grievance. He agreed that he had received an interim report - p306 – 400. He told me he believed that the Respondent had deliberately cancelled an appointment to discuss the grievance to ensure he could not bring a claim to the Tribunal.
30. The Claimant also said in evidence that he had not brought a claim or claims earlier because he had hoped to resolve matters internally and because he was working and studying for his PhD SOAS and his PhD supervisor was Dean of the Faculty. The Claimant was awarded his PhD in summer 2019. His PhD supervisor was no longer Dean of the faculty from about 2019.
31. When it was put to the Claimant in cross examination that he could have looked on the internet to find out how to bring a claim to the Tribunal, he said that he did not want to answer.
32. It was not in dispute that some of the alleged discriminators in the first claim have left SOAS. Ghinwa Mamari, who is alleged to have discriminated against the Claimant in March 2005, left SOAS on 11 July 2010; Muaath Salih, who is alleged to have discriminated against the Claimant in 2009, left SOAS on 31 August 2018; Saliha Fellache, who is alleged to have discriminated against the Claimant in 2012, left SOAS on 30 November 2020.
33. Regarding the allegations in the second claim, the Claimant was informed by Tawnya Cheatham, Director of Marketing, Student Recruitment and Admissions, on 25 July 2022, that there was no budget for conference participation, p295, p296. The Claimant told the Tribunal that he believed that, Ilham Salimane, Language Centre Manager, was, in fact, responsible for that decision.
34. Ilham Salimane, Language Centre Manager, informed the Claimant on 11 October 2022, that he had been removed from teaching a course, p303. It was not in dispute that the Claimant had failed to attend an online lecture and that students had complained.
35. The Claimant contended that the allegations in the first and second claim were linked because the perpetrators were all Arabs from the same ethnicity and background.

36. It was not clear how the Claimant contended that the alleged underage student had been allocated to the Claimant's class.
37. The 2 claims had been joined before the hearing on 14 July 2023, although the Claimant had originally objected to them being joined and had asked for the Tribunal to consider them separately.

### **Time Limits & Continuing Acts**

38. By *s123 Equality Act 2010*, complaints of discrimination in relation to employment may not be brought after the end of
- 38.1. the period of three months starting with the date of the act to which the complaint relates  
or
- 38.2. such other period as the Employment Tribunal thinks just and equitable.
39. By *s123(3) EqA 2010* conduct extending over a period is treated to be done at the end of the period. Failure to do something is to be treated as occurring when the person in question decided on it.
40. In *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'. Paragraph [52] of the judgment.
41. In *Owusu v London Fire and Civil Defence Authority* [1995] IRLR 574, the EAT held that an employer's repeated failure to upgrade an employee or to allow him to act up at a higher grade when the opportunity arose amounted to a prima facie case of a continuing act 'in the form of maintaining a practice which, when followed or applied, excluded [him] from regrading or opportunities to act up'. Mummery J stated that a succession of specific instances was capable of indicating the existence of a practice, thereby constituting a continuing act extending over a period. Whether those instances did in fact amount to a practice, as opposed to a series of one-off decisions depended on the evidence and the employer's explanations for the refusals.
42. Employment Tribunals can decide at a Pre-Hearing Review whether acts of discrimination are out of time and therefore not permitted to go to a full Hearing or, on the other hand, whether they could form part of a course of continuing acts and therefore should be allowed to proceed to a final Hearing where the question of whether they do form part of such a course of continuing acts will be determined. At such a Pre-Hearing Review, in deciding this question, Tribunals apply the tests set out in *Lyfar v Brighton & Sussex University Hospital Trust* [2006] EWCA Civ 1548 and *Aziz v FDA* [2010] EWCA Civ 304. In *Aziz* the Court of Appeal said that the test to be applied at the Pre-Hearing Review was to consider whether the Claimant has established a prima facie case. The Employment Tribunal must ask itself whether the complaints were capable of being part of an act extending over a period. Another way of formulating the test to be applied at the Pre-Hearing Review is this: the Claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs. One relevant, but not conclusive factor in deciding whether there is a prima facie case of a continuing act, is whether the same, or different, individuals were responsible for the discriminatory acts.

43. When assessing an argument that there is conduct extending over a period, a tribunal may first need to resolve any application for permission to amend the claim to add new detriments, since those detriments, if allowed, may strengthen the claim that there has been conduct extending over a period. If the amendment is allowed, the new detriments may bring an otherwise out of time claim, in time, *Sakyi-Opore v Albert Kennedy Trust* UKEAT/0086/20 (24 March 2021, unreported), at [18] and [20].

### **Extension of Time**

44. The Court of Appeal made clear in *Robertson v Bexley Community Centre t/a Leisure Link* [2003] IRLR 434, CA at [23] that: “If the claim is out of time, there is no jurisdiction to consider it unless the Tribunal considers that it is just and equitable in the circumstances to do so”.
45. The power to extend time for the consideration of a complaint has been held to give Tribunals 'a wide discretion to do what it thinks is just and equitable in the circumstances ... they entitle the [employment] tribunal to take into account anything which it judges to be relevant', *Hutchison v Westward Television Ltd* [1977] IRLR 69, [1977] ICR 279, EAT. The discretion is broader than that given to tribunals under the 'not reasonably practicable' formula: *British Coal Corp v Keeble* [1997] IRLR 336; *DPP v Marshall* [1998] ICR 518, EAT. Factors which can be taken into account include the prejudice each party would suffer as a result of the decision reached and all the circumstances of the case, including the length of and reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the Claimant acted once he knew of the facts giving rise to the cause of action and the steps taken by the Claimant to obtain appropriate advice once he knew of the possibility of taking action.
46. However, notwithstanding the breadth of the discretion, there is no presumption that a tribunal should exercise its discretion to extend time on the 'just and equitable' ground unless it can justify failure to exercise the discretion. The onus is always on the Claimant to convince the tribunal that it is just and equitable to extend time, *Robertson v Bexley Community Centre* [2003] EWCA Civ 576, [2003] IRLR 434, at para 25, per Auld LJ.
47. In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 11943 the Court of Appeal considered that: “...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).”
48. “There are also some essential legal considerations that flow from the statutory time limits framework itself, that form part of the general backcloth in every case, in particular, the inherent importance attached to observance of time limits for litigating, and finality in litigation, even where, as here, there is considerable flexibility in the test that the tribunal must apply when deciding whether or not to extend time...” per HHJ Auerbach in *Wells Cathedral School Ltd v Souter*, EA-2020-000801-JOJ at [32].
49. Regarding prejudice to the Respondent, in *Miller and Others v The Ministry of Justice and Others* UKEAT/0003/15/LA at §§12-13 Laing J said:
- “12. ... There are two types of prejudice which a Respondent may suffer if the limitation period is extended. They are the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and the forensic prejudice which a Respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents, and losing touch with witnesses...
13. ... DCA v Jones also makes clear (at paragraph 44) that the prejudice to a Respondent of losing a limitation defence is “customarily relevant” to the exercise of this discretion. It is obvious that if there is forensic prejudice to a Respondent, that will be “crucially relevant” in the exercise of the discretion, telling against an extension of time. It may well be decisive. But, as

Mr Bourne put it in his oral submissions in the second appeal, the converse does not follow. In other words, if there is no forensic prejudice to the Respondent, that is (a) not decisive in favour of an extension, and (b), depending on the ET's assessment of the facts, may well not be relevant at all. It will very much depend on the way in which the ET sees the facts; and the facts are for the ET..." .

**Decision - First Claim Out of Time**

50. The first claim, taken on its own, was presented out of time. The last act was on 19 October 2021. The claim was presented on 21 March 2022, a further 7 days beyond the additional time allowed by the EC conciliation period.
51. The second claim was presented in time and the two claims had been joined before this hearing.
52. Applying *Sakyi-Opare v Albert Kennedy Trust* UKEAT/0086/20, I considered whether the second claim, taken together with the first claim, showed that there was prima facie case of a continuing act through both claims, so that the first claim was also in time.
53. The test which a tribunal must apply is whether the claimant has established a prima facie case. An alternative framing of the test to be applied on a strike-out application is whether the claimant has established a reasonably arguable basis for the contention that the various acts are so linked as to be continuing acts, or to constitute an on-going state of affairs: *Aziz*.
54. The Claimant contends that all the alleged discriminators are Arabs and that there is a discriminatory environment in the Arabic department towards him.
55. However, I considered that there was no prima facie case of a continuing act, linking the allegations in the first claim and the second claim.
56. The allegations in the second claim concern different alleged discriminators and are of a different nature to the allegations in the first claim.
57. In the second claim, the person who told the Claimant, in August 2022, that he could not have funding to attend a conference, was Tawnya Cheatham. Director of Marketing, Student Recruitment and Admissions. It was not in dispute that she is a person outside the Arabic Department. Even if the Claimant contended that the Head of the Arabic Department, Ilham Salimane, was involved in that decision in some way, the Claimant has not shown any prima facie case that Ilham Salimane was involved in the allegations in the first claim.
58. Another of the allegations in the second claim is that, on 10 October 2022, the Head of Department, Ilham Salimane removed the Claimant from teaching a course. The Claimant acknowledges that this decision was made when he did not attend an online class, and there were complaints from students.
59. The earliest allegation in the second claim is that, in Summer 2022, an underage student was placed in the Claimant's teaching group causing potential safeguarding issues and putting the Claimant in a difficult situation. I agreed with the Respondent's contention that this allegation was based on unusual and obscure facts, with no apparent link to the Claimant's race.
60. On the prima facie facts, all the matters in the second claim appear to have arisen out of individual factual scenarios, and specific events, which did not bear any relation to the factual allegations in the first claim. The allegations in the first claim are generally of discriminatory comments made directly to the Claimant by different alleged discriminators, or a failure to promote him, or a failure to offer him teaching hours. There was no allegation in the first claim of a refusal of funding for conferences, or an underage student being in the Claimant's class.
61. In so far as there was any similarity between any allegation in the second claim and an allegation in the first claim, that related to the Claimant's removal from teaching a course when he failed to attend an online lecture. However, the Claimant's most recent allegation regarding reduction of his teaching hours, in the first claim, related to January 2019 – that is, more than



3.5 years before the allegation that he was removed from teaching an online course in the second claim. That was a very lengthy gap and did not support a prima facie case of a continuing state of affairs.

62. The Claimant himself opposed consolidation and asked that the claims be treated separately. That indicated that he did not consider that they were linked.
63. There was a period of about 9 months between the last act in the first claim and first, vague, allegation in the second claim. That was a substantial break in itself.
64. The breaks between the allegations in the first and second claims reinforced my decision that there was no reasonably arguable basis for the contention that the various acts in the second claim are so linked to the acts in the first claim as to be continuing acts, or to constitute an on-going state of affairs.

#### **No Extension of Time for First Claim**

65. Having decided that the first claim was out of time, I considered whether to extend time for it on a just and equitable basis.
66. I considered the prejudice each party would suffer as a result of the decision reached and all the circumstances of the case, including the length of and reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information, the promptness with which the Claimant once he knew of the facts giving rise to the cause of action and the steps taken by the Claimant to obtain appropriate advice once he knew of the possibility of taking action.
67. The Claimant contended that he had chosen not to bring a claim earlier than he did because he feared retaliation and the Dean of the faculty was also his Phd supervisor. However, the Claimant completed his PhD in 2019 and the Dean had also changed by 2019 at the latest. He delayed for more than 2 years thereafter before bringing a claim.
68. The Claimant presented a grievance in 2019, complaining of many of the things he alleges in his first claim.. He was represented by a Union throughout that grievance process. I decided that he could plainly have brought a claim to the Tribunal at that point, in relation to the allegations he relies on dated 2019 and before.
69. There was no evidence that the Claimant was unaware of his ability to bring a claim, or was impeded in any way in finding out about the Tribunal or its time limits.
70. Taking account of the prejudice caused to the parties by the granting or refusal of an extension of time, I considered that the Respondents would indeed be considerably prejudiced if I extended time for the first claim. Many of the allegations in it are extremely old, going back to 2013.
71. In addition to that, the total time, even from the last allegation to the date of bringing the claim, was almost 5 months. Given the generous EC extension - a period similar to the original time limit – there could be little justification for any further extension.
72. The most obvious hardship to the Respondent is the disadvantage of having to meet a claim which was otherwise out of time.
73. The passage of time, particularly in relation to the very many historical allegations, was inherently likely to have interfered with the ability of witnesses to recall their actions and thought processes.
74. I accepted that some of relevant witnesses are no longer employed, which further prejudiced the Respondent.
75. I acknowledged that the Claimant would be prejudiced in that he would not be able to pursue his discrimination claim against the Respondent. However, I concluded that there was little to explain his continued failure to bring a claim much earlier than he did. He waited until early

January 2022 before contacting ACAS – almost to the end of the 3 month limitation period. He then had a further generously extended period in 2022 in which to bring a claim in time. He had almost double the primary limitation period on which to bring a timeous claim. The Claimant had chosen not to bring a claim earlier, in relation to many of the claims, but had no good reason for his considerable delay.

76. Time limits are to be strictly applied. There was no justification for any further delay in presenting the claim. I did not consider that it was just and equitable to extend time to 21 March 2022 for the presentation of the claim.
77. The Claimant has not shown that time should be extended, the burden of proof was on him to do that. The Tribunal has no jurisdiction to consider the first claim. It is dismissed.

### **The Second Claim**

78. The Respondent sought strike out or, alternatively, a deposit order, in relation to the allegations in the second claim, on the basis that the allegations in it had no reasonable prospects of success, or little reasonable prospect of success.
79. I struck out the allegation that the Respondent subjected the Claimant to race discrimination and/or victimisation because of doing a protected act (issuing the first claim), by placing an underage student in the Claimant's teaching group causing potential safeguarding issues and putting the Claimant in a difficult situation, in Summer 2022.
80. I asked the Claimant to explain in what way he said that this allegation constituted race discrimination or victimisation. The Claimant was unable to explain who he said made the alleged decision, or omission, allowing an underaged student to be put in his class. He did not explain why, or how, he contended the Respondent would have acted differently in relation to another teacher. He asserted that "they must have known" and that "they did it to trap me" but did not explain the factual basis for such assertions. There were no documents available relevant to this allegation.
81. I decided that this allegation had no reasonable prospects of success because it amounted to no more than a difference in treatment (if there even was a difference in treatment) and a difference in protected status. I considered that the burden of proof would not shift to the Respondent to show that a non-discriminatory or non-victimising reason for the treatment. This would be the case even if the Claimant succeeded in his other allegations in the second claim, because the Claimant did not allege any link – in perpetrator – or similarity of facts – between this allegation and the other allegations in the second claim. In addition, I agreed with the Respondent that the allegation appeared to be fanciful. It was not even clear whether the Claimant alleged that there had been an act or omission by the Respondent.
82. I did not strike out, nor make a deposit order in relation to the allegation that, in August 2022, the Respondent refused funding for the Claimant to attend a conference, for no logical reason.
83. I considered that the Claimant had reasonable prospects of success in relation to that allegation. I noted that, at p443 of the Bundle, in an email from Gulnara Stover in 22 July 2013 at 13:36, the Claimant had been told that, "Unfortunately there is no fixed allowance for members of staff participating in conferences. LC Staff Development Fund is quite small, however whenever I get similar requests I put them through to our Finance and they usually get at least partially approved. If you'd like to participate somewhere soon, please send me a quote asap and we will try to subsidise it."
84. The Claimant therefore had evidence that another language centre Head did indeed facilitate funding for employees to attend conferences. There was some evidence that the refusal to give him funding in 2022 was not in accordance with how the Respondent treated other employees. The Claimant had done a protected act before the Respondent's refusal. There

might be a non-discriminatory reason for the Respondent's refusal to provide the Claimant with any such funding in response to his request in 2022, but I considered that that would be a matter for evidence at the final hearing.

85. I did not strike out, nor make a deposit order in relation to the allegation that, on 10 October 2022, the Head of Department Ilham Salimane removed the Claimant from teaching a course after an internet interruption.
86. I considered that the Claimant had reasonable prospects of success in relation to that allegation too. I noted that the Claimant had evidence that a similar case had arisen in 2018, when a teacher failed to attend a class without telling students. The Claimant relied on an email at p442, dated 7 July 2018 at 10:32, from a student saying, "This is a very urgent message. We are all here and one student has driven two hours by car to come to the class. Our replacement teacher, Fatima is not here, despite having told us last week there would be a final lesson today (to make up for the bank holiday). We are waiting, could you let us know what we should do?"
87. The Claimant contends that no action was taken against that teacher in the same circumstances, when the teacher was of a different race and had not done a protected act.
88. I considered that the burden of proof was likely to shift to the Respondent in those circumstances and that this allegation needed to be determined on the facts at the final hearing.

### **Application for Reconsideration**

89. The Claimant said he wished to apply for reconsideration of my decision regarding time limits in the first claim. He said that he had proof he had submitted the claim in February 2022 and that it was presented in time. I observed that he had not argued that during this hearing and that he should apply in writing for reconsideration, setting out his grounds and any relevant documents.

### **Final Hearing**

90. I gave directions for the final hearing as set out below. I originally ordered that the Claimant should send the Respondent his schedule of compensation, setting out the sums he claims in his second claim, by 10 August 2023. However, as these orders were not sent to the parties until after that date, I have changed that date to 28 August 2023.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

#### ***Final Hearing***

1. A Final Hearing is listed for **3 days on 24 – 26 January 2024, before a full Tribunal, in person.**

#### ***Schedule of Compensation***

2. **By 28 August 2023** the Claimant shall send to the Respondent his schedule of compensation, setting out the sums he claims in his second claim, for both economic loss and injury to feelings, and he shall show how these sums are calculated.

### ***Disclosure of Documents and Bundle***

3. **By 11 September 2023** the parties shall disclose to each other documents they have in their possession, relevant to the 2 issues in the second claim and in relation to compensation, by providing a list and copies of those documents, to each other.
4. The Respondent shall prepare the Bundle for the Final Hearing.
5. **By 16 October 2023** the Respondent shall put the disclosed documents into the Bundle and shall send a hard and electronic copy of it to the Claimant. It shall send updated electronic and hard copies of the Bundle to the Claimant for use at the Hearing.

### ***Witness statements***

6. **By 11 December 2023** the parties shall exchange witness statements relevant to the issues in the second claim.
7. The witness statements should be in numbered paragraphs, on numbered pages.
8. Each witness statement should set out all the evidence which that witness intends to put before the Tribunal on the issues in the second claim.
9. If the witness refers to a document, the witness statement should refer to page/s in the Final Hearing Bundle.
10. A failure to comply with this order may result in a witness not being permitted to give evidence because it has not been disclosed in a witness statement; or in an adjournment of the hearing and an appropriate order for costs caused by such adjournment.

### ***Cast List and Chronology***

11. The Respondent shall send first draft of a neutral cast list and chronology to the Claimant by 8 January 2024. The parties shall attempt to agree a neutral cast list and chronology for use at the Final Hearing.

### **Other matters**

#### **Public access to employment tribunal decisions**

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.**

**Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

**You may apply under rule 29 for this Order to be varied, suspended or set aside.**

Employment Judge **Brown**  
Date: 11 August 2023

SENT to the PARTIES ON

14/08/2023  
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FOR THE TRIBUNAL OFFICE