Neutral Citation Number: [2022] EAT 8

Case No: EA-2020-001109-LA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 13 October 2021

Before :

THE HONOURABLE MR JUSTICE CHOUDHURY (PRESIDENT)

- -

Between :

MS C LABONGO ALUM	**Appellant**
- and -	
THAMES REACH CHARITY	**Respondent**

- -
- -

MS C LABONGO ALUM the A**ppellant** in person
MR T SHEPPARD (instructed by Bates Wells & Braithwaite London LLP) for the **Respondent**

Hearing date: 13 October 2021

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JUDGMENT

SUMMARY

PRACTICE & PROCEDURE

The claimant appeals against the decision of the Employment Tribunal (ET) dismissing her claim because it was presented three days after the deadline of 21 June 2019. The ET considered that there was a period of unexplained delay between 13 and 24 June 2019 and that it would not be just or equitable to extend time. The claimant had tried unsuccessfully to present her claim on two previous occasions.

Held, allowing the appeal in part, that whilst the Judge had a broad discretion in determining whether it would be just and equitable to extend, such discretion had to be exercised having regard to all relevant factors. Here, it was relevant that there was a period of unexplained delay, but the factual basis for the length of that period appears to have been incorrect, in that the claimant had posted her claim to the ET by 20 June 2019, which was some days earlier than the ET appears to have considered, and which was within the time limit. The matter would be remitted for the ET to consider whether, taking the proper period of delay into account, and the claimant's two previous attempts at submitting her claim, it would be just and equitable to extend.

THE HONOURABLE MR JUSTICE CHOUDHURY (PRESIDENT):

1. This is the claimant's appeal against the decision of the London South ET ("the Tribunal"), Employment Judge Truscott QC (“the judge”) presiding, dismissing her claims of unfair dismissal, unpaid wages and discrimination. The basis for dismissing the claims was that there was a lack of jurisdiction to hear them in that the claims were presented three days out of time.

Background

2. The claimant was employed by the respondent charity as a kitchen assistant/relief cook from 2002 until her dismissal by reason of redundancy on 6 March 2019. The claimant considered that many aspects of her treatment during her employment and its termination were unfair and/or discriminatory. She commenced writing down a history of her employment after her dismissal. This history eventually became an attachment to her ET1 claim.

3. Dismissal on 6 March 2019 meant that her claim had to be presented to the tribunal by 5 June 2019 in accordance with the relevant time limits, unless that time was extended by mandatory Early Conciliation. The claimant commenced ACAS Early Conciliation on 26 March 2019, and the Early Conciliation Certificate was issued on 11 April 2019. The deadline for presenting her claim to the tribunal was therefore extended by 16 days from 5 June to 21 June 2019. There is no dispute that that was the applicable deadline.

4. The claimant went on holiday to Uganda on 13 May 2019. She was due to return to London from Uganda on 3 June 2019 but missed her flight because of an incident en route to the airport. She managed to get a flight a few days later. It was whilst she was in Uganda that the claimant made her first attempt to present her claim. She did so via email on 5 June 2019 using the email address of a Ms Agieta Patcy. However, email is not one of the accepted means of presenting a claim to the tribunal, those being submission using the tribunal's online filing system, presenting the claim in

person or sending it by post. These three methods of presenting a claim are made clear to putative claimants on the tribunal website and were also made clear to the claimant in this case in subsequent correspondence.

5. The claimant arrived back in London on 9 June 2019. The tribunal office sent an email on 10 June 2019 indicating that the claim could not be accepted by email and setting out the accepted means of presenting a claim, which are as I have already described. That email from the tribunal was sent to Ms Patcy. On 11 June 2019, Ms Patcy forwarded the tribunal's email to the claimant.

6. On that day, the claimant made her second attempt to present her claim. This time she did so by submitting the claim by hand to the ET in Central London. No criticism can be made as to the promptness of the claimant's actions on that day. Unfortunately for the claimant, she had omitted to include the ACAS Early Conciliation Certificate number on her form. As a result, on 13 June 2019, the claimant was sent a letter from the ET Central Office in Leicester returning her claim as it was not valid. The reason given was that there was no ACAS number or any reason for not providing one in her ET1 form. She was instructed to return the ET1 form to “the address above” when she resubmitted her application. The address above was the Leicester ET Central Office address.

7. The claimant's skeleton argument asserts that the tribunal's letter of 13 June 2019 was received in the "week of 17 June 2019" by post. It is relevant to note that there was no specific evidence before the tribunal as to the precise date on which the letter was received.

8. On 20 June 2019, the appellant sent the claim to the tribunal, this time with the ACAS Early Conciliation Certificate number included. The claim was accompanied by a handwritten letter, which is also dated 20 June 2019. The claimant states before me that she sent this letter by first-class post in the expectation that it would be received by the tribunal by 21 June. In fact, the tribunal dates that

claim as having been received on 24 June 2019. This was, as already stated, three days out of time.

9. The respondent in its response contended that the claim was out of time and sought a preliminary hearing at a telephone preliminary hearing case management before EJ Wright on 19 May 2020. The tribunal listed a further preliminary hearing to consider whether there was jurisdiction to hear the claim. That further preliminary hearing was listed to be heard on 14 October 2020. The case management summary noted that, "(9) The claimant will need to address the time limit under the relevant legislation and should appreciate the tests are different under the **EqA** and the **Employment Rights Act 1996** ("**ERA**").

> **"10. For the unfair dismissal claim and other claims under the ERA, under s. 111 ERA, it is:**
>
> > **111 Complaints to employment tribunal.**
> > **(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.**
> >
> > **(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—**
> >
> > > **(a) before the end of the period of three months beginning with the effective date of termination, or**
> > >
> > > **(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.**
> > >
> > > **[emphasis added]**
>
> **11. Under s. 123 of the EQA, the test is:**
>
> > **123 Time limits**
> >
> > **(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—**
> >
> > > **(a) the period of 3 months starting with the date of the act to which the complaint relates, or**

> **(b) such other period as the employment tribunal thinks just and equitable.**
>
> **[emphasis added]**
>
> **12. The claimant should review the legislation and how it has been interpreted and the discretion exercised (or not) in the leading cases on extending time limits."**

10. The matter came before the judge on 14 October 2020 as a video hearing conducted over the Cloud Video Platform (CVP). The ongoing restrictions caused by the pandemic at the time meant that this was the most appropriate format for the hearing. At the hearing, the claimant was represented by her friend, a Mr Akinsanmi, and the respondent by counsel, Mr Sheppard, who also appears before me today.

11. The claimant presented a five-page document at the hearing, amongst other documents. This contained a description of the disability upon which she sought to rely. This is described as the "soft tissue injury" arising out of an accident in Africa and which is now becoming osteoarthritis. There was no reference to any other disability in that document or in her claim form. Page 4 of the document was entitled "Time Limit, Concy Labongo" and provided as follows:

> **9. "I was to return from Africa on 3 June 2019 and missed my flight due to double trailer caring (sic – "carrying") cement overturned on the road and all the cement poured on the road making it impossible to pass, and it took more than 3 hours to clear the road for anyone to get by. So, I missed my flight from Uganda. All the shops, banks and airline ticket offices were closed as it was bank holiday week and I was therefore only able to return to the UK on 7 June 2019.**
>
> **10. I submitted my ET1 on 5 June 2021 from Uganda via email. Please see letters enclosed. I then hand-delivered a hardcopy of my ET1 to the Employment Tribunal Victory House, Central London on 11/06/2019. Thereafter, it was out of my hands.**
>
> **11. At the time I was relocating to my current address and I was in a situation where I could not handle everything at once. Moving home is very stressful."**

12. As can be seen, that evidence makes no specific reference to the period after 11 June 2019

and in particular makes no reference to the fact now asserted by the claimant that she received the tribunal's letter on 17 June 2019.

13. The tribunal's judgment had been provided with a note of the hearing taken by Mr Sheppard's instructing solicitor. It is evident from that note that the claimant gave evidence and was cross-examined on it by Mr Sheppard. Furthermore, it is clear that both sides were given an opportunity to make submissions.

14. The tribunal made findings of fact after the chronology. I refer here to just two of those findings:

> **5. "On 11 June 2019, the claimant submitted a claim form without the Early Conciliation number, which was returned by the Tribunal on 13 June 2019 as the claim was invalid [88].**
>
> **6. The claimant added the Early Conciliation number to the claim form and lodged it with the Tribunal which was accepted by the Tribunal on 24 June 2019 [5]."**

15. The tribunal then set out a summary of the legal framework as follows:

> **9. "Section 111(2)(b) of the Employment Rights Act 1996 provides that the three-month time limit can be extended:**
>
> > **(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 complainant to be presented before the end of that period of three months.**
> > **[(2A) … [and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purpose of subsection (2)(a).]**
>
> **10. There are two limbs to this formula. First, the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this rests firmly on the claimant (Porter v Bandridge Limited [1978] ICR 943 CA). Second, if he succeeds in doing so, the tribunal must be satisfied that the time within which the claim was in fact presented was reasonable. The leading authority on the subject is the decision of the Court of Appeal in Palmer and Saunders v Southend-on-Sea Borough Council [1984] ICR 372 CA.**

11. When considering whether to extend time under S.111(2)(b), Employment Tribunals should always bear in mind the general principle that litigation should be progressed efficiently and without delay; Nolan v Balfour Beatty Engineering Services EAT 0109/11.

Just and equitable extension

12. Section 123(1)(b) permits the Tribunal to grant an extension of time for such other period as the employment Tribunal thinks just and equitable. Section 140B of the Equality Act 2010 serves to extend the time limit under Section 123 to facilitate conciliation before institution of proceedings.

13. The Tribunal has reminded itself of the developed case-law in relation to what is now Section 123 of the Equality Act 2010. That has included a group of well-known judgments setting out the underlying principles to be applied in this area, together with recent occasions on which those principles have been applied and approved by later courts and tribunals. Particular attention has been paid to the historical line of cases emerging in the wake of the case of Hutchinson v Westwood Television [1977] ICR 279, the approach adopted by Smith J in British Coal Corporation v Keeble [1997] IRLR 336, the comments in Robinson v The Post Office [2000] IRLR 804, the detailed consideration of the Employment Appeal Tribunal in Virdi v Commissioner of Police of the Metropolis et al [2007] IRLR 24, and, in particular, the observations of Elias J in that case, as well as the decision of the same body in Chikwe v Mouchel Group plc [2012] All ER (D) 1.

14. The Tribunal also notes in passing the guidance offered by the Court of Appeal in the cases of Apelogun-Gabriels v London Borough of Lambeth & another [2002] IRLR 116 and observations made by Mummery LJ in the case of Ma v Merck Sharp and Dohme [2008] All ER (d) 158.

15. The Tribunal noted in particular that it has been held that 'the time limits are exercised strictly in employment cases', and that 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 discretion; as the onus is always on the claimant to convince the tribunal that it is just and equitable to extend time, 'the exercise of discretion is the exception rather than the rule' (Robertson v Bexley Community Centre [2003] IRLR 434, at para 25, per Auld LJ); Department of Constitutional Affairs v Jones [2008] IRLR 128, at paras 14-15, per Pill LJ) but see Sedley [LJ] in Chief Constable of Lincolnshire Police v Caston where he said in relation to what Auld [LJ] said "there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised."

> **16. The Tribunal's discretion is as wide as that of the civil courts under section 33 of the Limitation Act 1980; British Coal Corporation v Keeble [1997] IRLR 336; DPP v Marshall [1998] IRLR 494. Section 33 of the Limitation Act 1980 requires courts to consider factors relevant to the prejudice that each party would suffer if an extension was refused, including:**
>
> > **the length and reasons for the delay;**
> > **the extent to which the cogency of the evidence is likely to be affected by the delay;**
> > **the extent to which the party sued had co-operated with any requests for information;**
> > **the promptness with which the claimant acted once she knew of the possibility of taking action; and**
> > **the steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.**
>
> **17. Although these are relevant factors to be considered, there is no legal obligation on the Tribunal to go through the list, providing that no significant factor is left out; London Borough of Southwark v Afolabi [2003] IRLR 220.**
>
> **18. The Tribunal has additionally taken note of the fact that what is now the modern Section 123 provision contains some linguistic differences from its predecessors -- which were to be found in various earlier statutes and regulations -- concerning the presentation of claims alleging discrimination in the employment field. However, the case law which has developed in relation to what is now described as "the just and equitable power" has been consistent and remains valid. The Tribunal has therefore taken those authorities directly into account in its consideration.**
>
> **19. It is also a generally received starting proposition that it is for the claimant who has presented his or her claims out of time to establish to the satisfaction of the Tribunal that the "just and equitable" discretion should be exercised in the particular case. That obligation is not just a matter of the burden of proof. It also raises the question of what is the standard of proof to be established in order to persuade the Tribunal that a period other than the normal three months should be applicable. It is therefore a matter which requires evidence -- which may be oral and subjected to cross-examination or documentary."**

No issue arises before me as to that summary of the law and relevant principles.

16. The tribunal then concluded briefly as follows:

> **20. "The deadline for submitting the claim to the Tribunal was 5 June 2019 which was extended by 16 days to 21 June 2019 by the Early Conciliation procedure. The claim was accepted on 24 June 2019, 3 days late.**
>
> **21. The claimant explained that she was able to submit her ET1 by email on 5 June 2019 from Uganda but was not able to do so via the online form (ie. via a valid method of presenting her claim). She resubmitted her ET1 by hand on 11 June 2019, it did not contain the ACAS Early Conciliation number, so was returned on 13 June because it was invalid.**
>
> **22. She has not given an explanation for the delay between 13 June and 24 June 2019. The claimant has said that she was moving home at the time [92] and it is understood that this is [sic] time consuming and stressful experience but she does not explain what impact this had on her ability to submit her claim on time as it only needed the addition of the ACAS Early Conciliation number.**
>
> **23. The monetary claims advanced by the claimant include complaints of unlawful deductions from wages and breach of contract. The reasonable practicability test applies to both types of complaint as well as the claim of unfair dismissal.**
>
> **24. The Tribunal accepted the claimant's evidence but it did not establish that it was not reasonably practicable to lodge the claim. The Tribunal considered that it was reasonably practicable for the claimant to add the Early Conciliation number to the claim in time.**
>
> **25. In relation to the discrimination claims, the claimant had been formulating her claim which was a very extensive one since she was dismissed. She did not explain why she did not do so validly within time. The Tribunal considered that without the explanation the balancing exercise was very difficult. The delay was for a short but crucial period. The cogency of the evidence would be unlikely to be affected by the delay. On the guidance set out earlier, the Tribunal considers that it is not just and equitable to extend the time for lodging the discrimination claims."**

17. Permission to proceed to a full hearing was given by HHJ Shanks, who considered that it was arguable that the judge erred in relation to whether it would have been just and equitable to extend time.

18. The grounds of appeal raise three principal issues. First is what is described as the "postal issue". It is said that the tribunal failed to take into account that the letter sent by the tribunal on 13

June 2019 was sent by post. The grounds go on to state that this was not received until "the week of 18 June 2019, just before the deadline of 21 June 2019, after which I responded immediately in the manner stated by the tribunal."

19. Second is what is described as the "ACAS number issue". Here, it is said that there was simply an error in relation to the correct Early Conciliation number which was corrected as soon as the error was pointed out and that this technicality should not bar her from proceedings.

20. Third is what is described as "dyslexia and the move". Here, the claimant refers to the pressures created by the fact that she was moving home at the time. She also raised for the first time in these proceedings the fact that she is dyslexic and contends that this could have played a part in missing out the ACAS certificate number. The grounds conclude by saying that she has been deprived of any means of making a complaint by reason of an error which did not cause any prejudice to the respondent.

Submissions

21. The claimant represented herself and understandably found it difficult to articulate fully the points she wished to make. However, with some questioning from the bench, it became apparent that her principal point was that the judge had erred in considering that there was no explanation for the delay between 13 June 2019 and 24 June 2019. She submits that there was evidence before the tribunal that she had posted the letter on 20 June 2019. She highlights that she did so first-class and had expected it to be received by the tribunal on time.

22. Furthermore, she relies on the fact that she only received the tribunal's letter stating that the claim was not valid in the week of 17 June 2019. Thus, the delay, on her case, was only a matter of three days and not the 11 days considered by the judge. She also pointed out that whilst she had the

assistance of Mr Akinsanmi at the hearing, he was not a lawyer. She submits that she had at all times sought to get her claim in on time, as evidenced by the two previous failed attempts. There were, she said, a lot of things going on at the time, including having to move home after 30 years in the same place, and in the circumstances, she had acted promptly

23. Mr Sheppard submitted that some of the evidence now being relied upon, for example in relation to the post and to the claimant's medical conditions, could have been adduced at the time, and there was no proper basis in accordance with the principles set out in **Ladd v Marshall** [1954] 1 WLR 1489 for doing so now. As to whether the claimant received the tribunal's letter dated 13 June 2019 on 17 June 2019 or in the week of 17 June 2019, he submitted there was no evidence about this at the hearing. The claimant and her representative would have been aware from the time of the earlier preliminary hearing of the importance of addressing the period of delay with evidence, and he submits that it was too late now to rely on such matters.

24. It was further submitted that the hearing was fair, with the claimant being given every opportunity to put forward any points she wished to rely upon in support of an extension. Even if the relevant period of delay was shorter than the 11 days considered by the judge, there was, submits Mr Sheppard, still the insurmountable hurdle that there was no explanation for the delay. He highlights the fact that the claimant's written evidence before the hearing did not deal at all with the third attempt at presenting the claim, instead merely stating that after the claim had been submitted by hand on 11 June 2019 the matter was "out of her hands".

Discussion

25. There was very little if any discussion before me on the issue of reasonable practicability or whether the judge erred in his decision in that regard. That is not surprising, and it seems to me that that aspect of the judge's decision is unassailable. The judge concluded that it was reasonably practicable to have lodged the claim with the Early Conciliation Certificate number in time. (See paragraph 24). That is a finding of fact with which this EAT cannot readily interfere.

26. Perversity is not alleged, and nor could it be, in my view. The fact that earlier attempts had been made to lodge the claim and that the only thing that still needed to be done after 13 June was to insert the Early Conciliation Certificate number meant that it plainly was reasonably practicable for the claim to have been lodged by 21 June 2019.

27. The arguments before me focused on the just and equitable test under section 123 of the **EqA 2010**. The judge's reasoning on this issue was very brief. It boils down, it seems to me, to this: that there was a lack of explanation for the delay. (See paragraph 25). This appears to be a reference back to the lack of explanation for the period between 13 and 24 June 2019 referred to in paragraph 22 of the judgment, there being no criticism, it would appear, of the claimant's inaction during any other period since her dismissal.

28. In considering whether it would be just and equitable to extend time, the tribunal has a very broad discretion, and provided that no significant factor is left out of consideration, the range of matters to be taken into account is very much one for the tribunal itself. Periods of unexplained delay are clearly significant and relevant. However, if the period being considered is incorrect in some material respect, that may raise doubts as to whether the decision not to exercise a discretion was properly reached.

29. In this case, the judge clearly regarded as highly relevant, if not decisive, that there was in his view a delay of some 11 days between 13 and 24 June which was unexplained. However, it is apparent that, even on the material before the judge, the latter of those two dates cannot be correct. It is not disputed that the claim form ET1 was sent by post. That in itself would mean that the claimant had taken steps to present her claim at least some time before 24 June 2019.

30. The tribunal had before it a letter sent by the claimant to the tribunal dated 20 June 2019,

which appears to confirm that the ET1 was sent on that day. That is significant for at least two reasons in this context. First, it shows that the period of unexplained delay must have ended by 20 June 2019 and no later. There is nothing further that the claimant could reasonably have done after 20 June when she posted her claim. Second, if it is accepted that the ET1 was sent on that day, that was a step taken within the time limit and on a day on which there might be a reasonable expectation of the ET1 reaching the Tribunal on time. Of course, there are no deeming provisions in the **ET Rules** on which a claimant can rely, and which would automatically result in a date of a presentation more than two days after the date of posting. However, it is a relevant factor in deciding whether or not to exercise the discretion on just and equitable grounds that the ET1 was posted within the time limit.

31. That addresses the second of the two dates between which the tribunal considered there to be unexplained delay. What of the first date, namely 13 June 2019? It could be said in the claimant's favour that even on the face of the letter it could not have been acted upon on the date it was sent. That was because there was nothing to indicate that it was also sent by email, and I was not taken to any document today to suggest otherwise. If sent by post, the earliest it could have been with the claimant would have been 14 or 15 June 2019. The claimant asserts that she received the Tribunal's letter in the week of 17 June 2019. However that specific assertion was not made before the tribunal, and Mr Sheppard says that the claimant cannot rely upon it now because it was evidence that clearly could have been adduced with reasonable diligence at the time.

32. There is some force in that argument, although it might be said that the date on which a letter is received is a matter that arises out of the fact that it was sent and is not new evidence as such. However, I do not need to decide that issue now, because even without that evidence it is clear in my judgment that a letter dated 13 June 2019 and sent by post could not have been acted upon on the same day. Thus, the period in respect of which there was unexplained delay was not the 11 days relied upon by the tribunal but a somewhat shorter period, the precise length of which may yet need to be

determined.

33. Such explanation as the claimant did give the tribunal, namely the stresses that she was facing in having to move house, which evidence was accepted by the tribunal, might (and I express no firm conclusion on the matter) be considered to have more significance if the resultant delay is not as long as 11 days, the promptness of acting being a potentially relevant consideration.

34. The claimant's other points based on her dyslexia and the ACAS number do not advance her case. As Mr Sheppard submitted, if that had been a factor relevant to the delay, then there is no good reason and certainly none falling within the ambit of the **Ladd v Marshall** criteria for not adducing it earlier.

35. Mr Sheppard urges on me that this was a fair hearing at which the claimant had a representative of her choice, and was well aware of the time limits and of the need to adduce cogent evidence to explain the delay. However, although the claimant had a representative, he was a lay representative and not a lawyer. The usual allowances made for a litigant in person are not to be readily discounted when they are assisted by a friend whose knowledge and understanding of the law and procedure may well be as limited as that of the claimant. Furthermore, whilst it was incumbent on the claimant to adduce relevant evidence at the time, the tribunal's error as to the period of unexplained delay arises not so much from the lack of evidence but because of the matters described above.

36. I therefore conclude that there was an error of law in that the tribunal's decision not to exercise its discretion was based on an essentially incorrect factual premise. That leaves the question of disposal. I have heard brief submissions on this from the parties. I hesitate to remit the matter, because it has already been over two and a half years since the claimant's dismissal, and the remittal of this

issue is only going to introduce further delay. However, I do not feel able in the circumstances of this case to decide the matter for myself. That is because there is still some uncertainty about the precise dates involved. It is clear from Mr Sheppard's submissions that his client takes issue with 17 June as being the date on which the tribunal's letter was received. Even if remitted, there may be an issue as to whether the claimant would be permitted to adduce further evidence about the dates over and above that which emerges from the face of the documents, although it is hoped that a sensible approach can be taken in relation to that discrete issue.

37. The matter is therefore remitted. The final question to be addressed is whether it should be remitted to the same tribunal or to a differently constituted tribunal. In my judgment, there is no reason why the same tribunal cannot consider this matter. I have already upheld the part of the decision dealing with unfair dismissal and the wages claims, that is to say, the aspect of the judgment dealing with reasonable practicability. My decision that there was an error of law only relates to a small part of the tribunal's judgment. There was nothing to suggest that there was any lack of professionalism or lack of care, or that the judgment was so seriously flawed that only another tribunal could hear it. It is clear to me that the same judge can hear the matter again, subject to any decision that the Regional Employment Judge might take if there would be undue delay in having to remit it to the same judge. I say that because my understanding is that EJ Truscott is a fee-paid judge.

38. The matter is remitted to the same tribunal to deal with the issue of whether or not an extension is to be granted on just and equitable grounds in respect of the discrimination claims only. Given the length of time that has elapsed since the dismissal, it would be preferable for the matter to be listed by the tribunal as promptly as possible.