



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr H Ogrigri**

**v London Underground Limited**

**Heard at:** Watford

**On:** 4 October 2017

**Before:** Employment Judge Clarke QC

## **Appearances**

**For the Claimant:** Mr Carroll, Lay person

**For the Respondent:** Mr A Allen, Counsel

## **JUDGMENT**

1. The claims relating to an alleged public interest disclosure are dismissed upon withdrawal, the withdrawal being by email of 20 July 2017.
2. The claims for direct discrimination (relying on the protected characteristics of race and sex) are dismissed on withdrawal. The withdrawal was made to the tribunal at the hearing on 4 October 2017.
3. The claim for unfair dismissal is dismissed having not been presented within either the primary or secondary limitation period contained within s.111 of the Employment Rights Act 1996.
4. The claim for damages for breach of contract made pursuant to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 is dismissed, the claim having not been brought within either the primary or secondary limitation period contained within paragraph 7 of that Order.

## **REASONS**

1. The claimant presented his claim form to the tribunal on 4 February 2017. It set out five causes of action of which only two remain to be dealt with by me today. His claims relating to public interest disclosure were withdrawn by email on 20 July 2017 and his claims for direct race and sex discrimination were withdrawn before me today. All of those claims will be dismissed

following their withdrawal. That leaves a claim for unfair dismissal and a claim for breach of contract under the extended jurisdiction of the tribunal.

2. After the presentation of the claim form the tribunal made an order for the production of particulars and the claimant supplied particulars in writing on 17 May 2017. The preliminary hearing fixed for that day was adjourned and Employment Judge Henry set out a list of preliminary issues to be considered at this hearing. I deal with the claim in time issues first having indicated that those relating to strike out and deposit orders will be dealt with, if necessary, after the claim in time issues have been resolved.
3. For present purposes only a very brief account of the facts need be given. In May 2015 the claimant was a Train Driver. Unfortunately a member of the public jumped in front of his train as it was entering a station and was killed. Disciplinary proceedings resulted as it was alleged that he had failed to take sufficient care to observe the platform. As a result of the hearing the claimant was down graded with effect from 3 April 2016. However, for some considerable time after the incident in May of the previous year and for some time after the decision to down grade him, the claimant was off sick with work related stress and post traumatic stress disorder. Some documents which I have seen suggest that he returned to work in either April or May of 2016. However, the claimant told me in evidence that his return to work was in September of that year. The respondent does not seek to challenge that for present purposes and I proceed on that basis. The claimant initially returned to work delivering mail to various underground stations because there was no training course available for his new job until November. In early November he attended a training course which consisted of a week of formal classroom type training, a week on the job at the station to which he was ultimately to be assigned if he passed the course and then a further week back at the training centre.
4. I turn, against that background, to consider whether the two claims which are extant were presented in time. Both have the same regime of a primary limitation period of three months from the effective date of termination followed by a secondary limitation period. That is set out in s.111 of the Employment Rights Act 1996 (for the unfair dismissal claim) and paragraph 7 of the 1994 Order (in respect of the extended jurisdiction claim for breach of contract). In order to evoke the secondary limitation period, in either case, the claimant must show that it was not reasonably practicable for the claim to be brought within the primary limitation period and must then show that the claim was brought within a reasonable period thereafter.
5. This is a claim form to which the early conciliation provisions apply. The claimant made the appropriate application to ACAS by a notification of 2 June 2016 and received an ACAS Certificate dated 16 July 2016. I am satisfied that if there was a dismissal resulting from his being downgraded, then the effective date of termination was 3 April 2016. The request for a certificate and the certificate therefore came within the primary limitation period such that the primary limitation period would be extended by reason

of sections 207B and 207D of the Employment Rights Act 1996, such that the primary limitation period would expire for both claims on 16 August 2017.

6. It therefore follows that as the claim form was not received by the tribunal until some very considerable time after that, on 4 February 2017, that it was presented outside the primary limitation period and the claimant must satisfy me that it was not reasonably practicable to present it within that period and, if so, that it was presented within a reasonable period.
7. The claimant appealed against the decision to downgrade him. That appeal ran through two stages, but was concluded by an announcement on 19 September 2016. It is clear to me that the claimant participated to an extent in that appeal process. Furthermore, he returned to work by, at the latest, September 2016 and attended the three week training course in November 2016. Given that he was able to return to work in September 2016 and given his participation in the appeal process, it is my view that it was reasonably practicable for him to have made the claim on or before 16 August 2016. In that regard I also take in to account that during that period he had (albeit with some assistance from his partner) submitted the appropriate notification to ACAS in respect of his proposed claims. Therefore, no question arises as to the invocation of the secondary limitation period. However, had I been satisfied that it was not reasonably practicable to present the claim form within the primary limitation period, I would have decided that the reasonable period for its presentation would have expired, at the very latest, at the time when the claimant began to attend the training course in early November 2016. That is some months prior to its eventual presentation on 4 February of the following year.
8. Having looked at only a limited quantity of the documentation in the bundle relating to the claimant's condition, it is clear to me that he was for some time after the incident in May 2015 suffering in a significant way such as to prevent his attendance at work. The tribunal has great sympathy for the claimant in those circumstances, Mr Carroll, on his behalf, urged upon me both that this state of affairs continued even beyond his attending the training course and that, in those circumstances, I ought to extend time. As will be clear from what I have already said, I do not consider that that adopts the correct legal approach which I must adopt to the consideration of the primary limitation period and the possible invocation of the secondary limitation period. Great sympathy though I have, I have to apply the law and, having done so, I conclude (as set out above) that it was reasonably practicable to have presented both of these claims within the primary limitation period and, in any event, were I wrong on that, it ought reasonably to have been presented, at the latest, by early November 2016. In those circumstances both of the extant claims are dismissed having not been presented in time.
9. At the conclusion of the judgement and reasons the respondent made an application pursuant to Rule 76(1)(a) of the 2013 Regulations for costs, but limited to £450 being the cost of counsel's attendance. It is said that the

claimant having continued with his claim after the hearing before Employment Judge Henry his behaviour was “unreasonable”. For the claimant it was pointed out to me that the claimant’s witness statement shows that the impact upon him of the incident in May 2015 was not made clear before Judge Henry, indeed at that stage the claimant had not even informed his representative of the medical condition which had resulted from that incident and the medical evidence has been assembled since that time.

10. In all of the circumstances, where the claimant is unrepresented (by a lawyer) and where the claimant clearly felt that his condition had been such that the tribunal could have extended time, I do not consider that his conduct in bringing that matter for the tribunal to decide was unreasonable and I decline to make any costs order.

\_\_\_\_\_  
Employment Judge A Clarke QC

Date: 6 October 2017.

Sent to the parties on: .....

.....  
For the Tribunal Office