

reasonable adjustments in the form of providing information about and failing to secure redeployment.

2. There was a Preliminary Hearing before E.J. Bax on 1 November 2022. He listed the present hearing to deal with the question of time limits, if capable of determination at a preliminary hearing, and the Respondent's application for strike out deposit. The Claimant conceded that there would need to be a just and equitable extension of time for the Tribunal to have jurisdiction in this matter. Accordingly, the time was taken to determine the matter of time limits. As it happened, much of the Respondent's position on strike out/deposit also related to time limits.
3. E.J. Bax also identified the issues in the case. One of the claims for reasonable adjustments related to an alleged practice of not sending those seeking redeployment, job vacancy lists or alerting them to jobs as they arise. The Claimant confines the criticism to the period 6 October to 29 December 2021. The reasonable adjustment contended for was sending the Claimant, seeking redeployment, vacancy lists and job alerts. This is significant because the Claimant's grievance dated 5 January 2022 was upheld by the Respondent on 1 July 2022 in connection with this argument.
4. On 7 November 2022, the Respondent conceded that the Claimant was disabled at all material times with an otherwise undiagnosed chronic pain condition.

Relevant Chronology

5. The Claimant started as an HCA on Turner & Ricky Grant Wards, Torbay Hospital on 4 November 2013. He was employed to work 37.5 hours. He worked predominantly 11.5 hour night shifts. He was on sickness absence owing to abdominal pain between July 2020 and January 2021. Following a FIT note dated 18 January 2021 certifying fitness for a phased return to work, the Claimant was referred to Occupational Health. An OH report dated 25 January 2021 advised that the Claimant was fit to return to work with adjustment to hours and lifting obligations. A long-term absence review meeting was held on 29 January 2021 with Sara McMurray, the Claimant's line manager which set out terms of a phased return as a reasonable adjustment. A period of sickness absence, annual leave and a Covid isolation recommendation followed.
6. A second referral to OH was made. Dr Emma McCollum reported on 7 April 2021. She recorded constant abdominal pain, which limits day to day activities at home. There were spells of severe pain, which can be daily. There were underlying mental health conditions, controlled with medication. She advised that redeployment into a secondary role be made, working approximately 20 hours a week.
7. There was a long-term absence review meeting on 8 July 2021 with Sister Sara McMurray. Intermittent abdominal pain was complained of. Mobility

was affected. Help with housework was required. Dietician and gastroenterology appointments were awaited.

8. The Claimant stated he was not fit to start the redeployment process. He but was keen to start looking at paperwork. His union rep asked the Respondent to start looking to find a suitable redeployment position. She also asked to look at the possibility of ill health retirement in parallel. All options to be kept open.
9. On 2 September 2021 the Claimant's union – the Royal College of Nursing – wrote to Ms McMurray chasing the possibilities (a) of alternative employment and (b) early ill health retirement. As to the former Ann-Marie Stanley of the union quoted the trust's organisational change policy suggesting it was the individual's line manager responsibility to identify alternative vacancies. Only if none were available should someone be on the redeployment register.
10. OH reported again on 10 September 2021. Constant abdominal pain was recorded. Spells of severe pain had lasted on average twice a week, lasting 5-6 hours. These are incapacitating. He can walk 50-100m on a good day, usually with a stick. He suffers fatigue on a variable level. He did not report difficulty with driving and continued to undertake short shifts for a food delivery service on an ad hoc basis. Underlying mental health conditions were controlled by medication. Return to his substantive contractual role was not possible. Redeployment should be explored. Sedentary work up to 20 hours a week. Owing to the frequency of incapacitating pain, fixed shifts were not suitable; flexible work was required, self-paced and not time-limited. Ill health retirement was an unlikely option because he was not permanently incapacitated from performing his role at the present time.
11. A long-term sickness review meeting was held on 29 September 2021. The redeployment process would start from 6 October 2021. Once a suitable post had been identified, a 4-week trial would take place, with view to permanent redeployment. The redeployment process would last for 12 weeks.
12. The Claimant, via the RCN, raised a grievance on 5 January 2022. The Claimant had been placed on the redeployment register on 6 October 2021 for 12 weeks and this was due to end on 29 December 2021. A series of observations were made. One was that the Claimant should have been sent vacancy bulletins during the redeployment period. Both the Claimant and the Union had identified potentially suitable jobs on NHS jobs which were not sent to the Claimant prior to being advertised. 'We do not know how many jobs were potentially suitable for Daniel since Occupational Health advised redeployment'. Inadequate effort to find suitable alternative employment was alleged.
13. Occupational Health reported on 25 January 2021. There was still no diagnosis for the gastro-intestinal problem, but the condition was likely to be long-term. He was fit to return to work in an adjusted role: phased

return; multiple short breaks; avoid heavy lifting/movement; colleagues to provide assistance.

14. There was a redeployment review meeting on 4 March 2022. The redeployment process was to be extended for a further 6 weeks up to 19 April 2022. The forms would be sent also for early ill health retirement. However, it was pointed out that an application for ill health retirement was inconsistent with being available for redeployment. If ill health retirement was pursued, then dismissal for incapability was a real possibility. As to redeployment: the union suggested Oncology Support Worker, Ophthalmology HCA, Phlebotomist. Sharon Reynolds of HR supported a trial for the Oncology support worker role.
15. As of 8 April 2022 his permanent redeployment on health grounds as an Oncology Support Worker was confirmed. As was discussed in the hearing, this represented something of a happy ending. The important role of Anne-Marie Stanley, the RCN rep, in achieving that result is clear from the papers.
16. On 1 July 2022, Alex Atkins, the Cancer Services Manager, provided a grievance outcome. It was fair for the Trust to consult OH with regard to suitability for a return to work, redeployment or otherwise. The grievance was partially upheld in that the organisational Change Policy was not followed in the grievance process: the Claimant when on the redeployment list was not informed of available jobs by the People Hub; the redeployment skills form was lost during the process; his request for consideration for ill health retirement was not considered in a timely manner. This first point was the point made by Anne-Marie Stanley in bringing the grievance.

THE LAW

17. **S.123 of the Equality Act 2013** provides

Time limits

(1) [Subject to section 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.

18. It has often been said to be sensible to make reference to the Keeble factors [1997] IRLR 336 (EAT):

- (a) the length of and reasons for the delay;
 - (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - (c) the extent to which the party sued had cooperated with any requests for information;
 - (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and
 - (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.
19. It is also relevant to consider prospects of success.

DISCUSSION

20. In this case, subject to the issue of time limits, the Claimant has good liability prospects of establishing that there was a failure to make reasonable adjustments in the form at least of providing to someone on the redeployment register details of available jobs. A grievance was upheld to that effect. Often when the Tribunal is considering a just and equitable extension of time, the prospects of liability are poor or uncertain. That is not the case here. It is strongly arguable.
21. As all the case relates to the delay in redeployment, I do not pick and choose between the various claims. It is sufficient for present purposes to identify that there is at least one argument with real prospects of success.
22. The period criticised is 6 October to 29 December 2021. The primary period of limitation would expire then on 28 March 2022. It might have been extended to 28 April 2022 had ACAS conciliation started within the primary period of limitation. A grievance was raised on 5 January 2022, within the primary period. There was a grievance meeting on 7 April 2022. The grievance outcome was 1 July 2022. The claim was brought on 28 July 2022, some 3 months after the expiry of the primary period of limitation that might have been extended by ACAS conciliation. The actual ACAS conciliation period was between 19 May 2022 and 29 June 2022. This was outside the primary period of limitation but before the grievance outcome.
23. As to the reasons for the delay in bringing the claim, I accept from the Claimant that he was reliant on the grievance process to address matters. I also accept that he was not entirely well. There were ongoing issues of chronic pain and mental health. He had consulted the RCN throughout. His RCN rep was a lay rep. The RCN had been very effective in achieving the

redeployment, eventually. ACAS was approached late on 19 May 2022, but the grievance had not concluded. There was confusion about time limits. There was confusion about when to bring a claim to Tribunal when there was an ongoing grievance process.

24. There is no evidential prejudice to the Respondent at all. There was a comprehensive grievance which would be a rehearsal for the claim.
25. In all the circumstances, it is my judgment that it is just and equitable to extend time. I am significantly influenced by the fact that the grievance was upheld in the detail for which it was brought.
26. If liability is confirmed, then the Claimant deserves to be compensated for the delay in securing his redeployment. That said, that period is a modest one. Any compensation will also be modest. This case, one might have thought, is now easily capable of resolution out-of-court.
27. I have not determined the Respondent's strike out/deposit applications. The above suggests they would fail. The Claimant brings a strongly arguable claim, supported in large part by the grievance outcome.

Employment Judge Smail
Date: 07 February 2023

Judgment sent to the parties: 08 February 2023

FOR THE TRIBUNAL OFFICE