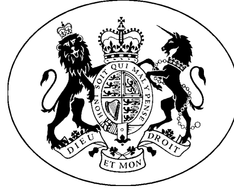

EMPLOYMENT TRIBUNALS

Claimant: **Mr N Seshadri**

Respondent: **Cwm Taf Morgannwg University Local Health Board**

Heard at: **Cardiff-by video hearing** **On: 4 December 2020**

Before: **Employment Judge J Whittaker (sitting alone)**

Representation:
Claimant: In person
Respondent: Mr Walters (Counsel)

JUDGMENT

The Judgment of the Tribunal is that the claim of the Claimant for unfair dismissal pursuant to Section 94 of the Employment Rights Act 1996 is dismissed because as at the effective date of termination of his employment the Claimant did not have the necessary qualifying period of service of 2 years.

The Claimant's claims of breach of contract pursuant to the Employment Tribunal's Extension of Jurisdiction Order 1994, a claim of unfair dismissal pursuant to Section 103 of the Employment Right Act 1996 (Protected Disclosures) and claims of detriment arising from protected disclosures pursuant to Section 47B of the Employment Rights Act 1996 are dismissed on the grounds that all these claims were presented out of time and it was reasonably practicable for the Claimant to have submitted those claims within the relevant 3 month time limit.

REASONS

1. The Tribunal was presented with a bundle of documents of in excess of 400 pages. The Preliminary Hearing however which took place today was

only to determine whether the claims of the Claimant were presented out of time and the majority of those documents were not relevant to the issue which was to be determined. Where appropriate reference is made to documents which were contained in the bundle and which were considered by the Tribunal.

2. The Claimant gave evidence on oath by reference to a written witness statement which was read and considered by the Tribunal. The Respondents did not call any witnesses and did not present any witness evidence themselves.

3. The time limit which was applicable to claims pursuant to Section 103, Section 47B and the 1994 Order are identical. The relevant time limits appear at Section 111 and Section 48 of the Employment Rights Act 1996 and at clause 7 of the 1994 Order. The wording of these Sections is that a complaint may be presented to an Employment Tribunal against an employer but that an Employment Tribunal "shall not consider a complaint unless it is presented to the Tribunal before the end of 3 months beginning with the effective date of termination or before the end of the period of 3 months beginning with the date of the act of failure to act which the complaint relates to."

4. It was agreed that the effective date of termination of the contract of employment of the Claimant was 25 October 2019. Furthermore it was agreed that the Claimant lodged his Early Conciliation form with ACAS e minute past midnight (00:01am) on 25th of January 2020 and it was also agreed that the Claimant submitted his claim form to the Employment Tribunal on 24 March 2020. The claim form was therefore submitted 2 months after the expiry of the relevant 3 month time limit.

5. It was agreed that the Claimant did not benefit from any extension of time for "stopping the clock" as a result of making a reference to ACAS for Early Conciliation. The 3 month deadline for making a reference to ACAS expired at midnight on 24 January 2020 and the Claimant did not make a reference to ACAS until 00:01 on 25 January 2020.

6. Considering the wording of the relevant statutory clauses, the Claimant agreed therefore that his claims had been presented outside the time limit and that was not an issue which needed to be determined by the Tribunal. The issue to be determined therefore was whether or not it was reasonably practicable for the Claimant to have submitted his claims within the relevant 3 month time limit. If the Tribunal were to decide that it was not reasonably practicable then the Tribunal would have to consider a third stage of the test included in the statutory provisions referred to above relating to time limits.

7. As a preliminary issue however the Claimant argued that some of his claims were in time because the last of the issues that he complained about insofar as detriment claims under Section 43B of the Employment Rights Act 1996 were concerned was an act on the part of the Respondents which occurred on 30 October 2019 Counsel for the Respondents acknowledged and accepted that all the 21 separate detriment claims brought by the Claimant would have been presented to the Tribunal in time.if the Tribunal were to accept that the last claim of detriment lodged was indeed related to the 30th of October. However Counsel argued that the detriment alleged in respect of 30 October was not a detriment which the Claimant had included in his original claim form. The Claimant argued that it had been included in his claim form. This preliminary issue therefore needed to be determined by the Tribunal but only insofar as the Claimant's claims of detriment pursuant to Section 43B were concerned. This argument did not affect the claims of s103 unfair dismissal and/or damages for breach of contract which the Claimant properly acknowledged were out of time.

8. After considering the content of the claim form and the words which had been used by the Claimant, the conclusion of the Tribunal was that no reasonable person could possibly ascertain from paragraph 7 of the Particulars of Claim that had been submitted by the Claimant that the Claimant was raising any concerns about one sentence in an email dated to 30 October 2019. A Claimant is required to state sufficient facts to set out a legal action and those facts need to be sufficient to enable the Tribunal and the Respondent to understand what has been done which the Claimant is complaining about. The conclusion of the Tribunal is that it could not in any way see how paragraph 7 alerted anyone in any way to the content of an email on 30 October. The Tribunal was of the view that no reasonable person could have come to that conclusion.

9. The details of that allegation which the Claimant had numbered 21 on page 53 of the bundle alleged that in an email dated 30 October that a representative of the Respondents had used inappropriate language, had demonstrated vindictive behaviour, had failed to maintain professional standards and had shown themselves to be dismissive of conscientious staff. None of these allegations or words or suggestions were in any way raised by the Claimant in paragraph 7 of his claim form.

10. The email in question appeared at page 251 in the bundle. It was very short. The words that the Claimant complained about were "feedback to his RO about the noise created". The Claimant said that he learnt of the existence of this email and the words set out above when he received a chain of emails on 19 November 2019. However in paragraph 7 of his Particulars of Claim the Claimant made no reference to the email of 30 October and no reference to the date of 30 October. Furthermore he made

no reference to the author of that email a Mr Lyons. He made no reference to any of the words used which are quoted above and he made no reference or suggestion whatsoever as to why those words allegedly amounted to a detriment. The email chain was considered in detail by the Tribunal. It incorporated a whole series of different emails and attachments and only today when giving evidence in answer to questions from Mr Walters did the Claimant actually say that the email in question was not one of the emails which had been sent to him as part of the "chain" of emails but actually was one of the attachments which had been contained in that exchange. In order to read the attachment the Claimant had had to take a separate step of opening it. None of this had been set out or included in paragraph 7 of his Particulars of Claim at all. In summary therefore the Claimant was complaining about one line of words in an email which had been hidden in an email chain as an attachment which the Claimant had had to open.

11. The conclusion of the Tribunal therefore was that claim number 21 of the 21 alleged detriment claims pursued by the Claimant was not a claim which the Claimant had presented in his claim form. . The chain of detriments therefore about which the Claimant complained terminated on 25 October with the dismissal of the Claimant. On that basis the detriment claims which were brought by the Claimant were presented out of time and the issue for the Tribunal was whether or not it had been reasonably practicable for the Claimant to have presented his detriment claims within the relevant 3 month time limit.

12. The Tribunal properly took into account that the primary time limit of 3 months expired at midnight on 24 January 2020. The claim form was not presented until 24 March and was therefore almost exactly 2 months out of time. The Claimant would of course have been entitled to the extensions of time associated with Early Conciliation if the Claimant had engaged with ACAS within the primary 3 month limit. It was agreed by the Claimant that he did not do so. That 3 month limit expired at midnight on 24 January but it was acknowledged that the Claimant had submitted an electronic Early Conciliation notification to ACAS which was received by them one minute after midnight, on 25 January. The Tribunal therefore, when considering whether or not it was reasonably practicable for the Claimant to have submitted his claim form within the primary 3 month limit, took into account the events of the 24th and into the first few minutes of 25 January when the Claimant had indicated that he was in a position to engage with the process of Early Conciliation. The conclusion of the Tribunal was that it had been reasonably practicable for the Claimant to have submitted all his claims within the primary 3 month limit and that would have simply involved the Claimant in engaging with ACAS through Early Conciliation within that 3 month time limit.

13. The Tribunal took into account that the Claimant was an intelligent and well-educated man and that he was therefore under an obligation to investigate his legal rights and his obligations in respect of the time limits which apply to claims in an Employment Tribunal. The 3 month time limit has been unchanged since Tribunal legislation was introduced in 1972.

14. In his witness statement the Claimant had said that he believed that his dismissal on 25 October was "shocking" and that he had felt" humiliated and discriminated against badly". In the opinion of the Tribunal it must have been obvious to the Claimant that there was a system to enforce equality and to prevent discrimination and that when it happened there was a system to punish discrimination. The Claimant was therefore under an obligation to seek advice or to make proper enquiries about how to enforce those rights and to ask what he could do about what he clearly described as being something which had significantly affected him.

15. The Claimant told the Tribunal that he was unaware of the existence of Tribunals until late January 2020 but the Claimant clearly had every reasonable opportunity to ask about how to enforce his rights and to make enquiries and perhaps most importantly every opportunity to search the internet as to what his legal rights were and how he could pursue those in an Employment Tribunal. In any event the Claimant confirmed in his witness statement that he had carried out those searches and that by 19 January, some 7 days before the primary time limit of 3 months expired, the Claimant was well aware of the existence of Employment Tribunals.

16. The Tribunal accepted what it was told by the Claimant namely that he was genuinely shocked by his dismissal and that he then had concerns about how he might be treated by his former employer if he then took steps to enforce his rights in whatever way he could. It was also the case that his employer was carrying out an internal enquiry into the conduct of the Claimant following his dismissal and that was something which understandably the Claimant was concerned about as he described. The Claimant described these concerns as being a "fear" but the Tribunal unable to accept that as a word which was appropriate in all the circumstances. The Tribunal could accept that the Claimant might have been concerned. The Tribunal could accept that the Claimant may have been apprehensive but the Tribunal was unable to accept that the Claimant could properly describe his circumstances as generating fear.

17. By 28 November, one month after his dismissal, the Claimant had had significant opportunity to reflect on his circumstances and then he chose to consult Medical Defence Shield, an organisation akin to a Trade Union and was freely able to describe his concerns with them. He told the Tribunal that at no stage did they discuss with him the ability to bring claims to an Employment Tribunal and at no time did they discuss with

him any applicable time limits. However if that is the case the Claimant had been advised inadequately but the Claimant is then personally saddled with those potential inadequacies in connection with the advice which he received. In the opinion of the Tribunal any professional advisor offering employment advice to any potential Claimant would be obliged to discuss the applicable time limits as a matter of utmost priority.

18. Having spoken to MDS, the Claimant also spoke to a mentor on 7 December. This gentleman had been the Claimant's mentor since 2011 and was therefore very well known to the Claimant. He told the mentor that he still believed that he had been "treated harshly and disproportionately".

19. The Claimant also went on to have a further one hour discussion with MDS on 13 December. In paragraph 14 of his witness statement he was able to continue to take active steps to find locum work as an Opthalmologist and indeed since his dismissal had actively been able to work even as soon as the weekend of 9 and 10 November following his dismissal on 25 October.

20. An event of particular significance occurred on 3 January 2020. The Claimant was told by MDS that any internal inquiry on the part of the Respondent had been closed down and concluded. In the opinion of the Tribunal therefore the Claimant no longer had any proper grounds for feeling apprehensive about pursuing his legal rights in an Employment Tribunal.

21. On 19 January the Claimant confirmed that he had read about Employment Tribunals on the internet and that he had read about ACAS and the need for Early Conciliation.

22. Furthermore on the 21 January the Claimant was able to make a data subject access request and he told the Tribunal that this required him to read a number of websites in order to understand how to do this. He told the Tribunal that he had been required to carry out quite a lot of reading in order to enable him to understand how to submit a proper request. He also told the Tribunal that on the same date he had been reading about a number of doctors who pursued claims against their employer. The Claimant had clearly devoted a great deal of time and energy to his enquiries on 21 January about making a data subject access request and this had included, as already indicated, a substantial amount of reading and consideration of a number of different websites. The Claimant therefore chose to devote that substantial time to pursue a data subject access request instead of using that time to clearly understand the time limits relating to an Employment Tribunal and the process which was required to engage with ACAS in Early Conciliation.

23. Despite the events of the 21 January the Claimant told the Tribunal that he did not then begin to make detailed enquiries about the process relating to ACAS until the afternoon of 23 January some 2 days later. He told the Tribunal he was unable to find an email address to be able to contact ACAS but the conclusion of the Tribunal is that the Claimant did not read the information freely and readily available on the ACAS website sufficiently carefully. Applying the standards of a reasonable person, the Tribunal concluded that the Claimant did not apply the reasonable care and attention of a reasonable person when considering ACAS. Indeed because the Claimant apparently was unable to find a contact detail that he was sufficiently satisfied with he raised a complaint to ACAS about that. However in the afternoon of 23 January the Claimant described a detailed telephone conversation with the ACAS Helpline. He conceded that they were very clear indeed about the time limits. By 23 January ACAS had now sent to him the links to enable him to complete an Early Conciliation notification form. The Claimant took no steps whatsoever to fill in that form on 23 January but instead described himself as being tired and went to bed. The Tribunal was not given any information as to why the Claimant could not get up earlier the following morning to complete the Early Conciliation form.

24. On 24 January the Claimant finished work at 6.45. He then began to look again at the links which ACAS had sent to him. The Claimant then came to the conclusion which no reasonable person could possibly have come to namely that ACAS may well be biased in favour of his employer simply because ACAS was based in Cardiff as was his employer and because he believed that representatives of ACAS spoke Welsh as indeed did representatives of the Respondent. On that basis the Claimant concluded that he had significant doubts about notifying ACAS of the name of the representative of the Respondent that ACAS should contact in connection with Early Conciliation. Pondering on these unreasonable doubts, the Claimant therefore delayed the completion and submission of his claim form but when he finally submitted it it was submitted 1 minute past midnight on 25 January when it had to be submitted by no later than midnight on 24 January.

25. The Claimant was well aware from his discussions with ACAS of the importance of the time limits and of the expiry of the time limit on 24 January.

26. The Tribunal therefore had to consider, as it has said above, whether or not it was reasonably practicable for the Claimant to have submitted his claim form within 3 months of 25 October 2019? The very clear conclusion of the Tribunal was that it was perfectly practicable and reasonable for the Claimant to have submitted his claim form within 3 months. After all he

only needed to have engaged with ACAS 2 minutes earlier than he did engage with them. If he had engaged with them by 11.59 on 24 January then all subsequent processes used by the Claimant would have been in time, including the submission of his claim form. The only conclusion therefore that the Tribunal could come to was that it had been perfectly possible for the Claimant to have submitted his claim form within the relevant period of 3 months. He had engaged in discussions with a number of different individuals and a number of different bodies. He had had every opportunity to discuss his feelings with them and to research his rights and obtain advice. The Claimant had very significant opportunities to make searches of the internet in the same way that he did about his data subject access request. The Tribunal has said above that a reasonable person would have engaged in the process within the 3 month time limit and would have informed themselves of the process and procedures which needed to be followed including complying with any relevant time limits.

27. The conclusion of the Tribunal therefore was that the claims of the Claimant had not been submitted within the 3 month time limit and that it had been reasonably practicable for the Claimant to have complied with and submitted his claim form within that 3 month period. The Tribunal found that the delay, in particular the delay on the evening of 24 January was irrational and unreasonable and certainly did not accord or match reasonable thoughts and procedures which would have been adopted by a reasonable person, in particular one like the Claimant was clearly a well-educated professional man.

Employment Judge J Whittaker
Dated: 16 December 2020

JUDGMENT SENT TO THE PARTIES ON 17 December 2020

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

NOTE:
This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.