Case Number: 2203850/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr N Smyth	**v**	**Samuel Smith Old Brewery Tadcaster/Samuel Smith (Southern)**

Heard at: London Central **On**: 17 August 2021 (by CVP)

Before: Employment Judge A James

Representation

For the Claimant: Mr N Clarke, counsel

For the Respondent: Mr B Hodgson, solicitor

JUDGMENT

(1) It was not reasonably practicable for the claimant to submit the unfair dismissal claim in time; the claim was submitted within a reasonable period thereafter (s.111(2) Employment Rights Act 1996).
(2) The Equality Act claims were submitted within such period as the Tribunal thinks just and equitable (s.123(1) Equality Act 2010).

REASONS

1 The issue for the tribunal to determine today was recorded at the preliminary hearing held on 29 April 2020 as follows and the parties agreed at the commencement of the hearing that this was the issue for the tribunal to determine:

whether the tribunal has jurisdiction to hear the claims of unfair dismissal and disability discrimination, on the basis that the claims were not filed within the requisite time period, and whether the tribunal should exercise its discretion to extend time on the basis that it was not reasonably

practicable to issue the unfair dismissal claim and that it would be just and equitable to extend time in respect of the disability discrimination claim.

The proceedings

2 The preliminary hearing took place over the period of one day. Evidence was heard from the claimant and submissions were then made on behalf of both parties. Oral judgment was delivered during the afternoon and written reasons were requested by Mr Hodgson at the hearing. Hence this judgment and written reasons.

Findings of fact

Events leading up to the claimant's dismissal

3 The claimant commenced employment with the respondent on 24 June 2003. Throughout his employment he was employed as Head Chef at Ye Olde Cheshire Cheese Public House at 145 Fleet St, London. His employment ended on 11 March 2019.

4 On the claimant's case, two managers, 'Tosh' and Tim Ryder started work as managers at Ye Olde Cheshire Cheese (The Pub) on 29 May 2017. On 2 June 2017, the claimant finished work at 3pm to go on a planned holiday. An environmental health inspection took place on 7 June 2017 and awarded a score of 1 (the lowest possible score).

5 The claimant returned from leave on 21 June 2017. He suffered an electric shock at The Pub on 5 July 2017. He attended Accident & Emergency on 6 July 2017 suffering from the effects of the shock.

6 On 7 July 2017 the claimant planned to finish at 3pm but was off sick, on his case, because he was suffering the effects of shock. On 8 July 2017 the claimant went on a planned holiday, after consulting with his GP.

7 The claimant says he returned to work on 12 July 2017 for a split shift between 8am and 3pm and 5:30pm to 10:30pm. He says he was asked by Tosh to attend a meeting on 13 July at 3pm after the first of his split shifts finished. He says that he was given no indication of the content of the meeting and assumed it was to discuss the Christmas menus.

8 The meeting duly took place on 13 July 2017. On the morning of that day, the Council's environmental health officer had revisited the premises. No report was generated but on the claimant's case, a note was made on the file confirming that conditions had improved.

9 The claimant says that during the meeting with the managers, the environmental health report was discussed. On the claimant's case, he was blamed for the issues that had arisen; he was told that it was a formal disciplinary meeting; and that they could either do it 'the hard way' with performance management being pursued during which the claimant would be 'pushed and pushed'; or the 'easy way', meaning that the claimant could just resign.

10 The claimant was distressed by what, on his account, occurred at the meeting. On 15 July 2017 the claimant went to his GP and was signed off with

anxiety and depression. He remained signed off sick, unfit for work, until his dismissal on 11 March 2019. He was diagnosed with PTSD in October 2019.

11 The claimant says that during his sick leave, he requested a reasonable adjustment, being a transfer to another pub. The respondent says that it looked at the possibility of alternative employment but that there were no Head Chef vacancies within a reasonable distance of The Pub. It is also the respondent's case that it tried to arrange an Occupational Health report from April 2018 onwards but that due to a lack of cooperation from the claimant the assessment did not take place until 7 August 2018. The respondent says that there were attempts to arrange a meeting to discuss the claimant's continuing employment between 26 November 2018 and 22 February 2019 but the claimant did not co-operate with those attempts.

12 It is not in dispute that on 22 February 2019 a meeting was held, which the claimant did not attend. A termination letter was subsequently sent on 11 March 2019. The claimant did not appeal.

13 Much of the above is in dispute. It reflects the parties' respective cases and sets out the background to this claim and today's hearing. If the final hearing goes ahead, it will be for the tribunal at that hearing to make firm findings of fact in relation to the above issues, to the extent relevant, and to the extent that any of it is disputed.

<u>The claimant's mental health from 11 March 2019 onwards</u>

14 The witness statement of the claimant produced for this hearing sets out between paragraphs 4 to 8 the state of his mental health from 11 March 2019 onwards. In summary, the claimant's evidence, which was not materially challenged, is that his mental health was 'out of control' during this period. He suffered frequent and extreme panic attacks. His anger was uncontrollable; as a result, his marriage to his wife was pushed to the limit.

15 Although his wife did her best to support the claimant, she was at the time holding down two jobs. Despite that, she attended every appointment with him, since he was not physically able to attend them alone. His wife did not have any support from her family at the time; on the contrary, his wife's mother was in Portugal when she was subsequently taken ill and was admitted to hospital with kidney problems. Money was sent to the claimant's wife's mother during that time which put a further strain on them financially.

16 On the claimant's case, he was '*totally incapable of producing documents to commence early conciliation as a result of my serious mental health condition close*' at the relevant time (May to September 2019). I return to that issue in the conclusions. The claimant's wife was not able to assist him more during that period, than she already was. She subsequently suffered what is described as a 'nervous breakdown' herself, in August 2019. She was signed off work for one month and has been on antidepressants ever since.

17 I was referred to a disability impact statement (DIS), submitted by the claimant as part of his claim. Disability has since been conceded. I make the following findings of fact from the information contained within the DIS.

17.1 The claimant suffers from poor concentration levels. His concentration levels begin to suffer after only 10 to 20 minutes of performing a task.

17.2 The claimant finds it extremely difficult to cope with any additional stress within his daily life. When faced with stressful situations he becomes impatient, irritable, and liable to panic attacks. It subsequently takes him a long time to calm down.

17.3 The claimant suffers frequent panic attacks, sometimes on several occasions a week. They are generally triggered by being out of the house and social situations with people other than his family. He has for example experienced panic attacks when visiting the doctors surgery, opticians, hospitals and restaurants.

18 Such symptoms have remained relatively constant since his diagnosis in July 2017. The symptoms affect the claimant in his daily life. For example:

18.1 The claimant finds it difficult to use a telephone. The claimant's wife generally takes telephone calls on his behalf, whilst he sits next to her.

18.2 The claimant finds it difficult to sleep soundly. His sleep is frequently disturbed which affects his ability to function the next day.

18.3 The claimant struggles to be around people in any situation. He once had a panic attack going into a therapy room. He tried to run away from the situation. The therapist caught up with him and suggested they undertake the session in the garden. Unfortunately there were other people out in the garden and the claimant became even more distressed and ran and found a corner where he huddled up and sobbed.

18.4 The claimant struggles to use public transport. This means he infrequently leaves the house and instead chooses to stay indoors, becoming increasingly isolated as a result.

19 The claimant stated in evidence that his wife started to recover from her 'breakdown' towards the end of September 2019 and it was at that time she managed to regain her composure and seek help from ACAS. The claim form was then submitted on 6 October 2019, within one month of ACAS early conciliation ending. On the basis however that ACAS early conciliation commenced on 4 September 2019, I find that the claimant's wife's health had improved by the end of August/beginning of September 2019, not the end of September.

Commencement of Acas EC and submission of Claim Form

20 Acas Early Conciliation having commenced on 4 September 2019, it ended on 9 September 2019. It should have been commenced by 10 June 2019. The claimant commenced Employment Tribunal proceedings on 6 October 2019, nearly 4 months outside the initial three month time limit.

21 The original claims were for unfair dismissal, disability discrimination and holiday pay. The claim for holiday pay was withdrawn on 26 April 2020. The claimant was ordered to provide further and better particulars at the previous preliminary hearing, which were subsequently provided.

22 Also at the previous case management preliminary hearing, the judge made a deposit order in principle, with the amount to be determined in due course. A Deposit Order was subsequently made in the total sum of £250. The reason for the Deposit Order being made was because the judge took the view that

the claimant had little reasonable prospects of success in persuading a tribunal in due course that the claims were submitted in time [#17]. That is of course the very issue before the tribunal today.

23 Directions were made on 29 April 2020 in relation to today's Preliminary Hearing, for a bundle to be agreed 28 days before and witness statements to be exchanged 14 days before. Those documents were to be filed with the tribunal the day before, together with any skeleton arguments. In the event, formal bundle has not been prepared, although I have been provided with a bundle of medical notes and relevant pleadings.

Instruction of Oakwood Solicitors

24 The claimant had instructed Oakwood Solicitors in 2018 in relation to a personal injury claim. He signed a form so that they could obtain medical records from his GP in December 2018. He had to formally instruct them – indeed, they could not act, as a matter of professional practice, without him doing so. I find however that subsequently, most of the communication between the firm and the claimant was via his wife. That was not contradicted in substance by anything said today. His formal instruction of Oakwood Solicitors is still consistent with his wife doing most of the communication with the firm, having spoken to the claimant first.

25 I find that Oakwood Solicitors were not instructed by the claimant to advise regarding his employment claims. I note that the GP notes on page 5 state that on 18 June 2019 the GP was told: "*Solicitor on the case to help with his unfair dismissal from work*". The claimant's evidence is that it was his personal injury claim he was seeking advice for. In answer to a question from the judge, the claimant stated that Oakwood Solicitors did not advise him on the employment law issue. His wife told them he had been dismissed but he is not aware of any advice being given by them about an unfair dismissal claim.

26 I find the claimant's evidence more persuasive than a brief note of a conversation with the claimant's GP. That is also consistent with the later advice obtained from Tower Hamlets CAB in August 2019.

Tower Hamlets CAB advice

27 On 7 August 2019 the claimant attended Homerton University Hospital. This followed him being picked up by an ambulance after a panic attack, whilst he was at Tower Hamlets CAB. The Hospital note says:

> *"Attended CAB Tower Hamlets today to seek advice re an unfair dismissal by his former employees (sic) four months ago. Reports that he was informed by the Tower Hamlets CAB that they couldn't do anything to help him as … he had to file the unfair dismissal claim against his employees (sic) has passed (should have done it within three months). He reported that he tried to explain that the reason why he missed the deadline was because of his mental health and the Tower Hamlets CAB informed him that they were not able to help in that he needed to approach Hackney CAB. It was at that point that he had a panic attack leading to an ambulance being called. He was reportedly shouting and in a "crisis" according to LAS on their arrival."*

28 The claimant told the tribunal that there must have been a misunderstanding due to his Scottish accent. I reject that, on the basis that it has been clear

what the claimant has said before me today. Unlike the GP note of 18 June 2019, the above note is comprehensive. On the balance of probabilities, I conclude that it is a reasonably accurate reflection of what the claimant was told. The claimant was not able to say at the hearing when he became aware of the correct time limit. On the balance of probabilities, I conclude that he did know of time limits by August 2019 at the latest. I find that the purpose of the visit to the CAB was to obtain advice about an unfair dismissal claim and he was advised that the time limit had already passed.

29 As noted above, the claimant subsequently contacted Acas at the beginning of September 2019 and on 4 September 2019, Acas Early Conciliation commenced. On 9 September 2019 an ACAS Early Conciliation Certificate was issued. There was then a delay until 6 October 2019 before the claim was commenced. The claimant was not able to confirm today that he had been told by Acas he had one month to submit the claim after 9 September and I make no such finding.

30 At that stage the claimant's mental health was still poor. He stated at the hearing: "I had been through a lot, I was still ill, could only concentrate 5 or 10 minutes. Get agitated and angry, have to stop. Wife working two jobs, could not do it myself". That is consistent with the GP records indicating regular panic attacks, walking out of the surgery, handing over the telephone to his wife during calls, and the panic attack when he took advice from Tower Hamlets CAB in August 2019. As well as the contents of the disability impact statement.

Relevant law

Employment Rights Act 1996

31 The relevant parts of S111 Employment Rights Act 1996 provide:

> *(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.*
>
> *(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).*

32 In *Schultz v Esso Petroleum Company Limited [1999] IRLR 488*, the Court of Appeal approved the judgment of *Palmer v Southend-on-Sea Borough Council [1984] IRLR 119*, Lord Justice May … quoting Mr Justice Browne-Wilkinson in Bodha's case [1982] ICR 200 at 204 [said]:

"The statutory test remains one of practicability. The statutory words still require the industrial tribunal to have regard to what could be done, albeit approaching what is practicable in a common-sense way. The statutory test is not satisfied just because it was reasonable not to do what could be done ... Reasonably practicable means 'reasonably capable of being done', not 'reasonable'."

If, in this dictum, Browne-Wilkinson J was intending to limit the meaning of the phrase "reasonably practicable" to that which is reasonably capable physically of being done, then on the authorities to which we have referred this we think would be too restrictive a construction.

... However, we think that one can say that to construe the words "reasonably practicable" as the equivalent of "reasonable" is to take a view too favourable to the employee. On the other hand, ***"reasonably practicable" means more than merely what is reasonably capable physically of being done.*** *[emphasis added]*

33 Tribunals should consider all the surrounding circumstances and reach clear factual findings as to the nature of the illness and the extent of its impact on the Claimant's ability to embark on litigation. (See *Ebay (UK) Ltd v Buzzeo UKEAT/0159/13*).

34 The following extract is taken from *Harvey*:

(viii) Reasons for missing the time limit: (3) ill health or disability

[229] One of the strongest cases for its not having been reasonably practicable to submit an originating application within the statutory time limit is where there was a physical impediment of some sort. As Brandon LJ in Walls' Meat Co Ltd v Khan [1978] IRLR 499 stated: 'The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant […]'.

[229.01] Whether physical or mental ill health justifies the application of the escape clause will necessarily depend upon all the circumstances and it will be important for the tribunal to reach clear factual findings as to the nature of the illness or injury and the extent of its impact on the would-be claimant's ability to embark on litigation (for a case in which the tribunal was held to have fallen short of such clarity, see Ebay (UK) Ltd v Buzzeo UKEAT/0159/13 (5 September 2013, unreported)). Findings will also need to be made about the relative effect of the incapacity throughout the three-month period where the ill health was not present for the entirety of that period or where the effects of illness or injury fluctuated. As considered above, the Court of Appeal in Schultz v Esso Petroleum Ltd [1999] IRLR 488 concluded that it was not right to give a period of disabling illness similar weight irrespective of the part of the limitation period in which it fell. Although the overall period should be considered, the focus should be upon the later stages of the three months, reflecting the reality that in most cases this is when litigants focus their minds on lodging a claim. In Schultz itself the claimant had been dismissed for long-term absence due to depression. It was held that he had been physically capable of giving instructions to his solicitor for the first seven weeks of the

three-month period but was too ill to do so for the last six weeks. The Court of Appeal overturned the decisions of the tribunal and the EAT that it had been reasonably practicable to present his claim in time, in part because of the failure to focus on the fact that the illness struck the claimant in the crucial later stages of the limitation period.

[229.02] The same approach, referenced above, will apply to cases in which a disability provides a physical or mental impediment to meeting the primary time limit. In Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490, for example, it was central to the Court of Appeal's conclusion that it had not been reasonably practicable for the claim to be lodged in time, that the claimant was severely dyslexic and that this had impacted directly the sequence of events leading to the time limit being missed.

Equality Act 2010

35 The relevant parts of section 123 EA 2010 provide:

(1) Subject to [section] … 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.

36 Where a claim is presented outside the primary limitation period, i.e. the relevant three months, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable.

37 Time limits are to be applied strictly in Employment Tribunal proceedings, and the onus is on a claimant to show to the tribunal that his is a case in which the time limit should, exceptionally, be disapplied (see *Robertson v Bexley Community Centre [2003] IRLR 434*, at para 25:

It also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.

38 As explained in *Caston v Lincolnshire Police [2010] IRLR 327*, para 26:

Plainly, the burden of persuading the ET to exercise its discretion to extend time is on the claimant (she, after all, is seeking the exercise of the discretion in her favour). Plainly, Schedule 3 of DDA does not give rise to a presumption in favour of extending time. In my judgment, Auld LJ's use of the word 'convince' in paragraph 25 of his judgment adds little.

39 As set out by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23*, 15 January 2021:

The best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the

particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay".

40 According to the Editors of ***Harvey***, it is likely that any ill health or disability which is held to have caused or contributed to the reason for the claimant missing the primary time limit will be a relevant factor to weigh in the balance when considering whether to exercise the discretion to extend time.

Conclusions

Unfair dismissal claims

41 There are two stages to the reasonably practicable test. The first is whether or not it was reasonably practicable to submit a claim in time. The second is whether the claim was submitted a reasonable period thereafter. Those are considered in turn below.

Reasonably practicable to submit claim in time?

42 It is argued by Mr Hodgson that the claimant was capable of giving instructions and indeed he did so regarding his personal injury claim, for work related stress. I conclude however that the claimant was not capable of giving instructions at the relevant time and in particular in May/June 2019 and that state of affairs continued up to and including September. In any event, the instructions given in relation to the work related stress claim were mainly through the claimant's wife, not directly himself. As a matter of fact, the claimant formally instructed Oakwood Solicitors regarding a personal injury claim in 2018; but in reality, his wife was doing most of the running in relation to that claim. Further, the claimant's health remained in a very poor state after instructed Oakwood, and became worse in 2019 following his dismissal.

43 I take due notice of the fact that I do not have to conclude that the claimant was totally physically incapable of providing instructions to a solicitor at the relevant time. The test of reasonably practicable is not that strict. I conclude for the following reasons that it was not reasonably practicable to submit the claim in time.

44 I rely for example on the GP records up to the date of submission of the claim form. These show that on 4 October 2018, the claimant had issues talking on the phone. By that stage, he had been on sick leave for over a year. On 18 June 2019, he had a panic attack while on the telephone to his GP. It was noted that 'even talking about his dismissal makes him anxious'. This was I note the same phone call in which the comment was made to the effect that he had a 'solicitor on the case to help with his unfair dismissal at work'.

45 The GP note of 4 July 2019 refers to '*regular panic attacks …. affected in every single aspect of his life … tearful, panic in the room, couldn't hardly come in, wringing hands, face in hands*'.

46 Page 41 of the GP notes also dated 4 July 2019, headed 'Problem - Anxiety with depression (Review) state:

History - Seen with his wife. Feels trigger was unfair dismissal after bullying at work 2y ago. Has improved slightly with CBT 16 sessions via Mind. They now suggest EMDR to deal more with PTSD side of things.

> *Regular panic attacks. Hasn't worked since. Affected in every single aspect of his life.*

47 A letter dated 24 July 2019 from Mind to Mr Smyth stated:

> *During the assessment/initial consultation (19/12/18) NS described that he had been living with a range of distressing symptoms for over 18 months that had impacted his life significantly. These included — Severe mood dysregulation, Flashbacks, Depression & Anxiety. NS was unable to work and found it tremendously difficult to leave his house to do daily tasks*.

48 Further, that since January 2019:

> *while some progress has been made with regards to NS understanding that he is struggling with the symptoms of PTSD it is clear that NS is still experiencing severe flashbacks, mood dysregulation and a feeling of hopelessness*. [33]

49 I conclude that the claimant was aware of time limits, just before or within a few weeks after the time limit expired on 10 June 2019. I have found that whilst the claimant or his wife told Oakwood Solicitors about his dismissal, they were not in fact advising him about an Employment Tribunal claim but a work related stress claim. A reference in the evidence to the Conditional Fee Agreement (CFA) being terminated at the end of June 2019 supports that; the CFA would have been for a personal injury claim, not an employment tribunal claim.

50 I conclude that the claimant's ill health seriously impeded him in being able to seek and obtain specific advice about his dismissal, and to subsequently start Acas Early Conciliation and then complete the claim form and submit it. I refer to the findings in relation to the panic attacks on 18 June 2019 and then again on 7 August 2019, when he went to Tower Hamlets CAB for specific advice about his Employment Tribunal claim. He was then advised that such a claim was out of time, so he clearly knew of the time limit then. But he had to leave the CAB in a state of severe distress, an ambulance was called and he was taken to A&E. Those are extreme circumstances. They reflect his inability to deal with stress, and his difficulty being around other people.

51 The fact that the claimant was able to instruct solicitors to advise on a work related stress claim in 2018 and sign a form allowing them access to his GP records in late 2018, does not mean that in May/June 2019, it was reasonably practicable for him to commence Acas EC and thereafter submit a claim form in a timely fashion.

52 Taking into account all of the medical evidence, whilst I am satisfied that the claimant was aware of time limits at least a good month before ACAS early conciliation was commenced, the claimant's continuing serious and exceptional mental health problems meant that it was not reasonably practicable for him to submit his claim in time.

Reasonable period thereafter?

53 I have found that the claimant's wife was ill in July/August 2019 and he was heavily dependent on her to assist him, but that she was better by the beginning of September 2019. That is when Acas Early Conciliation was commenced.

54 The claim form was not submitted until 6 October, just under 4 weeks' later. I conclude this was a reasonable period in all the circumstances of the case. Given the claimant's ongoing mental health problems, as demonstrated by medical evidence and as evident today when the claimant was giving evidence. During this period he remained unable to concentrate for more than 5 to 10 minutes, to cope with stress, or to be around other people and would quickly get agitated and angry. All that would increase the length of time needed to fill in and complete the claim form.

55 It is a rare case where it is open to a tribunal to find that it was not reasonably practicable to submit a claim in time; and that subsequently, the form was submitted within a reasonable period thereafter. For all of the above reasons, I consider that this is one of those rare case where such a conclusion is the just one to arrive at.

Equality Act 2010 claims

56 In considering whether it is just and equitable to extend the time for submission of the Equality Act claims, I note that relevant factors include (1) the length of and reasons for the delay; (2) the prejudice which each party would suffer as a result of granting, or refusing to grant, an extension; and (3) the potential merits of the claim.

Length of and reasons for delay

57 I refer to the reasons for my conclusion above in relation to the reasonably practicable test. For the same reasons, I conclude that because the claimant was severely ill, he was unable to take and act on advice in a timely fashion.

Prejudice

58 Mr Hodgson informed the tribunal that four of the respondent's witnesses had left, and that he had so far only been in touch with one of those, the dismissing manager. He later clarified that he had contact details for the other three but had not tried to contact them as yet. The potential witnesses also left within months of the claimant's dismissal and any issue in calling them to give evidence is not caused by the delay in the claimant submitting the claim. The documents relating to the disciplinary and dismissal process are available. It is a matter of record what procedures were followed (or not, as the case may be). As for the reasons for the dismissal, I was informed that there is a 15-page dismissal letter. Whilst I have not seen that, that is an exceptionally long letter and presumably contains a lot of background detail gathered by the dismissing officer. It would have been for the dismissal decision-maker to consider whether any reasonable adjustments were possible at that stage to enable the claimant to return to work (in particular, a move to another establishment).

Merits

59 Neither representative address me in relation to the overall merits of the claim. It is not therefore possible at this stage to draw any firm conclusions of the potential merits as to whether there were reasonable adjustments that could have been made at that stage; whether the claimant should have been told that he could work at another pub as Head Chef; nor whether, if so, the claimant would have been able to return to work within a reasonable period. The deposit orders were made because of the time limit issue, not the

substantive merits. I have had the advantage of hearing relevant evidence at the hearing on time limits form the claimant, and considering all relevant references in the medical records in context, as well as hearing detailed submissions from both professional representatives. There has been no discussion of the wider merits of the claimant's claims.

60 I also take notice of the fact that if the claimant had ben dismissed with notice, rather than a payment in lieu of notice, the claim would have been submitted just a few days late, rather than three months. Whilst not a decisive factor, it is still a factor in favour of the claimant.

61 Bearing in mind all of the matters above, I conclude that it is just and equitable to allow the claim to be submitted within the period within which it was submitted to the tribunal.

Further action

62 As a result of the decision on time limits, at the conclusion of the hearing a date was fixed for the final hearing, and appropriate case management orders were made. Those are the subject of a separate document.

63 I conclude by noting that the fact that the claims will be allowed to proceed should not be seen as an indication as to the likelihood of the claims succeeding in due course. That will be for a full tribunal to consider.

Employment Judge A James
London Central Region

Dated 9 September 2021

Sent to the parties on:

09/09/2021

For the Tribunals Office