Case Number: 3335357/2018

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr G Conisbee	**v**	(1) Crossley Farms Limited; (2) Shane Foulger; (3) William Durrant; (4) Jamie Docker; (5) Justin (surname unknown)

Heard at: Norwich

On: 17 May 2019
7 June 2019 (Final written submissions)

Before: Employment Judge Postle

Appearances
For the Claimant: Miss Bewley, Counsel.
For all the Respondents: Mr D Chapman, Solicitor.

RESERVED JUDGMENT

1. The Claimant's claim that vegetarianism is a protected characteristic under the Equality Act 2010 is not well founded and the claims are dismissed.

2. The claims against the third, fourth and fifth Respondents are dismissed for failure to comply with Early Conciliation procedures, namely to provide surnames of prospective Respondents.

3. The claim against the third Respondent is in any event dismissed as it is out of time and it is not just and equitable to extend time.

RESERVED REASONS

1. This is a preliminary hearing to determine whether or not vegetarianism is capable of satisfying the requirement and definition of being a philosophical belief (protected characteristic) under the Equality Act 2010.

2. There was some doubt at the outset of this hearing as to the full ambit given that there were also jurisdictional issues over the Claimant's ACAS certificates and the names of the third, fourth and fifth respondents, in particular Christian names only had been provided to ACAS and thus only referred to by Christian names on the ACAS certificates issued. Further there was also jurisdictional issues over the claims being made (some) on the face of it might be out of time unless considered as conduct extending over a period time. Ultimately, it was agreed between the Tribunal and the parties' representatives that they could make further written submissions on these points and an Order was duly made at the conclusion of the preliminary hearing that further written submissions would be made to the Tribunal by Friday 7 June 2019. Both parties duly complied with this Order.

3. The Respondents do not dispute the Claimant is a vegetarian and do not dispute the Claimant has a genuine belief in his vegetarianism. The Respondents case is simply being a vegetarian itself cannot amount to being a protected characteristic. Indeed, the Respondents accept the Claimant's evidence advanced in his witness statement prepared for these proceedings on face value and having indicated this therefore there is no need for the Claimant to give evidence before the Tribunal at this preliminary hearing.

4. In this Tribunal we have had the benefit of a bundle of documents consisting of 62 pages. The Tribunal have also had the benefit of skeleton arguments on behalf of the Claimant (3 pages) who have also referred to a number of cases namely, Williamson v Secretary of State for Education and Employment [2005] ALL ER UKHL15, Nicholson v Grainger Plc [2010] 2ALL ER, Redfearn v The United Kingdom [2012] ALL ER112 and finally Eweida v British Airways Plc [2009] IRLR 78.

5. The Respondents also produced a skeleton argument (4 pages) and a number of cases particularly Grainger Plc v Nicholson [2010] IRLR 4 EAT, McClintock v Department of Constitutional Affairs [2008] IRLR 29 and finally an extract from Hansard re: the third reading of the Equality Bill. There was also the further written submissions on jurisdictional points of time and the names included on the ACAS certificates in relation to the third, fourth and fifth Respondents.

The Facts

6. By a claim form presented on 13 December 2018 the Claimant made claims against the first Respondent Crossley Farms Limited, second Respondent Shane Foulger, third Respondent Justin (surname unknown), a fourth Respondent Jamie Docker and finally a fifth Respondent William Durrant. However, the ACAS Early Conciliation certificates referred to the first Respondent's full name correctly, the second Respondent Shane Foulger's name correctly, but the remaining ACAS certificates are reciting only the names of Justin, Jamie and William.

7. The grounds for complaint were discrimination on the grounds of religion and belief, and a claim for notice pay. The Claimant had insufficient service to bring a claim of ordinary unfair dismissal under the Employment Rights Act 1996. The Claimant had been employed from April 2018 until he resigned on 30 August 2018 as a Waiter / Barman.

8. The Claimant argues if any of the allegations are seen on the face of it to be out of time, they should be seen as conduct complained of extending over a period of time within the meaning of s.123(3)(a). In the alternative, the Claimant argues it would be just and equitable to extend time.

9. The response filed on behalf of all Respondents denying all the allegations. The response also advanced the arguments that in the case of the third, fourth and fifth Respondents that they should be removed as a party to these proceedings on the basis that the Claimant has failed to properly commence ACAS Early Conciliation against them. Particularly the Claimant's ACAS Early Conciliation certificates only refers to each of those Respondents by their first name. It is therefore argued that the Claimant has failed to comply with s.18A of the Employment Tribunals Act 1996 as he has not complied with the requirement to contact ACAS prior to issuing proceedings against these Respondents.

10. Further, or in the alternative, the Claimant's claim should be struck out under Rule 12(2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("The Rules"), this is on the basis that the name of the third Respondent on the ET1 claim form (William Durrant) is not the same as the name of the prospective Respondent in the Early Conciliation certificate to which the Early Conciliation certificate number relates in each case just to the first name. (Rule 12(2)(f) of the rules). Despite the Claimant clearly having this information available to him. This equally applies to the fourth Respondent Jamie Docker and the fifth Respondent 'Justin'.

11. Further, and in the alternative, the third Respondent contends that the Claimant's claim against William Durrant are out of time, the Claimant is very clear that the only incident of harassment to which he says the third Respondent was responsible was in June or July 2018. The Claimant having commenced the ACAS Early Conciliation process on 23 November 2018 is well after the period of 3 months had elapsed since the Claimant alleged the last act of discrimination (31 July 2018) meaning that the Claimant should have commenced ACAS Early Conciliation by 30 October 2018. The Claimant's claims therefore against the third Respondent are out of time, therefore the third Respondent should be removed.

12. The Respondent went on to recite in their response the fact the Claimant resigned on 30 August 2018. His resignation letter focused on an incident on 28 August when the Claimant had been told off for attending work in an un-ironed shirt. It is accepted the Claimant was shouted at and may have been sworn at in front of customers. The first Respondent will say the

incident was the reason for the Claimant's resignation. Further, the first Respondent understands that in September 2018 the Claimant returned to college meaning that it would no longer be possible for him to continue working for the first Respondent for 25 hours per week as he had been doing.

The Claimant's submissions

13. Miss Bewley, counsel for the Claimant, referring to her skeleton argument advances a number of arguments.

14. The first being that a finding to say that the Claimant's vegetarianism is not a protected characteristic would not defeat his claim. This is because, harassment merely needs to "relate" to a protected characteristic (together with the other components of s.26) and as such the victim need not possess the protected characteristic to succeed. Miss Bewley submits this made clear in the examples given at s.99 of the explanatory notes of the Equality Act 2010.

15. Miss Bewley goes on to say those notes to the Equality Act 2010 also make it clear that a definition of philosophical belief within s.4 of the Equality Act 2010 is a broad definition in line with the rights granted under the European Convention on Human Rights. Reference is then made to paragraph 52 of the explanatory notes of the Equality Act 2010. In particular, paragraph 52 clarifies what amounts to a protected characteristic under the category of philosophical beliefs as having the following criteria:

    a. The belief must be genuinely held and not a mere opinion or viewpoint on the present state of information available;

    b. The belief must be a weighty and substantial aspect of human life and behaviour;

    c. The belief must attain a certain level of cogency, seriousness, cohesion and importance and be worth of respect in a democratic society; and

    d. The belief must be compatible with human dignity and not conflict with the fundamental rights of others.

16. Miss Bewley then goes on to say that the following in her view are uncontroversial facts relating to vegetarianism:

    a. Many vegetarians including the Claimant are genuine in their belief, and there is no sensible argument to suggest that the belief system behind vegetarianism is made up, or fanciful;

    b. No one can sensibly deny that many vegetarians, the Claimant included, base their genuine belief on the premise that it is wrong and immoral to eat animals and subject them

and the environment to cruelty and perils of farming and slaughter. For the Claimant and many vegetarians this is not a mere opinion or viewpoint based on the present state of information available but instead a serious belief integral to the way of life;

c. Vegetarianism accounts for a huge portion of the world's pollution. Apparently, this was 21.8% in 2010 according to an article in Wikipedia, the abstract was produced at this hearing;

d. Given the above, vegetarianism is clearly a weighty and substantial aspect of human life and behaviour. That shows that vegetarianism attains a high level of cogency, seriousness and importance and is certainly worthy of respect in a democratic society; and

e. Finally, no one can sensibly argue that vegetarianism is incompatible with human dignity and conflict with other fundamental rights.

17. Therefore, Miss Bewley submits that vegetarianism is clearly capable of meeting the above criteria as set out above and suggests it would be perverse to state the contrary. Furthermore, it is demonstrated by the Claimant's witness statement, the Claimant's belief meets the above criteria even though the Claimant's personal belief is not determinative in this case.

18. Miss Bewley then goes on to recite the case of Regina v Secretary of State for Education and Employment & Others (Respondents) ex parte Williamson (Appellant) & Others is in her view persuasive jurisprudence to say that vegetarianism is an uncontroversial example of a protected philosophical belief. In particular, Lord Walker of Gesingthorp said,

> *"Pacifism and vegetarianism and total abstinence from alcohol are uncontroversial examples of beliefs which fall within article 9"*

19. Miss Bewley therefore submits that it is acknowledged that the reference to article 9 of the ECHR, as per the guidance notes to the Equality Act 2010, as referred to above, the definition of S.4 characteristics is aligned with the rights guaranteed under the ECHR. Miss Bewley then recites the case of Eweida v British Airways Plc as being an example of the EAT drawing on ECHR jurisprudence on the issue.

20. Miss Bewley finally submits that less conventional philosophical beliefs are included in the following authorities and if they are capable of protection under the Equality Act 2010 then vegetarianism must certainly qualify:

a. In Nicholson v Grainger Plc the EAT held that the belief that a belief in a man-made climate change and that we are all

responsible to live in a way so as to mitigate it, is capable as qualifying as a philosophical belief; and

b. In Redfearn v The United Kingdom a European Court on Human Rights case, the EC directed that the UK must provide for the protection of political beliefs regardless of how shocking or disturbing they may be.

21. Finally, Miss Bewley concludes that her primary case is the House of Lords have confirmed vegetarianism can be a philosophical belief and therefore the Employment Tribunal should be bound by this judgment. Reference to the Williamson case.

22. In relation to the Hansard text produced by the Respondents, Miss Bewley submits that it is not relevant to take into account by this Tribunal. Furthermore, that paragraph 17 in the Respondents' skeleton argument is plainly wrong, there is a difference between the Government and Parliament expressing views, two different things 'Government' and 'Parliament'.

The Respondents' submissions

23. Mr Chapman starts off reminding the Tribunal that s.10 of the Equality Act 2010 defines religion or belief as:

> "Religion means any religion and a reference to a religion includes a reference to a lack of religion.
>
> Belief means any religious or philosophical belief and a reference to a belief includes a reference to a lack of belief."

24. Mr Chapman recites the Oxford English Dictionary definition of vegetarianism as being *"a person who does not eat meat or fish and sometimes other animal products especially for moral, religious or health reasons"*. Therefore, vegetarianism is genuinely accepted to be the practice of not eating meat or fish. Whereas a vegan is *a "person who does not eat or use animal products"*. Thus, veganism is a practice of abstaining from both the consumption of and use of animal products.

25. Mr Chapman goes on to recite the guidance given on the definition of philosophical belief which although similar to that advanced by Miss Bewley, there is some additional one again we recite:

a. The belief must be genuinely held;

b. It must be a belief, not an opinion or viewpoint;

c. It must be a belief as to a weight in substantial aspect of human life and behaviour;

d. It must attain a certain level of cogency, seriousness, cohesion and importance;

e. It must be worthy of respect in a democratic society and not be incompatible with human dignity and not conflict with the fundamental rights of others;

f. It must have a similar status or cogency to religious belief;

g. It need not be shared by others;

h. Whilst support of a political party does not in itself amount to a philosophical belief, a belief in a political philosophy or doctrine might qualify;

i. A philosophical belief may be based on science.

26. Mr Chapman says that the Claimant's claim fails on one or some of all of b, c, d and f above, any of which would be fatal to the Claimant's claim.

27. Mr Chapman then goes on to set out his reasoning.

28. The first, (i.e. b. above) it must be a belief not an opinion or viewpoint. Mr Chapman recites McClintock v Department of Constitutional Affairs where the EAT held,

"In respect of the pre-2011 Law which was all but identical as set out in the Employment Equality (Religion and Belief) Regulations 2003 that Mr McClintock's objection to the adoption of children by same sex couples was not a belief as he had not as a matter of principle, rejected the possibility that such adoptions could ever be in a child's best interest. He merely felt that the evidence to support them was unconvincing. That was held to be an opinion or viewpoint."

Whereas in the Claimant's witness statement it is his belief that,

"…animals should not be bred, caged or killed for the purposes of food"

and that,

"I happen to believe that the environment would be a better place without slaughtering animals for food".

The Respondents say that is merely an opinion or viewpoint, just as Mr McClintock felt that same sex couples cannot adopt a child as successfully as couples of different sex and the fact that the Claimant feels that the world will be a better place if animals were not killed for food, that is an opinion and a viewpoint.

It must be a belief as to a weight and substantial aspect of human life and behaviour [c. above]

29. Mr Chapman submits that the Claimant's case fails on this test quite simply, because the belief of vegetarianism is not about human life and behaviour, it is about preserving the life of animals and fish. He submits in Lisk v Shield Guardian Co. Limited & Others (ET-3300873-11), a Tribunal held that,

> *"…a belief that people should pay their respects by wearing a poppy was not capable of protection because, however admirable, it could not be described as relating to the weight and substantial aspects of human life and behaviour"*.

The Respondents contend that the same can be said for vegetarianism.

It must attain a certain level of cogency, seriousness, cohesion and importance [d. above]

30. The Respondents accept that there are many vegetarians, popularity in itself is not a factor. The question is whether vegetarianism has attained a cohesive, serious and important level. Mr Chapman submits understanding such arguments might be advanced for veganism (where the belief held by each vegan is fundamentally the same) there are many different reasons for why one might be a vegetarian. Accepted reasons might be, a respect for sentiment life, moral concern about the raising and slaughter of animals, health / diet benefits, environmental concerns, economic benefit and / or personal taste. Therefore, as there are at least six different reasons for why one might be a vegetarian there is no cogency or cohesion in that belief. Furthermore, many people might practice vegetarianism at some stage in their life but not maintain the practice. For many the practice is neither serious nor important. Mr Chapman submits this is important when considering whether an employer should be compelled to treat vegetarianism as a protected characteristic, since unlike most protected characteristics it is not possible for an employer to know with any certainty whether yesterday's vegetarian is tomorrow no longer such, or vice versa.

It must have a similar status or cogency to religious beliefs [f. above]

31. Mr Chapman submits that if the Tribunal disagrees with the Respondents' assertion that vegetarianism is not a cogent belief, then the Tribunal must go to consider whether the cogency is of a similar level to that of a religious belief. Whilst for the Claimant it might well be that his belief is very strong, it is contended that for significant number of vegetarians their belief is far less serious and quire clearly not at the level of a religious belief. The Claimant's own beliefs are relevant subjectively to considering whether the Claimant genuinely holds his belief (which the Respondents are not contesting) but not relevant to considering whether vegetarianism per se is a cogent belief system at a similar level to that of religion. In

particular, many vegetarians simply prefer to avoid meat and fish but choose not to go as far as practising veganism. Vegetarianism is some way removed from veganism and could be argued to be a far less serious belief and for that reason it falls short of attaining the level of cogency or seriousness similar to a religious belief.

Mr Chapman's conclusions on this part of the preliminary hearing

32. He fully accepts the Equalities and Human Rights Commission (EHRC) have said in its guidance on religion and belief that,

> *"Belief such as humanism, pacifism and vegetarianism and the belief in man-made climate change, are all protected."*

33. However, it is to be noted that the statement by the EHRC was published in 2010 and the Government issued the following response,

> *"A spokesman for Miss Harman's department, the Government Equality Office, said the Government did not share the view that climate change or veganism were religious beliefs. However, the interpretation was a matter for the Courts.*
>
> *The Equality Bill does not change the existing definition of religion or belief and the Government does not think that views or opinions based on scientific or indeed on political theories can be considered to be akin to religious beliefs or philosophical beliefs, nor was it the intention in introducing the legislation that such beliefs should be covered."*

34. Mr Chapman therefore submits that Parliament clearly did not intend for a vegetarian to be able to rely upon employment legislation protecting those discriminated against on the grounds of a protected characteristic. He goes on to say that was made clear in Hansard on 23 March 2010 column 853 when Baroness Warsi said,

> *"To include cults and other lifestyle choices such as vegetarianism and veganism is to make something of a farce of the debates that we had".*

35. Mr Chapman submits that the Tribunal should be careful protecting people who are vegetarians, the fact that animals should not be killed may be a belief but does not warrant protection of the Employment Tribunals under the Equality Act 2010. In fact, he submits that it will be ground breaking if protection is given to vegetarianism because quite simply there are so many different reasons for being a vegetarian. Mr Chapman further submits that to allow the Equality Act 2010 to protect those who have made a lifestyle choice in becoming a vegetarian is a dangerous path to follow.

36. Finally, he submits that vegetarianism is not protected as it is:

    a. Is (assessed objectively not subjectively in respect of the Claimant) an opinion or viewpoint and not a belief; or in the alternative

    b. Is not a belief as to a weight and substantial aspect of human life and behaviour; and / or

    c. Is not a belief that (assessed objectively not subjectively in respect of the Claimant) has cogency in the seriousness; and / or

    d. Is not a belief of similar status or cogency to a religious belief, it is in fact as Baroness Warsi said, a lifestyle choice.

The Tribunal's Conclusions

37. The Tribunal is grateful to both Miss Bewley and Mr Chapman for their most helpful, and thought provoking submissions on the subject of whether vegetarianism is capable of being a philosophical belief capable of protection of the Equality Act 2010; i.e. being a protected characteristic under Section 4.

38. The Tribunal accept, as do the Respondents, that the Claimant is a vegetarian and he has a genuine belief in his vegetarianism.

39. It is clear the Claimant's belief in vegetarianism is his opinion and view point in that the world would be a better place if animals were not killed for food. The Tribunal concludes that that does not seem to be a belief capable of protection. It is simply not enough to have an opinion based on some real, or perceived, logic.

40. The Tribunal asks itself, is the belief weighty and a substantial aspect of human life and behaviour? Here the Tribunal endorses Mr Chapman for the Respondent's argument that vegetarianism is not about human life and behaviour, it is a life style choice and in the Claimant's view believing that the world would be a better place if animals were not killed for food. Clearly an admirable sentiment, but cannot altogether be described as relating to weight and substantial aspect of human life and behaviour.

41. The Tribunal asks itself, does the Claimant's belief attain a certain level of cogency, seriousness, cohesion and importance? Here the Tribunal remind itself it must guard against applying too stringent standards, that is to say, set the bar too high. The Tribunal do accept there are many vegetarians across the world, however, the reason for being a vegetarian differs greatly among themselves, unlike veganism where the reasons for being a vegan appear to be largely the same. Vegetarians adopt the practice for many different reasons; lifestyle, health, diet, concern about the way animals are reared for food and personal taste. Vegans simply do not accept the practice under any circumstances of eating meat, fish or

dairy products, and have distinct concerns about the way animals are reared, the clear belief that killing and eating animals is contrary to a civilised society and also against climate control. There you can see a clear cogency and cohesion in vegan belief, which appears contrary to vegetarianism, i.e. having numerous, differing and wide varying reasons for adopting vegetarianism.

42. Clearly, the practice of vegetarianism is worthy of respect in a democratic society and is not incompatible with human dignity.

43. The belief must have a similar status or cogency to religious beliefs. Clearly, having a belief relating to an important aspect of human life or behaviour is not enough in itself for it to have a similar status or cogency to a religious belief.

44. The Tribunal therefore concluded on balance they were not persuaded vegetarianism amounted to a philosophical belief capable of protection under the Equality Act 2010.

45. Dealing with, briefly, other matters which the parties' representatives gave further written submissions on, namely:

    a. whether the Tribunal has jurisdiction to hear claims against the third, fourth and fifth Respondents given their full names are not cited in the Early Conciliation Certificate; and

    b. that any of the claims are out of time, whether, advanced as a continuing or single act, depending on the answer to that question whether it would be just and equitable to extend time.

46. Since 6 May 2014, anyone who is considering bringing a complaint to an Employment Tribunal must, in the majority of cases, first contact Acas and be offered Early Conciliation before being allowed to submit the claim to a Tribunal. The details of the Early Conciliation Scheme are set out in Sections 18A and 18B of the Employment Tribunal's Act 1996, and in the Early Conciliation Rules of Procedure which are contained in the Schedule to the Employment Tribunal's Early Conciliation Exemption and Rules of Procedure Regulations 2014.

47. In essence, the Early Conciliation Scheme operates as follows:

    - Stage one – the potential Claimant notifies Acas that he or she intends to bring an Employment Tribunal Claim;
    - Stage two – an Early Conciliation Officer makes reasonable attempts to contact the potential Claimant and, if he or she agrees to Early Conciliation, passes the case details onto the Conciliator;
    - Stage three – the Conciliator having obtained the respective Respondent's consent to Early Conciliation has a month to attempt to resolve the dispute between the parties. If a settlement is

reached Acas records the terms of the Agreement between the parties;

- Stage four – if Early Conciliation is refused or is unsuccessful, the prospective Claimant is issued with an Early Conciliation Certificate confirming that Acas notification has been complied with.

48. The Early Conciliation Exemptions and Rules of Procedure Regulations 2014 set out certain requirements, in order to satisfy the requirements for Early Conciliation a prospective Claimant must present a completed Early Conciliation Form to Acas in accordance with Rule 2 and an Early Conciliation form must contain the prospective Claimant's name and address and the prospective Respondents name and address.

49. The Employment Tribunal (Constitutional Rules of Procedure) Regulations 2013 set out at Rule 12, in effect there will be a rejection of the claim if there are substantive defects. For example, 1) which institutes relevant proceedings and the name of the Respondent on the claim form is not the same as the name of the prospective Respondent on the Early Conciliation Certificate, Rule 12(f).

50. The Rules go on to say that the claim, or part of it, shall be rejected if the Judge considers the claim, or part of it, is a kind described in sub-paragraphs (e) to (f) of Rule 12, unless the Judge considers that the Claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim.

51. The Tribunal take the view that by merely giving a first name of the third, fourth and fifth Respondents is not a minor error. It should clearly have had the three Respondents surnames to provide to Acas. The requirement to set out the names is designed to ensure Acas is provided with sufficient information to make contact with the prospect Respondent. Clearly by providing just a first name without the surname is not satisfying the condition. That is a complete failure to supply the required information required under the Early Conciliation Procedure. The whole purpose of the procedure is to promote conciliation and if the full names are not provided it is difficult to see how Acas can properly do their job where they are just provided with the first names of a prospective Respondent.

52. Furthermore, in this case it is true that the Claimant was not an unrepresented party, he had benefit of legal advice with the Early Conciliation process. The Claimant / his Solicitor should have identified the surnames of the individuals they wished to add as Respondents and it is interesting to note, by the time they issued the ET1, they did certainly identify the fourth and fifth Respondents by surname albeit not the third. Taking all those matters into account, it is not in the interests of justice to allow claims against the third, fourth and fifth Respondents to proceed. In any event, removing the third, fourth and fifth Respondents as parties still leaves the Claimant with two Respondents one of which was his employer at the relevant time.

53. In those circumstances the claims against the third, fourth and fifth Respondent are dismissed.

54. Dealing with the second aspect, namely whether the claims are out of time or whether they are advanced as continuing or as single facts.

55. Section 123(1) of the Equality Act 2010 states:

> 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 three 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.

56. If one looks at the time line, particularly June / July 2018, it is alleged the third Respondent called the Claimant gay because he was a vegetarian. The Claimant is clear in his claim that the incident of harassment which the third Respondent is alleged to have been responsible for occurred in June or July.

57. On 23 November 2018, the Claimant commenced the Acas Early Conciliation process.

58. Therefore, on the Claimant's best case he should have commenced Acas Early Conciliation on or before 31 October 2018, the Claimant missed the deadline by three weeks.

59. It would appear this is the only discriminatory act which the Claimant alleges was committed by the third Respondent and it is therefore not possible for the Claimant to argue that this action formed part of continuing acts by the third Respondent.

60. The next question the Tribunal has to consider, whether in all the circumstances it would be just and equitable for the time limit to be extended?

61. It is true there is no presumption that a Tribunal should exercise its discretion to extend time, it is a high hurdle. The onus is on the Claimant to persuade the Tribunal that an extension is a just and equitable exercise of its discretion and the Tribunal reminds itself it is the exception rather than the rule established by this law.

62. In reaching our decision, the Tribunal have considered the prejudice a party might suffer if it is either granted or refused.

63. Clearly, the Claimant will not suffer any prejudice if the extension is denied, if the third Respondent is removed as the Claimant will still potentially have a claim against the Respondent, the main Respondent being the Claimant's employer. Furthermore, this is not a case that has been advanced by the Claimant's representative, there was a mistake with

the time limits, it was submitted knowing at that stage it was out of time presumably in the hope that it might be allowed to proceed.

64. Notwithstanding the Judgments in the main part of the Preliminary Hearing, if they were wrong the claim against the third Respondent the Tribunal conclude is not just and equitable to extend time in any event.

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Employment Judge Postle

Date: …6 September 2019.……

Sent to the parties on: .....

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For the Tribunal Office