



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Laketu  
**Respondent:** ABM Facility Services UK Limited  
**Heard at:** East London Hearing Centre  
**On:** 11 March 2022  
**Before:** Employment Judge Russell

**Representation:**  
**For the Claimant:** In Person (assisted by her daughter)  
**For the Respondent:** Ms N Dinnes (Solicitor)

## JUDGMENT

- 1 The complaints of unfair dismissal, breach of contract, whistleblowing dismissal and whistleblowing detriment were all presented out of time.**
- 2 It was reasonably practicable to have presented them within time, the claims are therefore dismissed as the tribunal does not have jurisdiction to hear them.**
- 3 The claim of victimisation was brought out of time, it is not just and equitable to extended time, the claim is dismissed as the Tribunal does not have jurisdiction to hear it.**

## REASONS

1 The Claimant was employed by the Respondent, and its predecessor companies, for a number of years. In her witness statement for today's hearing, she describes significant difficulties with her place of work, the nature of the duties allocated to her and, in more recent years, problems of pain in her foot which she attributed to unsuitable footwear which the Respondent required her to wear. The Claimant says that she suffered two falls at work caused by the unsuitable footwear, the most recent being July 2020 and it is clear that the issue of suitable footwear had been ongoing for some time.

2 The Claimant was suspended in August 2020 and she informed the Respondent straight away that she intended to consult a solicitor. The Claimant was invited for a disciplinary hearing, accompanied by her trade union representative, on 15 September 2020. The Claimant was subsequently dismissed and it is not in dispute that the effective date of termination was 28 October 2020. In order for the claims to be presented within time, the Claimant would have had to notify ACAS under the mandatory early conciliation scheme by the 28 January 2021.

3 The Claimant appealed against her dismissal and it appears that there were some difficulties in arranging an appeal hearing. The Claimant's solicitor continued to act for her throughout this period. There is a dispute between the parties about whether the Claimant refused to attend an appeal hearing on two occasions or whether she was unaware of the rearranged date due to a postal strike. I do not need to resolve this dispute as the material fact is that the Claimant, Respondent and their respective solicitors were in communication with each other about the appeal process. This concluded with an email sent by the Respondent's solicitor to the Claimant's solicitor sent at 15:41 on 25 January 2021 in which he expressly stated that the internal process had concluded.

4 The Claimant did not contact ACAS on or before 28 January 2021 but did so on 3 February 2021, some five days after the primary time limit expired. ACAS issued the early conciliation certificate the same day. The Claimant delayed a further 5 weeks before submitting the claim on 12 March 2021.

## Law

5 Section 111 of the Employment Rights Act 1996 provides that a Tribunal shall not consider a claim of unfair dismissal unless it is presented to the tribunal within three months of the effective date of termination or such further period as the tribunal shall consider reasonable where it is satisfied that it was not reasonably practicable to submit the claim within time. This period is extended by operation of the ACAS early conciliation scheme if entered within the primary time limit. The same three month time limit and "not reasonably practicable" test also applies to claims of protected disclosure detriment and breach of contract.

6 In deciding whether it was not reasonably practicable for the claim to be presented, the tribunal must consider whether there is just cause for not presenting the claim. The words "reasonably practicable" do not require the Tribunal to be satisfied that presentation was not physically possible, in the sense of a physical or mental bar, but should be read as being more a question of whether presentation within time was reasonably feasible, see **Palmer and Saunders v Southend on Sea Borough Council** [1984] IRLR 119, CA.

7 It is generally reasonably practicable for a claimant to present a claim to the Tribunal even when an internal appeal is pending, **Palmer**. However, regard should be had to what, if anything, the employee knew about the right to complain to the tribunal and of the time limit for making such a complaint. Ignorance of either, however, does not necessarily render it not reasonably practicable to bring the complaint in time and I should also have regard to what knowledge the employee should have had if he or she had acted reasonably, see **John Lewis plc v Charman** UKEAT/0079/11/ZT

8 Generally, if a claimant is receiving advice from skilled advisers, such as a trade union representative or solicitor, it will be practicable to present the claim in time, see **Dedman v British Building & Engineering Appliances Limited** [1973] IRLR 379 Court of Appeal. However, the involvement of a solicitor (and by extension, a trade union) does not mean that an extension of time will automatically be refused, the Tribunal must look at all of the circumstances of the case, **North East London NHS Foundation Trust v Zhou** UKEAT/0066/18.

9 Section 123 of the Equality Act 2010 provides that no complaint may be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable. For the purposes of this section conduct extending over a period is to be treated as done at the end of that period and failure to do something is to be treated as occurring when the person in question decided on it.

10 If the claim is presented outside the primary limitation period (that is, after the relevant three months), the tribunal may still have jurisdiction if, in all the circumstances, it is just and equitable to extend time. This is essentially an exercise in assessing the balance of prejudice between the parties, using the following principles:

- The claimant bears the burden of persuading the tribunal that it is just and equitable to extend time. There is no presumption that time will be extended;
- The tribunal takes into account anything which it judges to be relevant and may form a fairly rough idea of whether the claim appears weak or strong. It is generally more onerous for a respondent to be put to defending a late, weak claim and less prejudicial for a claimant to be deprived of such a claim;
- This is the exercise of a wide, general discretion and may include the date from which a claimant first became aware of the right to present a complaint. The existence of other, timeously presented claims will be relevant because it will mean, on the one hand, that the claimant is not entirely unable to assert his rights and, on the other, that the very facts upon which he seeks to rely may already fall to be determined. Consideration here is likely to include whether it is possible to have a fair trial of the issues;
- There is no requirement to go through all the matters listed in section 33(3) Limitation Act 1980, provided no significant factor has been left out of account, **British Coal Corporation v Keeble** (length and reason for delay, effect on cogency of evidence, cooperation, steps taken once knew of the possibility of action).

## Conclusions

11 In deciding whether it was reasonably practicable to present the claim in time, or alternatively just and equitable to extend time, I took into account the content of the Claimant's witness statement produced for today's hearing. The Claimant relies upon health problems and difficulties in her domestic circumstances. I accept her evidence that she has diabetes and pain in her foot and ankle. The Claimant also sadly lost her husband in late 2021, however that was many months after the date for contacting ACAS elapsed and, indeed, the claim form was presented.

12 The Claimant sets out in some detail why she believes that she was treated unfairly by the Respondent but scarcely addresses the reason why her claim was put in late. I gave the Claimant an opportunity to provide a more explanation today. The Claimant relies upon the inaction of the Respondent during the internal appeal process, both in failing to notify her properly of the appeal hearing dates and in failing to respond to her solicitor's suggested extension of time for the appeal hearing. In response to my questions about her understanding of the status of the internal appeal in light of the contents of the email dated 25 January 2021, the Claimant now says that her solicitor failed to advise her that the internal process had been concluded.

13 Considering first the "reasonably practicable" test, there can be no doubt that the Claimant was five days late in going to ACAS – the effective date of termination was 28 October 2020 but she only contacted ACAS on 3 February 2021 and so the primary time limit had already expired. The claim was presented on 12 March 2021, approximately six weeks late. The Claimant had engaged solicitors throughout the dismissal and appeal process. A solicitor is a skilled adviser, one who might reasonably be expected to be capable of advising the Claimant appropriately as to the importance of presenting her claim to the Tribunal in time. The solicitor still acting on her behalf was notified that the internal process had concluded by 25 January 2021 and must have been aware that there were only three days remaining to contact ACAS.

14 I accept Ms Dinnes' submission that in circumstances where the Claimant was able to go to ACAS on 3 February 2021, there is simply no explanation provided to this Tribunal as to why she could not reasonably have done so only five days earlier. Insofar as she now relies on the appeal process, Palmer makes clear that it is generally reasonably practicable to present a claim even when an appeal outcome is still awaited and, in the circumstances of this case, the Claimant's solicitor had been informed that the process had concluded.

15 I am satisfied that it was reasonably practicable for the Claimant to have contacted ACAS within the primary time limit. However, even had she done so and obtained the benefit of the further month to present the claim, the Claimant would still have been out of time as she waited a five weeks to do so. This further period of delay is not satisfactorily unexplained by the Claimant's ill health which was not of such severity as to prevent her from presenting her claim online. In the circumstances, I would not have extended time in any event.

16 The Tribunal has a broader discretion to extend time in the victimisation claim brought under the Equality Act 2010 as the test is whether it is just and equitable to do so, although there is no presumption that it will do so. In exercising my discretion, I am entitled to form a fairly rough idea of whether the claim seems strong or weak. In essence, the Claimant relies on a protected act which was a complaint about the nature of her footwear and says that she was dismissed because she did so. For the purposes of exercising my discretion, I have assumed that the Claimant will be able to establish a disability and that the footwear complaint was a request for a reasonable adjustment. However, the Claimant's case faces the significant hurdle of the existence of contemporaneous records of complaints from five different individuals, including two of the Respondent's client organisation, Transport for London. In response, the Claimant says that all of these documents are fabricated. There is no evidential basis put forward today to support this serious allegation.

17 On the basis of the evidence before me today, and in forming a general overview of the merits of the victimisation claim, I consider that it appears weak. It would be more onerous to the Respondent to be put to the cost of defending a weak claim and there is little prejudice to the Claimant in losing the ability to present a weak claim. Even taking into account the Claimant's explanation for the delay, namely that her husband was critically ill with cancer, the Claimant does not suggest that she was unable to deal with affairs in January and February 2021 as a result of her husband's sad illness. Indeed, as Ms Dinnes submits, she was clearly able to do so on 3 February 2021. In all of the circumstances of the case therefore, it is not just and equitable to extend time for the victimisation claim. I have not accepted that the Respondent's conduct in relation to the appeal make it just and equitable to extend time as it was known before expiry of the primary time limit that the appeal process had concluded.

18 All claims are dismissed as they were presented late and the Tribunal does not have jurisdiction to hear them.

Employment Judge Russell

Dated: 1 June 2022