



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Singh  
**Respondent:** Wanis Management Services LLP  
**Heard at:** East London Hearing Centre  
**On:** 2 August 2023  
**Before:** Employment Judge Reid

## Representation

Claimant: in person (supported by his sister-in-law Ms S Kaur)  
Respondent: Ms Churchhouse, Counsel

**JUDGMENT** having been sent to the parties on **15 August 2023** and reasons having been requested at the hearing by the Respondent in accordance with Rule 62(3) of the Rules of Procedure 2013.

# REASONS

## Background and preliminary issue

1. The preliminary time limit issue was identified in the Respondent's grounds of resistance and in its letter to the Tribunal dated 2 March 2023.
2. No separate preliminary hearing had been listed to deal with this preliminary issue and the final hearing listed today was to include this issue.
3. After discussion with the parties and due to the Claimant's lack of preparedness for today I decided that I would deal only with the preliminary issue today, even if the Claimant succeeded on this issue – if he did and his claim continued, his final hearing would then continue on another date.
4. There was a 363 page bundle and index and a witness statement bundle. The Respondent had also provided a skeleton argument on the time limit issue.

5. The Claimant was supported by his sister-in-law Ms Kaur who had not by the start of the hearing been through the Respondent's skeleton argument with the Claimant, not having had time to do so.
6. I had identified from the contents of the claim form that an interpreter might be required (although none had been requested) and obtained one on short notice who could start at 11am. Ms Kaur and the Claimant therefore had until 11am to go through the Respondent's skeleton argument and to look at the limited number of documents it referred to, despite their only access to the bundle being on a separate mobile (in any event the relevant parts of the documents were mostly quoted in the skeleton argument).
7. I checked with the Claimant whether he needed any adjustments beyond regular breaks and possibly questions repeated because Ms Kaur had referred to his mental health being poor – he said there was nothing further he needed.
8. The Claimant had not addressed the time limit issue in his witness statement save to refer to mental health problems in May 2023 after the claim was presented so not relevant to any delay. He referred at various times during the hearing to being mentally unwell at various points but had not provided any medical evidence.
9. The Claimant gave oral evidence assisted by the interpreter and because he was unrepresented and had not addressed the delay issue in his witness statement, I asked him some general questions first and then he was cross examined on behalf of the Respondent.
10. I explained the legal test I had to apply to the Claimant and to Ms Kaur – the 'not reasonably practicable' test in s111(2)(b) Employment Rights Act 1996.
11. After a break I then heard submissions on both sides until 1.40 pm and said I would give judgment at 4pm.
12. At 2.08pm Ms Kaur sent an email to the Listing Officer not copied to the Respondent (so forwarded on to Respondent's solicitors by the Tribunal) saying that she had been confused about submitting evidence, that the Respondent kept mentioning a lack of evidence but that she did not know where to submit it and asking for that evidence to now be put forward on behalf of the Claimant. However at 4pm Ms Kaur then confirmed that the evidence she was referring to was not relevant to the time limit issue anyway as GP records obtained showed that the Claimant had attended his GP about his mental health in May 2023 after he presented his claim and that the other evidence she was referring to which had not yet been provided related to the fairness of the dismissal and not to the time limit point.

#### Findings of fact

13. The Claimant was assisted by his sister-in-law Ms Kaur with contacting ACAS and with presenting his claim form.

14. The Claimant's employment terminated on 23 May 2022.
15. The Claimant and Ms Kaur contacted ACAS together on 22 August 2022, on the last day of the normal 3 month time limit.
16. ACAS issued its certificate on 3 October 2022.
17. The time limit (as extended by the ACAS certificate) was therefore 3 November 2022.
18. The Claimant presented his claim on 6 Jan 2023, around 2 months after the extended deadline.
19. The Claimant broadly gave two reasons why his claim was late at this hearing (though not articulated as reasons for delay in his witness statement): firstly he said he had been mentally unwell; secondly he said he did not understand the law (and had been unable to afford a solicitor), did not know why they had contacted ACAS and what to do after the ACAS certificate was issued and did not know about time limits; he said he had done his claim form in January 2023 jointly with Ms Kaur's help.
20. The Claimant also gave the reason that Ms Kaur was pregnant and her baby was due around this time but Ms Kaur clarified that her baby had been born in June 2021. around a year before he was dismissed.

Mental illness affecting the Claimant's ability to present his claim in time

21. The Claimant provided no medical evidence to support his assertion at this hearing that it was his mental health which meant his claim was late – he had been aware he needed to deal with why his claim was late from the letter from the Tribunal dated 6 February 2023 (page 18), the letter from the Respondent dated 2 March 2023 (page 298), the Respondent's grounds of resistance to the claim (page 34), the Respondent's email dated 11 April 2023 (page 296), the Respondent's letter dated 31 May 2023 (page 312 which refers to the failure to provide evidence about why the claim was late) and the Respondent's email dated 2 June 2023 (page 363 – again reminding about providing evidence relevant to delay); Ms Kaur's only response (page 314) was about the Claimant's schedule of loss and not about evidence on the delay issue.
22. The Claimant said initially in his oral evidence that he had been on medication for his mental health since May 2022 ie from when he was dismissed by the Respondent but later changed that to say this had only been sleeping tablets he got from the pharmacy until he first went to his GP in May 2023 about his mental health.
23. I therefore find that the Claimant's mental health was not requiring input from his GP until around a year after he was dismissed and several months after he presented his claim in January 2023. He was well supported by his family in this period after he was dismissed but did not go to his GP about his mental health until May 2023.

24. The Claimant referred to being stressed but he was able with his wife's help to obtain two temporary jobs starting on 30 May 2022 and 13 June 2022.
25. The Claimant was able to then attend an SIA course from 21 July 2022 and pass the test at the end of the course in September 2022 (without anyone else's help because they could not attend with him or take the test for him); that is in particular inconsistent with having a mental illness meaning that he could not present his Tribunal claim in time in the period October-November 2022 .
26. The Claimant was able with the help of Ms Kaur to contact ACAS on 22 August 2022 to start the early conciliation process.
27. The Claimant was well enough to get a security job off the back of that new SIA qualification with Tesco starting on 2 September 2022 (that is the date in his schedule of loss but was not the date he gave on his claim form which was that he started on 19 October 2022) and did not report any health problems with that new job once he had started – he still works there.
28. The Claimant may have been stressed and upset about losing his job at the Respondent but was able to function with some family support, was able to work and able to obtain and then use a new qualification.
29. It was said in submissions on his behalf by Ms Kaur that he had been feeling suicidal before the incident in May 2023 referred to in his witness statement but the Claimant had not said this himself in his evidence - in his witness statement he said this was in May 2023 and in any event he did not go to his GP till May 2023, likely to have been because of a deterioration in his mental health at that particular time. There was no medical evidence to support being this mentally unwell prior to (or after) May 2022.
30. I therefore find that the Claimant was not prevented by mental ill health from presenting his claim on time – he may have been stressed and things may have been difficult financially but that is not sufficient to mean that mental illness or incapacity stopped him bringing his claim in time given the other activities he could still do – this was a very different situation to the claimant in Nobert Logistics Limited v Hutton EAT 0011/2013 (to which Ms Kaur referred in submissions), where that claimant was significantly functionally incapacitated by his mental state.

Lack of knowledge and lack of legal representation/legal advice

31. The Claimant with Ms Kaur's help had been able to contact ACAS on 22 August 2022. In his oral evidence he professed not to know the purpose of contacting ACAS which he had done with Ms Kaur's help – I find it very unlikely that they did this together without also at the same time both knowing that it was the first step in bringing a claim as otherwise there was no reason to contact ACAS.

32. The Claimant therefore already had in mind a possible claim when he and Ms Kaur contacted ACAS together on 22 August 2022 – he was already sufficiently aware of his rights or he would not have done that.
33. I find based on the Claimant's oral evidence that once he started his new job at Tesco on 2 September 2022 he was also advised by his new colleagues that he could bring a Tribunal claim.
34. Therefore the Claimant knew about the right to bring a Tribunal claim by 22 August 2022, and was made aware again once he started his new job that a Tribunal claim was open to him; he must have clearly felt his dismissal had been unfair if he was discussing it with new colleagues relevant also to knowing he had a potential claim to bring because he had identified the claimed unfairness and was discussing it.
35. The Claimant did not have legal advice but he had family support especially from Ms Kaur who had already helped with contacting ACAS.
36. English is not his first language but he has lived in the UK since 2007 and had done his SIA course and exam in English and had according to the Respondent spoken in English at work with colleagues and customers.
37. Not knowing about the time limit does not mean it was not reasonably practicable to bring his claim in time, if that ignorance is not reasonable. The Claimant either himself or with the support of family could have found out the time limit with a basic internet search or got advice from eg the CAB or other free sources of advice (the ones in the Tribunal list he was sent subsequently after he presented his claim are examples of the kinds of organisations where advice can be found, which kinds of organisations he and Ms Kaur could have attempted to find and contact).
38. It was unreasonable for the Claimant to rely wholly on Ms Kaur, if that is what he was doing because it was his claim and he was mentally able to deal with it, even if it was a difficult thing to do – it was unreasonable to rely wholly on her to find out about time limits and to make sure his claim was in time. Both Ms Kaur and the Claimant being busy with work and family commitments does not mean it was not reasonably practicable to present the claim in time.

#### Relevant Law

39. The primary time limit for presenting an unfair dismissal claim is three months - s111(2)(a) Employment Rights Act 1996.
40. The time limit is extended by a period of ACAS conciliation – s207B(3) Employment Rights Act 1996, provided that ACAS is contacted by the claimant during the normal time limit.
41. If the extended date is less than a month after the date the certificate is issued the claimant has a month from the date of issue of the certificate – s207B(4) Employment Rights Act 1996.

42. The time limit can be extended if the Tribunal is satisfied that it was not reasonably practicable to bring the claim in time - s111(2)(b) Employment Rights Act 1996.
43. If the Tribunal decides that it was not reasonably practicable to present the claim in time, it then has to decide whether the claim was presented within a further reasonable period.
44. It is for the Claimant to show why his claim should be allowed to be presented outside the time limit.

Reasons

45. Taking the above findings of fact into account I find that it was reasonably practicable for the Claimant to have presented his claim on or before 3 November 2022, when the time limit expired, taking into account that the burden is on him to show that time should be extended.
46. I have not accepted that his mental health stopped him from presenting his claim in time based on the above findings of fact. Stress is unlikely to be enough (Asda Stores v Kauser EAT 0165/2007) and I do not find there are any other factors which taken with stress mean that it is enough. In any event no medical evidence has been provided to support a significant degree of stress.
47. The Claimant was aware of his right to bring a claim and was therefore put on notice to find out what the time limit was (Trevelyan v Norton 1991 ICR 488) even though he was not legally represented or had access to legal advice and was a litigant in person.
48. It was not reasonable to rely solely on Ms Kaur to find out about time limits given he was mentally able to do so himself – if he had needed some support to do that because it was stressful he had that support from his family.
49. I therefore do not extend time to present the claim because it was reasonably practicable to present it by the deadline of 3 November 2022. This means that the Tribunal cannot hear the Claimant's claim for unfair dismissal, the claim is dismissed and it goes no further.

**Employment Judge Reid**  
**Dated: 8 August 2023**