



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mrs EE Houssakou Chousakou v**

**Bank of America NA**

**Heard at:** London Central (CVP)

**On:** 21 August 2023

**Before:** Tribunal Judge RE Peer acting as an Employment Judge

## **Representation**

**For the Claimant:** In person

**For the Respondent:** Mr Darshan Patel of Counsel instructed by TLT Legal

## **JUDGMENT**

**JUDGMENT** having been sent to the parties on 21 August 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## **REASONS**

### **CLAIMS AND ISSUES**

1. The claimant, Mrs Chousakou, sets out on her claim form that she worked for the respondent from 10 July 1976 to 14 May 1983. The respondent accepts that the claimant worked for the respondent but no longer has any records and is unable to confirm dates of employment. The claimant claims unfair dismissal and the respondent contends the claim is out of time. The public preliminary hearing was listed in order to consider whether it was not reasonably practicable to file the claim in time and, if so, whether the claim was filed within such further period as the tribunal considers reasonable.
2. The agenda for the public preliminary hearing also included the respondent's application for strike out of the claim under Tribunal Procedure Rule 37(1)(a), (b) and/or (e). That is the respondent says that, if the tribunal has jurisdiction to entertain the claim, the claim ought in any event to be struck out on the basis that it is:

- Scandalous or vexatious or has no reasonable prospect of success;
  - The manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious;
  - The Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response.
3. The claimant presented her claim form to the Tribunal on 18 January 2023 and it was initially rejected on the basis that the early conciliation procedure had not been complied with. The letter dated 22 February 2023 notifying the claimant of the rejection also set out that if her claim was accepted an Employment Judge would need to determine whether it was not reasonably practicable to submit the claim within the primary time limit and if not, whether it was submitted within such further time thereafter as the Tribunal considers reasonable. The claimant had therefore been on notice for a period of over six months at the date of the hearing that she would need to address the issue of whether her claims had been filed on time.
  4. ACAS was contacted on 16 March 2023 and an early conciliation certificate issued on 17 March 2023. The claim was accepted on 11 May 2023 on the basis that the identified defect had now been rectified. The claim was deemed as filed on 29 April 2023. The Tribunal notified the respondent and required that any response be filed by 8 June 2023.
  5. A response was filed with grounds of resistance defending the claim, submitting that the Tribunal had no jurisdiction to consider the claim on three bases: (i) time limits – the claim was lodged nearly 40 years out of time; the applicable law in 1983 was section 21(4) Schedule 1 Trade Union and Labour Relations Act 1974 (now repealed) had the same time limit provision; (ii) territorial – the claimant says she worked in Piraeus/Athens, Greece; and, in the alternative, (iii) estoppel – the claimant refers in her claim form to proceedings in Athens, Greece on the basis she won at first instance but lost afterwards due to ‘penal claims I had filed’.
  6. The respondent, Bank of America, is a financial institution.
  7. This preliminary hearing was therefore listed to determine whether the tribunal has jurisdiction to consider the claimant’s claims having regard to the applicable statutory time limit which requires the claim to be brought within a period of three months of the relevant date or if the tribunal is satisfied that it was not reasonably practicable to have presented the claim on time within such further period as the tribunal considers reasonable.
  8. The claimant has not clearly explained what reason or reasons she relies on as to why it was not reasonably practicable to present her claim on time or within such further period as the tribunal considers reasonable.

## **THE HEARING**

9. The hearing was a remote hearing. The form of remote hearing was fully remote by Cloud Video Platform (CVP). A face-to-face hearing was not held

as all issues could be determined in a remote hearing. Neither party objected in advance to the hearing being held as a remote hearing or took any steps to request the hearing be held in person.

10. The tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net.

**Claimant's connection difficulties**

11. The claimant was not initially able to join the CVP and thus not able to join the hearing at the time it was listed to commence. The tribunal clerk spent significant time and made considerable efforts to support the claimant joining the platform. When the claimant was able to join the CVP, she could not be seen or heard. The claimant set out in the chat bar that she could see everyone on the platform and that she could hear but had some difficulty understanding. I clarified and she set out that the reason for any difficulty with understanding was connection as her English was very good. Time was taken to see if the claimant might join the platform by telephone to be able to speak during the hearing. This could not be achieved. The reasons were unclear. Even when a confirmed number and pin had been provided, the claimant experienced the connection as busy and was not able to join by telephone. I refused the claimant's request for the tribunal to call her on her private international number. The hearing therefore proceeded with accommodations to facilitate the claimant's participation. Everything said was summarised or repeated on the chat bar. The hearing proceeded at the pace set by these accommodations for the claimant.

**Claimant situated outside the jurisdiction**

12. The claimant was situated outside the jurisdiction and in Greece. The claimant had been adverted to the fact that permission was necessary for her to be able to give live evidence from Greece to the tribunal in advance. Permission was not in place by the time of the hearing. At the outset, the claimant told the tribunal that she would use the chat bar. The claimant also told the tribunal that she would 'testify' by taking questions over the chat bar. She also asked for consideration to be given to documents she had provided by email including as close in time to the hearing as 19 and 20 August 2023.
13. As the claimant had no permission to give live evidence to the tribunal, the scope of her participation was limited to making submissions and relying on any documentary evidence before the tribunal. I decided after a period of two hours of attempts to support the claimant to join the platform to be seen and heard by me and other participants that the hearing would proceed with the claimant joined to the platform able to hear albeit with some difficulty and with the accommodations referred to above. There was no obvious reason why the claimant was able to join the platform but not have her camera on or speak whilst being able to hear others.
14. In the circumstances, I considered it was consistent with the overriding objective to continue with the hearing with the accommodations in place for the claimant. Respondent's Counsel raised no objections to this and by contrast was conscientious and constructive in line with his duty to the court

and the overriding objective in ensuring matters such as his submissions were clearly summarised in the chat bar for the claimant to read in light of her stated difficulties due the stated some connection difficulties in following us in full whilst we were speaking.

15. The claimant was unrepresented and I recognised that added a further complexity for her. I did take time to explain points of procedure and law clearly such as the test in relation to the time limits for filing unfair dismissal claims in light of the claimant being a litigant in person. I facilitated the claimant trying to explain her position and tried to encourage her to stick to relevant matters. This was very difficult. The claimant was given the opportunity and time and was able to set out in the chat bar a response to a request to explain why she had not filed within three months as not reasonably practicable and why she had filed within such further period as was reasonable thereafter. The evaluation of the claimant's position is below.

### **Documents/evidence**

16. I did not hear live evidence at the hearing. To be clear I did not countenance the suggestion to 'testify' in writing via the chat bar as this presents as live provision of evidence and I did not consider it appropriate to facilitate or enable any circumvention of the procedure and permission requirement for the taking of evidence from overseas.
17. The respondent had prepared a bundle for the preliminary hearing containing the pleadings, tribunal correspondence and available documents including certain of the documents provided by the claimant. The claimant had objected to the respondent approaching her to agree this bundle for the tribunal hearing in advance of the hearing. The claimant provided her own documents. The respondent did not accept documents in Greek could go in the bundle in any event without accompanying translations. I was flexible and in the face of no real objection from the respondent admitted documents provided by the claimant by email on 19 and 20 August 2023 even though these were not accessible to me until late morning on the day of the hearing. Respondent's counsel indicated that there were not understood to be any wholly new documents being documents not seen at all by the respondent but reasonably reiterated the point about documents in Greek. Documents in Greek without accompanying translations were not formally admitted; they could not in event be read by the tribunal.
18. The respondent also filed a skeleton argument.
19. At all times I kept in mind the overriding objective when continuing the hearing in the circumstances faced by the claimant and respondent where the claimant had some minor connection issues. At no point was any postponement of the hearing requested by either party.

### **FINDINGS OF FACT**

20. Having considered all the evidence, I found the following facts on a balance of probabilities.

21. The parties will note that not all the matters that they told me about are recorded in my findings of fact. That is because I have limited them to points that are relevant to the legal issues.
22. The respondent is the London branch of a US bank. There was an operation in Greece at the relevant time. The claimant worked in Greece at the relevant time. She describes herself as being a permanent executive platform secretary. The claimant also says she has a degree in maritime law. She presents as having good command of the English language although I note that she did not speak during the hearing.
23. The claimant claims she was employed by the bank between 10 July 1976 and 15 February 1983. The respondent cannot confirm these dates. In all the circumstances, there is insufficient evidence available to me to make a fact finding as to the date employment ended. The claim form also refers to a termination deed dated 28 February 1983.
24. If the appellant's employment ended on 15 February 1983 as she says it did, she was required to present her claim by 14 May 1983. It is possible the formal three month time limit expired somewhat later during the course of 1983 if employment technically ended on a date later than 15 February 1983. The claimant relies on 15 February 1983 as the date her employment ended and the respondent does not actively dispute that date.
25. In any event, the claimant clearly did not present her claim within the primary three month time limit as she presented her claim on 18 January 2023. It was initially rejected as set out above and then deemed presented 29 April 2023.
26. On 29 April 2023, the claimant presented her claims to the tribunal. The claims were presented nearly 40 years late.
27. The claimant refers to proceedings before the Greek courts with reference 601/1984 at which she was successful at first instance but also refers to 'lost after penal claims I had filed'. The ability to engage in proceedings in Greece undermines any argument that the claimant was prevented from engaging in proceedings before the Employment Tribunal and in particular undermines reliance on any reason such as availability of time or illness as an explanation for not filing her claim on time.
28. The respondent identified that the claimant refers in the documents to no deadline where cases involve crime. The claimant also refers to being busy at work.
29. The claimant set out her explanations for the timing of presenting claims in the chat bar. It was not possible to discern any reason that explained the timing of the presentation of these proceedings and as to why it was not reasonably practicable. There is limited documentary evidence available to me including a lack of any medical evidence with regard to the references in the claim form by the claimant to her having extra pyramidal syndrome

and damaged hips. The claimant has not set out clearly at any stage whether in the pleadings or during the preliminary hearing that illness, for example, played any part in the reason as to why she presented the proceedings nearly 40 years late.

## LAW

### Time limits

30. A claim for ordinary unfair dismissal must be brought within the time limit laid down by statute in order for the tribunal to have jurisdiction to consider the claim. Section 111(2) of the Employment Rights Act 1996 (“the Act”) provides:

*“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.”*

31. In 1983, the statutory time limit was set out in different legislation but was materially the same as that within the Act.
32. In **Marks and Spencer plc v Williams-Ryan [2005] EWCA Civ 470, CA**, the Court of Appeal affirmed older case law back to **Dedman v British Building & Engineering Appliances Ltd [1974] ICR 53** that the test should be given a *“liberal interpretation in favour of the employee”*.
33. If a claimant relies on ignorance of rights, that ignorance itself must be reasonable. In **Dedman**, Lord Scarman said that a tribunal must ask what the opportunities were for finding out that a person had rights and whether the person took those opportunities and if not, why not. An extension of time is warranted in an exceptional case such as in **Theobald v Trustees of the Borough Market [1984] 3 WLUK 237** where the tribunal found that the claimant’s ignorance of his rights and his mental condition prevented him from making enquiries earlier and there was prompt action once the claimant’s sister who looked after him became aware that he might have a claim for unfair dismissal. Theobald filed his claim approximately a year after his dismissal.
34. In **Porter v Bandridge [1978] ICR 943, CA**, the Court of Appeal ruled that the claimant has the burden of showing precisely why it was that it was not reasonably practicable to present their claims in time. The court also noted that whilst ‘judicial glosses’ on the statutory test were designed to assist the first instance tribunal they must not become substitutes for the statutory test.
35. In **Wall’s Meat Co Ltd v Khan [1979] ICR 52, CA**, the Court of Appeal described the test as *“empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer’s complications into what should be a layman’s pristine province.”* The Court of Appeal was considering

circumstances of ignorance as to the existence or expiry of the time limit and held that the question was whether any such ignorance was reasonable including taking account of enquiries which should have been made.

36. In **Palmer v Southend-on-Sea Borough Council [1984] ICR 372, CA**, the Court of Appeal explained the scope of the test as follows:

*“...we think that one can say t/chat 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 – different, for instance, from its construction in the context of the legislation relating to factories: compare Marshall v Gotham Co Ltd [1954] AC 360. In the context in which the words are used in the Employment Protection (Consolidation) Act 1978, however ineptly as we think they mean something between these two. Perhaps to read the word “practicable” as the equivalent of “feasible” as Sir John Brightman did in Singh’s case [1973] ICR 437 and to ask colloquially and untrammelled by too much legal logic – “was it reasonably feasible to present the complaint to the industrial tribunal within the relevant three months?” – is the best approach to the correct application of the relevant subsection.”*

37. In **Schultz v Esso Petroleum Company [1999] ICR 1202, CA**, the Court of Appeal set out that where illness is relied upon as to why it was not reasonably practicable to present the complaint in time, the tribunal must “bear in mind and assess its effects in relation to the overall limitation period” but “Plainly the approach should vary according to whether it falls in the earlier weeks or the far more critical later weeks leading up to the expiry of the period of limitation. Put in terms of the test to be applied, it may make all the difference between practicability and reasonable practicability in relation to the period as a whole.”
38. In **Chouafi v London United Busways Ltd [2006] EWCA Civ 689, CA**, the Court of Appeal upheld a tribunal’s conclusion that it would have been reasonably practicable to present the complaint in time on the basis that a doctor’s opinion was assessed in light of all available evidence including actions of the claimant writing rational letters.
39. In **University Hospitals Bristol NHS Foundation Trust v Williams EAT/0291/12/JOJ**, the EAT upheld a tribunal’s conclusion that the claimant’s actions in coping with essential tasks related to domestic responsibilities despite her mental health problems did not mean it was reasonably practicable for her to also cope with putting in a tribunal claim.
40. In **Cygnnet Behavioural Health Ltd v Britton [2022] UKEAT 108**, the EAT overturned a tribunal’s conclusion that depression, dyslexia and ignorance of the time limit meant it was not reasonably practicable to present a claim in time as perverse. The EAT observed that despite his conditions, the claimant had engaged in actions such as contacting ACAS, working as a locum physiotherapist, moving house and responding to a regulatory investigation.

41. In **Cullinane v Balfour Beatty Engineering Services Ltd and anor EAT/0537/10**, in referring to the test as to whether the claim was presented within a further reasonable period of time after the expiry of the time limit the EAT said the assessment required *“an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted – having regard, certainly, to the strong public interest in claims in this field being brought promptly, and against a background where the primary time limit is three months”*.
42. In **Biggs v Somerset County Council 1996 ICR 364, CA**, the Court of Appeal explained that a tribunal considering the discretion to extend time and what further period of time for filing the claim was reasonable was able to take account of both the claimant’s difficulties and the impact on the respondent or employer. This was likely to be relevant where there were substantial delays.

## ANALYSIS AND CONCLUSIONS

43. I turn now to the application of the law to the facts I have found in this case.
44. I am required to apply the statutory test namely whether it was reasonably practicable for the claimant to present her complaints in time and by 14 May 1983 or thereabouts and if not, whether it was filed within a reasonable period of time thereafter. I am to apply this test on the basis of common sense rather than lawyer’s complexities. I have taken full account of the case law as relevant and to which I was directed.
45. The claimant has not precisely explained what prevented her from presenting her complaints to the tribunal on time and in particular has given no real explanation as to what prevented her from filing her claim in the three months after she says her employment ended on 15 February 1983.
46. I do not consider that it is the task of the tribunal and/or the respondent to seek to discern and then set out the claimant’s case or to spend a disproportionate amount of time as to any possible ground or reason on which reliance might be placed as to why the claimant says it is not reasonably practicable for her to have filed her claim within the ordinary three month time limit. The contention that the filing of the claim nearly 40 years late was nonetheless to be accepted as filed in time and allowed to proceed was fraught with difficulty from the outset. However, the claimant was provided with a reasonable opportunity to explain her position to the tribunal and in line with the overriding objective and the respondent’s duty to the court considerable efforts were made together to explore and ventilate the claimant’s position by reference to the pleadings and other documents.
47. The respondent discerned two potential reasons from the available documents being a reference by the claimant that there is no judicial deadline anytime anywhere where cases involve crime and a reference to being too busy at work.



48. The respondent said that suggesting that there was no judicial deadline was not an explanation but a legal argument and it was incorrect. It was incorrect as there are deadlines in proceedings before the tribunal and it was incorrect as the substantive jurisdiction of the tribunal does not extend to determining matters arising under the criminal law including any issues as to limitation under the criminal law.
49. Giving the claimant a considerable amount of latitude, the 'deadline' reason might be construed as an argument that it was not reasonably practicable for the claimant to file on time as she was ignorant of time limits as she thought there was no time limit. Holding a position that there is no deadline suggests a person has reflected to some degree on the possibility of a deadline, and concluded erroneously that there is no deadline. The case law provides that ignorance must be reasonable. I have concluded that to the extent ignorance of time limits is professed on the basis there was no deadline, this is not reasonable in all the circumstances including where proceedings were not brought for nearly 40 years with no explanation as to the timing of the proceedings in any event.
50. There is no evidence that the claimant took any steps to consider bringing proceedings in the UK and/or as to the making of any enquiries as to any relevant time limits or considerations at the relevant time which would have been reasonable. This is particularly in a context where the claimant presents as actively seeking compensation from the respondent and was engaging in proceedings in Greece and refers to 'penal claims'. The claimant had been working for an American financial institution at the relevant time and presents herself as educated to degree level. There is no suggestion the claimant is other than reasonably intelligent and she understands English so no reason why she might not have done something about bringing a claim in the UK if – which it is certainly not clear – there is reliance on ignorance of time limits.
51. The other possible explanation discerned by the respondent rather than clearly presented by the claimant was a reference to being busy at work. As set out above, it was patent that Mr Patel was conducting himself with consummate professionalism and patience during the preliminary hearing. A suggestion that the appellant was too busy is a wholly insufficient explanation in the circumstances particularly without any detail as to how that might have impacted during any initial three month period and given the overall period during which the claim was not filed being a period of nearly 40 years.
52. The claim form refers to the claimant having extra pyramidal syndrome and damaged hips and I have therefore given some reflection whether illness might be a ground on which it was not reasonably practicable to file in time even though it was not raised during the hearing. I am mindful that the claimant was representing herself. The test was explained and the explanation repeated in messages on the chat bar. Despite this, the claimant was not able to set out clear reasons why it was not reasonably practicable for her to file within the initial three month period after her dismissal or the grounds she relied upon or refer clearly to any relevant documentary

evidence. There is a complete lack of evidence supporting any illness and as to any such illness having the impact of preventing the claimant from filing during the three month period and in any event, although referred to in her claim form, the claimant did not opt to set this out as a reason or explanation during the hearing.

53. Even if the claimant demonstrated that it was not reasonably practicable to file within the three months and I do not find that she has so demonstrated, it remains for the claimant to file her claim within such further period as the tribunal considers reasonable. I cannot conclude that the period of time of nearly 40 years taking account of all the evidence available to me could be any such further reasonable period. The case law is clear that the background context here is the primary three month time limit which is set by parliament as an expression of the public interest in claims being brought promptly and also relates to principles such as legal certainty. Time limits also have a connection to ensuring there can be a fair hearing where each party is able to know the case they have to meet and present their position and the tribunal has a basis on which to fairly decide any claim before it.
54. I accept the respondent's submission that in considering what further period might be reasonable I can take account of any impact or prejudice on the respondent. I do so take account on the basis that I do not consider it will be possible to have a fair hearing given the passage of time. There is clearly prejudice to the respondent.
55. If discretion were exercised to permit the claim to proceed as in time, it is virtually certain the tribunal lacks the territorial jurisdiction to entertain the claimant's claim and allow it to progress to trial. She ordinarily worked in Greece outside Great Britain and it is not clear how she would show sufficiently strong connection with the relevant territory and law as required under current legislation. If she had presented her claim prior to 1999, the legislation would have explicitly excluded her from protection.
56. The respondent, whilst accepting the claimant was employed by them, was not able to confirm the dates of employment in light of the fact that documents were reasonably no longer retained some 40 years later. In the circumstances, the claimant relies on a particular date which the respondent does not actively dispute and the delay is considerable. I would go so far as to say that the delay in presenting the claim without any real explanation or evidence as to the reasons for the delay is unconscionable.
57. I have also concluded that the claimant herself would likely face some difficulties if a hearing were to go ahead in collating relevant documents and preparing witness evidence given the passage of time. In all the circumstances, having regard to the requirements of Article 6 ECHR (right to a fair trial) which includes the right to have proceedings dealt with within a reasonable period of time, I have readily concluded that it would not be possible in any event to have a fair hearing of the claimant's claim for unfair dismissal which will have to deal with facts about matters that took place 40 years ago.

58. In all the circumstances and given all my findings above, I have concluded that it was reasonably practicable for the claimant to have presented her claim within the primary time limit. Accordingly, it is not necessary for me to consider whether her claim was presented within such further period as I consider reasonable. However, in all the circumstances I have assessed matters and have further concluded that the presentation of the claimant's claim on 29 April 2023 nearly 40 years late has not been presented within such further period as I consider reasonable.
59. The claimant's claim for unfair dismissal was presented out of time so that the tribunal has no jurisdiction to consider it and it is hereby dismissed.

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**Tribunal Judge Peer acting as an Employment  
Judge  
08/09/2023**

Sent to the parties on:

.08/09/2023

For the Tribunals Office