



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr Karel Malek

v

Amazon UK Services Limited

**Heard at:** Cambridge

**On:** 3 April 2023

**Before:** Employment Judge Tynan

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mr Adam Ross, Counsel

**JUDGMENT** having been sent to the parties on 12 May 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. By a claim form presented to the Employment Tribunals on 12 August 2022, following Early Conciliation through ACAS between 4 and 5 July 2022, the Claimant pursues various complaints against the Respondent under §.48 and 111 of the Employment Rights Act 1996 (“ERA 1996”) that he was subjected to detriments and dismissed because he made protected disclosures. He also claims that he was wrongfully dismissed, that is to say dismissed without notice or payment in lieu of notice.
2. Employment Judge Ord directed that there should be a preliminary hearing to decide whether the claims have been brought in time, alternatively whether the wrongful dismissal claim should be dismissed as having no reasonable prospect of success.
3. I have not rehearsed the Law which is set out correctly by Mr Ross at paragraphs 5 to 13 of his Skeleton Argument. Mr Ross correctly identifies that the Tribunal must first consider whether the claims have been presented within the primary time limit applicable to them and, if they have not, whether time should be extended if the Tribunal is satisfied that it was not reasonably practicable for them to be brought in time.

4. The Tribunal's ability to extend time in whistleblowing and wrongful dismissal claims is more restrictive than, for example, in discrimination claims, where the Tribunal has a broader discretion to extend time where it is just and equitable to do so.
5. In order to determine whether the claims have been brought in time, the Tribunal must first identify what complaints are comprised within the claims. The starting point in this regard is the Claim Form, supplemented in this case by further and better particulars (pages 121 to 127 of the Hearing Bundle).
6. It is common ground that the Claimant's effective date of termination of employment was 24 January 2022. In any event, the date of dismissal is confirmed in section 5.1 of the Claimant's claim form and in his appeal against the outcome of his grievance; both documents cite 24 January 2022 as the date of termination of employment. That is the relevant date for limitation purposes as regards both the Claimant's breach of contract (or wrongful dismissal) complaint and any unfair dismissal complaint.
7. In paragraph 17 of his Skeleton Argument, Mr Ross has summarised the dates of the various detriments complained of, with reference to the Claimant's further and better particulars document. The Claimant has not suggested that Mr Ross has captured the dates incorrectly or omitted any relevant matters from his summary. In particular, the Claimant has not identified any further detriments beyond his dismissal and the other matters complained of that are said to have occurred on 24 January 2022. In any event, and for the avoidance of doubt, I have checked the claim form to ensure there are no further identifiable complaints in respect of matters after 24 January 2022, for example relating to or arising out of the grievance appeal. There are no such complaints. The position therefore is that the last in time of the detriments complained of occurred on 24 January 2022 (there are six claimed detriments in total pertaining to that date), and they include the Claimant's dismissal, being a claimed detriment as well as unfair.
8. Pursuant to s.48(3) ERA 1996, any whistleblowing detriment complaint cannot be considered by a Tribunal unless it is presented before the end of the period of three months beginning with the date of the act to which the complaint relates, or, where the act is part of a series of similar acts, the last of them. Taking the Claimant's case at its highest; namely, that all of the detriments relied upon by him form part of a series of similar acts such that time only runs from the last of them, the last in the series of detriments occurred on 24 January 2022.
9. In summary therefore, the entirety of the claims should have been notified to ACAS under the Early Conciliation Scheme by no later than 23 April 2022, namely within three months respectively of the alleged breach of contract, his allegedly unfair dismissal and the date of the last act of detriment complained of.
10. In section 15 of his claim form, the Claimant clearly identified that his claims

were out of time, even if he had not then particularised his claims as he has done now within his further and better particulars. The Claimant first contacted ACAS on 4 July 2022, between two and three months out of time. Contacting ACAS out of time does not serve to extend time. Having contacted ACAS on 4 July 2022, and an Early Conciliation Certificate having been issued the following day, 5 July 2022, it was a further five to six weeks before the Claimant presented his claim form to the Employment Tribunals. By the time the claim form was presented, the claims were approximately 16 weeks out of time.

11. In section 15 of the claim form the Claimant wrote,

*“On a personal note I am adjusting to night shifts while caring for my severely disabled, vulnerable Mum who has had a stroke and is incontinent. I have found it overwhelming dealing with every stage of this process, suffering adrenal burnout and insomnia and every time I sat down to work on this claim I was reliving the trauma.”* (page 15 of the Hearing Bundle)

Obviously, I have regard to those comments on the issue of whether it was reasonably practicable for the Claimant to notify his potential claims to ACAS under the Early Conciliation scheme within the primary three-month time limit and thereafter present his claim form to the Tribunals within time. However, the Claimant has not elaborated upon these matters in his Witness Statement which is largely silent as to the reasons for the delay. What is clear from his Witness Statement is that throughout the period in question, he was in regular contact with the Respondent. I refer in this regard to paragraph 15 onwards of his Witness Statement, in which he makes reference to meetings to discuss his appeal and other communications and interactions with the Respondent. His personal and family situation did not prevent this. Following the outcome of his grievance appeal, he was effectively informed on 14 July 2022 that he had reached ‘the end of the road’ in terms of the process, and told explicitly that he would not receive any further responses or communications from the Respondent relating to his grievance or its outcome. The Respondent’s position as at 14 July 2022 could not have been communicated more clearly.

12. The Claimant is an intelligent and capable individual. I am satisfied that he was reasonably capable of researching his employment rights, including the enforcement of those rights, on the internet. There is a wealth of readily accessible information available to employees on the internet, including as to the time limits within which claims must be brought. The documents in the Hearing Bundle evidence that in the course of his communications with the Respondent, the Claimant referred to whistleblowing, to having raised concerns and made disclosures, and to being subjected to adverse treatment as a result of what he had done. He was plainly well informed in the matter and capable of articulating his concerns. As I have noted already, he completed section 15 of the claim form with an understanding that his claim was being presented out of time. The Claimant is not young or inexperienced or lacking in maturity, factors that might cause an Tribunal to

conclude that it was not reasonably practicable for a claim to be presented on time.

13. The Claimant has the burden of establishing that it was not reasonably practicable for him to notify and to present his claims in time. He has failed to discharge his burden in the matter and his claim shall be dismissed on that basis.
14. I would have said in any event that even had the Claimant satisfied me that his personal or family circumstances, or the circumstances more generally, were such that it was not reasonably practicable for his claim to be presented within the primary time limit, he still failed to present it within such further period as was reasonable. In his claim form, he states that he was advised by ACAS that his claim was potentially out of time when he contacted ACAS on 4 July 2022. The Early Conciliation Certificate was immediately issued the following day to enable him present a claim without any further delay. On his own account, ACAS advised him that he should lodge a claim with the Employment Tribunals as soon as he could. Instead, he wrote to the Respondent's Chief Executive on 31 July 2022. That was his decision in the matter. However well intentioned, for example because he still hoped that matters might be resolved by agreement, it was a conscious choice on his part in circumstances where he had clearly been advised by ACAS that his claim was likely out of time and that he needed to present a claim without any further delay. The Respondent did not encourage him in that choice or mislead him in any way in the matter. Having pursued that alternative course, he must accept that he is solely responsible for the further delay that resulted. Even had I been persuaded that it was not reasonably practicable for the Claimant to present his claim within the primary time limit, I would have said that he ought reasonably to have presented it within a short period of time of being advised by ACAS that he was potentially out of time. Rather than focus his efforts on further correspondence with the Respondent's Chief Executive, in circumstances where he was told that he would not receive any further responses or communications from the Respondent relating to his grievance or its outcome, he ought reasonably to have focused instead on submitting a claim form. That could reasonably have been done within two weeks of the ECC being issued. On a generous view it ought reasonably to have been done by 31 July 2022 at the absolute latest, namely within two weeks of being told unequivocally that the Respondent would not engage further with him.
15. Given that a potential claim was not notified to ACAS under the and then brought within the primary time limit, the Tribunal does have no jurisdiction in the matter and I am obliged, therefore, to dismiss the claim.

**Case No:- 3310243/2022.**

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Employment Judge Tynan

Date: 12 September 2023

Judgment sent to the parties on  
14 September 2023

For the Tribunal office