



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Glyn Roberts

**Respondent:** AECOM Infrastructure & Environment UK Ltd

**Heard at:** Midlands East Employment Tribunal (by CVP)  
**On:** 13<sup>th</sup> June 2024

**Before:** Employment Judge Singh

**Representation**  
**Claimant:** In-person  
**Respondent:** Ms M Atwal (Solicitor)

## JUDGMENT

1. The claim of unfair dismissal was not presented within the applicable time limit. It was reasonably practicable to do so. The claim is therefore dismissed.
2. The claims of Age and Sex discrimination were not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claims are therefore dismissed.

## REASONS

3. The Claimant had been employed by the Respondent from 2008 as a Senior Bridge Inspector.
4. The Claimant was dismissed with effect from 26<sup>th</sup> July 2023. The Claimant had been accused of showing a younger female colleague an explicit image of himself and making a lewd comment. The Claimant was dismissed following a disciplinary procedure.
5. The Claimant appealed against the decision. The outcome of the appeal was not sent to the Claimant until the 19<sup>th</sup> October 2023. The Claimant's appeal was not successful.
6. The Claimant says that he then spoke to family members about what had

happened. One of his relatives suggested he speak to a cousin who worked in HR.

7. The Claimant then lodged his claim with ACAS on the 2<sup>nd</sup> November and was issued with a certificate on the 3<sup>rd</sup> November 2023. A claim form was submitted to the ET on the 3<sup>rd</sup> November 2023 as well.
8. The Claimant pursued claims for Unfair Dismissal and Direct Age and Sex Discrimination.
9. The Respondent has argued that the Claimant's claims should be struck out on the basis that they were not submitted within the normal time limits and that the time limit should not be extended.
10. At the start of the preliminary hearing, it was clarified with the Claimant what the dates of the acts complained of were. For the unfair dismissal claim, this was straightforward. It was uncontroversial that the effective date of termination was the 26<sup>th</sup> July 2023.
11. In relation to the discrimination claims however, it was unclear whether or not the Claimant was claiming that the appeal was also an act of discrimination. The Claimant confirmed it was not. The discrimination complaint was about the dismissal itself and he saw the appeal outcome as a confirmation of that discriminatory act.
12. On the basis of that information, it was confirmed that the relevant date from which time starts to run for both claims was the 26<sup>th</sup> July 2023.
13. The Claimant was also asked to clarify the direct discrimination claims as they had not been particularised fully in his claim form. The Claimant explained that he felt it was discriminatory that the Respondent had believed the colleague who had made the accusations against him and not him and believed this was because he was an older male, and she was a younger female.
14. The Respondent submitted that this was not the correct comparator for a direct discrimination claim. I agreed that the Claimant would need to compare himself to someone in a similar situation to him- that is someone else who is being subjected to allegations of sexual harassment. The Claimant was asked if he felt that a woman or younger man who was also subject to the same or similar accusations of sexual harassment would have been treated better than he was and he said he could not say.
15. The Claimant was also asked what steps he had taken during the process to get legal advice or research his rights regarding pursuing a claim in the Employment Tribunal.
16. The Claimant confirmed that he had sought the advice of a solicitor, who was a specialist in Employment Law, when he had first been notified of the disciplinary investigation. The Claimant confirmed that he had paid for this advice and the solicitor had provided him with advice in writing.
17. The Claimant confirms that at the time of the dismissal hearing and appeal he had advice and support from his trade union. This was not a union officially recognised by the Respondent, but they were allowed to attend the meetings as the Respondent acknowledged the reps as union representatives. The Claimant confirms that he was in communication with them through the process, both at the dismissal and the appeal.
18. The Claimant was asked why he didn't submit a claim to the tribunal at the time he was dismissed. The Claimant said that he had researched his rights and what

he had read said that he needed to exhaust the Respondent's internal procedure before he could submit a claim.

19. I found this difficult to believe. It is well-established that going through an internal process first is not necessary before a claim can be submitted to an Employment Tribunal. I had difficulty accepting that any source of advice would have stated something which is so incorrect.
20. The Claimant also said that he was focused on being reinstated and felt that submitting a claim might have angered his employer and then dissuaded them from overturning his dismissal.
21. The Claimant was asked what steps he took after receiving confirmation of the appeal outcome on the 19<sup>th</sup> October, before submitting his claim on the 3<sup>rd</sup> November 2023. The Claimant confirmed he had spoken to family members and one of them had suggested he speak to his cousin who was a HR officer. That cousin then helped him lodge his claim with ACAS and then submit it to the ET.

## **The Law**

22. Section 111 of the Employment Rights Act 1996 states that an Employment Tribunal cannot consider a claim unless it is presented-
  - 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*
23. In *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA*, the Court of Appeal conducted a general review of the authorities and concluded that 'reasonably practicable' does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'.
24. In *Asda Stores Ltd v Kauser EAT 0165/07*, Lady Smith explained it in the following words: 'The relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.
25. In *Lowri Beck Services Ltd v Brophy 2019 EWCA Civ 2490, CA*, Lord Justice Underhill set out the essential points established in the case law. Among them was that if an employee misses the time limit because he or she is ignorant about the existence of a time limit or mistaken about when it expires in his or her case, the question is whether that ignorance or mistake is reasonable. If it is not, then it will have been reasonably practicable for the employee to bring the claim in time.
26. However, where a Claimant has obtained advice and that has led to the late submission, either through the advisor's error or failure to act, that will bind the Claimant and a tribunal will be unlikely to find that it was not reasonably practicable to have presented the claim in time.
27. When engaging a solicitor, it will normally be presumed that it was reasonably practicable to present the claim and no extension of time will be granted. As Lord Denning MR put it in *Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA*:

*'If a man engages skilled advisers to act for him — and they mistake the time limit and present [the claim] too late — he is out. His remedy is against them.'*

28. A trade union representative also counts as an advisor in this context.
29. Even if it is found to have been not reasonably practicable to submit the claim within 3 months, the tribunal can only grant an extension if it is satisfied that the claim was presented in a period that it considers reasonable. This requires the tribunal to consider what happened after the deadline expired and the impact of the delay.
30. In relation to the discrimination claim, s.123 of the Equality Act 2010 states that a complaint must be brought within either-
  - a. *the period of 3 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.*
31. Here then, if a claim is submitted outside the 3-month time limit, a tribunal must consider if it is just and equitable to grant the extension. Clearly this is broader than the discretion in relation to an Unfair Dismissal claim, however, the tribunal must still consider all the relevant factors before deciding whether to allow a late claim. That discretion therefore is not a foregone conclusion.
32. The test requires a multifactorial approach which should weigh up the prejudice to both sides taking into account such things as the length of and the reason for the delay, the impact the delay will have on the evidence and the impact on the parties if the claim was allowed or not. That list is not exhaustive, and any other relevant factors can be taken into consideration.

#### Decision

33. I found that it was reasonably practicable for the Claimant to have submitted his unfair dismissal claim in time.
34. The Claimant had had the benefit of advice from a solicitor at the early stages of his disciplinary investigation. I note that the investigation meeting took place on the 4<sup>th</sup> July 2023 and the invite to the disciplinary meeting was sent on the 6<sup>th</sup> July 2023. That meeting invite confirms that a possible outcome of the disciplinary process is dismissal. The Claimant's solicitors would have therefore known that this was a potential outcome, even if they weren't involved when the Claimant was actually dismissed on the 26<sup>th</sup> July 2023.
35. The Claimant also had the assistance of Trade Union representatives at the disciplinary hearing, and he was notified in that meeting that he was being dismissed.
36. I find therefore that the principle in the Dedman case applies. The Claimant had the benefit of professional advisors, and they had sufficient information to advise him about the time limit in which he needs to bring a claim and that he did not need to wait until the appeal had been concluded before submitting a claim.
37. Further, even if I found that it was not reasonably practicable for the Claimant to have submitted his claim within the ordinary 3-month time limit, I find that the Claimant has not submitted it in a reasonable period after that. The Claimant received the outcome of the appeal on the 19<sup>th</sup> October 2023 and doesn't not have a reason why he took no action until the 3<sup>rd</sup> November. If, as he says, he believed he needed to wait until the outcome of the appeal, he still had a further 6 days until the 25<sup>th</sup> October 2023 deadline in which he could have lodged his

claim with ACAS. He did not do this and has not provided any explanation for his delay.

38. He only submitted his claim after speaking to a family member. He has not explained why he did not go to his professional advisors or do his own research about what to do now that the appeal had concluded.
39. I therefore find that the tribunal does not have jurisdiction to hear the claim for Unfair Dismissal and it cannot proceed.
40. In relation to the discrimination claims, as set out above, these were also submitted out of time. The deadline again expired on the 26<sup>th</sup> October 2023 and the Claimant did not submit his claim until the 3<sup>rd</sup> November 2023.
41. I find that it is not just and equitable to extend the time limit.
42. Although the discretion is wider than for an unfair dismissal claim, it is not automatic that it should be granted for a complaint of discrimination.
43. I have considered all the circumstances and do not consider it reasonable to extend. I took into account the reason for the delay and as set out above, I do not accept that the Claimant acted reasonably. He has either ignored the advice from 2 professional advisors or decided not to seek it.
44. He says that he did his own research which told him that he needed to wait until the appeal had concluded. Whilst I can accept that one source of advice on the internet had the incorrect information about this, I would accept a reasonable Claimant to look at more than one website and I would expect the majority of them to correctly state that the time limit for an Employment Tribunal claim does not pause whilst waiting for the outcome of an appeal.
45. The Claimant has also said that he did not want to submit his claim in case it affected his prospect of being reinstated. I note however on his claim form that he wants compensation only. This conflicts with the version of events that he has tried to present to the tribunal.
46. I also weighed up the prejudice to the Claimant if the claim was not allowed to proceed. Although I have not got sufficient information in front of me to allow me to fully assess the merits of the claim, even taking the claim at its highest, it does not appear to have any substance to it and would almost certainly be found to have no reasonable prospects of success.
47. The Claimant claims direct discrimination but has sought to compare himself to someone who would not be accepted as a comparator by an Employment Tribunal- that is his accuser.
48. The correct comparator would be someone who is also being accused of sexual harassment but who is a woman or is older. The Claimant was asked if he thought that such a comparator would have been treated better than he was and he could not say that they would be. The Respondent submitted that they would have been treated the same.
49. Further, even if the Claimant were to overcome the hurdle of proving less favourable treatment, he would then need to show that the reason for the treatment was sex or age. He would need to establish at least a prima facie case of discrimination in order to shift the burden of proof to the Respondent to show a non-discriminatory reason.
50. The Claimant was unable to provide any examples of discriminatory acts or comments which would establish a prima facie case. It was clear then that his

claim would also fall on this hurdle.

51. I therefore decided that the prejudice on the Claimant on not being able to pursue the claim was low, given how it was not fully formed and did not have reasonable prospects of success, even taken at its highest. In contrast, the prejudice and burden on the Respondent in having to defend a meritless claim would be high. It would in fact be a waste of the parties and the tribunal's time and resources to allow the claim to proceed which would conflict against the overriding objective.
52. On these grounds I found that the discrimination claims were also out of time and cannot proceed.

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Employment Judge **Singh**

Date: 25<sup>th</sup> June 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE