



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Wilson

**Respondent:** Network Rail Infrastructure Limited

**Heard at:** London Central Employment Tribunal (by video)

**On:** 24 September 2024

**Before:** Employment Judge Hopton

## Representation

Claimant: Mr Fray (Legal Advisor)

Respondent: Miss Wheeler (Counsel)

# JUDGMENT

1. The complaint of unfair dismissal was not presented within the applicable time limit. It was reasonably practicable to do so. The complaint of unfair dismissal is therefore dismissed.
2. The complaints of age and race discrimination were not presented within the applicable time limit, but it is just and equitable to extend the time limit. The complaints of age and race discrimination will therefore proceed.

# REASONS

## Background

3. The claimant has brought claims of unfair dismissal, direct age and race discrimination, and a pay claim. A final hearing of 8 days is listed starting on 14 July 2025.
4. At a preliminary hearing on 1 August 2024, this hearing was listed to consider whether the tribunal has jurisdiction to hear the claimant's unfair dismissal and discrimination claims. The claimant accepts they were presented out of time.
5. An oral judgment was given at the end of the hearing and written reasons were requested by the claimant.

## Facts

Relevant dates and delay

6. The claimant was dismissed on the 6th of February 2023. The deadline for starting early conciliation was therefore 5 May 2023. The claimant undertook 10 days of early conciliation with Acas from the 21st of March to the 31st of March. This means the deadline for presenting his claim to the employment tribunal was 15th of May 2023 (three months less a day from the 6th of February plus the 10 days Acas extension).
7. The claimant presented his claim on 2 June 2023. It was around two and a half weeks (18 days) out of time.

The advice the claimant received

8. The claimant received advice from his trade union that he had three months to bring a claim and that he should contact Acas by the 5th of May 2023. He followed the advice to contact Acas and started early conciliation on the 21st of March 2023.
9. The trade union decided not to take on the claimant's case. He received a letter explaining that on 28<sup>th</sup> February 2023. The claimant contacted Mr Fray at Northamptonshire Rights and Equality Council (NREC) on 17th of April and met him on the 19th of April 2023. Mr Fray gave the claimant advice that he should conduct Acas again, which he did. He contacted Acas on the 3rd of May 2023. Mr Fray advised the claimant that he had 30 days to bring a claim. It is not entirely clear from the claimant's evidence whether Mr Fray said he had until 3<sup>rd</sup> June or until 5<sup>th</sup> June 2023 to bring his claim, but I accept that he did tell the claimant that he had 30 days to bring a claim, and that the deadline was one of those two dates. That advice was incorrect. The claimant issued the claim on the 2nd of June 2023. Although this was out of time (the relevant date actually being 15<sup>th</sup> May 2023), it was before the deadline he had been advised.
10. The claimant obtained at least nine early conciliation certificates (EC certificates) at the beginning of this claim, referring to many different individual respondents. Most of the claims against the individual respondents have been withdrawn. He obtained a second EC certificate on 31 May 2023 for the present respondent, although this also contains the name of a non-existent company (Network Rail) and an incorrect address. The claimant was in considerable confusion over which respondent to name on the EC certificate and which address to include. None of the other EC certificates are relevant to my decision on these issues. However, it is relevant that in obtaining all the EC certificates, the claimant was actively pursuing his claim, was following the advice he had been given and was attempting to fulfil what he believed to be the legal requirements. He did this despite suffering significant stress at this time due to losing his job and a family bereavement.

Mr Fray

11. Mr Fray is an Equality Officer at NREC. He provides free of charge employment and immigration advice and is the Deputy Chief Executive of NREC. He has worked there for almost twenty years. In the past NREC has had funding from the Equality and Human Rights Commission.

12. Mr Fray explained in cross examination that he had undertaken hundreds of employment tribunal cases. He estimated in response to one of my questions that in the last one to two years he had advised around 20 - 30 people on time limits in employment tribunal claims. He explained that he advises on time limits for every single case, even if NREC does not take the case on. His evidence about the work that he does, and the number of cases he has conducted demonstrated that he holds himself out as someone capable of representing an employee in an employment tribunal case.
13. Mr Fray has a degree in social sciences but no legal training. He recalled having had some training on the Equality Act when NREC had funding from the Equality and Human Rights Commission, but nothing since then. He has had no training on time limits. He said during cross examination that he had done some personal research about the law but commented that the early conciliation time limits were very complicated and lots of people get them wrong including solicitors and judges.

## Law

14. Section 111(1) of the Employment Rights Act 1996 requires that, in cases of unfair dismissal:

*An employment tribunal shall not consider a complaint 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.*

15. Section 123(1) of the Equality Act 2010 states that: a claim:

*May not be brought after the end of:*

- (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.*

16. In *Dedman v British Building & Engineering Appliances [1974] 1 WLR 171* the Court of Appeal held that where it was a claimant's skilled adviser's fault that a claim was not presented in time, a tribunal will usually find it was reasonably practicable for a claim to have been presented in time.
17. In *Southwark London Borough Council v Afolabi 2003 ICR 800*, the Court of Appeal confirmed that the two most relevant factors to consider when considering whether to allow an extension of time on a just and equitable basis are: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).
18. In *Chohan v Derby Law Centre [2004] IRLR 685*, the EAT referred to *Steeds v Peverel Management Services Ltd [2001] EWCA Civ 419*, holding that it was just and equitable to allow a discrimination claim to proceed in the context that

solicitors had provided incorrect advice.

19. In *Miller and ors v Ministry of Justice and ors and another case EAT 0003/15*, the EAT held that the exercise of discretion to extend time is the exception rather than the rule.
20. In *Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA*, the Court of Appeal referred to Parliament giving employment tribunals the “widest possible discretion” in relation to extending time limits.

## **Conclusions**

### **Unfair dismissal**

#### **Is Mr Fray a “skilled advisor”?**

21. I have considered this question extremely carefully. Mr Fray has considerable experience in the employment tribunals over 20 years. His experience is not in doubt at all. I have considered if experienced is the same as “skilled”. In looking at this I have taken account of the fact that Mr Fray has no or very little legal training and no legal qualifications. I have balanced this against the fact that he regularly represents claimants in employment tribunal cases and that he regularly provides advice on time limits. He said he has undertaken hundreds of employment tribunal cases. He advises 20 – 30 people every one to two years on employment tribunal time limits. He holds himself out as being capable of representing claimants and advising them about employment tribunal proceedings. I have taken into account Miss Wheeler’s point that case law refers to Citizens Advice advisors and trade union advisers as “skilled advisors”. Those types of advisors are not dissimilar to Mr Fray’s role in this case.
22. I acknowledge what Mr Fray says about Acas early conciliation time limits being complicated. They can be complicated, and it is accurate to say that qualified lawyers, whatever their role, sometimes get them wrong; no one is immune from making a mistake. However, working out time limits is an absolutely crucial element of bringing an employment tribunal claim. It is therefore reasonable to expect an advisor, who holds themselves out as qualified to advise on employment matters, has the knowledge to provide advice on the crucial elements of a claim, and ensures that they are up to date and aware of the relevant legal requirements.
23. With his considerable depth of practical experience over two decades and the fact he holds himself out as capable of providing employment advice, I conclude that Mr Fray is a “skilled advisor”, despite his lack of formal legal qualifications.
24. I have applied the case of *Dedman v British Building & Engineering Appliances [1974] 1 WLR 171*. As I have concluded that Mr Fray is a “skilled advisor” and that it was his incorrect advice that led to the claimant submitting his claim out of time, I must also conclude that it was reasonably practicable for the claimant to bring his claim in time.
25. No evidence was presented and no arguments were made about the claimant’s potential redress against Mr Fray or NREC.

Should the claimant have brought his claim in time in any event?

26. The respondent has argued that even if Mr Fray were not a skilled advisor the claimant should have brought his claim in time in any event because he had been given initial advice from his trade union about the three-month time limit. I have considered this point, but I find that it was reasonable for the claimant to rely on Mr Fray's advice. The timeline of the claimant's actions demonstrates that he was actively seeking advice and he was following that advice. He took account of the advice from the trade union to contact Acas before the 5th of May 2023. He took account of Mr Fray's advice to contact Acas again and he took account of that advice to put his claim in by the deadline he believed at the time to be correct. The claimant is not legally qualified. It was not suggested during the hearing that he had any experience in employment tribunal litigation. In the context of his inexperience of employment litigation, it was reasonable for him to rely on the advice of Mr Fray who was providing a service of employment representation from a reputable organisation.

27. To summarise the unfair dismissal time issue. The reason the claim was presented out of time was down to Mr Fray's mistake. As the mistake was made by a skilled advisor it was reasonably practicable for the claimant to submit his claim in time. Therefore, no extension of time is appropriate for the unfair dismissal case which means the tribunal does not have jurisdiction to hear that claim and it is dismissed.

**Discrimination claims**

28. I have considered *Southwark London Borough Council v Afolabi 2003 ICR 800* and taken into account the factors in the Limitation Act 1980, focusing particularly on the delay and the prejudice to the respondent.

Reasons for and length of the delay

29. I have set out above the reasons for the delay. The claimant believed he was complying with the time limit because he had been given incorrect advice. The delay was one of 18 days.

30. The claimant had sought advice and believed he was acting promptly and within the time limit (as above).

Would there be any prejudice to the respondent in extending time on a just and equitable basis?

31. Given the delay is a matter of around two and a half weeks, there is no particular prejudice in terms of witness' memories deteriorating, documents being unavailable and so on. The respondent says that it is inherently prejudicial to face a claim which is totally without merit. However, based on the information that I have seen and the evidence I have heard today, it is not possible for me to conclude that the claimant's discrimination claims are without merit. I have heard no evidence about the claimant's experiences to which he refers in his discrimination claims. Taking the claimant's case at its highest I must therefore conclude that it has some prospect of success. Although the fact that the claimant's claim may have some merit does not mean that time should be

extended, it does not count against an extension of time.

32. The same considerations regarding a skilled advisor do not apply to a just and equitable case. When considering such a case, a tribunal should not necessarily attribute the fault of the advisor to the claimant (*Chohan v Derby Law Centre [2004] IRLR 685*). In this case, given the claimant had no litigation experience and was diligently following the advice of his skilled advisor, it would not be just to penalise him for that advisor's mistake.
33. Therefore, regarding the just and equitable extension of time: the length of the delay is short, the reasons for the delay are connected to a mistake not of the claimant's making; the claimant reasonably followed advice he was given to attempt to present his claim on time, despite it being a time of considerable stress for him due to the loss of his job and a bereavement; the prejudice to the respondent is small. It is therefore just and equitable to extend the period for the claimant to present his claim to 2nd of June 2023. The age and race discrimination claims proceed to the final hearing.

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**Employment Judge Hopton**

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**Date: 8<sup>th</sup> October 2024**

JUDGMENT & REASONS SENT TO THE PARTIES ON

21 October 2024

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FOR THE TRIBUNAL OFFICE