



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4105405/2023 (V)**

**Held at Aberdeen on 22 February 2024**

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**Employment Judge N M Hosie**

**Mr Leslie Munro**

**Claimant  
Represented by,  
Ms E Matheson,  
Solicitor**

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**Highland Council**

**Respondent  
Represented by,  
Mr M Briggs,  
Advocate  
Instructed by,  
Ms I Hamilton,  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

30 The Judgment of the Tribunal is that: -

1. the Tribunal has jurisdiction to consider the claim; and
2. the case shall proceed to a Final Hearing.

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**E.T. Z4 (WR)**

**REASONS**

1. The claimant, Leslie Munro, brought complaints of “standard” unfair dismissal, in terms of s.94 of the Employment Rights Act 1996, and of automatic unfair dismissal because he had made a protected disclosure, in terms of S.103A. The claim was denied in its entirety by the respondent and the respondent’s solicitor had also taken a time-bar point.  
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2. Judge Hendry conducted a Case Management Preliminary Hearing on 15 November when he directed that a Preliminary Hearing be fixed to consider and determine the time-bar point. In the Note, which he issued following the Preliminary Hearing he said this: *“It appears that there were difficulties when the claimant’s solicitor attempted to lodge the ET1 because the automated electronic system for online lodging was unavailable. The solicitors narrated that they attempted to lodge the papers outwith office hours at the Employment Tribunal office in Glasgow but they were not allowed to do so by a Security Guard. The papers were lodged the next day effectively one day late.”*  
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3. The case called before me, therefore, by way of a Preliminary Hearing to determine the time-bar point. The Hearing was conducted by video conference using the Cloud Video Platform (“CVP”).  
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4. It was not necessary for me to hear evidence at the Hearing as an agreed “Chronology of Events” was submitted by the parties, along with a Joint Bundle of documentary productions (“P”).  
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5. I heard oral submissions first from the claimant’s solicitor, with reference to her written submissions. I then heard oral submissions from the respondent’s Counsel.  
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**The facts**

6. Based on the agreed Chronology of Events, I make the following findings in fact.
- 5 7. On 4 May 2023, the claimant was dismissed by the respondent. The claimant also alleges that three whistleblowing detriments continued until this date.
8. On 14 July 2023, the ACAS Early Conciliation (“EC”) period began.
- 10 9. On 14 August 2023, the ACAS EC period ended and the EC Certificate was issued.
10. On 6 September 2023, technical issues with His Majesty’s Courts and Tribunals Service (“HMCTS”) online submission service for claim and response forms began.  
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11. On 8 September 2023, communications were issued by the Presidents of the Employment Tribunals (Scotland, England and Wales) to all Judges and members of the National User Group only, advising of issues with the HMCTS online submission system (P.55-57). The claimant’s solicitors are not members of the National User Group. This is a voluntary list parties can elect to register for. It does not include every practitioner within Scotland. No notification was made by the Law Society of Scotland or by the Scottish Legal News (P.66-107). An Employment Law bulletin was issued by Employment Law Barrister, Daniel Barnet, regarding communications from Presidents of the Employment Tribunals (P.58-59).  
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12. On 14 September 2023, the claimant’s solicitor unsuccessfully attempted a number of times to submit the claim form via the HMCTS online submission service between 16:35 and 17:55.  
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13. On 14 September 2023, the claimant's solicitor sent an e-mail to the Tribunal at 18:02:45 with a copy of the ET1, paper apart and a screen shot was taken of the portal at 17:55 (P.4-5).
- 5 14. On 14 September 2023, the claimant's solicitor attended at the Glasgow Employment Tribunal with the claim in a sealed envelope at 18:25. Upon arrival, the claimant's solicitor was advised by the Security Guard, David Williamson, that he could not accept the envelope. The claimant's solicitor obtained a signature from the Security Guard (P.65).
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15. On 15 September 2023, the technical difficulties with HMCTS online submission service were resolved. Communications were issued by the President of the Employment Tribunal (England and Wales) advising that the issues with HMCTS online submission system had been resolved. The claimant's solicitor delivered the claim form by hand to the Glasgow Employment Tribunal with a covering letter (P.29). The claim form was received and accepted by the Tribunal.
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16. On 15 November 2023, a Preliminary Hearing for case management took place before Judge Hendry. The Note which he issued following the Preliminary Hearing is included in the Joint Bundle (P.48).
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### Relevant law

- 25 17. An employee who seeks compensation for unfair dismissal is bound to comply with a strict time limit.
18. S.111(2) of the Employment Rights Act 1996 is in the following terms:-
- 30 *"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 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.*

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#### **Extension of time limit under early conciliation rules**

19. However, the three month time limit is extended under the early conciliation rules and S.207B of the 1996 Act, and s. 207B(4), in particular, effectively gives a prospective claimant one month from the date when he or she receives (or is deemed to receive), the ACAS Certificate to present the claim.
20. It was common ground between the parties, therefore, that if the claim form was presented before midnight on 14 September 2023 it was timeous.

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#### **Claimant's submissions**

21. The claimant's solicitor spoke to written submissions which are referred to for their terms. In support of her submissions she referred to the following cases:-

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***Swainston v. Hetdon Victory Club Ltd*** [1983] WL 215802  
***Consignia Pic v. Russell Sealy*** [2002] EWCA Civ 878  
***Tyne and Wear Autistic Society v. Smith*** [2005] ICR 663  
***Initial Electronic Security Systems Ltd v. Avdic*** [2005] IRLR 671  
***McFadyen and Ors v. PB Recovery Ltd and Ors*** [2009] 7WLUK918  
***Yellow Pages Sales Ltd v. Davie*** [2011] WL 5105132  
***Miah v. Axis Security Services Ltd*** [2018] WL 03972172  
***Hedley v. Patisserie Holdings Pic*** [2018] UKET1301914/2017

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22. The following is a brief summary of the claimant's submissions. She submitted, with reference to the principles identified by Lady Eady at para.13 in ***Miah***, that the claim form had been validly presented when it was delivered to the Employment Tribunal office in Glasgow, on 14 September 2023 at 18:25, notwithstanding the fact that it was not accepted by the Security Guard.

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23. In support of her submission in this regard, the claimant's solicitor also referred to **Swainston**. She submitted that, *"no action is required on the part of the party being presented to and a complaint does not need to be placed in the hands of a member of the Tribunal staff. Had the Security Guard taken the envelope and set it on a desk, instead of taking it and writing "delivery refused", there would be no doubt over whether it was presented. The complaint would have been presented in time. The analogy of placing the complaint through the letterbox after hours is of assistance."*
24. In the alternative, were I to decide that the claim form had not been validly presented on 14 September, it was submitted that, *"the actions of the Security Guard resulted in there being no proper means to present the claim. In circumstances such as this, Lady Eady has identified this as a situation where the limitation period could be extended to the next working day. The Security Guard in this case is akin to the locked letterbox and a situation where there are no proper means. In these circumstances, we submit that this is exactly the kind of circumstances described by the EAT where the time limit maybe extended.*
- The issues with the online submission portal were officially resolved on 15 September 2023. This is the following day the claimant's solicitor was confronted with the error message."*
25. The claimant's solicitor further submitted, with reference to **Tyne & Wear**, *"that even if the Tribunal were not holding out that they were not accepting online submissions, they were holding out that they were accepting submissions by hand. The reasonable expectation of delivery by hand is that it will be made there and then, so in the claimant's solicitor's situation 18:25 on 14 September 2023 being the date and time he arrived at the Tribunal office with the claim. This is equivalent to general public expectation that a website will work."*

26. The claimant's "primary position" was that the claim was presented on 14 September 2023 either online, or when it was presented at the Tribunal offices later than evening.
- 5 27. The claimant's secondary position was that the date of presentation was 15 September and that was timeous, in the particular circumstances.
28. The claimant's solicitor's final, alternative position, were I to find that the claim had been presented out of time, was that it had not been reasonably practicable to submit the claim form in time and that it had been submitted within a further reasonable period.
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### Respondent's submissions

- 15 29. The following is a brief summary of Counsel's submissions. He disputed the claimant's contention that the claim form had been validly presented on 14 September 2023. He disputed that the particular circumstances of this case were analogous with the situation where presentation is not possible due to their being a locked letterbox. He disputed that **Miah** was relevant. He said this: -
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*"The respondent's solicitor had received intimation that the online Employment Tribunal Service was temporary unavailable (P.242). The claimant's solicitor was not sure, therefore, whether the claim form had been presented and the onus was on the claimant to establish that it had been."*

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30. He submitted that the claim form had been submitted out of time on 15 September and the issue, therefore, was whether it had been "reasonably practicable" to submit the claim form in time.
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31. In support of his submissions, he referred to **Initial Electronic Security Systems Ltd**. He submitted that the fact that the online issue was "widely advertised" was relevant and that there was a "reasonable expectation" that it would not be possible to submit the claim form online. The "online outage"

was “made public” on 8 September, almost a week before the claimant’s solicitor endeavoured to submit the claim form.

- 5 32. Counsel submitted, therefore, that it had been “reasonably practicable” to submit the claim form in time. This was not done. Accordingly the claim is time-barred.

### Discussion and Decision

- 10 33. By and large, I found favour with the claimant’s submissions.

34. Submitting a claim form, in person to an Employment Tribunal office is a prescribed means of presentation.

- 15 35. **Miah** confirmed that **Consignia** remains a correct summary of the principles governing the time limit under s.111. In **Consignia** LJ Brook gave general guidance in determining whether a claim had been presented in time. He said that a claim is “presented”, within the meaning of s.111(2,) when it arrives at the Employment Tribunal office.

- 20 36. Further, as Lady Eady said in **Miah** it does not actually need to be, “*put into the hands of a member of ET staff*”

- 25 37. Also, in **Hammond v. Haigh Castle & Co. Ltd** [1973] ICR 148, NRIC, Sir John Donaldson stated: “*In our judgment, a claim is presented to a Tribunal when it is **received** (my emphasis) by the Tribunal, whether or not it is dealt with immediately upon receipt.*”

- 30 38. In **Post Office v. Moore** [1981] ICR 623 the EAT held that presentation of a complaint does not require the co-operation of a Tribunal Clerk or official. It only requires physical delivery at the Tribunal offices. In that case, the claim form was put through the letterbox at the Employment Tribunal office at 10pm



on the last day of the three-month period for presentation and the EAT decided that the claim had been presented in time.

5 39. I was persuaded, therefore, that when the claimant's solicitor attended at the Glasgow Employment Tribunal offices on 14 September 2023 and handed the claim form to the Security Guard at 18:25 it was presented then, notwithstanding the fact that the Security Guard refused to accept it.

10 40. Accordingly, the claim form was presented in time.

41. If I am wrong in that view, and that did not amount to a valid presentation, I concluded, that there was, "*no proper means*" for presentation.

15 42. I was satisfied, in all the circumstances, and with reference to ***Initial Electronic Security Systems Ltd*** and ***Tyne & Wear Autistic Society***, that the claimant's solicitor had a "*reasonable expectation*" that the claim form would be accepted if he handed it in personally at the Tribunal offices.

20 43. As the Security Guard refused to take delivery of the claim form, I concluded, that, in the particular circumstances of this case, there was "*no proper means for presentation*". Accordingly, in terms of ***Miah*** and ***Swainson***, the limitation period may be extended to the next day.

25 44. It was not disputed that the claim form was submitted, in person, the following day. It was, therefore, presented in time.

30 45. In arriving at this view, I am satisfied that it was not possible to submit the claim form online timeously. While there was some public intimation of the "outage" from around 8 September 2023, there is no requirement on a claimant to present his claim any earlier than by the end of the statutory limit; the claimant's solicitors are not members of the National Users Group; there was no intimation from the Law Society of Scotland or the "Scottish Legal

News” of the “outage”; and Daniel Barnet’s Employment Law Bulletin is not an official intimation.

**Reasonable practicability (the “escape clause”)**

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46. Finally, and for the sake of completeness, I wish to record that had I decided that the claim form had been presented out of time, I would have found that it had not been “reasonably practicable” to submit the claim form in time and that it had been submitted within a “reasonable period” thereafter. This would mean that the claimant would be able to avail himself of the so-called “escape clause” in s.111(2)(b) and the Tribunal would still have jurisdiction.

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47. Whether it was not reasonably practicable to present in time must depend upon the facts of the case. As Judge Hendry recorded in his Note (P48), it is difficult to envisage what else the claimant’s solicitor could have done, to ensure that the claim form was submitted in time. If there was not a valid presentation on 14 September and if there was no automatic extension to the following day, it was impossible, in the unique circumstances which prevailed at the time, for the claimant’s solicitor to submit the claim form before the end of the time prescribed. It was not reasonably practicable to do so.

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48. Had I been required to do so, therefore, I would have been satisfied that the claimant had discharged the onus of showing precisely why the claim form was not presented in time and that it had been presented within a further reasonable period.

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49. Accordingly, the Tribunal has jurisdiction to consider the claim and it should now proceed to a Final Hearing on the merits.

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**Employment Judge: N M Hosie  
Date of Judgment: 4 March 2024  
Entered in register: 4 March 2024  
and copied to parties**

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