



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4106421/2024**

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**Held in Dundee via Cloud Video Platform (CVP) on 24 February 2025**

**Employment Judge McFatridge**

10 **Mr M McGill**

**Claimant  
In Person**

15 **Greater Glasgow Health Board**

**Respondent  
Represented by:  
Mr I Wells -  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that the tribunal does not have jurisdiction to hear the claimant's claims as they are time barred. The claims are dismissed.

### **REASONS**

#### **Introduction**

- 25 1. On 7 August 2024 the claimant submitted a claim to the tribunal in which he claimed that he had been unfairly dismissed and that he had suffered unlawful discrimination on grounds of disability by the respondent. He also indicated that he was due a sum of holiday pay following the termination of his employment. The respondent submitted a response in which they
- 30 denied the claims. They made the preliminary point that the claimant's claims were time barred. In any event it was their position that the claimant had been fairly dismissed on grounds relating to capability and that no discrimination had taken place. It was their position all sums due in respect of holiday had been paid. A case management preliminary hearing took
- 35 place on 18 December 2024 which fixed a substantive open preliminary hearing to be held on 24 February 2025 in order to deal with the preliminary issue of time bar. Within the course of that note the tribunal confirmed that the complaints were disability discrimination, unfair dismissal,

unauthorised deductions in relation to final wages paid in June 2023 and failure to pay the claimant's full accrued annual leave entitlement on the termination of his employment. There was initially a dispute between the parties as to the date of termination of employment. The claimant had initially been told he was dismissed with effect from 22 July however subsequent to the hearing it was confirmed that at some stage due to difficulties arising from the claimant's final pay it had been agreed that his effective date of termination was 1 September 2023. The respondent formally agreed that for the purpose of these proceedings the claimant's effective date of termination would be taken as 1 September 2023. At the preliminary hearing on 24 February the claimant gave evidence on his own behalf. A bundle of documents was lodged. These are referred to by page number in the discussion below. On the basis of the evidence and the productions I made the following factual findings in relation to the matter which was subject of the hearing.

### **Findings in fact**

2. The claimant worked for the respondent as a hospital porter. His employment commenced in or about July 2003. It ended on 1 September 2023 and 1 September 2023 was the effective date of termination. The claimant had been subject to an attendance management process which had culminated in a Stage 3 hearing which took place on 7 June 2023. The claimant was accompanied at the Stage 3 hearing by Neil Craig of Unite the Union. During the process leading up to this the claimant had had the benefit of assistance from a full time union official Mr O'Connell. On 9 June 2023 the respondent wrote to the claimant confirming that the outcome of the hearing was that he was dismissed. This letter confirmed that the claimant's date of termination would be 22 July 2023. The letter which was lodged (pages 70-72) referred to the fact the claimant had been absent from work since 9 October 2021 due to anxiety and stress. It stated that the claimant's leaving date had been extended so as to facilitate payment of annual leave.
3. As noted above there were some further discussions regarding the holiday pay to which the claimant was entitled and the respondent subsequently agreed that his date of leaving be extended to 1 September 2023. The

letter also notes that the claimant was verbally told at the meeting on 7 June that he was to be dismissed.

4. The claimant was involved in a car accident in or about January 2020 and was thereafter shielding from Covid between March 2020 and 31 August 2020. He returned to work after this in August 2020 albeit he used his holiday entitlement to avoid having to work full hours over this period. He was then shielding again between 1 November 2020 and 7 August 2021. Unfortunately whilst shielding he began to suffer major psychological effects of the car crash triggered by seeing a car exploding on television. He returned to work from shielding in August 2021. He was diagnosed as suffering from PTSD in early 2023. The claimant's claim refers extensively to his contention that his return to work after Covid shielding was badly handled by the respondent in or about 2021. The claimant's position is that he was put back to work in a Covid area. It was his position that it would have been a reasonable adjustment to his disability at that stage to have not subjected him to this. The claimant's position is that as a result he had a panic attack which caused him to be absent from work. It was his further position that his absence had been badly handled by the respondent.
5. Following his dismissal in June 2023, the claimant put in an appeal. He discussed this appeal with his full time union representative Mr O'Connell. He discussed with Mr O'Connell the issue of how to proceed about raising an Employment Tribunal claim. The claimant's appeal hearing took place on 29 September. At the appeal hearing the claimant was represented by Mr Finlay, another full time official with Unite. This was because the claimant's workplace Unite representative was unavailable. The appeal was unsuccessful. At some point around this time the claimant spoke to Mr O'Connell about proceeding to the Employment Tribunal. He completed a form which Mr O'Connell provided him with which on the balance of probabilities I considered to be a form for ACAS early conciliation.
6. The claimant's ACAS early conciliation certificate number R261078/23/14 was lodged (page 21). This shows that the early conciliation notification

was received by ACAS on 19 October 2023 and that ACAS issued their early conciliation certificate on 30 November 2023.

7. The claimant did not receive the ACAS certificate direct and it is likely that it was sent to his trade union official Mr O'Connell. In any event, neither  
5 Mr O'Connell nor the claimant took any steps to raise proceedings before the Employment Tribunal at that time.
8. In the meantime shortly after the hearing on 7 June the claimant had himself put in a grievance to the respondent about his holiday pay. Essentially it was the claimant's position that his holiday pay had been  
10 miscalculated since around 2020/21 and that he was due considerably more days' holiday than he had been paid following the termination of his employment. The claimant dealt with this grievance himself.
9. The claimant contacted Mr Finlay of the union in early 2024 and asked him what was happening. Mr Finlay contacted Mr O'Connell and at some time  
15 in April/May 2024 the claimant was advised that the union had not submitted an application and that he would require to do it. Mr O'Connell essentially told the claimant that he did not consider that he had a claim and the union would not be assisting him. The claimant's understanding had been that Mr O'Connell would be putting in a claim however Mr  
20 O'Connell's position was that he had told the claimant that the union would not be helping him and that if he wanted to put in a claim then he would have to do it himself. He was also advised about the time limit. He contacted Mr Finlay about this and Mr Finlay said that he was not allowed to help the claimant as a union official but would be prepared to give him  
25 some assistance on a voluntary basis. Mr Findlay contacted the respondent about the claimant's holiday pay and received some further documentation from them in June 2024.
10. In or about August the claimant contacted ACAS by telephone. He was advised of the fact that early conciliation had taken place and was given  
30 the details of the certificate. The claimant submitted his ET1 on 7 August 2024 which was around a day after he had spoken to ACAS on the telephone. He completed the application himself with some assistance from Mr Finlay. On or about 13 September he sent an email to ACAS. He set out his understanding at the time. He said:

"Hi Liz

5 Sorry to bother you my case became late which was out of my control as the union James O'Connell think it was representing me. I'm of the understanding that a conciliation was to take place before going to a tribunal and receiving a certificate number from ACAS. I called helpline several weeks or so ago and was told if memory serves that conciliation took place November last year and that I was now late had to give reason for being. This was just me finding out because I had heard nothing I tried contacting James in between then and eventually my new rep got word that James claimed he knew nothing about a conciliation meeting in November last year.

10 I don't know if he is to blame or not as he didn't contact me to tell me what was happening and he didn't answer my attempts to contact him to find out. Was there a lack of communication somewhere between James conciliator or NHS. I know I had no ideas of being late was outwith my control.

15 Did James receive anything from ACAS that there was a deadline timeline after conciliation took place to move to tribunal (given the conciliation that he says he wasn't involved or knew about in any meeting to conciliate took place.) If you can shed any light I would appreciate it." (page 284)

11. As noted above the claimant was diagnosed with PTSD in or about May 2023.
12. The claimant is currently not working and still getting therapy with EDMR treatment. He has held back on some of his treatment because there was so much going on with his tribunal claim that he wished to concentrate on that first. At the hearing the claimant reported that his PTSD caused him problems sleeping and that he would have intrusive thoughts.

### **Matters arising from the evidence**

13. During his evidence the claimant wanted to talk about the detail of his claim rather than those matters relating specifically to the issue of time bar. It was extremely difficult to get any kind of coherent timeline from the claimant. This was particularly the case as for some reason he had

decided not to lodge any of the emails which he claimed to have exchanged with Mr O'Connell and Mr Finlay and indeed in respect of one email he had only chosen to lodge two lines from this. Subsequent to the tribunal on or about 28 February the claimant sent some further documentation to the tribunal administration which bore to be copies of a number of emails. These were not copied to the respondent at the time and I have not taken them into consideration in arriving at the findings in fact set out above. I should record that none of these emails contradict the findings in fact above. They do show that the claimant would appear to have contacted Mr Finlay in or about 29 January 2024 and amongst other things asked if James had said anything about a tribunal. He then wrote again mid-February to say he had heard nothing from James and would call him again. He sent an email in early May where he sets out his claims against the respondent. He then wrote again on 7 May. It records that Mr Finlay wrote to him on 10 May stating clearly that Mr O'Connell had not taken the case to a tribunal and indeed saying that he did not have a good claim although he may have a claim for personal injury which could be pursued through the courts. None of this contradicts my principal finding above which is to the effect that the claimant knew in or about May 2024 that whatever discussions there had previously been with the union, the union had not put a claim in on his behalf and would not be putting a claim in on his behalf.

14. The claimant's evidence in relation to his PTSD was extremely fleeting and not in any way detailed. He did not rely on this as being causing him any particular problems. His main difficulty was that he said that he did not know anything about employment law or how to go about putting in a claim and that he had expected the union to do this for him. He did not give any detailed evidence at all regarding the discussions which he'd had with Mr O'Connell or anything which Mr O'Connell had said at the time. He was unable to say why he had delayed from May until August before contacting ACAS. I had no doubt that he was genuinely trying to assist the tribunal by giving truthful evidence but he appeared to have little genuine recollection of matters which I would have expected him to remember and he was essentially unable to give any detail at all about his interactions with the union which as we can see are fairly crucial. It would have been

open to him to call either Mr Finlay or Mr O'Connell to give evidence but he did not do so. I was accordingly left in the position in relation to the reason for the claim not being lodged in time as being that there was some kind of breakdown in communication between the claimant and his union and was really unable to get any more detailed findings that that.

### Discussion and decision

15. The sole matter which I was required to determine was whether or not the claims are time barred. There are different legal provisions in respect of each claim and it is appropriate to deal with these separately. The claims and the sources of the legal provisions regarding time bar are listed in paragraph 9 of the preliminary hearing note. In respect of the complaints under the Working Time Regulations the time limit is set out in regulation 30(2) thereof. In respect of the complaint of unauthorised deduction of wages the time limit is set out in section 23(2) of the Employment Rights Act 1996 and in respect of the complaint of unfair dismissal the time limit is set out in section 111(2)(a) of the Employment Rights Act.
16. In respect of the claim of unfair dismissal the three month time limit referred to runs from the date of dismissal which in this case was agreed to be 1 September 2023. With regard to the claims of unauthorised deduction of wages and holiday pay it is not entirely clear when these payments ought to have been made but given the benefit of the doubt to the claimant it is clear that the payments were due and the time limit of three months started to run in each case on 1 September 2023. Whilst early conciliation started within the three month period the ET1 was not submitted until August 2024 which was some seven months later than it should have been. In respect of these claims the tribunal has a discretion to extend the time limit but only where it makes a finding that it was not reasonably practicable for the claim to have been submitted within the initial time limit. In that event the claim requires to have been submitted within a reasonable time thereafter.
17. With regard to the discrimination claim the appropriate time limit is contained in section 123(1)(a) of the Equality Act. The tribunal has jurisdiction to extend this time limit if it is just and equitable to do so.

**Claims of unauthorised deductions, holiday pay and unfair dismissal**

18. It is appropriate that I deal with the claims for unauthorised deductions, holiday pay and unfair dismissal together since the legal provisions relating to time bar are similar. As noted above even giving the benefit of the doubt to the claimant in terms of when the payments were due all three claims are some seven months late. There was really nothing before me to suggest that it had not been reasonably practicable for the claim to have been submitted earlier. The claim certainly could have been submitted earlier and the only reason it was not was due to the breakdown in communication between the claimant and his union. As noted above I really had very little to go on as to the nature of this breakdown in communication. There was however absolutely nothing to prevent the claimant's union representative Mr O'Connell from submitting a claim within the initial three month period as indeed he had submitted the application for early conciliation within the appropriate time. There was also nothing to prevent the claimant from doing this. It appears clear that Mr O'Connell understood that the claimant had been clearly told that the union would not be supporting him with a tribunal claim going forward because the tribunal did not consider that the claim had any reasonable prospect of success. The claimant himself referred in evidence to having become disillusioned with the advice given by Mr O'Connell when Mr O'Connell had told him that the respondent could tell him when and when he could not take his holidays.
19. I was referred by the respondent's representative to the usual authorities on the subject. It is clear that where a party is relying on their ignorance of the law or their ignorance of time limits then they must not only demonstrate that they were genuinely ignorant of these time limits but also that such ignorance was reasonable. In this case I was not in fact satisfied that the claimant was ignorant of the time limits. His evidence was somewhat confused and it appeared that he was aware there was some sort of time limit but he thought that the union were submitting everything in time. If the claimant received faulty advice then I believe that this is a case where even although it is a trade union involved and not a professional legal adviser the claimant could perhaps have a remedy in pursuing a claim for negligence against the union. There is clearly a



dispute between them in that I understand from the claimant that Mr O'Connell's position is that the union were never going to put in his claim because they did not think it had any merit. It would appear that the claimant was either not told this at the time or, if he was told that, chose not to listen.

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20. I took on board the claimant's evidence that he had been trying to obtain further information from the respondent which he only received in June 2024. I did not however consider this to be relevant because I accepted the respondent's position that the claimant's evidence was that long before this he wanted to go to a tribunal and it could not be said in any way that he required to wait on this evidence before knowing that he had a potential claim. In short, I consider that the claimant's application to extend time in respect of the first three jurisdiction fails at the first hurdle in that it was reasonably practicable for the claim to have been submitted in time. Even if I am wrong in that then it is my view that the claimant would fail at the second hurdle in that he would have to show that he submitted the claim within a reasonable time of the expiry of the original time limit on 11 January 2024. Whilst the claimant can rely on his apparent ignorance that the union were not putting in a claim on his behalf for the period between 11 January and May he cannot rely on that as being the reason the claim was not submitted on time thereafter. By May he knew what Mr O'Connell's position was and he knew that he would have to put the claim in himself. Whilst I appreciate he may have wanted some assistance the fact is that he was able to put the claim in himself without official assistance from Mr Finlay. Although my view is that the position is moot it is my view that the claimant's claim falls at this hurdle also. Accordingly, the first three claims are time barred and the tribunal has no jurisdiction to hear them.

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21. With regard to the discrimination claims the time limit of three months runs from each act of discrimination. Where discrimination consists of conduct extending over a period then the act is deemed to have ended at the end of that period of continued conduct. As matters currently stand it is not entirely clear from the claimant's pleadings exactly what, if any, conduct he is alleging took place over a period. It is clear that he is referring to some decisions that were taken by the respondent as far back as 2020 and 2021, the main thrust of his case appears to be that the respondent

5 mishandled his return to work following Covid shielding in August 2021 and his subsequent absence which lasted from that date until his dismissal. Whilst the matter is somewhat confused I consider that in order to deal with the current position I should be generous to the claimant and accept that in some way his discriminatory treatment was continuing right up until his dismissal. I have to say that I consider this is showing some considerable generosity to the claimant. Even so however the claim is still time barred in that as with the other claims he ought to have submitted his claim following ACAS conciliation no later than 11 January 2024. He did not lodge it until August and is therefore some seven months late.

10 22. The tribunal does have jurisdiction to extend the time limit in discrimination cases where it is just and equitable to do so. I was referred by the respondent to the case of **British Coal Board v Keeble** and the case of **Adedeji v University Hospitals Birmingham NHS Trust** [2021] EWCA Civ 23. I considered the **Adedeji** case to be relevant in this case since if the claim were accepted then the tribunal could find itself dealing with matters which date from 2021 or 2022 or perhaps even earlier. I agreed with the respondent that at seven months late this is a fairly extreme example of a case being lodged well out of time. The case of **Robertson v Bexleyheath Community Council** makes it clear that employment tribunals have a wide discretion to extend time. There is no burden of proof. It is not a case that the tribunal should allow an extension of time unless there are reasons for not doing so. The tribunal requires to consider the whole facts and decide what is just and equitable. The tribunal requires to be just and equitable to the respondent as well as to the claimant and requires to look at the potential prejudice to either.

25 23. I considered that in this case the length of the delay was extremely long – seven months. I did not consider that the reason for delay was a good one. The claimant could have done a lot more to check up with his union. Once he knew they were not putting in a claim for him he could have acted much more quickly.

30 24. With regard to the balance of prejudice, if the claimant's claim of disability discrimination is not allowed to proceed then the claimant loses the opportunity of arguing this case at a hearing. I have no doubt the claimant

feels strongly that he was badly treated over a long period. I do have to note however that during this period, according to his dismissal letter he attended some 15 meetings where he had the professional support of his trade union. It might have been expected that if it is the claimant's complaint that reasonable adjustments ought to have been made when he returned to work in August 2021 was well founded then he and his union would have raised the proceedings then. I am also forced to take into account the claimant's own evidence to the effect that his union official told him in May 2024 that he did not consider he had a case.

10 25. As against that there is the undoubted prejudice which would be caused to the respondent if the claim were allowed to be lodged at this extremely late stage. They would require to investigate matters which are of considerable vintage. The claims as they currently stand are inadequately specified and it is likely that a fairly lengthy period will be required to get the claims in order before they reach the stage where the respondent can carry out a proper investigation. Any hearing is likely to be lengthy and given the time which is likely to be required in order to deal with these matters of specification it is likely to be the end of 2025 or the beginning of 2026 before they come to a hearing. By then what the claimant considers to be the most important part of his case will be five years in the past. It is highly likely that many of the witnesses will no longer be in the employ of the respondent. There is little doubt that the cogency of the evidence is going to be affected. I also have to take into account the possibility that if the claimant is unable to take his claim before the tribunal he may be able to claim damages from his union. Additionally, it would appear that the claimant may also have the option of raising a claim for personal injuries against the respondent in respect of his contention that their behaviour around his return to work in August 2021 caused his mental health to deteriorate.

30 26. At the end of the day I do not consider that the claimant's apparent position where having been dismissed he simply left matters in the hands of his union without making any further enquiry for a period of months assists him. On balance, taking all of those factors into account I do not consider that it is just and equitable to extend time in respect of the discrimination claim.

27. Accordingly, the tribunal has no jurisdiction to hear any of the claimant's claims and these claims are dismissed.

**Date sent to parties**

**13 March 2025**