



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Rush

**Respondent:** Wilts & Dorset Bus Company Limited t/a Morebus

**Heard at:** Bristol (by telephone)

**On:** 25 March 2025

**Before:** Employment Judge Murdoch (sitting alone)

## **Representation**

Claimant: In person

Respondent: Ms Lunney, solicitor

# JUDGMENT

The complaint of unfair dismissal under Part X Employment Rights Act 1996, and direct race discrimination pursuant to section 13 Equality Act 2010 were all brought out of time, time is not extended, and the claims are dismissed for lack of jurisdiction.

# REASONS

## **Introduction**

1. This was a preliminary hearing to determine whether the claims were brought in time and, if not, whether the claimant was entitled to the benefit of an extension under any of the applicable statutory provisions. The two claims were for unfair dismissal and direct race discrimination.

## **The hearing**

2. I heard the claim on 25 March 2025. The hearing was heard remotely. It was originally listed as a telephone hearing but Employment Judge Midgley converted it to a Cloud Video Platform (CVP) hearing in his directions on 3 December 2024. The parties were, however, given telephone log in details. The clerk converted it to a CVP hearing but I was then unable to hear and see the claimant consistently, so I eventually had to convert it back to a telephone hearing. These technical problems meant that we effectively started the hearing 45 minutes late.

3. The claimant represented himself. I took his written witness statement as his evidence in chief, which he declared to be true to the best of his knowledge, and he answered questions under oath. Both parties gave oral closing statements. I adjourned briefly to deliberate but was unable to give judgment orally within the allotted time as we had started so late. I reserved my judgment accordingly.

### **Preliminary matters**

4. At the beginning of the hearing, before I heard any evidence, I dealt with the preliminary issue of the respondent's correct name. It was agreed between the parties that the correct name for the respondent was Wilts & Dorset Bus Company Limited t/a Morebus, not Go South Coast Groups.
5. I checked that both parties had access to the preliminary hearing bundle that had been prepared by the respondent totalling 58 pages. I noted that I had also been sent another bundle just before the hearing started. It had been prepared by the claimant totalling 53 pages. This new bundle included new/additional undated claim forms and witness statements with different dates to the witness statement that had included in the respondent's bundle. I asked the claimant whether he wanted me to rely on any documents in his new 53 page bundle. The claimant said no: his bundle of 53 pages was not intended for use at this preliminary hearing. All parties agreed that we were therefore only referring to the respondent's bundle of 58 pages.

### **Issues for the Tribunal to decide**

6. I said I thought the claimant had two claims: unfair dismissal and direct race discrimination. The respondent agreed. I then spend some time discussing this with the claimant.
7. The claimant had written 'criminal defamation' on his claim form. I explained to the claimant that this tribunal did not have jurisdiction to deal with any criminal matters or any defamation claims. The claimant said he believed I did have jurisdiction. I said he could appeal my judgment on this point if he would like to.
8. The claimant did not write anywhere on his claim form that he was making a whistleblowing claim. He later wrote in his agenda that he was making a protected disclosure claim. I explained the legal elements in a whistleblowing claim to the claimant, noting that I had read all the paperwork and the claimant's witness statement and that the factual make-up of the case did not appear to fit the framework of a whistleblowing claim to me. I asked him whether he would orally like to make an amendment application to add whistleblowing as a claim. He stated that he did not intend to make that application.
9. He also clarified that his claims of 'illegitimate conduct' and 'contractual claim' – which he set out in his agenda but not his claim form – were not additional claims but part of his unfair dismissal claim.
10. The claimant then confirmed that his claim was limited to the two claims set out above.

11. The parties agreed that the key issue to be decided in this preliminary hearing was whether his unfair dismissal claim was extendable by the 'not reasonably practicable' formula and whether his discrimination claim was extendable by the 'just and equitable' formula.
12. The parties agreed that the relevant date for the last act alleged (or, in other words, the date that the clock started ticking) was the date of dismissal which was 7 February 2024 for both claims.

## The law

### Reasonably practicable test

13. The relevant section of the Employment Rights Act 1996 ("ERA") in relation to the unfair dismissal claim is section 111, which states:
  - (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
  - (2) ...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 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.
14. This is the 'reasonably practicable' test.
15. When a claimant attempts to excuse late presentation of a claim on the ground that it was not reasonably practicable to present the claim within the time limit, it is worth keeping in mind the following:
  - There is a public interest in applying time limits strictly. They are there for a reason.
  - Section 111(2)(b) ERA (and its equivalents in other applicable legislation) should be given a 'liberal construction in favour of the employee' (*Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53, CA).
  - What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide.
  - The onus of proving that presentation in time was not reasonably practicable rests on the claimant. 'That imposes a duty upon him to show precisely why it was that he did not present his complaint' (*Porter v Bandridge Ltd* 1978 ICR 943, CA). Accordingly, if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal will find that it was reasonably practicable (*Sterling v United Learning Trust* EAT 0439/14).
  - The 'reasonably practical' 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' (*Asda Stores Ltd v Kauser* EAT 0165/07).

Just and equitable test

16. The discretion for tribunals to hear out-of-time claims within whatever period they consider to be 'just and equitable' is broader test than the 'reasonably practicable' test.
17. When considering whether it is just and equitable to extend time, it is worth keeping in mind the following:
  - The discretion to extend time is a wide one.
  - Time limits are to be observed strictly in employment tribunals. There is no presumption that time will be extended unless it cannot be justified. The reverse is true: the exercise of discretion is the exception rather than the rule.
  - If a tribunal directs itself correctly in law, the EAT can only interfere if the decision is, in the technical sense, 'perverse', i.e. no reasonable tribunal properly directing itself in law could have reached it, or the tribunal failed to take into account relevant factors, or took into account irrelevant factors, or made a decision which was not based on the evidence
  - What factors are relevant to the exercise of the discretion, and how they should be balanced, are a matter for the tribunal. Two factors that are almost always relevant when considering the exercise of any discretion whether to extend time: 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).

**Findings of fact**

18. The claimant worked as a bus driver for the respondent from 18 November 2013 until he was summarily dismissed on grounds of gross misconduct on 7 February 2024. (There were various dates provided in all the paperwork for the start and end date of employment but the parties agreed these two dates at the outset of this hearing.)
19. The respondent conducted an investigation into the altercation that occurred on the bus on 1 February 2024, followed by a disciplinary hearing, and then an appeal hearing.
20. The time limit for bringing these two claims is at the latest 3 months from the effective date of termination or effective date of the alleged discriminatory act, in this case the dismissal on 7 February 2024.
21. ACAS were notified for Early Conciliation on 16 April 2024 and the Early Conciliation certificate was issued on 22 April 2024. These dates were agreed by the parties.
22. That means that the claim form should have been submitted by no later than 22 May 2024.
23. The claimant emailed his claim form to the Employment Tribunal on 3 May 2024. The claim form is stamped as being received on 23 June 2024.

24. On 29 July 2024, Employment Judge Roper rejected the claim on the basis that it was not supported by ACAS. The claimant had mistakenly attached the wrong ACAS certificate. On the same day, the claimant wrote to the Employment Tribunal attaching correct ACAS certificate.

25. On the 17 September, Employment Judge Self directed as follows:

“EJ Self has considered the claimant’s application for a reconsideration of the rejection of his Claim. The Claim was rejected by EJ Roper initially because the ACAS EC number cited on the Claim Form related to a certificate issued in 2021 which plainly could not apply to the claimant’s dismissal and discrimination claims which are asserted to have taken place in 2024. By return on 29 July 2024 the claimant submitted an ACAS EC Certificate dated 22 April 2024, Early Conciliation having commenced on 16 April 2024. Having considered the application pursuant to Rule 13 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, I consider that the original decision to reject was correct but the defect has now been rectified and, pursuant to Rule 13 (4) the claim shall be accepted dated as having presented on 29 July 2024.”

26. Both parties accepted that the claim form was therefore deemed to have been accepted on 29 July 2024.

27. On 3 December 2024, Employment Judge Midgley issued directions for a preliminary hearing to consider this time limit point.

## **Conclusions**

28. The claimant’s position was that he submitted his claim form in time as he emailed it to the Tribunal on 3 May 2024. Email is not a prescribed method of presentation of a claim form. Rule 83(2) of the Tribunal’s Procedural Rules 2024 states that a claim form may only be delivered in accordance with a Practice Direction. The email method of submission is not specified in the relevant Practice Directions concerning the presentation of claims issued by the Employment President on 2 March 2020 (England and Wales).

29. If the claimant had not attached the wrong ACAS certificate, his claim form would have been lodged on 23 June 2024, which is the stamped date of submission on the claim form, rendering the claim approximately one month out of time.

30. But the claimant did make this error, which meant that the claim form was deemed to be received on 29 July 2024, rendering the claim over two months out of time.

31. The claimant argued in his witness statement that his delay was due to the respondent’s delay in providing him CCTV footage. The CCTV footage was of the altercation that had occurred on the bus on 1 February 2024. I do not accept this to be a good reason for the delay in submitting a claim form as the claimant was shown the CCTV footage several times during the disciplinary proceedings and appeal proceedings. He could always

have withdrawn his claim if he had received the CCTV footage later down the line and decided he did not want to proceed.

32. The claimant confirmed in his oral evidence that he has made two previous claims to the Employment Tribunal: one in 2021 and one in 2022. The claimant also stated in his witness statement that his understanding of time frames is due to his dealings on another case which is currently with the EAT and some studying background. He states that he learned the time limit by reading and researching tribunal practice directions, jurisdiction, articles and presidential order. He states that he has been studying law, including employment law, since 2020, aiming to obtain a degree. The claimant therefore has previous experience with time limits in Employment Tribunal proceedings and has specifically self-studied time limits within the employment law context.
33. My view is that it remained reasonably practicable for him to have researched on the internet how to submit a claim form properly, and/or contacted ACAS or CAB for advice. He could have filled out an employment tribunal claim form online within the time period.
34. I find that it was not only possible for the claimant to have submitted his claim correctly within the three-month time limit, but on the facts of the case, it was also reasonable to have expected him to have done so. As noted above, there is a public interest in applying time limits strictly, and they are there for a reason.
35. I find that the claimant has failed to show that it was not reasonably practicable to present the claim in time. Even if I am wrong and it was not reasonably practical for the claimant to submit his claim form within the three month window, I note that the deemed date of submission of the claim form was two months after it was due. This period of delay is not insignificant. For the same reasons given above, I find that the delay of two months means that the claim form was not submitted within a reasonable period.
36. I also find that there is no reason to exercise my wide discretion to extend time under the 'just and equitable' test, which should be the exception, not the rule. The reason for the delay, as set out above, is not a good one, and the length of the delay is not a matter of a couple of days, but a couple of months. I do not consider that the respondent would be at a significant prejudice if I did extend time as the investigation into the altercation on the bus and the disciplinary and appeal process that followed has already been well-documented. Nonetheless, this is not a reason, in and of itself, to extend time.
37. Accordingly, I find that both claims were submitted out of time, and the employment tribunal has no jurisdiction to hear this claim.
38. These claims are therefore dismissed.

Approved by:

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Employment Judge Murdoch

Date: 25 March 2025

JUDGMENT SENT TO THE PARTIES ON  
10 April 2025 By Mr J McCormick

FOR THE TRIBUNAL OFFICE