



EMPLOYMENT TRIBUNALS

Claimant: Mr Alexander Farmer

Respondent: Hitachi Rail Limited

Heard at: London Central Employment Tribunal (by CVP)
On: 27th March 2025

Before: Employment Judge Singh

Representation

Claimant: In-person

Respondent: Ms A Niaz-Dickinson

JUDGMENT

1. The claimant's claim for unfair dismissal was not presented within the applicable time limit. It was reasonably practicable to do so. The claim is therefore dismissed.

REASONS

Background

2. The Claimant pursued a claim for Unfair Dismissal only. His Effective Date of Termination is the 6th February 2024.
3. It was accepted that the ordinary time limit for the Claimant's claim expired on the 5th May 2024. He was required to lodge his claim with ACAS before that date.
4. The Claimant did not go to ACAS until the 2nd August 2024. The Claimant accepted that this was after the ordinary time limit had expired.

5. The Claimant obtained an ACAS certificate on the 6th August but did not submit his claim to the Employment Tribunal until the 13th September 2024.
6. The Respondent made an application to strike out the Claimant's claim on the 29th October 2024.

The hearing

7. The tribunal sent out directions to the parties on the 8th November 2024 in respect of this hearing. They set out dates for the parties to agree a bundle and for any person wanting to give evidence to exchange witness statements in advance of the hearing.
8. I was provided with a 97 page bundle for the hearing. The Claimant had not submitted a witness statement. He said he might not have understood what was being asked.
9. He had submitted a response to the Grounds of Resistance. This had not found its way to me before hearing started but I did have the opportunity to read it during my deliberations.
10. As there was no witness evidence to hear, the parties instead stated their position through submissions.

The Respondent's position

11. The Respondent argued that the claim was clearly submitted out of time. This was not disputed by the Claimant.
12. The Respondent argued that the Claimant had the burden of proving that it had not been reasonably practicable for him to have submitted the claim in time.
13. They accepted that the Claimant had suffered a period of ill-health recently, but according to his own time line, which was in the bundle, this had not started until after the first week in August, so after the initial time limit had expired. The Respondent reminded me that the "reasonably practicable" part of the test applied to what was done, or not done, during the 3 month time limit period.

The Claimant's position

14. The Claimant was asked questions to determine the facts of what had happened. He made several key statements which were relevant to my findings.
15. The Claimant had appealed around a week after his dismissal. He had an appeal hearing a month after the EDT. The Claimant accepted that immediately following his dismissal he felt it was wrong and wanted to challenge it.
16. The Claimant confirmed that he was contemplating pursuing an ET claim as early as March 2024. The Claimant said that he was aware there was a 3-month time limit at that point.
17. Following his appeal the Claimant engaged with the Respondent to obtain information and documents from them, as per his rights under the General Data Protection Regulations.
18. The Claimant was asked he decided to pursue the Respondent for documents and deferred submitting an ET claim. The Claimant said that he felt he had rights under the GDPR and wanted to engage them. He believed they linked with his employment rights.
19. He did not say that he believed that making a subject access request under the GDPR granted him an extension to bring a claim to the ET.
20. The Claimant was not satisfied with the first response from the Respondent to his request for documents. He then submitted a further request and received a further poor reply, in his opinion. It was that which prompted to pursue the matter through the Employment Tribunal and contact ACAS in August.
21. The Claimant said that he had taken some initial legal advice from solicitors in the summer but had not formally instructed anyone. It was not confirmed whether he received any advice in writing about time limits.
22. The Claimant said that he was unwell after the 1st week in August. This has affected his energy levels as well as his cognitive ability. At the time he had not known what the reason for his ill-health was. It was not until 31st October when he was diagnosed with a Brain Tumour.
23. He said he had tried to get information from his specialist doctors about how far back he could have been suffering the effects of the tumour, before it was finally diagnosed, but this has not yet been provided.
24. The Claimant also confirmed he drafted and submitted the claim form himself in September 2024.

The law

25. Section 111(2) states that, in relation to a claim for Unfair Dismissal,

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.

26. In this case, it was accepted that the claim was presented after the end of the three month period and so only second part of the section needs to be considered.

27. What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide.

28. The burden of proof falls on the Claimant.

29. Several cases have attempted to provide guidance as to what “not reasonably practicable” means.

30. In *Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53, CA, the Court of Appeal said that the phrase should be given ‘*liberal construction in favour of the employee*’.

31. In *Palmer and anor v Southend-on-Sea Borough Council* 1984 ICR 372, CA, the Court of Appeal 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’.

32. In *Lowri Beck Services Ltd v Brophy* 2019 EWCA Civ 2490, CA, Lord Justice Underhill stated that the test does not only refer to physical impracticability.

33. An employee who is ignorant of his rights or of the time limits may be granted an extension, but there needs to be consideration as to whether the ignorance is reasonable. This may require an analysis of the enquiries

the Claimant made of his legal rights and what access he had to information or advice.

34. In Schultz v Esso Petroleum Co Ltd 1999 ICR 1202, CA, the Court of Appeal accepted that illness may justify the late submission of claims. However in Asda Stores Ltd v Kauser EAT 0165/07, the EAT stated that mere stress is unlikely to be sufficient.

35. If illness is being relied upon, medical evidence should be provided.

My decision

36. I find that it was reasonably practicable for the Claimant to have submitted his claim inside the normal 3 month time limit. As such, there is no basis for me to extend the time limit and the claim must be struck out as the Tribunal does not have jurisdiction to hear it.

37. I have focused on what happened inside that time limit and the Claimant's explanation of what he knew and what he did in that period.

38. The Claimant said he was having cognitive difficulties in August 2024. Although I have not seen medical evidence about that, it is outside the relevant period anyway so does not impact my finding.

39. The Claimant did not say he was suffering from those health problems before the 3 month time limit expired in May 2024.

40. The Claimant's actions in that period indicated to me that he would have been able to submit a claim.

41. The Claimant engaged with his employer to say he was unhappy with the decision to dismiss when he appealed. This would have been similar to all he would have needed to do to submit a claim to the ET.

42. The Claimant also engaged with his employers about the request for documents and information. He was clearly, in my opinion, able to communicate, comprehend the Respondent's response and formulate a response himself. This contradicts any argument that the Claimant did not have sufficient cognitive ability to be able to pursue a claim inside the normal time limit.

43. He also accepted that he had knowledge of his right to pursue a claim and the time limits for doing so.

44. He has not sufficiently explained why he chose to ignore the time limits.

45. He did not say that he needed to see the outcome of the DSAR before he could decide whether to pursue a claim or whether there was key information he was expecting to receive from it.
46. For these reasons, I find that it was reasonably practicable for the Claimant to have submitted his unfair dismissal claim in time.

Employment Judge **Singh**

_____28th March 2025_____

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

10 April 2025

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FOR THE TRIBUNAL OFFICE