EMPLOYMENT TRIBUNALS

Claimant: **Ms Renata Stochmal**

Respondent: **Vinci Construction Terrassement UK Ltd**

Heard at: **Midlands West ET (via CVP)** **On:** **21 March 2025**

Before: **Employment Judge Boyle**

Representation

Claimant: in person (interpreter present Mr M Adam)

Respondent: Ms Louise Whittington (Counsel)

JUDGMENT

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

2. The tribunal has no jurisdiction to hear a claim related to “personal data processing”. Therefore this claim is dismissed.

3. The claimant had not been employed by the respondent for at least two years when her employment ended. The claim of unfair dismissal is therefore dismissed because the Tribunal does not have jurisdiction to determine it.

REASONS

Request for reasons

1. The claimant made an oral request for reasons at the end of the oral judgment delivered on 21 March 2025. The claimant also made a written request for reasons on 21 March 2025.

Claims and Issues

2. The claimant presented a claim with Midland West Employment Tribunal on 2 December 2023. alleging unfair dismissal (based on protected disclosures), and ordinary unfair dismissal and "personal data processing".
3. Whilst the claimant did not refer specifically to whistleblowing or protected disclosures in her ET1 form the claimant was able to refer me specific passages in her particulars where she says she made protected disclosures. These included her reference to "illegal alteration of documents" and her referring this to her manager.
4. I was satisfied that on an objective reading of the ET1 (and its particulars) that it was in the interests of justice for this application to consider whether the claimant's automatic unfair dismissal claim was presented in time. It is the same test as for unfair dismissal.
5. The claimant says she also brings a claim for discrimination because of sex and/or nationality. I asked the claimant to show me in her ET1 and particulars where she brings this claims. She referred to the passage in her particulars which states:

   "*My line manager's decision, his disrespect for my work, his pressure on me, the corporate culture, the serious violation of the employment contract forced me to resign".*

6. The claimant did not tick boxes under 8.1 regarding discrimination but did tick the box above for unfair dismissal and the box below to indicate that she was making "another claim" in the ET1 form. When pressed by me, the claimant said that maybe she missed the discrimination boxed because she was rushed. I do not find this particularly credible as she clearly read the whole page and ticked boxes above and below the discrimination section.

7. Her particulars show no obvious claim for discrimination. I do not necessarily expect a litigant in person to use the work discrimination, but there must at least be an indication that the claimant believed the treatment was "because of" of "due to " her sex or nationality.

8. The claimant did tick box 9.1 but I believe on a fair reading of this, this was because.she was looking for remedies other than compensation.

9. The claimant did provide particulars, when prompted to do so, on 4 May 2024 where she gives some information about a possible claim for discrimination. This information was not contained in her ET1 or its particulars. The respondent opposed the claimant's position that she had already brought any type of discrimination claim and stated that she would need to make an amendment application.

10. Reading the ET1 and particulars objectively I could find no reference to any type of discrimination claims. I determined at the start of the hearing that if the claimant wished to bring a claim for discrimination she needed to an amendment application.

11. There was a further suggestion that the claimant had brought a detriment claim arising from her alleged protected disclosures. I was not asked to address this at the hearing. If I had done so, I would have said that this would also need to be the subject of an amendment application. Bearing in mind the outcome of today's hearing, such an application could not have been made. However, if it had the same test regarding "out of time" would also be applied to claims under s47 Employment Rights Act 1996.

12. This hearing was listed to determine "time issues" and I determined that it is in the interests of justice that this application is heard first. If the claimant had been successful she could have made an amendment application to include claims for discrimination. This is now obsolete as the claimant's entire claim has been struck out.

13. The respondent lodged an ET3 denying all claims. The respondent in its ET3 raised a potential jurisdictional point regarding the claimant's claims – namely that they were all presented outside of the primary time limit (subject to ACAS Early Conciliation) that applies for each claim.

14. A Judge ordered that a public preliminary hearing take place to consider time matters and that is what came before me on 21 March 2025.

Procedure documents and evidence

15. I received three bundles – two from the claimant and one from the respondent. I pointed out to the parties that this was not ideal, particularly as there was a large degree of overlap in these bundles. I have considered all documents I was referred to during the hearing.

16. The claimant requested an interpreter to assist her during the hearing and Mr Adams attended the hearing. The parties conversed with and understood each other when speaking in Polish. I advised the claimant that she could use the interpreter how she wished. She did not require everything to be translated. Cross examination was largely carried out via the interpreter.

17. The hearing was not always straightforward and several times I intervened (particularly during cross examination) to remind the claimant that she needed to answer the questions put to her and not to give further evidence.

18. The claimant had not produced a witness statement (she was not directed to do so). She read from a prepared statement and was then cross-examined by the respondent's counsel.

19. Both parties made submissions which were also considered by me before making a decision.

Submissions

20. The submissions can be summarised as follows

Respondent's submissions:

a. A reminder of the two stage nature of the S111(2)(b) Employment Rights Act 1996 test.
b. The Tribunal has limited scope to extend the time limit and ignorance of time limits is generally not a good defence.

c. The claimant's reasons for bringing her claims late are being ignorant of her rights and the pursing other claims. There was no reference to unfair dismissal in any correspondence with ACAS, the ICO and Ombudsman.
d. When the claimant spoke to ACAS it was regarding personal data There is no positive evidence in November 2022 that she was intending to bring a claim for unfair dismissal.
e. The Employment Tribunal can take judicial notice that if ACAS understood there was a constructive dismissal claim they would have acted accordingly.
f. The claimant has not been misled by ACAS.
g. It is entirely irrelevant how other bodies were dealing her claims. The ICO and Ombudsman were dealing with data breaches. There is no reference in their correspondence to dismissal.
h. The claimant was not incapacitated during this period and knew how to conduct research – she is intelligent. She was simply focussed on the data protection and HMRC issue.
i. Reference was made to the authority of *Walls Meat* where it held that it is a question of fact whether claimant made sufficient enquiries. The respondent says there no evidence why she didn't do so in primary time limit. The claimant's ignorance was not reasonable based on her knowledge and abilities and her clear ability to articulate claims to other organisations. She could have done research and found the relevant time limits.
j. Claimant's evidence is that in September 2023 she started researching and then contacted ACAS in November 2023. She was clearly able and competent to do so. The claimant knew she had resigned and unhappy with resignation. Evidence is that she was preoccupied in HMRC and DP.
k. There is no evidence of poor advice being given to the claimant.
l. On the second limb of test, the claimant should have taken urgent and immediate action and her delay is not reasonable. Her claim was not lodged until December 2023 more than 16 months after resigned The main person she complains about left the respondent organisation in November 2022.

21. Claimant submissions

a. The claimant's claim was late but this is excusable. It was not reasonably practicable for her to submit her claim by 4 November 2022 due to ACAS

misdirection and then the time taken by the ICO and Ombudsman to consider her claims.

b. She started researching options quickly. There is evidence of disclosures made during her work place in July and August 2022 and she didn't understand why they said she was still on probation as she believed she had been made permanent.
c. Her evidence shows the truth.
d. She made disclosures on 15 July 2022 18 July 2022 and 1 August 2022 drove her resignation. The termination date was 5 August 2022
e. Her delay was excusable. There was external delay beyond her control and she was diligent and took proactive steps in September 2023 – and October 2023 and sought ET procedures and reconnected with ACAS .

22. At the end of the hearing, and after judgment had been given the clamant demanded that I respond to various emails she had sent to the Tribunal. She also said that she would sue both me and the respondent's barrister. I address this below at the end of this judgment.

Fact findings

23. The claimant was employed by the respondent as a Surface Water and Flood risk discipline lead from 27 January 2022 to 5 August 2022. The claimant resigned on 29 July 2022 and her last day of employment was 5 August 2022. The claimant does not have 2 years' service and therefore cannot bring an ordinary claim for unfair dismissal.

24. The claimant accepted, and her resignation letter dated 29 July 2022 shows, that she believed the respondent had breached her contract. She says she made protected discloses in July and August 2022. I make no findings on those – save that it is clear that at the time of dismissal the claimant had formed a clear view that she had been forced to resign. In her evidence she said that the respondent had made "serious errors" that forced her to resign.

25. Following her resignation, it is clear from various documents referred to me in the bundles that the claimant was also trying to resolve data protection breaches and issues in relation to taxation with the respondent..

26. The claimant made first contact with ACAS in October 2022 which would have been inside the primary time limit. The first written reference to ACAS is when they are copied into an email from Brahim Hajli of the respondent to the claimant dated 18 November 2022. The email concerns:

f. Access to the claimant's payslip

g. Request from the claimant to "correct data"

h. incorrect tax issues with HMRC

27. ACAS were copied into further correspondence passing between the parties on 29 November 2022 and 8 December 2022. This correspondence related to matters referred to payslip, document correction and tax issues.

28. ACAS wrote to the claimant on 9 December 2022 stating:

> "*Dear Renate Please can you confirm that the payslip issue is now resolved so that ACAS can close the matter? I appreciate you are still sorting the other data issue with the employer but that is outside of early conciliation process!*

29. ACAS wrote to the claimant again on 9 December 2022 stating: *"thank you for confirming this matter is resolved. As discussed with you, if you believe there have been data breaches, then the you need to seek advice from the …ICO"*

30. Whilst the claimant said she was misdirected by ACAS at this time I do not find this to be the case. The contemporaneous emails between the claimant and ACAS shat that time show that the ACAS were only assisting the claimant with a pay slip issue and a data protection issue.

31. Taking judicial notice, I have no doubt that if the claimant had said to ACAS that she had resigned due to breaches of contract or protected discourse, ACAS would have directed her to register for Early Conciliation. For whatever reason, this was clearly not her focus at the time and there is no evidence that this was a matter with which the claimant engaged ACAS at that time.

32. The claimant was not in any way incapacitated during the relevant time and was clearly actively pursuing disputes relating to tax and data protection with her former employer and government agencies from August 2022 onwards.

33. From November 2022 to around 29 August 2023 the claimant was engaged in correspondence with her former employer the respondent, HMRC, the IOC and thereafter the Information Ombudsman. This is all contained in documents referred to me in the bundles. There is no evidence that at any stage did the claimant believe any of these bodies were looking at an unfair dismissal claim for her – the issues either related to her tax affairs or data protection issues.

34. For reasons that are not clear, the claimant whilst knowing she had a potential employment law claim at the date of her resignation, did not pursue with either with ACAS Early Conciliation or a claim to the ET at any point during this time.

35. The claimant was not able to point to any advice received to say that she should delay her Employment Tribunal claim.

36. Following the correspondence with the Ombudsman on 29 August 2023, the claimant's evidence is that she began researching her employment law rights independently from September 2023. She tried to seek free legal advice but was not able to secure it.

37. The clamant reconnected with ACAS on 9 November 2023 and then completed Early Conciliation on 13 November 2023.

38. There was an error with her original ET filing as she did not enclose a ACAS certificate so issued a second and this time valid ET1 on 2 December 2023. The claim appeared to be a claim or constructive unfair dismissal and for personal data issues.

39. The claimant ticked the box unfair dismissal in 8.1 of the ET1.

40. The claimant is computer literate and did not describe any issues with using and lodging the ET1 claim form.

The law - out of time

Time Limit – unfair dismissal

41. The time limit for unfair dismissal claims is three months. Section 111 of the Employment Rights Act 1996 ('ERA') provides that:

'(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) Subject to the following provisions of this section, 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.

(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).'

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.'

Extension of time limit for early conciliation

42. The clock stops when ACAS receives the early conciliation request and starts to run again the day after the prospective claimant receives the certificate:

'*(2) In this section—*
(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.'
[Section 207B, ERA]

The "reasonably practicable" test

43. 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 at p.948E]

44. Accordingly, if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the Tribunal may find it was. This was explained in Sterling v United Learning Trust EAT 0439/14 *per* Mr Justice Langstaff (President) at §23:

'*Where an argument is not pursued before a Tribunal, a Judge is entitled to conclude that, since the burden is on the Claimant to show that it was not reasonably practicable, she has failed to discharge that burden*.'

45. There is no authoritative definition of 'reasonably practicable,' but Lord Justice Underhill summarised the essential points from the case law in Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490, CA at §12:

'*(1) The test should be given "a liberal interpretation in favour of the employee (Marks and Spencer plc v Williams-Ryan [2005] EWCA Civ 470, [2005] ICR 1293, which reaffirms the older case law going back to Dedman v British Building & Engineering Appliances Ltd [1974] ICR 53).*
(2) The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was 'reasonably feasible' for the claimant to present his or her claim in time: see Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119…
(3) If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will have been reasonably practicable for them to bring the claim in time (see Wall's Meat Co Ltd v Khan [1979] ICR 52); but it is important to note that in assessing whether ignorance or mistake is reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made.
(4) If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (Dedman).
(5) The test of reasonable practicability is one of fact and not of law (Palmer).'

46. When assessing the reasonableness of a claimant's ignorance, the question for the Tribunal is:

'*ought the plaintiff to have known and, if he did not know, has the applicant given a satisfactory explanation of why he did not know?*'
[Porter v Bandridge Ltd 1978 ICR 943, CA at p.949D]

47. Where the claimant is generally aware of his rights, he will generally be taken to have been put on inquiry as to the time limit. *Per* Lord Scarman in Dedman v British Building and Engineering Appliances Ltd [1974] 1 All ER 520, CA at p.528E:

'*…does total ignorance of his rights inevitably mean that it is impracticable for him to present his complaint in time? In my opinion, no.*

It would be necessary to pay regard to his circumstances and the course of events. What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?
Should there prove to be an acceptable explanation for his continuing ignorance of the existence of his rights, it would not be appropriate to disregard it, relying on the maxim "ignorance of the law is no excuse." The word "practicable" is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance.
But what, if, as here, a complainant knows he has rights, but does not know that there is a time limit? Ordinarily, I would not expect him to be able to rely on such ignorance as making it impracticable to present his complaint in time. Unless he can show a specific and acceptable explanation for not acting within four weeks, he will be out of court.'
(emphasis added)

48. As Judge LJ observed in London Underground Ltd v Noel [2000] I.C.R. 109 at p.117G:

'*The power to disapply the statutory period is therefore very restricted. In particular it is not available to be exercised, for example, "in all the circumstances," nor when it is "just and reasonable," nor even where the Tribunal "considers that there is a good reason" for doing so.*
As Browne Wilkinson J (as he then was) observed: "The statutory test remains one of practicability … the statutory test is not satisfied just because it was reasonable not to do what could be done" (Bodha v Hampshire Area Health Authority [1982] ICR 200 at p 204).'

49. Even if a claimant satisfies a Tribunal that presentation in time was not reasonably practicable, it does not automatically decide the issue in his favour. The Tribunal must go on to whether the claim was presented within such further period as the Tribunal considers reasonable. In Cullinane v Balfour Beattie Engineering Services Ltd UKEAT/0537/10, Underhill P (as he then was) held at §16:[1]

'*The question at "stage 2" is what period – that is, between the expiry of the primary time limit and the eventual presentation of the claim - is reasonable. That is not the same as asking whether the claimant acted reasonably; still less*

is it equivalent to the question whether it would be just and equitable to extend time.

It requires an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted - having regard, certainly, to the strong public interest in claims in this field being brought promptly, and against a background where the primary time limit is three months.'

Jurisdiction

50. If a claim is presented out of time, the Tribunal has no jurisdiction to hear it. The Court of Appeal endorsed first instance principles in Dedman v British Building and Engineering Appliances [1974] ICR 53, CA *per* Lord Denning MR at p.59H:

'*According to the decisions of the Industrial Court, the time limit is so strict that it goes to the jurisdiction of the tribunal to hear the complaint. By that I mean that, if the complaint is presented to the tribunal just one day late, the tribunal has no jurisdiction to consider it.*

Even if the employer is ready to waive it and says to the tribunal: "I do not want to take advantage of this man. I will not take any point that he is a day late:" nevertheless the tribunal cannot hear the case. It has no power to extend the time: see … Rogers v Bodfari (Transport) Ltd [1973] ICR 325, NIRC.'

51. The burden of proof for establishing that it was not reasonably practicable to present the claim in time is on the claimant. The issue is whether it was reasonably practicable for the claimant to have presented his claim (or contacted ACAS) within the three-month time frame. Reasonably practicable does not mean reasonable, nor does it mean simply physically possible, but means something like "reasonably feasible".

52. Individuals who have acted "reasonably" may fall foul of the time limit provisions. As Lady Smith in Asda Stores v Kauser EAT 0165/07 explained: "The relevant test is not simply a matter of looking at what was possible but to

ask whether, on the facts of the case, it is reasonable to expect that it was possible to have been done."

Conclusions

53. The claimant does not have two years' employment with the respondent and therefore there is no jurisdiction to hear an ordinary unfair dismissal claim. Therefore this claim is struck out.

54. A claim for automatic unfair dismissal is made under the Employments Rights Act 1996 . This is a day one right for employee. However the test remains that claims must be brought within 3 months of the termination date. The "reasonably practicable" test applies here.

55. I considered the following factors:

    a. It is accepted that the claims were presented over a year late (around 13 months).
    b. The claimant was aware when she resigned that she was unhappy her employer's actions. She said she had no option but to resign and described serious errors by the respondent which forced her resignation.
    c. The claimant found her way to ACAS within the normal time period. I have found that she did not , for reasons unknown, make ACAS aware that she believed she had been forced to resign.
    d. ACAS believed her claims related to pay slips a tax issue with HMRC and data protection issue. Once the pay slip issue was closed ACAS properly directed the claimant to the ICO regarding data protection issues.
    e. I find that the claimant was not misled by ACAS.
    f. The claimant could (if she found her way to ACAS) have with reasonable diligence discovered that employment law rights such as unfair dismissal have set time periods for presenting a claim. She would only have had to put this is one sentence to ACAS (eg "I have been forced to resign") and it is highly probably that they would have directed her to register for Early Conciliation.
    g. The claimant is an educated person who held an important job with the respondent and who was used to using a computer or phone to look up matters..
    h. Time limits are considered important in the Employment Tribunal jurisdicition It is in the interest of the parties and justice for time limits to be followed in the main, but there are some exceptions to this. Time limits for bringing claims in the Employment Tribunal are short for good reason as respondent employers should not be in the normal course of events be

surprised some 16 months after a dismissal that they now have to defend a case.

56. I find that the claimant with reasonable diligence could have discovered her rights and the correct time limits at some point between August and November 2022. She had already engaged with ACAS in October 2022.

57. The claimant was solely focused on her HMRC and data protection issues. Once she came to the end of the road with these issues her mind turned back to her dismissal at the end of August 2023.

58. The claimant knew of all the factual issues which she now says amounted to unlawful treatment at the time. She could have done research. The existence of the Employment Tribunal is well-known. Rights and the possibility of action are easily accessible via search engines.

59. The claimant was not in any way incapacitated during the relevant time and was clearly actively pursuing disputes relating to tax and data protection with her former employer and government agencies from August 2022 to August 2023.

60. Taking all the above into account I find that it would have been reasonably practicable for the claimant to have lodged her claim within the primary time limit of 3 months subject to any extension for ACAS early conciliation.

61. Even if I am wrong on this, I have gone on to consider whether, in any event, the claimant went on to bring her claim within a reasonable time period. The claimant says she was diligent at this time. I disagree. The claimant says she was starting to research her rights in September 2023 yet she did not engage with ACAS as regards Early Conciliation until 13 November 2023 some two months later. This is bearing in mind that she had already engaged with ACAS the previous year and therefore clearly knew how to use their services.

62. Any basis research would have told her that she was already outside of the primary time period and therefore I would have expected to her to move very quickly here to contact ACAS and get her ET1 lodged – probably in September 2023. Therefore I conclude that in any event the claimant did not then submit her claim to the Employment Tribunal in a reasonable time.

63. In conclusion, the claim for automatic constructive unfair dismissal, was not presented within the applicable time limit. It was reasonably practicable to do so. This claim is therefore dismissed.

64. The claimant does not have two years' service and therefore there is no jurisdiction to hear an ordinary unfair dismissal claim. Therefore this claim is dismissed.

65. For the sake of completeness, I have also dismissed the "personal data processing" claim reference under 8.1 of the ET1. There is no jurisdiction to hear a claim of this nature in the Employment Tribunal.

Additional request from the Claimant

66. At the end of the hearing, the claimant demanded that I respond to her emails and said that "a judge had said these would be addressed at the hearing".

67. In her written request for reason, the claimant re-iterated this and said

> *Additionally, during the hearing on 14 March 2025 (supplement bundle, Page 50), the judge indicated they would consider my emails to the Tribunal, including my letter dated 14 March 2025 (Claimant's Agenda, Pages 31-32).*
>
> *These, along with other submissions (e.g., Claimant's Agenda, Pages 9, 16, 61-67, 70, 78-79, 82-83), addressed contradictions in the Respondent's Investigation Report and potential misconduct by the Respondent's Representative.*

68. I believe the claimant is referring to an email from the Tribunal dated 14 March 2025 that says:

> *Dear Sir/Madam,*
> *Regarding the emails sent to the Tribunal, Senior Legal Officer, Metcalf, has directed that all matters will be dealt with at the hearing on 21st March 2025.*
> *Thank you.*

69. Therefore it is not the case that a Judge either considered the claimant's emails or ordered that they would be responded to at this hearing. I have

nonetheless considered the claimant's correspondence that she refers to.

70. As her claims have now been struck out, there is no reason or basis for responding to this correspondence as it relates to matters for case management. None of the correspondence relates to the time point before me at the hearing.

Approved by: *Employment Judge Boyle*

Employment Judge Boyle

28 March 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/