



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001960/2024

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Held in Glasgow via Cloud Video Platform (CVP) on 7 May 2025

Employment Judge L Wiseman

10 **Dr A Kutsawa**

**Claimant
In Person**

15 **Maximus UK Services Ltd**

**Respondent
Represented by:
Mr A Macmillan -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the tribunal is that the claim was presented late and that it would not be just and equitable to extend the time limit. A tribunal does not have jurisdiction to determine the claim. The claim is struck out.

REASONS

- 25 1. This hearing was a preliminary hearing to determine the issue of timebar.
2. I heard evidence from the claimant, submissions from both parties and I was referred to a number of documents. I, on the basis of the evidence before me, made the following material findings of fact.

Findings of fact

- 30 3. The claimant commenced employment with the respondent on the 17 April 2024. The claimant was employed as a registered Medical Practitioner.
4. The claimant was dismissed on 1 July 2024, and paid two weeks in lieu of notice.

5. The claimant contacted her local MP's office on 22 July 2024 to seek guidance, advice, support and help to escalate her concerns of discrimination. The claimant did not receive a response and sent a follow-up on 12 August.
6. The claimant received a reply on 9 September and participated in a telephone
5 call on 8 October.
7. The claimant was advised, in a phone call on 14 November, to contact ACAS. The claimant contacted ACAS on 19 November and obtained an Early Conciliation Certificate on 25 November 2024.
8. The claimant was frustrated with the delay by the local MP's office and so she
10 contacted the British Medical Association (BMA) to seek advice, but was advised they could not help because she is not a member of the BMA.
9. The claimant did not carry out any independent research regarding bringing a claim in the Employment Tribunal or applicable time limits.
10. The claimant presented a claim to the Employment Tribunal on the 25
15 November 2024. The claimant brings complaints of discrimination because of the protected characteristics of race and disability. The complaint of race discrimination is a complaint of direct discrimination concerning allegations of less favourable treatment during the course of the claimant's employment. The complaint of disability discrimination is a complaint of failure to make
20 reasonable adjustments. The claimant also complains that her dismissal was discriminatory.

Respondent's submissions

11. Mr Macmillan submitted all claims should be struck out because the tribunal
25 had no jurisdiction to hear the claims because they had been presented out of time and there was no just and equitable basis to extend time.
12. Mr Macmillan referred to page 32 of the documents where the respondent's jurisdictional arguments were set out. The claimant had been dismissed on 1 July 2024 with two weeks' payment in lieu of notice. The effective date of termination was 1 July 2024.

13. The claimant contacted ACAS on 19 November 2024 (day A). This was significantly late in circumstances where the last day for making contact was 30 September 2024.
14. Mr Macmillan noted there was no suggestion of any discrimination beyond 1 July 2024. The further particulars provided by the claimant confirmed, in respect of the complaint of direct race discrimination, that all alleged incidents of less favourable treatment occurred within the period of employment. This was the same for the complaint of failure to make reasonable adjustments, where the main focus of the claim was February 2024 and occupational health. The dismissal which the claimant asserted had been discriminatory took place on 1 July 2024. The claimant confirmed there were no further legal complaints. Accordingly, there was no suggestion of any alleged discrimination beyond 1 July 2024.
15. Mr Macmillan referred the tribunal to the case of ***British Coal Corporation v Keeble 1997 IRLR 336*** where the EAT set out a number of factors which may be of assistance for tribunals considering the exercise of the just and equitable discretion. One such factor was the reason for delay. Mr Macmillan noted the claimant did not seek to argue that her disability was the reason, or part of the reason, for the delay. The reason for delay was because the claimant waited for guidance from the local MP's office.
16. Mr Macmillan noted the claimant was a highly intelligent and articulate person, and she had made enquiries in her community, of the local MP's office and of the BMA. It was surprising that the claimant had not taken any further steps to seek advice or carried out any google search.
17. The claimant was responsible for ensuring her claim was presented in time and it could not be right to blame administrative delays in the local MP's office.
18. The balance of prejudice also had to be considered by the tribunal and Mr Macmillan submitted the balance of prejudice lay with the respondent, who would be required to divert resources away from public health in order to defend the claim. Mr Macmillan acknowledged the claimant would lose the right to pursue her claim, but submitted the claim was weak with no

reasonable prospect of success. The claimant, in the further particulars, had struggled to address factual vagueness with regards to the dates of the alleged less favourable treatment and the alleged instances of less favourable treatment were not inherently racist and were weak on the “because of” issue, with no actual comparator. The claimant had also struggled to identify the provision, criterion or practice (PCP) of the respondent said to have caused disadvantage which the respondent had a duty to remedy by making reasonable adjustments. The possible PCPs which could be identified from the facts advanced by the claimant were unlikely to be found to exist.

- 10 19. In conclusion, Mr Macmillan invited the tribunal to strike out the claim because it was late and there was no just and equitable basis to extend time.

Claimant's submission

- 15 20. Ms Kutsawa accepted the ET1 claim form had been presented late, but submitted that if the local MP's office had not thought the claim worthy, they would not have advised her to contact ACAS. The claimant had acted on that advice and could not be blamed for their delay.

- 20 21. Ms Kutsawa accepted that the allegations of discrimination occurred during the course of her employment and culminated with her dismissal. She considered there had been an injustice and this should be addressed by the tribunal notwithstanding the claim was late.

Discussion and decision

- 25 22. I firstly had regard to the relevant statutory provisions set out at section 123 Equality Act, which provides that proceedings may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. Section 123(3) acknowledges that conduct extending over a period is to be treated as done at the end of the period.

- 30 23. I next had regard to the fact there was no dispute that alleged acts of discrimination occurred during the course of the claimant's employment and culminated in the dismissal of the claimant on 1 July 2024. Accordingly, the

dismissal on 1 July 2024, is the latest date of an act to which the complaint relates: in other words, that is the date from which the time limit starts.

24. The claimant had a period of three months less one day from the 1 July 2024 in which to present a claim to the Employment Tribunal or make contact with ACAS. The claimant did not do either of these things. The claimant did not make contact with ACAS until 19 November 2024 and did not present her claim until 25 November 2024. The claim was presented late.
25. Section 123 Equality Act makes clear that tribunals have a discretion to extend the time limit for presenting a claim where they think it is “just and equitable” to do so. I had regard to the fact that in exercising this discretion tribunals may have regard to the list of factors set out in section 33 of the Limitation Act 1980 (as modified by the EAT in ***British Coal Corporation v Keeble 1997 IRLR 336***) although the list of factors should not be adhered to slavishly (***Southwark London Borough Council v Afolabi 2003 ICR 800***). I also had regard to the case of ***Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR 5*** where it was stated that the best approach when considering the exercise of the discretion is for the tribunal to assess all factors in the particular case that it considers to be relevant, and in particular, the length of and reasons for the delay. This tribunal had regard to this guidance and adopted this approach.
26. I had regard to the evidence given by the claimant today. The claimant was a credible witness and she had kept a note of her various emails and telephone calls with the local MP’s office. The claimant understood, from asking within her community, that making contact with the local MP’s office was the route to take in order to receive advice, guidance, help and support to escalate the matter. The claimant approached the local MP’s office on 22 July and ultimately received advice to contact ACAS on 14 November 2024. This was the reason for the delay. The claim was presented almost 2 months late.
27. I next had regard to the fact the claimant contacted the BMA for advice, but could not receive assistance because she was not a member of the BMA. I took from this that the claimant was frustrated with the delay in receiving

advice from the local MP's office, and explored other avenues. I considered, against this background, that the fact the claimant took no other action to explore her rights in challenging what she considered to be discrimination, surprising and unusual. The claimant told the tribunal she was unaware of her right to go to an employment tribunal. I had no reason to doubt this, but the question for me is whether her ignorance of the right was reasonable.

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28. The claimant could not offer any explanation why she had not carried out a search, for example on Google, to access information regarding discrimination and employment. Mr Macmillan, in his submission, described this as "unfathomable" and I also formed that view, particularly as the claimant is a highly qualified person, working within a profession where technology is commonly used. I concluded, for these reasons, that the claimant's ignorance of her rights was not reasonable and I say that because the claimant could, and should, have done more to inform herself about action she could take and the timescales for doing so.

29. I noted the claimant did not seek to rely on her disability as the reason for any delay. The cause of the delay was entirely focussed on the fact the claimant waited for advice from her MP's office.

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30. I next had regard to the balance of prejudice, where the burden is on the claimant to show that her prejudice would outweigh that of the respondent. I accepted that if I exercise my discretion to extend the time limit, the respondent will be required to defend the claim and there will be costs associated with this. Mr Macmillan supported that position by submitting there were clear weaknesses with the claimant's case. Mr Macmillan referred to the fact there had been a case management hearing where the statutory basis of the claims had been clarified, and the claimant directed to provide further particulars of the claims. His submission regarding the weakness of the claim was based on the information provided by the claimant in the claim form, agenda and further particulars.

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31. I had regard to the claim form, the agenda, the further particulars and the Note issued after the case management hearing. I noted that following the case

management hearing the claimant had been ordered to provide further details of her complaints, and in particular, with regard to the complaint of direct race discrimination, to provide the dates of the alleged acts, who was involved and what was said/done. Further, in relation to the complaint of failure to make reasonable adjustments, to provide (amongst other things) details of the provision, criterion or practice said to have been applied by the employer and which put her at a substantial disadvantage.

32. I noted the claimant, whilst setting out a number of incidents of alleged less favourable treatment, did not provide details of the dates (or approximate dates) when those acts were said to have occurred. The fact the claimant has not provided dates is not fatal to her claim, but it is a factor which may weigh against the credibility of the claimant's evidence, particularly if the respondent has no recollection of the incident alleged.

33. I next noted, in relation to the complaint of failure to make reasonable adjustments, the claimant did not particularise the provision, criterion or practice. I acknowledged the claimant is a litigant-in-person and formulation of the provision, criterion or practice can be difficult. However, against this, I balanced the fact the claimant should be able to state the practice of the employer which put her at a disadvantage because of her disability. This complaint appeared to focus on the claimant's position that the respondent should have referred her to occupational health before making the decision to dismiss. I accepted the respondent's submission that any formulation of a provision, criterion or practice based on the information provided (for example, a practice of not referring employees to occupational health prior to dismissal) would have little chance of being successful.

34. I next considered the balance of prejudice to the claimant and I accepted that if I refused to exercise my discretion, the claimant will be denied the opportunity to pursue a claim of (alleged) discrimination.

35. I balanced my conclusion that the prejudice to the respondent of extending the time limit would be that they will be required to defend the claim, where there would, on the face of it, appear to be some weakness in the claim. There

has already been a cost to the respondent in attending the case management hearing and this hearing; and the final hearing is likely (in my estimate) to be at least a 3 day hearing. I balanced this with the fact that if time is not extended, the claimant will not be able to pursue her claim of discrimination. I concluded that in the circumstances of this case, the balance of prejudice was with the respondent. I reached that conclusion because although the claimant would not be able to pursue the claim if time is not extended, this situation could have been avoided if the claimant had taken steps to carry out independent research into her right to challenge what had happened at work.

10 36. I next stood back and had regard to the factors set out above. First, the claim was presented almost two months late, and the reason for the lateness was because the claimant contacted her local MP's office for guidance and support, and was not advised to contact ACAS until 14 November. Second, the claimant's ignorance of her right to bring a claim and the time limits for doing so was not reasonable in circumstances where the claimant took no steps to inform herself of what action she could take. I acknowledged the claimant contacted the BMA, but she could not offer any explanation why she had not researched the matter on the internet. The claimant, albeit she was frustrated with the delay, took no action to address this. Third, the balance of prejudice (if the time limit is extended) lies with the respondent for the reasons set out above.

25 37. I decided, having had regard to these factors, that the claim was presented late and it would not be just and equitable to extend the time limit. A tribunal does not have jurisdiction to hear the claim because it is late and the claim is struck out.