



EMPLOYMENT TRIBUNALS

Claimant: Mr P Shield

Respondent: Durham County Council

Heard at: Newcastle (by CVP) **On:** 29 May 2025

Before: Employment Judge Robertson (sitting alone)

Representation

Claimant: In person

Respondent: Ms I Brunton, counsel

JUDGMENT

The claimant did not present his claim to the Tribunal within the time-limit in section 111(2) of the Employment Rights Act 1996. The claim is out of time and is dismissed.

REASONS

1. The claimant, Mr Shield, was employed by the respondent, Durham County Council, as a Gardener from 3 March 2014 until his summary dismissal on 23 August 2024.

2. The claimant brings a claim to the Tribunal that the dismissal was unfair within Part X of the Employment Rights Act 1996 (the 1996 Act).

3. This is a Preliminary Hearing to decide if the claim has been presented out of time. The claimant has appeared in person with support from his family. He gave sworn evidence. Ms Brunton, counsel, has represented the respondent.

4. A claim of unfair dismissal is made to an employment tribunal under section 111 of the 1996 Act. Section 111(2) provides that an employment tribunal shall not consider a complaint under the 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.

6. The claimant was dismissed on 23 August 2024. The primary time limit of three months beginning with the effective date of termination of employment therefore ended on 22 November 2024. ACAS early conciliation began on 18 December 2024 and ended on 23 December 2024. That means that the extension of time under section 207B of the 1996 Act to facilitate early conciliation does not assist the claimant as the time-limit had already expired before he began early conciliation. The claim was presented to the Tribunal on 14 January 2025. On the face of it, therefore, the claim is out of time.

7. As I have said, the claimant was dismissed on 23 August 2024. He appealed against his dismissal. That indicates that he considered the decision to dismiss him had been wrong. Neither he nor Ms Brunton could tell me exactly when he appealed but it must have been within a short period after the dismissal. The appeal was heard on 28 November 2024 when the claimant was accompanied by a work colleague but was unsuccessful.

8. The claimant suffered what he described as a mental breakdown after his dismissal. He saw his GP and was prescribed anti-depressants. He described being unable to get out of bed or do anything but his mental health was “up and down”. He did not consider bringing an unfair dismissal claim until his appeal was unsuccessful. He told me, and I accept, that he expected to get his job back at the appeal and he had not thought about taking any other action.

9. After the appeal the claimant felt he had been unfairly dismissed. He had by now some support from his family especially with technology as he has no IT skills and did not know for example how to send emails or do a Google search. His father’s IT skills are limited but he can help with such things. The claimant saw the CAB who advised him to contact ACAS. Early conciliation, as I have said, began on 18 December 2024 and the claimant saw the CAB shortly before that. He could not recall whether the CAB or ACAS mentioned time limits but I find it inconceivable that they did not. The claimant was unsure what to do and did not know how to bring a Tribunal claim but his father helped with Google searches and assisted him to prepare and present a claim online which was on 14 January 2025.

10. I accept that the claimant’s mental health was poor after the dismissal. I accept also that he had no IT skills and did not know how to make a claim. But I find that the claimant’s mental health was not such as to prevent him investigating how to make a claim of unfair dismissal and the reason the claimant did not research how to do that and what time-limits there were was that he expected his appeal to be successful. Once the appeal had been rejected, he was able to consult the CAB, speak to ACAS and find out how to make a claim, all of this with his father’s help. I find that he was able to take those steps before the appeal during the primary time-limit and did not do so because he expected to be reinstated.

11. The test of reasonable practicability is a strict one. Beginning with the question whether it was reasonably practicable to have presented the claim within the initial three-month time-limit, in **Asda v Kauser** [UKEAT/0165/07] the Employment Appeal Tribunal said this:

'The relevant 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'.

12. The claimant did not know about the time-limit. Ignorance of rights must be reasonable, as Lord Scarman held in **Dedman v British Building & Engineering [1974] ICR 53:**

'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?' [at 64]

13. The difficulty is that the claimant took no steps to find out the position during the initial time limit. Even recognising the lack of technology skills, I do not accept it was reasonable to take no steps to explore how to make a claim because of a belief that the appeal would be successful. Discovering the proper time limit is not difficult. A simple Google search, or a short call to ACAS or the CAB, will quickly reveal it. As Cavanagh J held in the recent Employment Appeal Tribunal case of **Cygnnet Behavioural Health Limited v Britton [2022] EAT 108:**

'I fully accept that the claimant was very busy in his day jobs and with the regulatory investigation but it would be the work of a moment to ask somebody about time limits or to ask a search engine' [at 58]

14. As I have said, the claimant would have been able before 22 November 2024 to take the steps he did take later. I find, therefore, that it was reasonably practicable to have presented the claim within the initial time-limit and the claim is out of time and is dismissed.

15. I add that I find that the CAB and ACAS did advise the claimant about time limits. It is inconceivable that they did not. Knowing that the claim was already out of time, the claimant should have taken immediate steps to present it without delay including finding out the process. However, he delayed another three weeks until 14 January 2025. Had it been necessary, I would have found that the claim was not presented within a reasonable time after expiry of the three-month time-limit.

Approved by: **S D Robertson**

Employment Judge Robertson

29 May 2025

Notes : 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/