



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Jenkins

Respondent: Cardiff and Vale University Local Health Board

Heard at: Employment Tribunal, Cardiff **On:** 11 July 2025

Before: Employment Judge Webb

Representation

Claimant: Mr M Mohamed (Consultant)

Respondent: Mr J Walters (Counsel)

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The claimant, Mrs Jenkins, began working for the respondent on 20 August 1989, at the time she left her employment on 18 June 2024 she was working as a Ward Manager (Band 7).
2. The claim is about the circumstances of Mrs Jenkins' dismissal and her treatment before her dismissal. She says she was discriminated against on the basis of her disability and sex, suffered harassment related to her sex, was victimised, that the respondent failed to make reasonable adjustments and that she was unfairly dismissed.
3. The respondent denies the claims.

Claims and Issues

4. This was a preliminary hearing to decide issues relating to the timeliness of the claims being brought by Mrs Jenkins. She accepts that the claims were submitted outside the three-month time limit. As a result, the issues for me to decide were as follows:

Unfair dismissal

5. Was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
6. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Discrimination and victimisation

7. Were the claims made within a further period that the Tribunal thinks is just and equitable?

The Hearing

8. The claimant was represented by Mr Mohamed. The respondent was represented by Mr Walters.

Evidence and submissions

9. Mrs Jenkins gave evidence before me: she confirmed her statement, what was said in her ET1 and was cross examined by Mr Walters.
10. After I had heard from Mr Jenkins, Mr Mohamed made submissions on behalf of her, followed by Mr Walters for the respondent.
11. After submissions from the respondent, I gave Mrs Jenkins and Mr Mohamed a few minutes to discuss any potential reply, and then I heard from Mr Mohamed again.
12. In addition to the oral evidence and submissions, I had a 207 page bundle of evidence, page references will be to this bundle unless otherwise stated.

Law

Unfair dismissal

13. Under section 111(2) of the Employment Rights Act 1996, the Tribunal is only able to consider a complaint about unfair dismissal if it has been 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.”

Discrimination

14. The Tribunal is only able to deal with claims that have been submitted in time, or where the time to submit a claim has been extended. In relation to discrimination claims section 123(1) of the Equality Act 2010 sets out that a claim may not be brought to the Tribunal after the end of:

“(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.”

15. Where there is continuing conduct over a period, it is treated as if it was done at the end of the period (section 123(3) EA 2010).

Findings

16. I have not set out every point or piece of evidence in my findings, only those that are most important to my decision. In making my findings I have considered all the evidence and arguments put forward by the parties.
17. The burden is on the claimant, and the standard of proof is the balance of probabilities.
18. The claimant accepts her claims were submitted outside the 3 month limitation period.
19. Mrs Jenkins retired on 18 June 2024, she began ACAS procedures on 05 August 2024, received the early conciliation certificate on 16 September 2024. The time limit for submitting the unfair dismissal claim, once the early conciliation period is taken into account, was 29 October 2024. The claim was submitted on 06 January 2025.
20. In the discrimination claim set out in the ET1 the last act of discrimination is said to have taken place in August 2023. I agree with Mr Walters submission, that this is the date of the last act complained of for the purposes of the discrimination claims.
21. I find the claimant also submitted a formal grievance on 16 October 2023 dealing with aspects of her treatment by the respondent and the failure to make reasonable adjustments (page 140).
22. I find the claimant attended a resolution meeting on 23 November 2023 and had a final outcome from that process on 02 July 2024 (page 155).
23. I find the claimant contacted ACAS with a view to starting a claim in August 2024. Her evidence was that she had become aware of the time limits while researching ACAS. She was initially advised by her union and from July 2024 Mr Mohammed, again with a view to submitting a claim.
24. She was, I find, aware of the time limits and had advisers assisting her with her claims.
25. I find the evidence about her ill health as shown by her GP records (page 135) does not suggest that she was incapable of providing instructions at the relevant time. Mr Walters submitted, and I accept, that her ability to undertake work as a clinical nurse following her retirement also shows that she was capable of providing instructions at the relevant time. I find that Mrs Jenkins' ill health did not prevent her from presenting a claim.

26. I accept, as it was not challenged by the respondent, that there was a period of annual leave for the ACAS officer dealing with the case during October 2024 and Mr Mohamed was on annual leave in November 2024.

Conclusions

27. I have considered the facts as I have set out above and the submissions of the parties in reaching my conclusions on the issues before me.

Unfair dismissal

28. In relation to the unfair dismissal claim the question I need to first address is whether it was reasonably practicable for the claim to have been submitted within the relevant time limit.

29. In Asda Stores Ltd v Kauser [2007] 10 WLUK 350 the relevant test was expressed as:

“not simply a matter of looking at what was possible but asking whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done.”

30. It is said that the reasons it was not practicable for the claim to have been submitted in time relate to Mrs Jenkin’s ill health and the availability of her representative.

31. Mrs Jenkins was aware of the time limits from August 2024. She was being advised by professional advisors. Her health conditions did not prevent her from working, and I have found would not have prevented her from giving instructions to her representative. Although her advisor was absent in November 2024, that does not explain why the claim was not submitted in October 2024.

32. Having considered all the evidence I have been referred to and the submissions of the parties I find that it was reasonably practicable for the claim for unfair dismissal to be submitted within the relevant time limit and as a result the Tribunal does not have jurisdiction to deal with the claim.

Discrimination claims

33. In relation to the discrimination claims, the test is different, I am required to decide if it is just and equitable to extend time. This is broader than the discretion to allow late claims to proceed where it was not reasonably practicable to present a claim in time.

34. In assessing this question I have in mind the guidance provided in British Coal Corporation v Keeble [1997] 3 WLUK 586, and what has been said by the Court of Appeal in Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23 about the relevance of the factors identified in Keeble.

35. The last act complained of in the discrimination claims was in August 2023. Mr Walters made the point that the delay is significant and would cause significant prejudice to the respondent because of the fading of memories.

There was some weight in that argument, and I agree the delay is significant and that memories of those involved may have faded. However, there are some contemporaneous documents in the form of the internal grievance procedures commenced in October 2023 which relate to some aspects of the claims presented by Mrs Jenkins.

36. Any delay until July 2024 in relation to the discrimination claims, I find is because of the on-going internal grievance procedures. The delay in that procedure was not as a result of the claimant's action but of the respondent.
37. After July 2024, the claimant could have submitted her claims, but did not do so. Mrs Jenkins was aware of her rights to bring a claim and of the time limits from August 2024 when she contacted ACAS. There is no suggestion she was provided incorrect advice by Mr Mohammed or her union while she was a member.
38. Some of the delay until January can be explained by the actions of her representative, Mr Mohamed through his annual leave during November. But that explanation does not cover the whole of the period until January 2025.
39. There are periods when there is no explanation for the delay. The lack of an explanation is a significant matter that I take into account when assessing if it is just and equitable to extend time.
40. Having considered all the evidence I was referred to and the submissions of Mr Mohammed and Mr Walters, I find that the balance of prejudice falls in favour of extending time for the bringing of the discrimination claims as set out in the ET1.
41. While memories may have faded, the respondent was aware that Mrs Jenkins had grievances about the way she was treated so the claim has not come unexpectedly. The investigation into that grievance provide some contemporaneous documents that the witnesses the respondent will wish to call, will have to support what they say.
42. If I were to find the opposite, it would deny Mrs Jenkins the opportunity to put her claim to the respondent in circumstances where they were aware of the points raised in the claims.

Employment Judge Webb

14 July 2025

REASONS SENT TO THE PARTIES ON

22 July 2025

Kacey O'Brien

FOR THE TRIBUNAL OFFICE