



EMPLOYMENT TRIBUNALS

Wales (Wrexham County and Family Court)

10 June 2025 (video)

Claimant: Hayley Warner

Respondent: Elite Wine Refrigeration Ltd

Before: Judge M Aspinall (sitting alone as an Employment Judge)

Appearances: Mrs H Warner, in person
(supported by Mrs A Warner as McKenzie Friend)
Mr S Tibbitts, Counsel for the Respondent

Judgment

The Respondent's application for an extension of time to present its response is refused. Pursuant to Rule 22 of the Employment Tribunals Rules of Procedure 2024, judgment is entered for the Claimant in respect of liability for constructive unfair dismissal and disability discrimination. The issue of remedy will be determined at a separate hearing.

Reasons

Background

1. The Claimant, Mrs Hayley Warner, was employed by the Respondent, Elite Wine Refrigeration Ltd, from 25 October 2021 until her resignation on 31 March 2025, a period of approximately three years and five months. During her employment, she progressed to the position of Operations Manager, having "climbed the ranks" as she described it, with a salary of £40,000 per annum. The Claimant suffers from a chronic health condition which she asserts constitutes a disability within the meaning of the Equality Act 2010, a matter which the Respondent has indicated it disputes.
2. Issues between the parties began to emerge in late 2023, with matters deteriorating significantly from April 2024 onwards. The Claimant submitted a letter of resignation on 27 February 2025, which also contained grievance matters. According to the Claimant, she subsequently spoke with the Respondent's external HR advisor, Ms Amanda McKay, on 4 March 2025, with the understanding that her grievance would be investigated internally. The Claimant states that between 7 March and 25 March 2025, she made multiple attempts to contact Ms McKay without success.
3. ACAS Early Conciliation commenced on 3 March 2025, with a certificate [R137145/25/02] being issued on 4 April 2025. On the same date, the Claimant submitted her ET1 claim form to the Employment Tribunal. A grievance hearing eventually took place on 7 May 2025, with the Claimant submitting grievance evidence on 8 May 2025 at Ms McKay's request. Shortly thereafter, the Claimant was informed that the Respondent had instructed legal representatives.
4. Following her resignation, the Claimant was unemployed for approximately one month

before securing new employment as a Sales Executive in the renewable energy industry on a lower salary of £36,000 per annum with no bonus potential. Her contract with her new employer began on 28 April 2025, though her actual start date was delayed until 4 May 2025 due to health issues related to the stress of these proceedings.

Complaints made in the claim

5. In her ET1 claim form, the Claimant brought complaints of constructive unfair dismissal and disability discrimination. The constructive unfair dismissal claim is brought pursuant to section 95(1)(c) of the Employment Rights Act 1996. The Claimant alleges that the Respondent fundamentally breached her contract of employment, entitling her to resign and treat herself as dismissed. She specifically alleges that the Respondent's conduct cumulatively amounted to a breach of the implied term of mutual trust and confidence.
6. The disability discrimination claims are brought under various provisions of the Equality Act 2010. The Claimant asserts that she has a disability within the meaning of section 6 of the Equality Act 2010, which the Respondent has indicated it would dispute. She claims to have experienced direct discrimination related to her disability (section 13), discrimination arising from disability (section 15), and failure to make reasonable adjustments (sections 20 and 21).
7. The specific acts of disability discrimination alleged by the Claimant include what she describes as fabricated performance issues, inconsistent treatment compared to non-disabled colleagues, and an escalation of hostility following a colleague's promotion. She further alleges that she was demoted in early 2025, which she claims was related to her disability. The Claimant also contends that the Respondent failed to make reasonable adjustments to accommodate her condition.
8. The Claimant asserts that these issues began to manifest in late 2023 but became particularly problematic from April 2024 onwards. She claims that the Respondent's conduct worsened over time, eventually reaching a point where she felt compelled to resign on 27 February 2025, with her employment terminating on 31 March 2025.
9. In addition to the claims of unfair dismissal and disability discrimination, the Claimant's grievance letter (which formed part of her resignation) raised concerns about procedural failures, including alleged non-compliance with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Issues for determination by the Tribunal

10. At the commencement of the hearing, I was faced with a preliminary issue regarding the Respondent's application for an extension of time to present its ET3 response. The primary issue before me was whether to grant this application pursuant to Rule 21 of the Employment Tribunals Rules of Procedure 2024.
11. In considering this application, I needed to determine:
 - a. Whether the Respondent had provided a satisfactory explanation for the delay in submitting its response, which was filed nine days after the expiry of the 28-day time limit.
 - b. Whether, in accordance with the principles established in *Kwik Save Stores Limited v Swain and others* [1997] ICR 49, the Respondent's explanation for the delay was honest and satisfactory, bearing in mind that the more serious the delay, the more important a satisfactory explanation becomes.

- c. Whether the Respondent's defence, as presented in the late ET3, had sufficient merit to justify granting an extension.
 - d. Whether the balance of prejudice between the parties favoured granting or refusing the extension, considering the guidance in *Thorney Golf Centre Ltd v Reed* [2024] EAT 96 that this should be assessed at the point the application to extend was made.
 - e. Whether granting an extension would be in accordance with the overriding objective in Rule 2 of ensuring that cases are dealt with fairly and justly, including ensuring that parties are on an equal footing and avoiding unnecessary delay.
12. If the application for an extension of time were to be refused, I would need to determine whether to enter judgment under Rule 22 for the Claimant on liability for her claims of constructive unfair dismissal and disability discrimination, with remedy to be determined at a separate hearing.

The hearing before the Tribunal

13. The preliminary hearing for case management took place on 10 June 2025 via CVP video. I sat alone as Employment Judge. The Claimant, Mrs Hayley Warner, appeared unrepresented but was supported by Mrs Andrea Warner as her McKenzie Friend. The Respondent was represented by Mr Simon Tibbetts of Counsel.
14. The hearing commenced at 10:14. I began by addressing the presence of Mrs Andrea Warner as a McKenzie Friend, clarifying the limitations of this role—that she could provide support and quiet assistance to the Claimant but could not conduct the case, address the Tribunal unless invited to do so, or answer questions on the Claimant's behalf.
15. I then turned to the Respondent's application for an extension of time to present its ET3 response, which had been filed nine days after the expiry of the 28-day time limit. Mr Tibbetts made submissions on behalf of the Respondent, outlining the legal framework under Rule 21 of the Employment Tribunals Rules of Procedure 2024 and the principles established in *Kwik Save Stores Limited v Swain and others* [1997] ICR 49 and *Thorney Golf Centre Ltd v Reed* [2024] EAT 96.
16. Mr Tibbetts explained the chronology of events leading to the late submission, including the initial receipt of documentation without the ET1 on 22 April 2025, the HR advisor's contact with the Tribunal on 1 May 2025, and the subsequent appointment of legal representatives on 16 May 2025. He argued that the delay was relatively short (nine days) and that a credible explanation had been provided. He further contended that the prejudice to the Claimant was limited, whereas the prejudice to the Respondent of being denied the opportunity to defend the claim would be substantial.
17. The Claimant responded, highlighting her compliance with all deadlines despite managing a chronic health condition and changing employment. She expressed concerns about what she perceived as a strategic approach to delay by the Respondent, particularly noting the timing coincidence between her submission of grievance evidence and the Respondent's subsequent instruction of legal representatives. She argued that an administrative error by the Respondent's insurers did not constitute an acceptable reason for an extension of time.
18. I questioned Mr Tibbetts closely about several aspects of the Respondent's explanation, including the nine-day delay between receiving the documents and notifying the Tribunal about the missing ET1, the failure to submit a holding response or extension request before the deadline, and the apparent passivity of the Respondent in following up with their

insurers. Mr Tibbetts acknowledged that with hindsight, different actions could have been taken but maintained that there had been a genuine misunderstanding by the HR advisor.

19. The hearing was paused at 10:47 to allow me to consider the submissions and relevant authorities. Upon resumption, I delivered my decision, refusing the Respondent's application for an extension of time and entering judgment for the Claimant on liability pursuant to Rule 22, with remedy to be determined at a separate hearing. I then issued case management directions for the future conduct of the proceedings.

The law

20. The applicable legal framework for the Respondent's application for an extension of time is Rule 21 of the Employment Tribunals Rules of Procedure 2024, which provides:
21. "(1) A respondent may apply to the Tribunal for an extension of the time limit set out in rule 20 for presenting a response. An application under this rule may be made either before or after the expiry of the relevant time limit.
22. (2) An application under paragraph (1) shall be in writing and shall be determined by an Employment Judge. The application must set out the reason why the extension is sought and, where the application is made after the expiry of the relevant time limit, it must, unless the respondent requests a hearing, be accompanied by either—
(a) a draft of the response which the respondent wishes to present; or
(b) an explanation of why it is not possible to attach such a draft."
23. While Rule 21 does not specify the grounds upon which the Tribunal may grant such an application, the case law has established clear principles. The leading authority remains *Kwik Save Stores Limited v Swain and others* [1997] ICR 49, which established that when exercising discretion to grant an extension, the Tribunal must take into account all relevant factors, weighing and balancing them to reach a conclusion that is objectively justified on the grounds of reason and justice.
24. The Employment Appeal Tribunal in *Kwik Save* identified three key considerations:
- "The process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice."*
25. These factors include:
- a. The explanation for the delay - the more serious the delay, the more important it is that the explanation is honest and satisfactory.
 - b. The merits of the defence.
 - c. The balance of prejudice between the parties.
26. More recently, in *Thorney Golf Centre Ltd v Reed* [2024] EAT 96, the Employment Appeal Tribunal provided additional guidance, emphasising that:

*"When considering the issue of delay when deciding whether to extend time for presentation of a response:
The starting point should be a consideration of the delay in presenting the response itself. The more serious the delay, the more important that the*

*respondent provide a full and satisfactory explanation for it.
If a late response is not accompanied, or preceded, by a request for an extension of time, the tribunal should also consider the delay in making the application and why that was not done sooner.
Where a respondent fails to make an application for an extension at the same time as submitting its late response and this is raised with the respondent by the tribunal, consideration should also be given to how promptly the respondent then makes the application to extend.
Where there has been further delay in the tribunal then determining the application that can be attributed to the unreasonable conduct of a party, this may also be taken into account."*

27. The Employment Appeal Tribunal in Thorney Golf Centre further held that:

"When considering the balance of prejudice between the parties in granting or refusing the application, this should be considered at the point that the application to extend was made. Further, when considering the extent of the prejudice that would be caused to the respondent if the extension of time is refused, the impact of it not being able to advance its case on the substantive merits of the claim should be considered."

28. I must also consider the overriding objective in Rule 2 of the Employment Tribunals Rules of Procedure 2024, which requires dealing with cases fairly and justly, including ensuring that parties are on an equal footing and avoiding unnecessary delay.

29. If an application for an extension of time is refused, Rule 22 of the Employment Tribunals Rules of Procedure 2024 applies, which provides:

"(1) Where on the expiry of the time limit in rule 20 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.

(2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone.

(3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge."

The evidence

30. Before me were written submissions from both parties regarding the Respondent's application for an extension of time, as well as oral submissions made during the hearing.

31. The Respondent's written application, dated 23 May 2025, outlined the chronology of events leading to the late submission of the ET3. This included the assertion that the ET1 was missing from the initial documentation received on 22 April 2025, that the HR advisor contacted the Tribunal on 1 May 2025 about this, and that the ET1 was provided on 2 May 2025. The Respondent explained that their HR advisor, Ms McKay, mistakenly believed the timeframe would be automatically extended upon receipt of the ET1. They further detailed

that their insurers did not instruct legal representatives until 16 May 2025, leading to the ET3 being submitted on 23 May 2025, nine days after the expiry of the 28-day time limit.

32. The Claimant's written objection to the application, dated 27 May 2025, contested the Respondent's explanation, suggesting a strategic approach to delay. She highlighted her compliance with all deadlines despite managing a chronic health condition and changing employment. She pointed to the timing coincidence between her submission of grievance evidence around 14 May 2025 and the Respondent's subsequent instruction of legal representatives on 16 May 2025.
33. During the hearing, Mr Tibbetts elaborated on the Respondent's explanation, acknowledging that with hindsight, different actions could have been taken but maintaining that there had been a genuine misunderstanding by the HR advisor. When questioned about the nine-day delay between receiving the documents and notifying the Tribunal about the missing ET1, Mr Tibbetts was unable to provide a specific explanation beyond stating that the papers were passed to Ms McKay to deal with.
34. Mr Tibbetts further explained that the decision to submit a complete response rather than a holding response after legal representatives were appointed on 16 May 2025 was made on the basis that it would be more efficient. However, he was unable to explain why an application for extension was not made immediately upon legal appointment, given that the deadline had already passed.
35. The Claimant provided additional oral evidence about her attempts to engage with the Respondent's grievance process, stating that she had spoken with Ms McKay on 4 March 2025 and had been led to believe that her grievance would be investigated internally. She described making between 10 and 12 attempts to contact Ms McKay between 7 March and 25 March 2025 without success. She also described her current employment situation, having started a new job as a Sales Executive in the renewable energy industry on a lower salary of £36,000 per annum with no bonus potential, compared to her previous salary of £40,000 with the Respondent.
36. The Respondent's ET3, submitted late on 23 May 2025, presented potentially meritorious defences, including a jurisdictional challenge, a dispute over disability status, and performance-based justifications for their actions.

Findings of fact and application of the law

37. Based on the evidence to which I was referred, I find the following facts on the balance of probabilities:
38. The Tribunal issued a Notice of Claim to the Respondent on 16 April 2025, which was received by the Respondent on 22 April 2025. The 28-day time limit for submitting an ET3 response expired on 14 May 2025. The Respondent did not submit an ET3 response until 23 May 2025, nine days after the expiry of the time limit. The Respondent did not apply for an extension of time before the expiry of the deadline.
39. The Respondent asserts that the ET1 form was missing from the initial documentation received on 22 April 2025. However, there was a nine-day delay between receiving the documents and notifying the Tribunal about the missing ET1 on 1 May 2025. No satisfactory explanation has been provided for this delay. The Tribunal provided the ET1 to the Respondent on 2 May 2025.
40. The Respondent's external HR advisor, Ms McKay, mistakenly believed that the timeframe

for submitting an ET3 would be automatically extended once the ET1 was provided. This belief was incorrect under the current Employment Tribunal Rules of Procedure. Given Ms McKay's professional role as an HR advisor, it is reasonable to expect her to be familiar with basic Tribunal procedures or, at minimum, to verify them when uncertain.

41. Even after receiving the ET1 on 2 May 2025, the Respondent still had 12 clear days until the deadline of 14 May 2025 to submit their response. During this period, they failed to submit even a holding response or apply for an extension before the deadline expired. There is no evidence that the Respondent made any attempts to follow up with their insurers with appropriate urgency as the deadline approached.
42. The Respondent's insurers did not instruct legal representatives until 16 May 2025, two days after the deadline had expired. No explanation has been provided for this delay. Once legal representatives were appointed, there was a further seven-day delay before the ET3 and extension application were submitted on 23 May 2025. While Mr Tibbetts explained that this was due to a desire to submit a complete response rather than a holding response, this does not explain why an application for extension was not made immediately upon legal appointment.
43. Applying the principles from *Kwik Save* and *Thorney Golf Centre* to these facts, I must consider the explanation for the delay, the merits of the defence, and the balance of prejudice.
44. Regarding the explanation for the delay, I find that the Respondent has failed to provide a satisfactory explanation for the multiple delays in this case. The more serious the delay, the more important it is that the explanation is honest and satisfactory. While the overall delay in submitting the ET3 was nine days, which might be considered relatively short, there were multiple unexplained delays throughout the process. The initial nine-day delay in notifying the Tribunal about the missing ET1 remains entirely unexplained. The assertion that Ms McKay misunderstood the rules is particularly concerning given her professional role. Even after receiving the ET1, the Respondent failed to act with appropriate urgency. The Respondent has provided no evidence of any attempts to expedite matters with their insurers as the deadline approached.
45. Regarding the merits of the defence, I acknowledge that the Respondent's ET3 presents potentially meritorious defences, including a jurisdictional challenge, a dispute over disability status, and performance-based justifications for their actions. This factor weighs in favour of the Respondent.
46. Regarding the balance of prejudice, I must consider this at the point the application to extend was made, as directed in *Thorney Golf Centre*. The prejudice to the Respondent if the extension is refused is clear: they will be limited in their ability to contest the claim and may face a judgment without full consideration of their defences. However, the prejudice to the Claimant must also be considered. Mrs Warner has complied with all deadlines despite managing a chronic health condition and the stress of changing employment. She has prepared her case on the understanding that the Respondent had not responded in time. Importantly, any prejudice to the Respondent stems directly from their own unexplained failures to act with appropriate diligence. The prejudice to the Claimant, however, would be imposed through no fault of her own.
47. Mr Tibbetts argued that the prejudice to the Claimant is limited because the claims require further particularisation in any event. While I accept that particularisation will be required, this does not retrospectively justify the failure to comply with clear procedural requirements.

48. Considering all these factors and the overriding objective of dealing with cases fairly and justly, including ensuring that parties are on an equal footing and avoiding unnecessary delay, I find that the Respondent has failed to provide a satisfactory explanation for the multiple delays in this case. While I acknowledge the potential merits of the Respondent's defence, this factor is outweighed by the unsatisfactory explanation for the delays and the balance of prejudice considerations.

Conclusion

49. The 28-day time limit for responding to claims serves important purposes within the tribunal system. It provides certainty to claimants, allows for efficient case management, and ensures the prompt resolution of employment disputes. It is not a mere technicality but a fundamental aspect of the Employment Tribunal process.
50. In this case, the Respondent has demonstrated a concerning lack of urgency in responding to the claim. The initial nine-day delay in notifying the Tribunal about the missing ET1 was never adequately explained. The reliance on an HR advisor's misunderstanding of basic Tribunal procedures is particularly troubling, as is the failure to take prompt action even after receiving the ET1 with 12 days remaining before the deadline.
51. The Respondent had multiple opportunities to rectify the situation—they could have contacted the Tribunal promptly upon noticing the missing ET1, they could have submitted a holding response or extension request before the deadline expired, and they could have followed up with their insurers with appropriate urgency. At each stage, they failed to act with the diligence expected of a party to Tribunal proceedings.
52. While I acknowledge the potential merit in the Respondent's defence, this cannot outweigh the cumulative effect of the unexplained delays and the resulting prejudice to the fair administration of justice. The overriding objective requires that parties be on an equal footing, and it would be inequitable to allow the Respondent's procedural failings to be visited upon the Claimant.
53. For these reasons, the application for an extension of time is refused. Pursuant to Rule 22 of the Employment Tribunals Rules of Procedure 2024, judgment is entered for the Claimant on liability for her claims of constructive unfair dismissal and disability discrimination. The issue of remedy will be determined at a separate hearing.

APPROVED
Judge M Aspinall
(sitting as an Employment Judge)
3rd July 2025

ISSUED 22 July 2025

SIGNED Katie Dickson

For the Tribunal

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