EMPLOYMENT TRIBUNALS

Claimant: Ms C Ansah
Respondent: Scope

Heard at: Watford
On: 9 May 2025
Before: Employment Judge Dick

Representation
Claimant: In person
Respondent: Mrs M Targett (head of HR)

JUDGMENT having been sent to the parties on 11 June 2025 and written reasons having been requested on 13 June 2025, in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided.

REASONS

Introduction

1. The claim in this case was submitted out of time. The case was listed before me as a preliminary hearing for a decision on whether time limits should be extended. The claimant makes the following complaints: unfair dismissal; direct race discrimination (the detriment relied upon being the dismissal), and; unauthorised deductions from wages for unpaid overtime prior to the dismissal.

2. The usual rule is that a claim must be presented within three months plus the time added by operation of the early conciliation provisions. The claimant was dismissed on 8 or 9 November. For the purposes of my decision I took it as 9 November, i.e. the date most favourable to the claimant for time limits purposes. Early conciliation started on 6 March 2024 and ended on 11 March 2024. The claim was presented on 7 May 2024.

3. The case was originally listed for a hearing in November 2024. That hearing was moved on the claimant's application. On 4 February 2025 my colleague Employment Judge Alliott had orders sent out to the parties explaining that the next hearing (i.e. the hearing that I went on to deal with) would deal with the time limits point and that the claimant was to provide a written statement explaining why her claims were presented late, and why time should be extended, no later

than two days before the hearing. No such statement was ever sent. In my discussions with the claimant at the start of the hearing she explained that she had thought that an email she sent to the Tribunal in November 2024 would be sufficient. When I asked her why she thought Judge Alliott would still have made an order about the statement if the email was sufficient, she simply said that she thought the email she sent would stand. The email had explained that the claimant was asking for the November hearing to be moved because of a bereavement. It would be the third funeral she would be attending that year and her emotions and mental health had been challenged to the point that she was not in a good place of mind. Most pertinently for the purposes of my decision, the email said: "I filled in the [claim] form but unfortunately it was delayed due to the above circumstances."

4. I discussed with the parties what would be the appropriate approach and nobody disagreed with my taking oral evidence from the claimant on the point rather than, for example, adjourning the hearing for the claimant to provide a statement in compliance with Judge Alliott's orders. I explained the legal tests that I would have to apply to the parties before hearing the claimant's evidence, followed by submissions from the parties. After taking time to consider the matter, I explained my decision to the parties, giving oral reasons. I declined to extend time.

Applicable Law

5. For time limits, different tests apply to different complaints (i.e. to the different legal causes of action) in this claim. The complaints of unfair dismissal and arrears of pay will be subject to a "reasonably practicable" test, whereas the claim for discrimination will be subject to a "just and reasonable" test.

6. Both tests apply where a claim was presented outside the three month period as extended by the ACAS early conciliation provisions of s 207B Employment Rights Act. The effect of those provisions in this case is that time spent in early conciliation would not have counted towards the three-month period if the claimant had entered early conciliation within three months of her dismissal (but she did not). In some cases, section 207B(4) can apply to further extend the three-month period, allowing for a claim to be presented within a month of the end of conciliation even where it would otherwise be out of time, but that provision cannot apply in this case because the claimant did not start conciliation within three months, and also because she did not present her claim to the Tribunal within a month of finishing conciliation.

Extension of time under ERA

7. By section 111 of the Employment Rights Act ("ERA"), a Tribunal shall not consider a complaint of unfair dismissal 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
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> (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.

The effective date of termination here will be the date on which the claimant was summarily dismissed.

8. An identical provision (s 23 ERA) applies to complaints about arrears of pay (i.e. unauthorised deductions from wages). The time limit will run from the time the deduction (or the last deduction in a series) was made. If there was no payment made at all, time will run from when the payment was due under the contract.

9. In *Palmer and anor* v *Southend-on-Sea Borough Council* 1984 ICR 372, the Court of Appeal explained that "reasonably practicable" does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like "reasonably feasible". In *Asda Stores Ltd* v *Kauser* EAT 0165/07 Lady Smith said: "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." The same case makes clear that the burden of establishing it was not reasonably practicable lies on the claimant.

10. Where the time limit is missed because the claimant is unaware of the time limit, or mistaken about when it expires, the question is whether that ignorance or mistake is reasonable – if it is not, then it will have been reasonably practicable to have presented the claim in time (*Lowri Beck Services Ltd* v *Brophy* 2019 EWCA Civ 2490). The test of reasonable practicability is one of fact and not of law (also *Lowri*).

Extension of time under EqA

11. By s 123(1) of the Equality Act 2010 ("EqA"), claims to the Employment Tribunal under the Act may not be considered after the end of the period of 3 months starting with the date of the act to which the complaint relates or "such other period as the Tribunal thinks just and equitable". S 123(3) of the Act provides that conduct extending over a period is to be treated as done at the end of the period. In this case, the last act complained of is the claimant's dismissal.

12. It has been said that the exercise of the discretion to extend time is the exception not the rule (*Robertson* v *Bexley Community Centre t/a Leisure Link* 2003 IRLR 434). But an extension does not require exceptional circumstances. In exercising the discretion a Tribunal may (not must) have regard to the checklist contained in s 33 of the Limitation Act 1980, as modified by the EAT in *British Coal Corporation* v *Keeble and ors* 1997 IRLR 336. As summarised by the authors of the *IDS Manual*, this suggests the Tribunal consider the prejudice that each party would suffer as a result of the decision reached and have regard to all the circumstances of the case, in particular: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the respondent has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the complaint; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

Factual Findings

13. I accept that the claimant believed that the email she sent to the Tribunal

explained her reasons for presenting her claim late, and so I do not hold it against the claimant that she did not produce a statement in accordance with Judge Alliott's orders. I decided the case simply on the evidence that I heard on the day.

14. I believe that the claimant told me the truth as best she could remember it. No suggestion was made in cross-examination that she was dishonest with me, and I make clear that I find that she was honest. Unfortunately, the claimant's memory was not the clearest, particularly when it came to dates and time periods.

15. Where I refer below to the evidence the claimant gave, as will already be clear, I accepted that evidence. In other words, I accepted that it was true on the balance of probabilities.

16. The claimant was suspended (for the reasons which the respondent says were ultimately the reasons for her dismissal) around mid-August 2023. I did not need to make any decision about whether or not the claimant, as she says as part of her complaint, received a lack of support from the respondent over the period of her suspension. At the time of her suspension by the respondent, for whom she had worked for 10 years, the claimant was of no fixed abode. She learnt of her dismissal by email on 9 November 2023. She told me she immediately formed the view that the dismissal was unfair so there was no suggestion that it was only later that she realised that she might have a legal claim. She agreed in cross-examination that she did not submit an internal appeal with the respondent against the decision, albeit she had been a little uncertain about that point earlier on in her evidence.

17. I asked the claimant particularly about the period between November 2023 and February 2024. She told me that, even though she had been on suspension, her dismissal came as a considerable shock to her. For the whole of that period and, indeed, until May, she was living at a YMCA. She had no access to computers as a resident there. She had a phone, but it had somewhat patchy Wi-Fi and she could not afford to pay her phone bill (i.e. she could not pay for data). She did however have the benefit of help from a support worker and, amongst other things, that support worker would let her use the hot spot on their phone, by which she could access the internet. It was this same support worker who suggested to the claimant that she should go to ACAS. The claimant could not clearly recall when that was, though it must have been before 6 March (the start of ACAS conciliation). Even if the claimant did make some preliminary contact with ACAS before the formal start of conciliation, I find that it must have been some time after 8 February (i.e. the latest she could have gone to ACAS in order for her claim to be in time).

18. The claimant was aware in general terms of the existence of the Employment Tribunal and the sort of claims that it dealt with. She told me, and I accept, that she did not know about the Employment Tribunal time limits until after ACAS became involved. But the reason she did not know is simply that she had not looked into it. She did not do any research on time limits on her own, despite telling me, for example, that she had been able to do research into the meaning of gross misconduct. I accept that she relied upon the support worker for help and advice, but there was no suggestion that the claimant believed the support worker to be a legal professional.

19. The claimant was clearly going through some considerable personal difficulties at the time that I am concerned with. She was expecting to have to leave the YMCA in March 2024, although she was eventually able to stay a little longer. I do not underestimate the difficulties that she would have been going through trying to find herself somewhere more permanent to live. Nonetheless, she was able to look for work during that time and she was able to do some courses as well.

20. Very shortly before she was dismissed the claimant had been able to see a GP after some considerable difficulty being able to find one because she had been of no fixed abode. She was prescribed anti-depressants and sleeping tablets. She told me there was nothing more specific I needed to know about her mental health between November and March and that no particular diagnosis had been made about her mental health since. The claimant was experiencing some considerable emotional upset over that time because of the bereavement she had suffered as a result of the death of a close friend and all of that was coupled with difficulties with access to her children. None of that ultimately prevented the claimant from doing research into and pursuing a Tribunal claim; it is just that the research did not include time limits.

21. The claimant told me that she completed her ET1 form in May on her mobile phone. There was no suggestion that would have been technically impossible, nor any more difficult, for her to have done so before that date.

Conclusions

22. Since the claimant was dismissed on 9 November 2023, applying the usual rules on early conciliation, for the claims to be in time the claimant would have had to have started early conciliation no later than 8 February 2024. She did not in fact do so until 6 March 2024, almost a month later. Had the claimant started early conciliation in time, she would still have had to present her claim within one month of the end of conciliation. She in fact presented it almost two months after the end of conciliation. So even on the best possible view for the claimant, there was almost two months' delay – one month before the conciliation process and one month afterwards. So far as the claim for unpaid overtime is concerned, this was even further out of time –the claimant was suspended for three months before her dismissal, so any wages would have been due well before November 2023.

23. I accept that the claimant was experiencing significant personal difficulties at the relevant time and that those difficulties went significantly beyond the difficulties that someone losing their job after ten years would normally experience. But ultimately, it was not clear to me why, if the claimant was able to go to ACAS on 6 March, she could not have done so earlier. Further, given that she was able to go to ACAS on 6 March, even taking those difficulties into account I consider that the claimant could have presented her claim form considerably earlier than almost two months after the end of the conciliation period. Despite all that I heard about the claimant's difficulties, it does not seem to me that I was presented with no good reason why the claim could not have been presented in time. The claimant had support and access (albeit not perhaps easy access) to the equipment needed to present a claim. During the relevant period she was able

to do some research into some of the law relating to her claim and was able to look for other work. Her circumstances do not appear to me to have been materially different between the date by which she should have gone to ACAS and the day on which she did go to ACAS (and likewise, the day she should have presented her claim and the day she did present her claim).

24. I took account of what I found to be the claimant's genuine confusion about Judge Alliott's orders. But the claimant clearly was capable of presenting her claim; the issue here was whether it was practicable for her to do so in time, and I do not consider that the claimant's understanding of later orders has any material bearing on this point.

25. It was reasonably practicable in my judgment for the claimant's claim to have been be presented in time, even taking account of the claimant's numerous difficulties that I have set out. I make clear that I applied a test of practicability, not (im)possibility. I therefore declined to extend time for the purposes of the unfair dismissal and wages claims.

26. Turning now to the just and equitable test, various judgments from the Employment Appeal Tribunal have made clear that time limits are important. The delay, although not years or months and months, was certainly rather more than a day or two. It was significant in my judgment and, in any case like this, the later a claim is presented, the more difficult it is to respond to. The respondent in my judgment is likely to face some material prejudice as a result of the delay. Although the claimant was dismissed on 9 November 2023, the reasons for her dismissal date back further, to before her suspension in August 2023. Because she did not appeal against the decision, the respondent could only have been put on notice of the potential dispute when the claimant went to ACAS. The latest the claimant could have done that was 8 February, but the claimant did not do that until 6 March. There was further delay in presenting the claim. The Tribunal passed the claim to the respondent on 5 June 2024, less than a month after receipt, requiring a response by 3 July 2024. In responding, the respondent would therefore have had to ask its witnesses to cast their minds back around 10 months. Not all of that period is attributable to delay by the claimant, but a significant proportion of it is.

27. I assumed for these purposes that the claimant has at least an arguable case. That said, the case on discrimination is not obviously strong. In summary, the claimant complains that she was overworked for some time and was dismissed for gross misconduct following a dispute with a colleague, after which the claimant says that she (i.e. the claimant) apologised, recognising her own wrongdoing; she says that her actions were out of character, suggesting she acted in the way she had because of stress. The claim form does not explain any basis for a belief on the claimant's part that she was treated less favourably because of her race, nor is it apparent to me on what basis a Tribunal might be invited to form such a conclusion. So although if I did not extend time limits the claimant would lose the chance to bring a complaint of discriminatory dismissal, she would not lose the chance to bring a strong complaint, and this would be in the context where her complaint for unfair dismissal – which might reasonably be thought to be the real crux of her case – could not be brought because of the stricter time limits imposed by Parliament for dealing with such complaints.

28. Ultimately, there was nothing preventing the claimant from submitting her claim in time. This is not determinative, but on the facts of this case it is significant. For this and all the other above reasons I did not find it just and equitable to extend time limits for the discrimination claim.

29. Finally, I apologise to the parties for the short delay in preparing these reasons.

Approved by:

Employment Judge Dick

21 July 2025

SENT TO THE PARTIES ON

22 July 2025

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FOR THE TRIBUNAL OFFICE