



THE EMPLOYMENT TRIBUNALS

Claimant: Mr W Mwiti
Respondent: Migrant Help UK
Heard at: Ashford Employment Tribunal
On: 11 July 2025
Before: Employment Judge Robinson

Representation

Claimant: Mr C Grieve (lay representative)
Respondent: Ms J Fairclough-Haynes (consultant – joined by CVP)

JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's unfair dismissal claim was presented out of time.
2. The Tribunal is not satisfied that it was not reasonably practicable for the claim to have been presented within time.
3. The Claimant's unfair dismissal claim is therefore dismissed.

WRITTEN REASONS

1. I gave the above judgment at the hearing on 11 July 2025, together with oral reasons. The judgment was sent to the parties on 21 July 2025. The Claimant requested written reasons under Rule 60 of the Employment Tribunals Rules of Procedure 2024. My reasons were as follows.

Introduction and background

2. The Claimant, his representative and the representative of the Respondent attended an Open Preliminary Hearing of one day. The hearing was hybrid given that the Respondent's representative joined by

video link.

3. The Claimant, Mr Mwiti, was employed by the Respondent, Migrant Help UK, as a Senior Modern Slavery Care Advisor from 11 September 2020. The parties agree that he was dismissed on 15 February 2024.
4. ACAS early conciliation started on 10 July 2024 and ended on 12 July 2024. The claim form was presented on 13 July 2024.
5. The Claimant in this case makes a claim of unfair dismissal.
6. I agreed with the parties at the outset of this hearing that its purpose was to consider the issue that was communicated to the parties by the judge at the last Preliminary Hearing on 16 April 2025. The Claimant did not dispute that his claim had been brought outside of the required three-month time limit because he had not lodged it by 14 May 2024. Therefore the question for me to consider at this hearing was the preliminary issue of whether it was not reasonably practicable for the Claimant to present it within the required time limit and whether it had then been presented within a further reasonable period.

Relevant Law

7. The relevant statutory provision is s.111(2)(b) of the Employment Rights Act 1996. I must consider first whether it was not reasonably practicable for the complaint to be presented by 14 May 2024 (the first limb). The claimant bears the burden of proof on that issue.
8. If I am satisfied that it was not reasonably practicable for the complaint to be presented by that date, the second matter to consider is whether it was presented within such further time as the Tribunal considers reasonable (the second limb).
9. I heard oral evidence from the Claimant. The other evidence before me consisted of a witness statement from the Claimant, a letter from Rubicon Care dated 7 July 2025, and a bundle of 168 pages.
10. I explained to the parties that the circumstances around the Claimant's dismissal, the reasons for it and whether or not it amounted to an unfair dismissal were not within the scope of this hearing. This hearing was to consider the preliminary issue of whether the claim should proceed to the final hearing given it was presented out of time.
11. It was not disputed by the parties that:

- a. Given the date of dismissal of 15 February 2024, the statutory time limit for commencing ACAS early conciliation in the first instance was 14 May 2024.
 - b. The ACAS early conciliation period was 10-12 July 2024.
 - c. The Claimant submitted his claim on 13 July 2024.
 - d. The claim was therefore 57 days late.
12. The background to the dismissal is that the Claimant was involved in a physical altercation in Canterbury (outside of work) on 23 December 2022 (over a year before his eventual dismissal). The Claimant stated that the incident had caused him PTSD, but it also meant that there were problems with his DBS status, which was a requirement of employment with the Respondent. The Claimant was ultimately dismissed for 'some other substantial reason' (section 98(1)(b) of the Employment Rights Act 1996) on 15 February 2024. For completeness - it was not disputed (but nor was it an issue of the purposes of this hearing) that the Claimant was subsequently acquitted of any crime in relation to the December 2022 incident in November 2024.
13. As mentioned, at this Preliminary Hearing, it is not for me to assess the merits of the Claimant's claim. Suffice it to say that I accept on its face that the unfair dismissal claim is a reasonably arguable one.

The Facts

14. I have made the following findings of fact and conclusions based on the material provided, and the sworn evidence I heard. These are limited to the list of issues that are necessary to explain the decision reached.
15. From his witness statement and his oral evidence, my assessment of the Claimant's explanation for the delay in submitting his claim is that it was a combination of:
- a. being unaware of Employment Tribunal time limits,
 - b. delays in the Respondent's appeal process,
 - c. his hope that the Respondent would eventually 'do the right thing' and overturn his dismissal,

- d. his desire not to harm the reputation of the Respondent given it is a charity,
- e. his belief that it was improper of the Respondent to have not mentioned his Employment Tribunal options when they informed him that his appeal had been unsuccessful, and
- f. his PTSD meaning he was not well enough to have submitted his claim in time.

16. As a matter of evidence, I accept that the Claimant was suffering from PTSD at the time of his dismissal. However, given the robust and comprehensive manner in which the Claimant conducted his appeal against his dismissal, I do not find that his PTSD was so serious as to have prevented him from submitting an ET1 claim form.

17. I find that the Claimant is a highly educated and intelligent man, with a number of academic qualifications in the field of law at universities in Kenya and England.

18. The Claimant also accepted in oral evidence what was also apparent to me from the written documentation in the bundle:

- a. Mr Grieve (his representative) was involved in the matter from at least December 2023 i.e. two months before the Claimant's dismissal. The Claimant's evidence demonstrated that Mr Grieve is also well-educated and is a former Detective Superintendent and Head of Professional Standards for Kent Police. Although his experience is primarily in criminal law, he is well-versed in legal matters.
- b. The Claimant's letter of 12 March 2024, which was sent as part of his appeal hearing, demonstrates the following:
 - i. the Claimant had already consulted with Citizens' Advice,
 - ii. the Claimant wrote "*I would advise that I will take the matter to an employment tribunal*", and
 - iii. the footnote to the letter referred to "*Having received advice from a very senior, retired HR professional*".

19. I also note from an email from 22 February 2024 (just one week after his dismissal) that the Claimant, as part of his appeal, refers to this being "*unfair dismissal*".

Conclusions

20. In exercising my discretion on whether to extend the time limit for the Claimant's claim, I must start with the first limb of the test i.e. was it reasonably practicable for the Claimant to have presented his claim by 14 May 2024?
21. I must consider not only what the Claimant in fact knew about time limits but what he *ought* to have known, taking into account the sources of information that were available to him.
22. In this case, I give particular weight to the following:
- a. The Claimant is a highly educated man with undergraduate and postgraduate qualifications in the field of law. I accept his legal expertise lies in human rights law, rather than employment law, but I would have expected a man of his education and academic ability to have been able to identify (and comply with) Tribunal time limits.
 - b. From at least two months before his dismissal, the Claimant was assisted by Mr Grieve, who was also extremely well qualified and experienced to be able to advise on matters such as time limits.
 - c. The Claimant had been in touch with Citizens' Advice by at least 12 March 2024 (if not before) and my view is that it would have been reasonable to expect him to consider seeking advice about his options post-dismissal.
 - d. The Claimant referred to Employment Tribunals in his letter of 12 March. He also mentioned "*unfair dismissal*" (an employment law phrase) in his 22 February email as part of his appeal. It is clear to me that the prospect of a claim was in his mind at these stages; a point at which he could have submitted his claim in time.
 - e. The 12 March letter also confirms that the Claimant had support from a retired HR professional, again at a time before the three-month deadline.
23. It was clear from the bundle that the manner in which the Claimant pursued the appeal against his dismissal in February and March, demonstrates that the Claimant would have been equally capable of submitting an ET1 claim form at that time. This task would not have been a more onerous one than his appeal. Whilst I accept the Claimant's PTSD and that it is a serious condition, from the written and oral evidence I have considered, I

am not satisfied that it would have prevented the completion of an ET1 claim form.

24. In relation to the Claimant's submission that the Respondent ought to have told him about his right to take legal proceedings in the Employment Tribunal, I give that very little consideration. It is clearly not for the Respondent to provide legal advice to the Claimant after he has been dismissed and is no longer an employee.
25. Similarly, I do not accept the Claimant's evidence that he delayed for fear of harming the reputation of the Respondent. That, in my view, is not a credible reason for delay in submitting a claim.
26. Many claimants (with fewer qualifications and sources of advice than the Claimant had) depend on looking at sites such as the Employment Tribunal Website and the ACAS website to see what are the relevant time limits. In this case, there is ample evidence to show that the Claimant, with the benefit of his legal background and all the advice he was in receipt of at the relevant time (and before), ought to have been able to gain access at the very least to the information available from ACAS and discover the applicable time limit for his claim.
27. Even accepting part of the Claimant's assertion that the Respondent's appeal process delayed matters, and that he wanted to exhaust that first, that outcome was communicated on 27 March 2024. That still allowed time to submit the claim within the required time limit.
28. Given all my conclusions above, I find that the Claimant has not proved it was not reasonably practicable to present his complaint in time and, for that reason, his claim must be dismissed.
29. There is no need for me to look at the second limb of the test. However, I do so only briefly, for completeness. It is my conclusion that where a time limit is three months (subject to the extension of ACAS early conciliation), a further delay of 57 days in the presentation of the claim, is not a "*reasonable period*" under limb two. So, even if it had been necessary to consider limb two in this claim, I would still have found that the claim was out of time for that reason also and I would have dismissed the claim.

Employment Judge Robinson
Dated: 24 July 2025