



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002100/2024 (V)

Held on 28 April 2025

Employment Judge J M Hendry

Mrs H Thomas

**Claimant
In Person**

Fedcap Employment Scotland Limited

**Respondent
Represented by,
Ms O Greener,
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal finds as follows:-

1. That the claimant has not demonstrated that it was not reasonably practicable for her claim for unfair dismissal to be lodged in time and accordingly the claim is dismissed.
2. The claimant not having demonstrated that it was just and equitable for the claims for disability discrimination to be heard although late, the claims are dismissed.

E.T. Z4 (WR)

REASONS

1. The claimant in her application to the Employment Tribunal seeks findings that she was unfairly dismissed from her employment and also discriminated against on the grounds of her disability. The claims are resisted.
2. The case proceeded to a Preliminary Hearing for case management purposes on 18 February 2025. That hearing appointed 28 April 2025 as a hearing on time-bar.
3. The claimant had been advised at the case management hearing that the test for a late submission of an unfair dismissal claim was contained in Section 111 of the Employment Rights Act 1996 and that the test for extending the time to allow claims for discrimination to be heard late was dealt with in Section 123 of the Equality Act 2010. The Note went on to provide that:

"5. It seems that the appropriate course of action is to hear the respondent's time-bar point. I explained to the claimant that she could give evidence as to why the claims were late. She indicated that her husband was disabled and he had become very unwell during this period. Although she had trade union assistance the trade union rep. was not directly involved in using these proceedings but is willing to give a witness statement. I suggested the claimant set out briefly in a number of paragraphs in a document headed Better and Further Particulars of when she considered making a claim, what advice she took, what prevented her making a claim in time and why she thinks the Tribunal should allow both claims to proceed. I don't think there is any need for the respondents to answer this document."
4. The claimant later lodged Further and Better Particulars (JBp.71-74) setting out the background on which she relied.

Evidence

5. The Tribunal had the benefit of a bundle of documents prepared by the respondent's agents. The claimant gave evidence in relation to the

background surrounding her dismissal and the lodging of the Employment Tribunal application.

Findings in Fact

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6. The claimant worked for the respondent company as an Adviser. She would assist their clients to obtain work. She would help with job applications and CVs. Her work latterly was mostly face-to-face. She was supplied with a work computer and a telephone. She carried out some work from home.

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7. The claimant was aware how to use a computer and how to carry out searches on the internet.

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8. The claimant had a long-standing heart condition. Because of treatment that she received for this condition she lost her hair in September/October 2023. The claimant found this difficult to cope with and it impacted on her confidence and mental health. She had a long period of absence.

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9. The claimant was dismissed on the grounds of capability through ill health following a hearing on 17 June 2024. The hearing was carried out remotely. The claimant was a member of the trade union UNISON and had the assistance of a trade union Officer at the meeting who acted as her representative.

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10. Following the claimant's dismissal, which came as a surprise to her as she was ready to return to work, the claimant lodged a grievance/appeal on 24 June 2024 and attended a further meeting with her trade union representative on 30 July 2024 at which the grievance/appeal was rejected.

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11. The claimant was generally aware of employment rights but had no knowledge of employment tribunal processes or time limits. Following her dismissal she received advice about taking possible employment tribunal proceedings both from her trade union representative, Mr S Adebayo and

also from a lawyer employed by the trade union to whom she spoke by telephone a few weeks after her dismissal.

12. The claimant entered into early conciliation on 16 September 2024.

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13. The relevant dates are agreed to be as follows:

1. The effective date of dismissal was 17 June 2024;

2. The claimant entered into early conciliation on 16 September 2024;

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3. ACAS issued an early conciliation certificate on 22 October 2024 so that the time limit for lodging claims was 22 November 2024;

4. The claimant raised a claim for unfair dismissal and disability discrimination on 11 December 2024.

15 **The claimant's personal circumstances**

14. The claimant first became ill in 2001 when she was diagnosed with coronary problems. In 2023 the medications she was prescribed caused severe hair loss. She lost her head hair and later her eyebrows. The claimant found these events difficult to cope with. She found them embarrassing and upsetting. She became anxious and lost confidence. She believed her line manager was not overly sympathetic towards her and did not understand her sensitivity about being seen "on camera" at meetings.

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25 15. The claimant had various periods of absence but by 17 June 2024 she felt well enough to return to work. She was shocked that her employment was terminated.

16. The loss of her hair in September/October 2023 caused the claimant to seek assistance from her G.P. She was prescribed Sertraline, an anti-anxiety medication. She continued to be prescribed this medication until the dosage was doubled soon after the termination of her employment.

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Family circumstances

17. The claimant's husband with whom she lives developed serious problems with his back. These difficulties led to him having one of the discs fused in 2001. His back condition did not improve. He was in constant pain and unable to work. The condition was painful and debilitating. The claimant's husband began to have severe mobility problems. These problems meant that the burden of running the home and looking after her husband including assisting him with washing and bathing fell to the claimant.
18. The claimant's husband's condition steadily deteriorated and in 2024 he began having regular falls. In or about mid to late July the claimant's husband had a significant fall at home. It was not recognised at this point that he had caused significant damage to himself through injuring his ribs and spine. The claimant was very concerned at these events. They put additional stress on her. She became very vigilant about her husband's wellbeing.
19. The claimant's husband suffered another fall on 6 August 2024. He was admitted to Aberdeen Royal Infirmary and his discharge information (JBp.88) recorded:
- "New grade 2 Biconcave compression fracture L1, which maybe post traumatic and in the context of multiple healing right sided rib fractures."*
20. Mr Thomas was taken to hospital but discharged on the same date.
21. The claimant became concerned at the deterioration in her husband's condition. She found that the loss of her employment had made her feel anxious and depressed. The loss of her employment caused her financial difficulties and these in addition to her husband's mobility problems meant that she felt under pressure and stress. The claimant has elderly parents who she is required to assist. Her father is registered as blind.

22. On 1 November 2024 the claimant's husband had another fall. This resulted in paramedics from the Scottish Ambulance Service attending their house where he was examined. They noted (JB91): *"at approximately 3.45pm today PT fell while at home. PT has bad mobility and legs gave way causing PT to land on back on a wooden floor, PT or wife did not try to get off the floor due to previous fractures and called 999. PT has recurrent falls. PT states his pain no worse than normal – stating 8/10 which is his normal – also seems to be on medication, does not know the reason."*
23. The claimant's, husband was not taken to hospital.
24. The claimant's husband during this period was attended periodically by an Occupational Therapist to discuss adaptations to the property. He was also visited by a physiotherapist. Latterly, the physiotherapist was unable to carry out meaningful physiotherapy treatment to Mr Thomas because of back pain.
25. The claimant's husband during this period (June to December 2024) struggled to get out of bed and was reliant on a wheelchair to leave the house. He could only walk a few yards. He has difficulty getting in and out of the bath. He had "good days and bad days".
26. On 11 December the claimant's husband was asleep one evening. The claimant began going through her "to do list". She noted that she had not raised employment tribunal proceedings. She had been preoccupied with her husband's condition over the past couple of months and had been concentrating on his welfare. She had neglected to submit her claim. She went online and completed the Employment Tribunal application form in approximately an hour.

Witnesses

27. I found the claimant to be an honest and straightforward witness. She was credible and although a little unsure of exact dates she was reasonably reliable as a historian.

5 Submissions

28. The claimant asked the Tribunal to consider the difficult circumstances she had faced and the stress and anxiety she experienced at this time. She had made a mistake and forgotten about the Tribunal proceedings. She was concentrating on her husband's welfare. She believed that she had strong claims against her former employer.

29. Ms Greener submitted that the claimant had decided to prioritise certain matters in her life and although it was understandable this led to the failure to lodge proceedings on time. This meant that she effectively chose not to raise proceedings in time. She had accepted that she was aware of time limits. Ms Greener referred me to the well-known statement of Lord Denning in the case of **Wall's Meat Co Ltd v Khan [1979] ICR 52**.

30. The "reasonably practicable" test was considered in the case of **Palmer v. Southend Borough Council**. It was suggested that it meant reasonably feasible to lodge a claim. It was up to the claimant to show that it was not reasonably feasible to lodge her claim and this she had failed to do.

31. Turning to the discrimination claims Ms Greener then made reference to the well-known case of **Robertson v. Bexley Community Council** which gives guidance in relation to the just and equitable test. She indicated that the Tribunal could take account of the check list referred to in the case of **British Coal Corporation v. Keeble and Ors**. She also made reference to the case recent case of **Jones v. Sec of State for Health and Social Care** and the discussion of how the test is applied that is contained there.

32. The claimant had the benefit of trade union assistance. She was aware of Employment Tribunal processes and that time limits would apply. The significant dates which she rehearsed were not in dispute. The claimant had been able to attend and participate in meetings on 17 June, 4 July and 22 August. Although there was an incident on 1 November when the claimant's husband fell he was not taken to hospital and nothing much changed in her caring responsibilities both in the period from her dismissal until the lodging of the proceedings. Ms Greener submitted that the respondents would be prejudiced if the claims were allowed late. They would be required to spend time and expenses in defending a claim in which the statutory time period had elapsed. The delay of 19 days was significant and not explained. She suggested that the claimant had chosen not to prioritise her Employment Tribunal application.
33. She submitted that nothing had happened in relation to the care of her husband or her own mental health that gave her cause to be able to demonstrate to the Tribunal that a) it was not reasonably practicable to lodge the claim in time or b) that it was just and equitable to allow the claims to be heard late.

Discussion and Decision

34. The two legal tests that are to be applied relating to time bar and late claims are contained in the Employment Rights Act 1996 and the Equality Act 2010 which are as follows:

"111 Complaints to employment tribunal].

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this 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.

5 123 *Time limits*

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

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

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

35. First of all dealing with the claim for unfair dismissal the onus of establishing that the presentation of a claim was not reasonably practicable falls to the claimant to establish (**Porter v. Bandridge Ltd** [1978] ICR 943CA). An
15 employment tribunal claim for unfair dismissal must be started within the time limit set out in section 111. If it is not then the Tribunal will have no jurisdiction to deal with the claim. In the present case the dates of the dismissal and submission of the claim were agreed. Where, as here, a claimant tries to persuade the Tribunal to allow the unfair dismissal claim to be received late
20 they must demonstrate that it was not reasonably practicable for the claim to be made on time or (section 111(2)(b)) within such other time as the Tribunal considers reasonable.

36. The issue of what is reasonably practicable is a question of fact, the Tribunal
25 must look at all the circumstances. There are two parts to the test to be applied in section 111. There are various legal authorities which assist Tribunals in considering the application of these tests but there is no one clear definition of the test and it's application because each case depends on its own particular circumstances.

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37. In the case of **Palmer & Another v. Southend-on-Sea Borough Council** [1984] ICR 372CA, the Court of Appeal conducted a general review of the authorities and concluded that “*reasonably practicable*” does not mean reasonable, which to be too favourable to employees, and does not mean

physically possible which would be too favourable to employers but means something like “*reasonably feasible*” as Ms Greener submitted. Lady Smith in the case of **Asda Stores Ltd v. Kauser** EAT 0165/07 indicated:

5 “*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. Ignorance of the time limit which results in the employee failing to lodge proceedings in time can make the lodging of proceedings not reasonably practicable if the ignorance or mistake itself is reasonable.*”
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38. In the case of **Dedman v. British Building & Engineering Appliances Ltd** [1974] ICR 53 CA, Lord Scarman suggested the Tribunal should ask further questions: “*What were his opportunities for finding out he had rights? Did he take them? If not, why not? Was he misled or deceived?*” In this case the
15 claimant accepted that she was aware generally that there would be time limits but could not recall specific advice although she had discussed making claims with her Trade Union.

20 39. The claimant is a competent and intelligent person who is used to prioritising and organising her busy life. She gave evidence that she used the internet and when she finally made the application she was able to do so taking about an hour to lodge the application.

25 40. I then went on to consider the just and equitable extension under section 123 of the Equality Act. I was referred to the well-known case of **Bexley Community Centre v. Robertson** [2003] EWCA Civ 576 and the proposition that then exercise of the discretion is the exception rather than the rule. It is clear however that the Tribunal has a wide discretion. That was emphasised
30 in the case of **Chief Constable of Lincolnshire Police v. Caston** (2009) EWCA Civ 1298 in which Sedley LJ observed:

35 “*There is no principle of law which dictates how generously or sparing the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. That has not*

happened, and ought not to happen in relation to the power to enlarge the time for bringing ET proceedings.”

41. In the case of **Abertawe Bro Morgannwg University Local Health Board v. Morgan** [2018] ICR 194 it was stressed that Parliament has given Employment Tribunals “wide powers”. It referred to the earlier case of **British Coal Corporation v. Keeble** [1997] IRLR 336) observing that the Tribunal was not required to go through the list of factors such as contained in the Limitation Act 1980 but that many of the factors there might be relevant but that it should not leave a significant factor out of account (**Southwark London Borough Council v Afolabi** [2003] ICR 800). However, some factors are often relevant such as: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).
42. In the case of **Kumari v. Greater Manchester Mental Health NHS Foundation Trust** (2022) EAT 132 the Employment Appeal Tribunal indicated that an Employment Tribunal may, at a preliminary hearing, take into account the merits of the claim being made when deciding on whether or not to allow a “just and equitable extension”. It seems taking the pleadings at face value that the claimant appears to have a strong claim for unfair dismissal and disability discrimination.
43. No one can help but feel sympathetic to the situation the claimant was in. She lost her employment rather surprisingly on the grounds of ill-health where she appeared to be in a position to return to work. It is clear from the claimant’s evidence that she became very vigilant in relation to her husband’s ill-health. She was very concerned he might fall again. She accepted that she would have considerable caring responsibilities however it was also clear from her evidence that her husband had as she put it good days and bad days. It could not be said that at some point over this period she could not have taken a little time to check the time limits (she guessed that there would be time limits) and to lodge proceedings.

44. There were undoubtedly opportunities for her to turn her attention to her own affairs for example when Mr Thomas was visited by his physiotherapist or the occupational therapist. If the claimant had chosen to do so she could have spent an hour on the internet lodging her claim. I can well understand why she was focussed on her husband's health but there does not appear to be any good reason why she had not noted down or researched the appropriate time limits. She had been appraised of the Tribunal procedures in general terms both by her trade union representative, a lawyer from Unison and also by ACAS.
45. In summary the claimant is a capable person who had access to the internet and an ability to check the time limits, if she had chosen to do so. She is used to giving people advice and appears to be organised and capable. It is noteworthy that the claimant felt able to return to work on 17 June and it cannot be said that her own mental health was an impediment. Although she was clearly upset by her dismissal she indicated that she felt very strongly that she had not been treated properly and wanted to take further action. She had the means at her disposal of pursuing Employment Tribunal proceedings but did not do so until too late.
46. The claimant will suffer prejudice by having her claims dismissed but statutory time limits are important and there needs to be some good reason for exercising the just and equitable discretion to allow claims out of time. The claimant has been unable to persuade the Tribunal that the circumstances she faced in both regards to her own mental health and caring responsibilities justify the exercise of discretion in her favour. On the other hand, if the claims proceed the respondent will have to expend time and expenses on fighting claims that would otherwise be time barred. I conclude that the claims require to be dismissed.

Employment Judge: J M Hendry

Date of Judgment: 30 April 2025

Date Sent to Parties: 6 May 2025

