EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000112/2025 (V)

Held on 25 April 2025

Employment Judge J M Hendry

Mr J Mallon	**Claimant** **In Person**
Artfarm Limited	**Respondent** **Represented by,** **Ms G Nicholls,** **Barrister**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is as follows:-

1. The claimant not having demonstrated that it was not reasonably practicable for the claim to be made in time, the claim for "automatically'' unfair dismissal in terms of s.103A of the Employment Rights Act 1996" the Tribunal having no jurisdiction to hear the claim, it is dismissed;
2. The claims for sex discrimination and disability discrimination not having been lodged timeously and the Tribunal finding that it would not be just and equitable to hear the claims late, they are dismissed as the Tribunal has no jurisdiction to hear them.

REASONS

E.T. Z4 (WR)

1. An Open Preliminary Hearing took place by CVP Digital Platform on 25 April 2025 in order to consider the respondent's application that the claims should be struck out for want of jurisdiction having been lodged out of time.

2. The Tribunal heard evidence from the claimant who gave evidence about the background circumstances to the lodging of the claims. The Tribunal considered the Joint Bundle of Documents lodged by parties and the submissions made. The respondent's Counsel having lodged written submissions prior to the hearing which she supplemented orally.

Procedural Background

3. It was not a matter of dispute that the claimant lodged Tribunal proceedings in January 2025 after having contacted ACAS as part of the early conciliation process on the 3 January 2025. He had been dismissed from his employment as a Linen Porter with the respondent company, who run a Hotel in Aboyne, on 17 May 2024.

4. The case proceeded to a Preliminary Hearing which took place on 12 March 2025. The claims at that point were noted as being for unfair dismissal/whistleblowing, disability discrimination and sex discrimination. It was explained to the claimant that he had insufficient qualifying service to make a claim for "ordinary unfair dismissal". The issue of time-bar was discussed and the two tests that the Tribunal was bound to apply canvassed.

5. In relation to the whistleblowing allegations the Note records that their basis was not clear and that the claimant should consider what he says the whistleblowing complaints consisted of. He indicated that the whistleblowing complaints were made to Mrs Zommerfield, a Manager.

6. The Tribunal indicated that a hearing would be arranged to consider the issues of time-bar but in the meantime the claimant should set out the background to the lodging of the claims and the reasons for the delay. As he had made reference to his health at the time of dismissal it was suggested that he obtain medical evidence as to how his health might have impacted on his ability to raise proceedings. It was also clear that the claimant had taken steps to try and get advice at various points and he was asked to clarify this.

7. Following the hearing the claimant lodged Further and Better Particulars. In these he stated that he had spoken to an adviser from a company called Quantum Claims called Paul on 17 May 2024 following his dismissal. He records: "*Paul asked me about the process and advised me of the two year rule and said that I couldn't go anywhere with my claim.*" The claimant indicated that he had been in contact with the Scottish Legal Aid Board on 29 April 2024 to try and get representation for the disciplinary hearing that was imminent and records the steps he took to assist this including contact with the Citizens Advice Bureau and then latterly with ACAS he contacted on 18 March 2024. The claimant also gave details of what he regarded as being his whistleblowing which was that he asked Mrs Zommerfield to investigate what he regarded as unfairness in relation to the disciplinary process and a failure to investigate his grievance. At the end of the Better and Further Particulars the claimant made reference to a number of court cases which he thought would be of assistance to him.

Issues

8. The issues for the Tribunal to consider was whether or not it was reasonably practicable for the claimant to lodge his unfair dismissal claim in time and secondly, whether it was just and equitable to allow the claims for disability discrimination and sex discrimination to proceed.

Findings

9. The following chronology was accepted: The claimant's employment began with the respondents on 26 December 2022 as a linen porter. His dismissal took place on 17 May 2024. On 3 January he contacted ACAS to take part in early conciliation. The Certificate was issued on 15 January. The claimant completed Employment Tribunal proceedings on the same date.

10. It was accepted that the claimant made efforts to get legal advice and representation in relation to disciplinary action being taken against him in March 2024. He made contact with a number of organisations namely on 3 March he contacted McLellan, Adam & Davis Solicitors. On 5 and 8 March 2024 he contacted Unison Grampian. On 8 March 2024 he contacted the CAB. On 8 March 2024 he made initial contact with Quantum Claims a company proving no win no fee representation. On 10 March 2024 he spoke to Paul Lefevre at Quantum Claims who gave him some advice. On 15 March 2024 he contacted the CAB once more. On the 25 April 2024 he contacted Rutherford & Sheridan Solicitors and on the 27 April 2024 he contacted the CAB once more. He contacted Duncan & McColl, Solicitors on 29 April and on the same date he contacted the Govan Law Centre and solicitors Hill & McGinty. He also contacted the Scottish Legal Aid Board on the 29 April and on 30 April 2024 he contacted David Ritchie. On the 7 May 2024 he contacted Pollack & McLean Solicitors and on 7 May 2024 he contacted the Sandemans Solicitors. On the 8 May 2024 he contacted Malcolm, Jack & Mathieson Solicitors and in May 2024 he contacted the MFY Partnership Solicitors, in May 2024 he contacted the MMFW Partnership Solicitors. These organisations were unable to provide representation for him.

11. The claimant has access to the internet and is able to carry out searches there. He holds the view that the law is complex and that there might be misleading information off the internet.

12. The claimant attended a disciplinary hearing on 13 May 2024. Following that hearing he was dismissed. He received a letter on 17 May 2024 from the

respondent company (JB.68). The claimant was dismissed for an alleged breakdown in trust and confidence.

13. The letter recorded the following (JB.69):-

"***3. You have behaved in an unprofessional manner, breach of confidentiality and that you have potentially caused reputational damage to the company amongst your colleagues and ex-colleagues:***

a. You are alleged to have been saying to colleagues and ex-colleagues that you will be taking the company to court and that the Fife Arms is in trouble as they will soon receive a court case……"

14. The claimant accepted that he had indicated that he would take the respondents to court.

15. On 1 June 2024 the claimant e-mailed the respondent in relation to the refusal of his appeal against dismissal:

"*Following your final decision which I again disagree with, I will be taking this further to the Media and my legal team as I feel dissatisfied with your company's failure in relation to my case, there was also no follow-up to my complaints against my so-called colleague FS throughout this shambles of an investigation.*

I also add that any dialogue I had between ex-colleagues from 17 May has no concern to your company as this isn't a breach of any sort."

The claimant at this point had not instructed solicitors.

Medical condition

16. The claimant, since around 2016 has not enjoyed robust mental health. He has suffered from depression and received medication from his G.P. in relation to that depression. He attends a local G.P.'s practice in Braemar at the Braemar Health Centre.

17. The claimant produced his medical records (JB.78-84). The records cover the period March 2023 to date. They record on 10 March 2022 (JBp. 78) "*depression resolved*".

18. In early 2024 the claimant began to feel stressed and anxious in relation to difficulties which had arisen at work. He contacted his G.P. on 27 February 2024 and it was noted "*recurrent depressive disorder: induced by stress at work, going through a disciplinary process at work and ruminating about it when away from work. History of previous depressive illness. Feeling anxious and distressed. Not sleeping. Not at work this week.*"

19. On 5 March it was noted that he was "*struggling currently with disciplinary procedures at work*". The claimant had been prescribed Sertraline medication. He had previously been prescribed this medication. Throughout March 2024 the claimant was periodically reviewed by his G.P. On 13 May 2024 it was noted that he was currently under suspension and awaiting a decision on a disciplinary matter. He was continued on Sertraline and also given Buspar 5mgs. These are medications used to control anxiety.

20. The claimant began work as a cashier in a local shop approximately 7 days after his dismissal on 17 May 2024.

21. In August 2024 the claimant contacted his G.P. in relation to back pain from which he was treated throughout August 2024. It was noted on 4 September "*back ache: T/call; ongoing back pain, feels too sore to return to work.*"

22. On 12 September it was noted "*pain in back improving*".

23. On 4 February 2025 the notes record that the claimant was becoming anxious because of employment tribunal proceedings and was trialed on Zopiclone.

Witnesses

24. The claimant is an articulate and able individual. I found him to be generally credible and reliable in his narration of events but did not find his evidence in relation to his alleged interactions with Quantum Claims or the mystery customer in the shop particularly persuasive.

Submissions

Claimant's Submissions

25. The claimant asked for the claims to be accepted late. He had made strenuous efforts to try and get advice. He had found it a very difficult and stressful time. He needed to work as financially he had to support himself and his wife who did not work and who was disabled. In relation to his claims for sex discrimination he believed that there was a double standard applied. There had been an impromptu meeting of staff on 23 February 2024 and he was criticised for using language which had been used at the meeting by female staff members. In relation to disability discrimination the claimant came to the view that because of his anxiety and depressive condition his employers should have redeployed him to another site because of the impact on his mental health that conflict was having in his workplace. This adjustment had been requested by him in an e-mail in March.

26. In relation to whistleblowing the claimant's position was that in contacting Ms Zommerfield he had set out various breaches of policies in the way he had been treated during the disciplinary process which was the wrong-doing he was complaining of.

27. The claimant indicated that what eventually spurred him to raise proceedings was that he spoke to someone in the shop in which he was working who indicated that he should have raised employment tribunal proceedings against his former employers. This occurred in January and he then took steps to contact ACAS. He had been put off proceeding before because he had been told he had no claim by Quantum Claims and he accepted this. He accepted that he might not have raised the issue of possible sex or disability discrimination with Quantum Claims but he told them the background and

would have expected them to decern that he had these claims. His position was that he was not an expert, he was not a specialist and after discussing matters with someone in the shop that had prompted him to contact ACAS once more. His previous contacts with ACAS and CAB were no relation to representation and not about the merits of any claim.

Respondent's Submissions

28. Ms Nicholls spoke to the written submissions that had been lodged. She also made reference to the evidence that the Tribunal had heard. In her view the claimant's position was implausible. The Tribunal had to look at the entire circumstances and apply a multifactorial test. It was clear that the claimant felt strongly about the way in which he was being treated because of his various attempts to contact solicitors. It was clear from his evidence that he believed that what was happening was wrong. His version of events in relation to the discussion with Quantum Claims seems to make it clear that he did not raise either sex or disability discrimination with them and that the discussion was centred around a possibility of him raising unfair dismissal proceedings and the lack of two years' service being a significant hurdle.

29. In relation to the medical evidence there was nothing that indicated that the claimant was not well enough to make enquiries himself and raise proceedings. He began work almost immediately after losing his job. He continued with that employment. There was nothing in the notes in relation to possible adverse impact of any of the medications that he was on. In any event by early September his back condition and mental health were much improved. The alleged discussion with someone in the shop in January was somewhat convenient. It wasn't clear why the discussion with someone in the shop persuaded the claimant to pursue claims if, as he says, the discussion with Mr Lefevre in May had satisfied him that he could make no claim. It was also noteworthy that there was no claim for disability

discrimination or sex discrimination apparent in the ET1 (or indeed whistleblowing, other than the boxes being ticked).

Discussion and Decision

30. 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.

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

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

31. 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 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 date of the dismissal was agreed as being 17 May 2024. It was also accepted that ACAS were not contacted until the 3 January 2025 to allow the claimant to enter into the Early

Conciliation process. Where, as here, a claimant tries to persuade the Tribunal to allow the claim to be received late he 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.

32. The issue of what is reasonably practicable is a question of fact, the Tribunal must look at all the circumstances. There are accordingly 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 because each case depends on its own particular circumstances. 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*". Lady Smith in the case of ***Asda Stores Ltd v. Kauser*** EAT 0165/07 indicated:

> "*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.*"

33. In this case Mr Mallon argues that he was ignorant of his rights to make a claim for unfair dismissal. 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?*

34. In the present case it is difficult to accept that the claimant's ignorance of the time limit is reasonable or to excuse his inaction. He was aware that

employee rights could be vindicated at Employment Tribunals. He had a palpable sense of grievance that he had been treated badly and that his dismissal was unfair. He made reference in correspondence and to colleagues about taking the matter ‘‘to court’’. Although he said that he had contacted numerous organisations to get representation at the disciplinary hearing it is implausible that the did not want to go further and enquire what his rights were or the remedies available to him if he was dismissed.

35. The claimant gave evidence that he used the internet but stated that he did not carry out research into his rights and/or the Tribunal process because he was not a specialist and the internet could be confusing. However, he was aware that there are officially maintained websites such as the one ACAS has. He was in contact with ACAS and the CAB and it is difficult to accept that in conversation with them he did not enquire generally about his rights or in looking at their website check what the law said and what the time limits were. There are clearly ‘‘official’’ websites available on the internet maintained by organisations such as the CAB, ACAS and the Equal Opportunities and it is reasonable to expect someone to look at them if they are unable to get legal advice.

36. It also seems likely as Ms Nicholls put it that the claimant when he used the internet to obtain details of the solicitors and other organisations that he contacted to try and obtain representation that in this process either he or the organisation would not have mentioned possible claims for unfair dismissal. As noted earlier the claimant during this period was clearly motivated by a strong sense of injustice and a feeling that he had been treated wrongly and that he wanted to do something about it.

37. The claimant gave evidence that not only was he ignorant of the time limits that might apply but that his discussion with Mr Paul Lefevre on 17 May had misled him into believing that he had no claim whatsoever. The claimant’s position was that he told Mr Lefevre about the circumstances of his dismissal and he said that because of the lack of two years’ service he could either not

proceed or have no claim. However, he records the matter in this way in his Better and Further Particulars:

''*Quantum claims- after termination of contract on the 17/5/2024 I spoke with Quantum claims advisor Paul as to what next steps I could take with regards to my circumstances, Paul asked about the process and advised me of the two year rule and said that I couldn't go anywhere with my claim".*

Perhaps a fair reading of these comments is not that a claim cannot be made but that it would be unsuccessful because of the two year service required.

38. The conversation he says he had did not deal with time limits. On the face of it that seems surprising as it is generally a matter that is mentioned and the conversation took place on the same day as the dismissal. I noted that in the ET1 although the claimant had ticked the boxes for sex and disability discrimination there was no factual basis given for those claims. Indeed, even at the stage of the claimant completing his Agenda document he had not articulated what the facts were that he thought amounted to sex or disability discrimination. It is, therefore, highly probable in my view that Mr Lefevre was not alerted to the fact that the claimant was considering that he had a claim for either sex or disability discrimination. In these circumstances he cannot argue that he was told that such claims were impossible.

39. Another factor in this matter is that when questioned at the hearing, the claimant said that the sex discrimination amounted to him being pulled up for using words in conversation that his female colleagues had also used. The disability discrimination was apparently the failure by the respondents to redeploy him a month or so before the actual run up to his dismissal because of conflict with other staff. These matters do not give me any confidence that there is a clearly articulated claim for either sex or disability discrimination and in addition they would also be out of time as the acts complained of occurred prior to the dismissal.

40. Even if I were to take the view that his adviser, Mr Lefevre, was at fault that would not particularly assist the claimant. Although it is a relevant factor

determining whether it was reasonably practicable to present the claim in time it is not determinative on it's own. According to the claimant's own evidence he was still aggrieved at his treatment and did not take any action until a customer in his shop indicated that he should have raised employment tribunal proceedings. Why the customer's advice outweighed that of a skilled adviser is not clear. Lord Denning put it in the case of ***Dedman*** that if someone engages "skilled advisors" and they give the time limit wrongly then the remedy is to sue them in negligence. This is commonly referred to as the ***Dedman*** principle. In this case the claimant confirmed that he had contacted Quantum Claims, a firm specialising in taking no win, no fee Employment Tribunal cases.

41. I also considered the claimant's health. He was not clear as to in what way his ill health prevented him from raising proceedings. His position was that he did not do so because of faulty advice. I accept that during this period he went through a difficult time losing his job and that he had raised anxiety levels which required him to seek medical assistance. However, his condition did not prevent him from being able to work almost immediately after his dismissal and cope with the usual stresses of life. It does not appear to the Tribunal to have been a factor in preventing him raising proceedings and indeed he was still being prescribed medication when the proceedings were finally brought by him.

42. Looking at the entire circumstances here I am of the view that the claimant has not persuaded me that it wasn't reasonably practicable to lodge a claim for unfair dismissal either in time (within three months of the date of his dismissal) or within such other time as was reasonable and as a consequence the claim falls to be dismissed.

43. 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 in the case of ***Chief Constable of Lincolnshire Police v Caston*** (2009) EWCA Civ 1298 in which Sedley LJ observed:

> *"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."*

44. 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 a 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).

45. 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".

46. One of the other factors that I considered in relation to these claims was time bar and the strength of the claims as currently articulated. All things considered they appear weak. It is clear that the claimant's request for redeployment, which is the foundation for his claim for disability discrimination, occurred in March some time prior to his dismissal. As noted

earlier this does not appear to have been a matter that he raised with Mr Lefevre. The claim for sex discrimination arises from the impromptu meeting the claimant describes took place on 23 February. Accordingly both claims have been time-barred before the claim for unfair dismissal became time-barred.

47. Considering the entire circumstances it appears to the Tribunal that there was no impediment preventing the discrimination claims being made on time and the claimant making his own researches into the employment tribunal process he needed to use. What he did in January 2025 he could have done earlier. Rejecting the claimant's request for an extension of time will result in him losing his right to pursue these claims. I have observed that they appear weak. Statutory time limits are there to be observed. In short there is no good reason why the claims should not have been made in time. I must consider the impact on both parties. The respondent company did not contribute to any delay. If the claims proceed they will have to incur time and expense defending them. Accordingly, I find that it is not just and equitable to allow these claims late and they fall to be dismissed.

Employment Judge: J M Hendry

Date of Judgment: 30 April 2025

Date Sent to Parties: 6 May 2025