



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. P. Wilson

**Respondent:** Rhenus Warehousing Solutions Limited

**Heard at:** Birmingham via CVP

**On:** 11 August 2025

**Before:** Employment Judge Wedderspoon

## Appearances

For the claimant: In Person

For the respondent: Mr. J. Tataobuzogwu, solicitor

## JUDGEMENT

1. The claimant's claim of disability discrimination is out of time and it is not just and equitable to extend time.
2. In the circumstances the claim is dismissed.

## REASONS

1. On 17 April 2025 Judge Battisby fixed a hearing to deal with the following issues :-

### Time Limits

- (i) Given the date the claim form was presented and the dates of early conciliation any complaint about something that happened before 3 July 2024 may not have been brought in time.
  - (a) Was the claim made to the tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
  - (b) If not was their conduct extending over a period?
  - (c) If so was the claim made to the tribunal within three months (plus early conciliation extension) of the end of that period?

- (d) If not were the claims made within a further period that the tribunal thinks is just and equitable? The tribunal will decide :
  - (e) Why were the complaints not made to the tribunal in time
  - (f) in any event it is just and equitable in all the circumstances to extend time?
- (ii) In their discretion based on the contents the evidence and the time available to deal with it and any other considerations or representations at the time of the hearing, the employment judge may decide to determine the issue based on the claimants case at its highest namely that time for bringing the claim ran from 22 December 2023, leaving any arguments over a continuing course of conduct from late May 2023 to be determined at the final hearing if the claim is allowed to proceed.
  - (iii) Such further case management directions as appropriate will be given.

#### The hearing

2. The Tribunal was provided with two witness statements from the claimant and a bundle of documents of 68 pages. It was determined at the beginning of the hearing that the Tribunal should focus on whether the last act of discrimination (the alleged discriminatory dismissal) was in time and assume for the purposes of the hearing that there was a continuing act of discrimination. In the circumstances it was not appropriate that each detriment prior to the dismissal be considered individually as to whether they were brought in time.

#### Background

3. The claimant submitted a claim on 13 March 2024 ticking the box that ACAS did not have power to conciliate on his claim. By letter dated 15 March 2024 Employment Legal Office Parmar rejected the claimant's claim because the claimant did not have an ACAS conciliation certificate for claims which ACAS had power to conciliate on. In the letter the Legal Officer stated.
4. The claimant entered ACAS conciliation on 2 October 2024 and received a certificate on 22 October 2024.
5. The claimant brought a claim dated 25 October 2024. He was employed by the respondent, a logistics operator, as an Operations Manager from 22 August 2022 until 22 December 2023 when he resigned.
6. At a preliminary hearing before Judge Battisby on 17 April 2025 the claimant confirmed his claim was about direct disability discrimination by association. The claimant's case is that his wife is disabled by reason of fibromyalgia and his son is disabled by reason of autism. His case is that because his families' disabilities he needs to work fixed daytime hours and was happy with his original contract to work from 6:00 a.m. to 2:00 p.m. In late May 2023 he was told to work alternate daytime and evening shifts. The evening shift was from 2:00 p.m. to 10:00 p.m.

His case is that he could not manage the shifts due to family arrangements. He was the only manager asked to work alternative shifts.

7. The claimant made a written flexible working request by email dated 7 June 2023. A meeting took place on 7 July 2023 and his request was refused in writing on 21 July 2023. The claimant tendered his resignation with effect on 22 December 2023.
8. The claimant confirmed that he did not pursue a complaint of whistleblowing and his constructive unfair dismissal claim is brought as part of his discrimination complaint.
9. Judge Battisby noted that the claim was out of time by some considerable degree. It was agreed that there should be a preliminary hearing to determine whether the time should be extended on a just and equitable basis.

The claimant's evidence

10. The claimant's history of events was confused. He stated that he made an initial claim on 13 March 2024 because he did not realise he had to go to ACAS he had not obtained a certificate. He also stated in his evidence that he did contact ACAS before submitting his claim. He stated that his history for events was not clear because he was unwell at the time of leaving the respondent; he was on medication for stress and anxiety.
11. The claimant secured an alternative job prior to resignation having been approached by a recruitment agency and following his effective resignation in December 2023 he started a new job in a new industry (a factory manager role as opposed to logistics) in January 2024.
12. The tribunal notified the claimant his claim was rejected as he did not have an early conciliation number. The document from the Legal Officer dated 15 March 2024 states "You will need to obtain an early conciliation certificate and re-present your claim form". The Legal Officer also included some explanatory notes called "Claim Rejection – Early Conciliation. Your Questions Answered." The claimant stated he thinks he read it but cannot recall if he took it all in. He did contact ACAS by email on 26 April 2024 and received an ACAS EC number on 30 April 2024 which he said he forwarded to the Tribunal on 1 May 2024 and did not hear anything until he chased for a response in August 2024. He had not provided a copy of the ACAS certificate or email to the Tribunal in the bundle.
13. Whatever was sent by the claimant to the Tribunal, the Tribunal deemed to be a reconsideration application and rejected it. By letter 19 August 2024 the Tribunal stated *"Your application for a reconsideration of the decision to reject your claim form cannot be accepted. If you want the decision to be reconsidered you must apply again and explain why your application was not made 15 March 2024 of the date of notice of rejection was sent to you."*
14. The claimant stated at this stage he was disheartened and spoke to his wife who by early September 2024 stated she would assist the claimant in bringing his claim. ACAS was contacted by 2 October 2024 and an ACAS certificate was provided dated 22 October 2024. The claimant was aware that he was out of time and issued his claim on 25 October 2024.

15. The claimant said that he was aware he could bring a constructive dismissal claim because of his internet research.
16. The claimant also engaged in a subject access request with his employer. He wanted evidence such as flexible working requests, his contract, location of work site and conversations between HR and senior managers. He was sent this on the 22 of March 2024. The claimant said that the respondent was delaying in providing information to him once he complained he would be taking them to court for constructive dismissal. The respondent suggested they had 28 days from 1 March 2024 to reply. The last contact that the claimant had with the respondent was on 31 March 2024 and had no reply since.
17. He did not appeal the decision to reject his request for flexible working determining that the decision was already made against him. The respondent's suggestions that he could take a break in the day to go home he said was unrealistic. He felt targeted because no other manager at the respondent was being asked to work the hours he was.
18. The claimant stated his case against the respondent was that their decision to refuse his flexible working impacted on his life with his family who are disabled.

#### Submissions

19. The respondent submitted that the Tribunal has a wide discretion but any claim that there is a lack of knowledge as to how to bring a claim has to be reasonable and the claimant's ignorance is not reasonable here. The claimant had been given further information and opportunities by the Tribunal to submit his claim in time but he failed to do so. The respondent relied upon the following cases **Mensah v Royal College of Midwives UKEAT/124/94; Robertson v Bexley Community Centre 2023 Civ 576; Miller others v Ministry of Justice EAT 0003/15; Perth v Kinross 001/10; Kumari 2022 EAT 132 and No. 8 Partnership v Simmons 2023 EAT 140.**
20. The respondent submitted that the claimant in his resignation letter in early December 2023 alleged he had been discriminated against. He did not make contact promptly with ACAS; he made contact at either end of February or early March. To be able to allege constructive dismissal the claimant accepted he researched online. There is a significant amount of information available to the claimant as to how to bring a claim. He was able to research to make a subject access request to his employer. Although the claimant says he had mental health issues there is no corroborative evidence to establish this. It is unclear when the claimant contacted ACAS but it is inconceivable when speaking to ACAS that he would not have been informed about the process. The claimant appears to have chosen to ignore this advice. The claimant was advised when his original claim was rejected and was provided with guidance as to how to apply for a reconsideration. He failed to act on any of that guidance. The claimant has described being busy with life but that ignores he was able to find time to submit a subject access request having conducted research. The respondent questioned the merits of the claim taking account of the claimant's clarification today that he was complaining that the change in hours had an impact on his lifestyle/care of his family

21. The respondent asked the Tribunal to consider the effect of the delay on the cogency of witness evidence. The claimant having been aware of the process takes until 2 October 2024 (some 10 months post termination) and receives a certificate on 22 October 2024 but does not submit a claim knowing his claim is out of time until 25 October 2024. There is no clear explanation for the delay and it is not just and equitable.
22. The claimant submitted he had significant changes over 6 months following resignation from the respondent. He was starting a brand new job which took him at least 6 months of learning in respect of the team and a new way of working in the construction industry; he had experience of logistics only. His health and family's health was impacted. By reason of his son's autism, home life is subject to a strict structure; he cannot just come home and put in a claim. He apologised for the delay but he was subject to a lot of pressures.

### The Law

23. Prior to commencing proceedings in the employment tribunal certain prescribed information must be provided to ACAS in respect of "relevant proceedings" pursuant to section 18(1)(a) and (e) of the Employment Tribunal Acts 1996. Section 18A of the Employment Tribunals Act provides for a process to be followed by a conciliation officer upon a notification being made. If at the end of the process settlement is not possible or the prescribed period expires without settlement, ACAS issues a certificate see section 18A (4) of the Employment Tribunals Act.
24. Pursuant to section 123 of the Equality Act 2010 a discrimination claim needs to be brought within three months starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable.
25. The Tribunal has a wide discretion in applying the just and equitable test for extension of time in Equality Act claims. The Court of Appeal in the case of **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194**

*"First it is plain from the language used (such other period as the employment tribunal thinks just and equitable) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980 section 123 (1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or interpret it as if it contains such a list. It may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the limitation act 1980 (see **British Coal Corporation v Keeble 1997 IRLR 336**) the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor*

*out of account see **Southwark London Borough Council v Afolabi ICR 800, para 33.** That said factors which are almost always relevant to consider when exercising any discretion whether to extend time are (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 all matters were fresh).*

26. Section 33 of the Limitation Act 1980 in addition to highlighting specific factors likely to be relevant also sets out the question of prejudice to each party which is an important consideration when exercising the just and equitable discretion. In **Miller v Ministry of Justice 2016 UKEAT/0003/15 Elizabeth Laing J** noted there were two types of prejudice which a respondent may suffer if limitation is extended *"the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence and the forensic prejudice which a respondent may suffer if the limitation period is extended by many months or years which is caused by such things as fading memories loss of documents and losing touch with witnesses."*
27. The tribunal is entitled to consider any disadvantage to any party in coming to its conclusions; see the case of **A v Choice Support (2022) EAT 145** at paragraph 30. The best approach is for the Tribunal to assess all the factors in the particular case it considers relevant including in particular the length of and reasons for the delay (see **Adeji v University Hospitals Foundation Trust 2021**). The merits of the claim may also be relevant to the exercise see **Kumari v Greater Manchester Mental Health NHS Foundation (2022) EAT 1321**.
28. If a claimant is relying on an alleged ignorance as to their rights it will be important to ask whether that ignorance was reasonable see **Perth and Kinross Council v Townsley (2010) UKEATS/00110/10**. More generally when considering the just and equitable extension, Mrs Justice Simler (as she was then) in the case of **Bowers v National Institute for Health and Clinical Excellence (2014) UKEAT/1073/14** stated at paragraph 38
  - (a) the onus is on the party seeking an extension of time to persuade a tribunal to do so. That is the case because an extension of time is an indulgence. It is the exception and not the rule. It is not an entitlement nor even an expectation;
  - (b) at best a party seeking the exercise of discretion in his favour can expect that the discretion will be exercised judicially in accordance with established principles but it is incumbent upon the party seeking that exercise in his favour to provide a full and acceptable explanation for his delay.
  - (c) in the ordinary case a failure to provide a good explanation for delay may well lead to the discretion being exercised against him absent compelling reasons why that should not be the case.
29. In **Jones v the Secretary of State for Health and Social Care 2024 EAT 2** HHJ Tayler (see paragraphs 27 to 37) stated that strictly speaking section 123 of the Equality Act does not set out a primary time limit that may be extended but rather a time limit of three months "or such other period is the employment tribunal thinks just and equitable". In his Judgment he also referred to HHJ Auerbach's judgement in **Owen and Network Rail Infrastructure Limited 2023 EAT 06** stating *"as discussed above the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what is just and equitable*

*is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reasons are relevant matters to which the tribunal ought to have regard.*

### Conclusions

30. The claimant's history of events is confused.
31. However, the claimant issued his claim on 13 March 2024 without an ACAS certificate. He had stated incorrectly on the form that one was not required. He was aware 2 days later that he needed an ACAS certificate and he needed to re-issue his claim by virtue of the letter from Legal Office Parmar. The letter was clear as to the steps the claimant needed to take.
32. The claimant has said that he took steps some 4 to 6 weeks later by contacting ACAS and receiving a certificate which was forwarded to the ET on 1 May 2024. Neither the Tribunal nor the respondent have seen this certificate today.
33. On 19 August 2024 the claimant was informed by the tribunal that his reconsideration claim was rejected, and he needed to reapply with reasons. The claimant did not do so. He discussed with his wife so that by September 2024 she took responsibility for his claim. However, contact was not made with ACAS until 2 October 2024. This is over 6 months after the Legal Officer had informed the claimant he needed an ACAS certificate and needed to re-issue his claim. He then took 3 days on receipt of the ACAS certificate to issue the claim.
34. The Tribunal accepts that the claimant was under some stress at work so that he contacted his GP in December 2023 for medication and he was stressed by starting a new job in a new industry in January 2024 and was busy at home with his family.
35. However, the claimant did have the time to engage with a subject access request with his employer having taken time to research online how to do this. The claimant is capable of research but appears to have just left his claim with a lack of attention. His contact with ACAS is confused. On the one hand in respect of his initial claim the claimant said he did not need a certificate but also states he thinks he spoke to ACAS at this time. It is unlikely that ACAS failed to inform him about the need for a certificate prior to submitting a tribunal claim.
36. The Tribunal promptly informed the claimant on 15 March 2024 about his need for an ACAS certificate and provided him with additional information about obtaining a certificate and issuing his claim. He failed to follow these steps. The claimant says he then obtained a certificate, but the tribunal and the respondent have not seen this. He failed to re-present his claim in accordance with the clear instructions of the Legal officer. The suggestion that the claimant did not know what to do is unreasonable following the clear instructions of the legal officer.

37. The claimant received communication from the tribunal on 19 August rejecting the reconsideration and inviting the claimant to make a further application; he did not do so. The last step taken was to contact ACAS on 2 October prior to submitting his claim on 25 October 2024 three days after the receipt of the ACAS certificate on 22 October 2024 knowing his claim was out of time.
38. There is a significant amount of information available online to assist litigants in person to bring claims to the Tribunal. The claimant is capable of research as shown by his research and engagement in the process of subject access request. He has also stated that he researched online to inform him about his right to bring a constructive dismissal claim.
39. The claimant's lack of knowledge about obtaining an ACAS certificate and following the correct process to issue a claim is unreasonable bearing in mind the clear instructions from Legal Officer Palmar. The delay here is significant and not satisfactorily explained. The claimant did not follow the Legal Officers instructions. On receipt of the communication from the Tribunal on 19 August 2024 the claimant did not apply for a reconsideration but again has waited a further 6 weeks until 2 October 2024 to contact ACAS. Life is busy and the Tribunal does not underestimate the challenges of a new job with a busy family life. However, discrimination claims are fact sensitive and delays should be avoided. Delay could have been avoided here had the claimant taken notice of the guidance given by the Tribunal.
40. If the claimant is not permitted to pursue these claims he will have no redress for the way he says he was treated by this respondent. However, if this claim is permitted to proceed the respondent will have to face a discrimination claim which is prima facie out of date with the consequent of fading memories, costs and management time. Balancing all the factors and noting that the claimant has not acted promptly even with knowledge of the procedure to be followed having received guidance from the Tribunal and ACAS. The Tribunal concludes that it is not just and equitable to extend time. The claim is dismissed.

Approved by EJ Wedderspoon

Date: 11 August 2025