



EMPLOYMENT TRIBUNALS

Claimant: Ms. M. Mills

Respondent: Virgin Atlantic Airways Limited

JUDGMENT

The Claimant's claim is struck-out as it was submitted out of time and the Tribunal does not have jurisdiction to hear it.

REASONS

1. At a Preliminary Hearing on 5th June 2025, the Respondent alleged that that the Claimant's claim was submitted out of time and therefore, the Tribunal did not have jurisdiction to hear it. The Claimant was an unrepresented Litigant-in-Person and I allowed her an opportunity to make written submissions by 1st July 2025 (which were provided on 16th July 2025) to explain why her claim had been presented outside of the primary time limit and why it was not reasonably practicable for her to submit her claim inside the three-month time limit or within such further period which would be considered reasonable.
2. The Respondent responded to the Claimant's application on 16th July 2025 pursuing dismissal of the claim for want of jurisdiction or, in the alternative, for a Deposit Order to be made as it considered the Claimant's complaint as having little reasonable prospect of success.

Background Application to Strike Out the Claim

3. On 5th December 2024, the Claimant began Acas Early Conciliation ('Day A') and was issued with an Acas Early Conciliation certificate on 16th January 2025 ('Day B'). The Claimant presented her ET1 on 13th February 2025 and her complaint claim was for unauthorised deductions from wages.
4. The Claimant complained about unauthorised deductions from wages between the period 22nd January 2024 to 2nd April 2024. The Claimant was suspended from work during this time and resumed work on 2nd April 2024 when her pay was re-instated.

5. Therefore, the primary time limit expired on 1st July 2024 and the Claimant should have begun Acas Early Conciliation by this date. As it happened, the Claimant did not begin Acas Early Conciliation until 5th December 2024 and presented her ET1 claim form on 13th February 2025. This is a significant period of delay.

Summary of the Respondent's Case

6. The allegations made by the Claimant relate to the period 22nd January 2024 to 2nd April 2024. It was submitted (in written submissions) that when one considers the dates of Acas Early Conciliation and when the ET1 was presented, the primary time limit had expired by a considerable period.
7. Therefore, the Respondent says that the Claimant's ET1 was presented just over five months after the primary time limit expired. The Respondent also submitted that the Claimant was, and is, a member of a trade union and had received advice from it and knew about Employment Tribunal processes and time limits as she had been involved in several Employment Tribunal claims in 2021.
8. Finally, it was said that the Claimant had failed to establish that it was not reasonably practicable for her to submit a claim within the time limit and that the Claimant had not demonstrated that she had submitted her claim in a reasonable period thereafter.

Summary of the Claimant's Case

9. The Claimant's submissions were brief, to say the least, and are reproduced here,

'Dear Judge,

I am happy for you to advise in regards to a summary of the deposit.

In regards to Virgin Atlantic claiming they knew nothing of the amount that I was claiming I initially enquired about this in April 2024 when I raised a grievance against the commander.

In October 2024 I was to be given a non agreed settlement figure of £155 (see attached email DSAR). This payment wasn't received and I do not agree or did so at the time to this amount. The reasons for the delay was that the emails from the court went into my Junk/Spam folder and I missed them and I apologise for the oversight.

Last year was incredibly taxing as my father was diagnosed with Alzheimer's and his dog had to be put to sleep within days of his diagnosis. I'm happy to mediate and negotiate with the respondent outside of the tribunal and involve the assistance of ACAS for the overriding objective of the tribunal.

Yours sincerely

Melissa Mills'

10. The Claimant's submissions were submitted by a trade union representative so it is implicit that the Claimant is a trade union member and had received and had access to trade union advice.

11. The Claimant did not explain when her father received a diagnosis of Alzheimer's or the date of his dog's demise. More importantly, the Claimant has failed to address how these events made it not reasonably practicable to submit an ET1 claim form within the time limit or a reasonable period thereafter.

Relevant Law

12. The starting point must be s.23 of the Employment Rights Act 1996 ('ERA') which states (so far as material):

'(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received..'

...

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

...

13. It is for a Claimant to show that it was 'not reasonably practicable' for the complaint to be presented in time and that the claim was nevertheless presented 'within such further period as the tribunal considers reasonable.' There is no presumption to exercise the discretion. The Tribunal should have regard to relevant factors, including what the Claimant knew about the right to complaint to a Tribunal and of the time limit for doing so (Marks & Spencer plc v. Williams-Ryan [2005] EWCA Civ 470).

14. What is reasonably practicable is a question of fact and thus, a matter for the Tribunal to decide. An appeal will not be successful unless the Tribunal has misdirected itself in law or has reached a conclusion that no reasonable Tribunal could have reached. As Lord Justice Shaw put it in Wall's Meat Co Ltd v. Khan 1979 ICR 52, CA:

'The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive'

15. I remind myself that the onus of proving that presentation of a claim within the time limit was not reasonably practicable, rests on a Claimant. *'That imposes*

a duty upon him to show precisely why it was that he did not present his complaint' — Porter v. Bandridge Ltd 1978 ICR 943, CA. Accordingly, if a Claimant fails to argue that it was not reasonably practicable to present the claim in time, the Tribunal will find that it was reasonably practicable — Sterling v. United Learning Trust EAT 0439/14.

16. What amounts to a 'further reasonable period' is essentially a matter of fact for a Tribunal to decide on the particular circumstances of the case. There is no hard and fast rule about what period of delay is reasonable and the extent of the delay is just one of the circumstances Tribunals will need to consider. In *Cullinane v. Balfour Beatty Engineering Services Ltd* and anor EAT 0537/10 Mr Justice Underhill, then President of the EAT, commented that the question of whether the period between expiry of the time limit and the eventual presentation of a claim is reasonable requires an objective consideration of the factors causing the delay and of what period should reasonably be allowed in those circumstances for proceedings to be instituted. Crucially, this assessment must always be made against the general background of the primary time limit and the strong public interest in claims being brought promptly.

Conclusion

17. The factual matrix of this matter is uncomplicated and agreed. The Claimant issued a claim in February 2025 relating to matters which took place between January 2024 and April 2024; the ET1 should have been submitted by 1st July 2024 and it was not presented until the passing of nearly seven-and-a-half months. It is not the Claimant's case that she was incarcerated or incapacitated at the material time save that *'Last year was incredibly taxing as my father was diagnosed with Alzheimer's and his dog had to be put to sleep within days of his diagnosis.'*
18. An additional feature in this case is that the Claimant has been involved in several previous Employment tribunal claims and was (and remains) a trade union member and had received trade union advice and had access to it.
19. The Claimant did not advance any convincing reasons as to why she submitted her ET1 so far outside of the primary time limit.
20. Therefore, the Claimant's claim was presented out of time, there are no reasons to allow an extension of time and the claim is dismissed as the Tribunal had no jurisdiction to hear it.

Employment Judge Sudra
Date: 4 September 2025