



EMPLOYMENT TRIBUNALS

Claimant: Ms DC Payne
Respondent: Govani Dental Limited

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE
By video link

On: 29 September 2025

Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: Mr B Dawes, trade union representative

For the respondent: Ms C Bennett, Solicitor

JUDGMENT

UPON hearing from trade union representative for the claimant and solicitor for the defendant

AND UPON considering the evidence

It is the Tribunal's judgement that

1. The complaint for constructive unfair dismissal was presented out of time. It was reasonably practicable to have presented it in time. Therefore the Tribunal lacks jurisdiction to hear and determine it. The complaint is dismissed.
2. All complaints for disability discrimination and harassment were presented after time. It is not just and equitable to extend time. Therefore the Tribunal lacks jurisdiction to hear and determine them. The complaints are dismissed.
3. Because there are no further complaints, the claim is dismissed and all future hearings are vacated.

REASONS

Introduction

1. The claimant has presented claims of constructive unfair dismissal and various claims of disability discrimination. The exact details of the

discrimination claims is not clear. It is clear however that the claimant relies on the alleged disability of anxiety and depression.

Hearing

2. The hearing took place by video link. We took breaks as a reasonable adjustment to accommodate the claimant. There was an agreed electronic bundle of 382 pages. The claimant gave evidence. No other witnesses gave evidence. At the start there was a discussion which initially prompted an oral application to amend, but that was withdrawn. I say therefore no more about it. No party has suggested the hearing was unfair. I am satisfied it was a fair hearing.

Issues

3. It is agreed that the claims were not presented to the Tribunal within the time limits prescribed by statute. The issue for me to decide is then whether time should be extended this diction to hear and determine the claims in the usual way. In the case of the claim for constructive unfair dismissal the test is whether it was not reasonably practicable to present the claim in time and if it was not whether it was then presented in such time afterwards as was reasonable. In the case of the discrimination claims it is whether it is just and equitable to extend time.

Facts

4. I begin with an observation. The claims themselves are not clear despite the lengthy grounds of complaint. It is not clear what are the acts that are said to amount to fundamental breaches of contract. It is not clear what are said to be acts of disability discrimination (I include harassment in this) and is difficult to pick out the essential elements for each potential claim. At the case management hearing before Employment Judge Brewer on 13 May 2025, the Learned Judge made directions to further and better particulars. He set out the elements required for each claim. The claimant has since provided three sets of further and better particulars. None of them clarify the claim. Therefore the discrimination claim is lacking clarity even with a reasonable reading. The respondent is not able to discern the case it faces on discrimination. If the claim proceeds some time will have to be dedicated by the Tribunal to disentangle these claims, to identify the essential elements. This has the consequent impact on time and expense.
5. For present purposes, the details and types of discrimination claim are not relevant and neither party has sought to explore them. The parties agreed to proceed for this hearing's purposes only on the assumption that they represent a continuous act. This is the most beneficial presumption to the claimant.
6. I make a further observation about the claimant as a witness. I am quite satisfied she was an honest witness who was doing her best to assist the Tribunal. That said, what she told me does not appear to always tally with the objectively ascertainable facts. I conclude that her state of mind has coloured somewhat her recollection and I therefore treat her recollection with caution.

7. I turn to the relevant facts. I make the following findings of fact on the balance of probabilities in relation to the relevant matters to enable me to decide only the issues before me.
8. Since 2017 the claimant has had a mixed single condition of anxiety and depression. I express no view on whether it is a disability for the purposes of the **Equality Act 2010**. The medical notes show she is prescribed various medications to help with the condition. However the notes do not show continuous visits to the doctors or recently, repeated or lengthy absences from this condition. It is something she lives with daily.
9. The claimant's employment commenced on 2 January 2019. Latterly she was employed as a practice manager.
10. The Claimant lodged a grievance on 20 June 2024. For the purposes of the matter before me neither the substance of this or other grievances nor the outcomes matter.
11. About this time she joined a trade union who agreed to represent her in her workplace dispute and Tribunal proceedings. She was certainly a member by 26 June 2024. Mr Dawes has been her representative throughout. The claimant confirmed in cross examination that he made aware from early on about the strict time limits for bringing claims to the employment Tribunal.
12. A grievance meeting took place on 27 June 2024. Mr Dawes attended by video link to represent her. The outcome was communicated on 1 July 2024. Her grievance was upheld.
13. On 5 July 2024 the claimant resigned on notice.
14. On 10 July 2024, Dr Giovanni sent to the claimant a WhatsApp message relating to the workplace keys. The details are not important except to mark that the claimant alleges the message is an act of disability discrimination and that this is the last alleged discriminatory act.
15. On 17 July 2024 the claimant submitted a grievance through her trade union. The details do not matter again. However the respondent appointed the British Dental Association (a trade body) to conduct the investigation.
16. It is agreed the claimant's employment ended 2 August 2024.
17. The claimant started new employment on 9 August 2025 or thereabouts.
18. After her employment, the respondent wrote to the claimant on 23 August 2024 about a USB stick that allegedly contained sensitive personal data and was in the claimant's possession. The parties liaised through Mr Dawes about it.
19. Despite her employment ending the respondent dealt with the grievance through the British Dental Association. A grievance meeting took place on 21 August 2024. The claimant attended with Mr Dawes. In the meeting she explained that as part of her training for a City and Guilds' Certificate in Leadership and Management she had to do about two observations per month but intended to increase to four observations per month to complete her qualification.
20. On 6 September, the claimant commenced early conciliation.

21. The grievance was dismissed on 1 October 2024. Mr Dawes appealed on the claimant's behalf, after discussing it with her and obtaining her consent.
22. On 14 October 2024, early conciliation ended.
23. On 16 October 2024, the respondent wrote another letter about the USB stick and set out the files on it that it believed were confidential or sensitive personal data. On 18 October 2024, the claimant wrote a detailed, considered and thorough reply.
24. On 23 October 2024, the claimant attended the grievance appeal with Mr Dawes. The appeal was dismissed. The decision was communicated to the claimant on 21 November 2024 (though the report is dated 18 November 2024). The claimant identified the date of 17 November 2024, which is wrong. Though asked about it, I think there is nothing significant in the fact she got the date wrong.
25. It is agreed the time limit for presenting her claim for discrimination was 16 November 2024
26. On 25 November 2024, the claimant was admitted to hospital with a chest infection. The doctors prescribed her with antibiotics and discharged her that day. She had an allergic reaction to the antibiotics She saw her family doctor on 28 November 2024 about this. I accept her evidence that this would have left her tired and drained. She was nonetheless able to return to work and continue to work for her certificate.
27. It is agreed the time limit for presenting her claim for unfair dismissal was 9 December 2024.
28. The claimant presented her claim on 10 January 2025.
29. She completed her certificate on 23 January 2025. In a nomination for an "Against All Odds" award it is noted she met her deadlines, worked diligently and adapted and thrived under pressure and stayed on course.
30. The claimant continued in her new job despite the incident of 25 November and despite her condition to complete her qualification and to earn money to pay the mortgage. She was able to complete the 4 observations per month she needed, which is double what she would ordinarily have expected to do.
31. After her employment ended, the claimant has had some suicidal ideation at times and was, generally, mentally unwell. Her new employer had accommodated her condition so she did not need to take time off. There is no evidence of, for example, seeing doctors with these symptoms conditions or them being so bad she was unable to attend work.
32. When asked in cross-examination she explained that she prioritised her new job – she felt she could not take time out for financial reasons and because of the need to settle into her new role. I accept this.
33. The claimant did not present her claim before the outcome of the appeal against the grievance outcome because in "good faith" she hoped for a resolution without litigation. I accept this was her belief. There is no evidence that anyone led her to hold this opinion e.g. the respondent did not do anything that might lead her to believe this.

Law

34. Claims for unfair dismissal must be presented within 3 months of the date of termination. Claims for discrimination (including harassment) must be presented within 3 months of the last act of harassment.
35. The Tribunal can only extend time for claims of unfair dismissal if it was not reasonably practicable to present the claim in time, and then it was presented in a reasonable time thereafter.
36. The case law on this test was recently reviewed by the Employment Appeal Tribunal in **Cygnnet Behavioural Health Ltd v Britton [2022] IRLR 906 EAT** and summarised. I note
 - 36.1. The test is a strict one (at **[19]** and **[27]**),
 - 36.2. The test is focused on practicality of what could be done, not whether it was reasonable not to do something: (at **[20]** and **[27]**),
 - 36.3. It is for the claimant to prove it was not reasonably practicable to present the claim in time: (at **[21]** and **[25]**),
 - 36.4. Any ignorance of rights and time limits must be a reasonable one (at **[23]** and **[25]**),
 - 36.5. If it was not reasonably practicable to present the claim in time, whether it was presented in a reasonable time thereafter is “an objective consideration having regard to all of the circumstances of the case, including what the claimant did, what he knew or reasonably ought to have known about time limits, and why it was that the further delay occurred.” (at **[24]** and **[25]**), and
 - 36.6. A person who is considering bringing a claim for unfair dismissal is expected to appraise themselves of the time limits that apply; it is their responsibility to do so (at **[53]**).
37. The existence of an internal procedure is not enough to justify not bringing a claim in time: **Palmer v Southend-on-Sea Borough Council 1984 ICR 372 CA**. That said, other factors may justify awaiting the outcome of an internal procedure (see e.g. **John Lewis Partnership v Charman UKEAT/0079/11**) such as a young, inexperienced person who relied on his parents for advice. I see no reason why a medical scenario might not also be justification for awaiting the outcome, especially as in principle a debilitating illness is potentially enough: **Schultz v Esso Petroleum Co Ltd [1999] ICR 1202 CA**.
38. The test is more relaxed for the “just and equitable” test. Likewise internal processes are not enough to justify an extension of time limits: **Apelogun-Gabriels v Lambeth LBC 2022 ICR 713 CA**. Ultimately I must balance all the relevant circumstances which include the length and reason for the delay: **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**

Conclusions

39. I conclude it was reasonably practicable to have presented the claim for unfair dismissal in time. Therefore I dismiss it for lack of jurisdiction. My reasons are as follows.
- 39.1. The claimant had trade union representation from at least 26 June, throughout her grievances and through early conciliation.
 - 39.2. The claimant was aware of the deadline early on because her trade union advised her of it.
 - 39.3. I accept her condition has impacted on her. I accept she has at all relevant times been unwell. I do not accept however that it has led her to be so unwell she could not present her claim in time.
 - 39.3.1. She was able to lodge, with her trade union's help, a grievance and appeal against it.
 - 39.3.2. She was able to take part in the grievance and grievance appeal hearing.
 - 39.3.3. She was able to secure and commence a new job quickly.
 - 39.3.4. She has completed her certificate for which she was studying, including doubling the number of observations required to complete it.
 - 39.3.5. She has continued to work in her new role. I accept that she has understandably been motivated by the need to earn and settle into a new job. However her condition has not been so adverse she has had to take time off.
 - 39.3.6. The chest infection, admission and reaction to the antibiotics left her fatigued. However they clearly did not leave so fatigued she could not work or could not complete her certificate and the work for it.
 - 39.3.7. She has been able to commence and complete early conciliation.
 - 39.3.8. She may well have awaited the outcome of the grievance appeal in good faith, but this was her own decision and her own belief. No other person led her to think this. Furthermore there is no evidence or suggestion that she might have erroneously reached this conclusion because of her anxiety and depression.
 - 39.3.9. The claimant was prioritising her new job and certificate. Entirely understandable in my view and reasonable. However the evidence leads me to conclude that had she instead chosen to prioritise the

claim to get it presented at least, she would have been able to present her claim to the Tribunal in time.

- 39.3.10. She had her trade union available to help her present her claim.

In simple terms she made an understandable choice. The result is however that the claim could have been presented in time. Her condition and the chest infection and aftermath did not prevent her from presenting it in time.

The claim is one month late. Even if she had not reasonably been able to present the unfair dismissal claim in time, I have seen no evidence that justifies a one-month delay. Therefore I would not have extended time anyway.

40. I turn to the discrimination and harassment claims. This is more balanced. However I conclude that it is not just and equitable to extend time for the discrimination and harassment claims. My reasons are as follows.

40.1. The length of delay is nearly 2 months. I consider this significant.

40.2. I repeat the above about the impact of her condition set against what she was able to do. Most strikingly she was able to start and continue new employment and work on her certificate. She made an understandable choice. However I cannot ignore she was also aware of the time limit from well before the deadline expired and had trade union support. Reflecting on all the above I do not consider there is a good explanation for the delay.

40.3. The claimant will be prejudiced if I stop the claims from proceeding. However I balance against that the fact the claimant has been afforded a chance to present her claims.

40.4. If I allow the claims to proceed the respondent will suffer prejudice. This is because the claims are ill-defined and unclear despite a case management hearing and 3 sets of further and better particulars. They would be subjected to further expense clarifying them and further delay before the claim against them is disposed of by which time memories will have, inevitably, faded.

40.5. I do not accept the internal process assists the claimant. As noted above no-one led her to consider it best to await its resolution before presenting a claim.

41. It follows the claims are dismissed for want of jurisdiction.

Approved by the Judge

Employment Judge Adkinson

Date: 29 September 2025

JUDGMENT SENT TO THE PARTIES ON

.....16 OCTOBER 2025.....

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FOR THE TRIBUNAL OFFICE

Notes

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Appeals

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