



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001018/2025

Held by Video Conference in Aberdeen on 12 September 2025

Employment Judge N M Hosie

Mr P Jurgiel

**Claimant
In Person**

Wm Morrison Supermarkets Limited

**Respondent
Represented by
Mr R Winspear
Counsel
Instructed by
Ms A Schiavetta,
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:-

1. the claim is time-barred and is dismissed for want of jurisdiction; and
2. the claim has no reasonable prospect of success and is struck out under Rule 38(1)(a) of The Employment Procedure Rules 2024.

REASONS

Introduction

1. Piotr Jurgiel brought a complaint of “automatic” unfair dismissal. He claimed that he was dismissed for asserting a statutory right, namely, “*asking to receive training relevant to my new responsibilities*”; and “*I was denied the appeal against my disciplinary dismissal.*” The respondent denied the claim, in its entirety. They admitted the dismissal but claimed that the reason was conduct, gross misconduct, and that it was fair. The respondent’s solicitor also maintained that the claim was time-barred and that the Tribunal had no jurisdiction to hear it; and that it had “no reasonable prospect of success” and should be struck out. The case called before me by way of a preliminary hearing to consider these two issues.

The evidence

2. I heard evidence from the claimant in respect of the time-bar issue.
3. I then heard submissions by the parties, in respect of both issues.
4. Each party submitted a bundle of documents (“C”) and (“R”).

Time-bar

5. A claim of unfair dismissal under s.111 of the Employment Rights Act 1996 (“the 1996 Act”) must be brought before the end of the period of three months beginning with the “effective date of termination”, subject to the possibility of an extension if it was “not reasonably practicable” for the claimant to meet this deadline. However, s.207B of the 1996 Act extends the ordinary time limit to take account of any participation in the ACAS Early Conciliation process, provided that early conciliation commences before the ordinary limitation period has expired.
6. It was not disputed in the present case that the claim was submitted out of time.
7. I was satisfied having regard, in particular, to the respondent’s dismissal letter, that the effective date of termination of the claimant’s employment was 15 December 2024 (R72-73).
8. The claimant notified ACAS on 9 January 2025 and the ACAS Certificate was issued on 20 February 2025.

9. This meant that the last day to submit the claim form was 25 April 2025.
10. It was not submitted until 27 April 2025 and was, therefore, out of time.

The facts

11. Having heard the evidence and considered the documentary productions, I was able to make the following findings in fact, relevant to the time-bar issue. The claimant was employed by the respondent as a night-shift assistant from 5 September 2023 to 15 December 2024. He was dismissed, summarily, allegedly for gross misconduct. He notified ACAS on 9 January 2025 and a Certificate was issued on 20 February 2025. He was in Poland from 23 April to 6 May dealing with unrelated inheritance proceedings, following the death of his Uncle.
12. He was aware of the three month time limit. He had experience of Employment Tribunal proceedings having raised a previous claim against his then employer on 9 September 2022. He alleged that he had been subjected to detriment for making protected disclosures. His claim was struck out on the ground that it had “no reasonable prospect of success”. A Judgment to that effect was issued on 13 October 2022.
13. The claimant has a computer at home and also a smartphone. He has internet access. He submitted his claim form online on 27 April 2025.
14. The claimant is reasonably fluent in English although it is his second language.

Discussion and Decision

15. Section 111(2) of the 1996 Act is in the following terms:-

“.....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 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.”*

16. The issue for me in the present case, therefore, was whether or not the claimant could avail himself of the so-called “escape clause” by establishing that it had not been “reasonably practicable” for him to present the claim form timeously and, if so, the next question for me was whether I could conclude that the complaint had been presented: “*within such further period as the Tribunal considers reasonable*”.
17. In support of his submissions, Counsel referred to the meaning of “reasonably practicable”, as described by Lady Smith in ***Asda Stores Ltd v. Kauser*** EAT0165/07: “*The relevant test is not simply a matter of looking at what is 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.*”

Counsel also referred to the Judgment of Lord Justice Underhill in ***Lowri Beck Services Ltd v. Brophy*** [2019] EWCA Civ 2490, in which he set out the essential elements of the test and said that: “*The statutory language is not to be taken as referring only to physical impracticability and for that reason it might be paraphrased as whether it was ‘reasonably feasible’ for the employee to present his or her claim in time.*”

18. The claimant maintained that he had been unable to submit his claim form in time, principally because he had been in Poland and also because of the volume of documents which he wished to submit. He made reference to the “*six pages of A4*” which he had submitted to the Tribunal the day before the preliminary hearing (C2-C7).
19. He also gave as reasons that he was unable to find a “*secure digital environment whilst in Poland*” and also because he was much occupied immediately after his dismissal looking for a job and had “*other issues to attend to*”. Once he got a job he had to do training. He claimed that he “*only had a few hours a day to work on the claim form.*”
20. I was not persuaded that these explanations rendered it not reasonably practicable for him to submit the claim form in time.
21. While I was mindful that the claimant was unrepresented, he was aware of the three month time limit. He knew how to go about submitting an Employment Tribunal claim. Even if I were to accept that he experienced difficulty accessing the internet when in Poland, he received the ACAS Certificate on 20 February 2025 which gave him the green light to proceed with an Employment Tribunal claim and there was no reason why he could not have submitted his claim form in the two month period from then until he

went to Poland on 23 April 2025. There was no impediment to him doing so. He was aware of employment tribunal procedures. It was unnecessary for him to submit all the documentation he referred to along with his claim form.

22. It was clear that it was “reasonably feasible” for him to submit his claim form in time.
23. I arrived at the view, therefore, that I should not exercise my discretion, extend the time limit and allow the claim to proceed. Accordingly, the claim is dismissed as the Tribunal does not have jurisdiction to hear it.
24. In arriving at this view, I was mindful that the test of “reasonable practicability” is a strict one, more strict than the “just and equitable” test in respect of discrimination claims which are out of time.
25. Another factor which I had regard to, although a minor one, was my view, expressed below, regarding the merits of the claim. Even taking the claimant’s pleadings at their highest, I was not persuaded that the claim had a reasonable prospect of success. When taking account of this factor, I was mindful of the guidance in ***Kumari v. Greater Manchester NHS Trust Foundation*** [2022] EAT132 that while the apparent merits of a claim are not necessarily an irrelevant consideration to the extension of time limit, the Tribunal is required to approach the question with caution and keep in mind that it does not have all the evidence before it.

Prospects

26. Counsel also submitted that the claim should be struck out as having “no reasonable prospect of success”, in terms of Rule 38(1)(a) of the Employment Tribunal Procedural Rules 2024.
27. When considering this issue, I was mindful that strike-out is a draconian measure and should only be exercised in exceptional cases.
28. In addition to the claim form (R18-30) the claimant had submitted further and better particulars of his claim (R53-55).
29. For the purposes of considering this issue I took his pleadings at their highest value. In other words, I accepted that he would be able to prove all the material facts he alleged.

30. However, even doing so, I was not persuaded that, in law, the claim had a reasonable prospect of success. In short, I was not persuaded that the request to receive training, or an alleged failure to afford the claimant an appeal against his dismissal were assertions of a relevant statutory right, as defined in s.104(4) of the 1996 Act.

31. Further, I found favour with Counsel's written submissions in this regard:-

"The claimant's case is that he was requesting that he undertook training. The right to receive training is not a relevant statutory right as defined by the ERA.

Further, even if the claimant's claim is seen as a s.100 claim (i.e. the principal reason for dismissal being the making of his employer aware of circumstances he reasonably believed were harmful or potentially harmful to health and safety) this would only apply in circumstances where there was no health and safety representative or committee.

The other potentially relevant sub-section is s.100(d), but there is no reasonable prospect of satisfying this section, as the threshold is that an employee must reasonably believe that he was "serious and imminent danger" and refused to return to his place of work in response. There is no prospect of the claimant demonstrating that anything within his place of work (a supermarket) represented serious and imminent danger.

Whilst there are general complaints about not feeling safe in the absence of completing certain (currently undefined) training, the claimant's case does not come close to qualifying as an allegation that the respondent had infringed a relevant statutory right of the claimant."

32. For all these reasons, I arrived at the view that the claim has no reasonable prospect of success and it is struck out, therefore, in terms of Rule 38(1)(a).

Date sent to Parties

17 September 2025