THE EMPLOYMENT TRIBUNALS

Claimant Miss R Olyazadeh

Respondent Newcastle University

Heard at Newcastle upon Tyne Hearing Centre

On 16 October 2025 (in chambers, parties not in attendance)

Before Employment Judge Langridge

JUDGMENT

1) The claimant's complaints under case number 2502011/2023 of unfair dismissal and for notice pay were not presented within the applicable time limit. It was reasonably practicable to do so.

2) Accordingly, the Tribunal does not have jurisdiction to hear the complaints and they are dismissed.

REASONS

Introduction

1. This preliminary hearing was fixed for the purpose of rehearing one matter arising from the Tribunal's judgment dated 14 December 2023 following a preliminary hearing on 25 October 2023. By that judgment ('the 2023 judgment'), I determined that the claimant's claims identified in her second ET1, presented on 29 August 2023 and given the above case number, were not brought within the statutory time limits under the Employment Rights Act 1996 ('the Act'). I further decided that it was reasonably practicable for the claimant to have brought those claims in time.

This latter point was the subject of a successful challenge to the Employment Appeal Tribunal.

2. By orders dated 30 January 2025 the EAT directed that the issue of reasonable practicability under section 11(2)(b) of the Act be remitted to me for rehearing. The EAT directed that I need consider no new evidence, and should take into account the findings of fact in the 2023 judgment, as well as the two prior preliminary hearings, the claimant's witness statement, and the parties' written submissions. Those submissions were provided to the Tribunal in advance of this hearing, and the parties agreed it could go ahead without their attendance.

3. The two preliminary hearings which predated the 2023 judgment took place before Judge Robertson on 20 June 2023 and Judge Sweeney on 24 August 2023.

4. The present claim under the above case number comprised claims for unfair dismissal and for notice pay. Other like claims had been brought in the claimant's first ET1 dated 3 April 2023 under case number 2500668/2023. Those claims were withdrawn by the claimant at the October 2023 preliminary hearing. They had been brought prematurely in that they predated the claimant's effective date of termination ('EDT').

5. Some claims of discrimination under the Equality Act 2010 remain live under the first ET1, and were the subject of a deposit order made at the October 2023 preliminary hearing.

6. At the October 2023 preliminary hearing the Tribunal was tasked with determining as a fact, and with the benefit of evidence, the date of the claimant's EDT. It was determined to be 18 April 2023, and as a result the primary time limit for the claimant to bring her claim (subject to the Acas Early Conciliation provisions) was 17 July 2023. The second claim was presented some weeks later, on 29 August 2023, and so was out of time.

7. The issue for this remitted hearing was simply to consider whether it was reasonably practicable for the claimant to have submitted her second ET1 in time, having regard to:

   7.1 The reasons put forward by the claimant for not submitting that ET1 within the statutory time limit; and
   7.2 Whether, once she became aware of the problems with the time limit, the claimant presented her second ET1 within a reasonable time after the expiry of the time limit.

8. The findings of fact from the 2023 judgment were reviewed, as well as the pleaded case, and the claimant's written and oral evidence from the October 2023 preliminary hearing. The following facts derive from a combination of these sources and I have included a summary of some key findings of fact from the 2023 judgment.

Relevant facts

9. The chronology of events during these proceedings has a bearing on the claimant's understanding of the time limits and her conduct throughout that period. All dates refer to 2023 unless otherwise stated.

10. At the time of presenting her first ET1 on 3 April, the claimant was unaware of the position regarding her pay and P45. She had been paid her salary at the end of March, then submitted the first claim without knowing whether she would receive any payment from the respondent at the end of April. Although absent from work, the claimant had no reason to believe that her contract of employment had terminated as at 3 April, and she gave no such indication in her form ET1. At that time the majority of the complaints the claimant was pursuing were discrimination claims under the Equality Act 2010.

11. By the time the respondent submitted its Response on 23 May, the claimant's employment had terminated. The respondent put her on notice that it considered her EDT to be 18 April. The claimant took no steps to investigate the implications of this or seek advice.

Preliminary hearing 20 June 2023

12. A preliminary hearing was fixed to discuss the first claim. It took place on 20 June 2023 before Judge Robertson, whose Case Management Orders were sent to the parties on 14 July. This was three days before the primary time limit expired on 17 July. The Judge ordered the claimant to set out some Further Information about her claims, which was provided on 28 July.

13. In her case summary attached to the Orders, Judge Robertson noted that the first ET1 dated 3 April indicated the employment was continuing. She further noted that the claimant was aware of the time limits for the discrimination claims under the Equality Act 2010. This was confirmed by the claimant herself in the Further Information, where she stated that:

    13.1 She believed her sex discrimination claim had been brought in time, relying on a meeting on 26 January 2023.

    13.2 She was aware that her pregnancy discrimination claim had not been brought in time, as the facts dated back to 2021.

14. Judge Robertson indicated that the circumstances of the claimant's employment ending and the EDT were unclear at that stage.

15. In paragraph 31(m) of her case summary the judge stated:

> "If there is a suggestion from the claimant, on reflection, that her employment ended after presentation of the ET1, it is possible that her claim has been presented prematurely."

16. Neither the claimant (nor, for that matter, the respondent) has made any reference to this part of the Judge's notes during the course of these preliminary hearings. I note it is also not referred to in the EAT's judgment, which suggests it was not brought to the attention of the EAT either.

17. What is clear is that the claimant took no steps to reflect on what the judge said, or to investigate the implications of a premature claim, after the 20 June hearing.

Claimant's Further Information

18. In her Further Information the claimant identified a number of matters which set out her own interpretation of events. Many of these are reflected in the findings of fact made in the 2023 judgment, for example the fact that she contacted Acas in February 2023; told colleagues on 2 March that that would be her last meeting; and that she would be taking annual leave until 17 March.

19. Other matters contained in the Further Information have a bearing on the present issue. The claimant stated that:

    19.1 She was being pushed to work full-time or resign, and that the respondent's conduct towards her happened between 26 January 2023 and 2 March 2023.

    19.2 The respondent had taken away her projects and informed everyone in January she was not working there any more.

    19.3 The respondent had paid her to "the date we agreed with Acas (23 March 2023)". In fact, no such agreement was ever reached.

    19.4 The respondent had ended her employment on 18 April, with a further small payment being made at the end of May.

    19.5 "I checked at HMRC website beginning of June 2023 that my employment ended 18th of April."

Preliminary hearing 24 August 2023

20. A second preliminary hearing took place on 24 August before Judge Sweeney. By this time both parties were in agreement that the claimant's employment ended on 18 April 2023. Despite this, when the claimant submitted her second ET1 a few days later, she relied on an entirely new termination date of 31 May. The only explanation for this new date is that it was when the claimant received her accrued holiday pay. If that date had been accepted, it would have brought the second claim within the time limit.

21. Judge Sweeney's case management summary included the following relevant matters:

    21.1 There was a dispute as to which party had terminated the employment. He outlined the difference between a dismissal by termination by the employer,

and a resignation where the employee considers they have been constructively dismissed.

21.2 The Judge inferred that the claimant had constructive dismissal in mind when submitting her first ET1, from the directions made by Judge Robertson.

21.3 The EDT had been discussed at the previous hearing and was now agreed by both parties to be 18 April 2023. The claimant was relying on information from the HMRC portal.

21.4 In paragraph 32 Judge Sweeney stated:

> "Whatever the precise date, and whoever ended the contract, what was clear was that the claimant maintained that at no point prior to 3 April 2023 (the date of presentation of the claim form) did she tell the respondent she had resigned or was resigning. As she explained to me, it was never a plan for her to resign … and she did not want to give them a resignation."

22. It was not therefore the claimant's case that she had resigned at the point when she submitted her first ET1. This led Judge Sweeney to raise the issue of whether that claim had been presented prematurely, and whether the Tribunal would have jurisdiction to hear it.

23. On 28 August the claimant initiated Early Conciliation with Acas and on 29 August she presented her second form ET1.

Findings of fact in 2023 judgment

24. The Tribunal made findings of fact in its 2023 judgment, of which the following are relevant to the present decision.

25. In an email dated 11 November 2022 the claimant told her line manager, Professor J Mills that she had found a new job, working remotely. There followed communications about the fact that the claimant wanted the respondent to allow her to reduce her hours to part-time. The respondent did not give permission. By January 2023 the claimant was exchanging emails with the respondent's HR department. This was to clarify her intentions regarding a resignation, and the practicalities of giving effect to this. At no time did the claimant take steps to give effect to her intended resignation. At one stage she told the respondent she did not want to leave but instead wanted to apply for funds so as to collaborate with future research, and keep her affiliation as a research associate. Following a number of meetings with line management in 26 January the claimant then decided she did not want to work with the respondent any longer.

26. On 31 January 2023 the claimant emailed the respondent's HR adviser and said she would be getting a representative and taking advice. She said she would be collecting emails and documents to give to her representative and would not be attending further meetings until she had legal advice.

27. The claimant then initiated early conciliation with Acas on 14 February 2023.

28. The claimant ceased carrying out any substantive work on 2 March, then took 10 days' holiday from 17 March. She was paid until 23 March. On 13 April she returned all university property to the respondent. These decisions were taken by the claimant unilaterally and she was not following the instructions of the respondent in stopping work or returning equipment.

29. In the meantime, on 30 March Acas had informed the respondent that the claimant intended to submit her resignation. Emails were exchanged with the claimant about actioning this, but she chose not to do so.

30. The emails exchanged between the claimant and the respondent's HR adviser on 18 April recorded the fact that she was by now on unpaid leave, until 24 April. Having heard nothing in reply to the 18 April email about her resignation, the respondent processed the claimant as a leaver on 25 April, and wrote to her on that date to say so. The letter stated that the employment ended with effect from 18 April, and that accrued annual leave would be paid no later than 31 May.

31. The claimant saw her P45 on returning to the UK on 28 May. The claimant stated in evidence that she checked the HMRC website at the beginning of June and saw her P45 showing that a termination date of 18 April.

32. The claimant contacted Acas to initiate early conciliation on 28 August 2023, more than one month after the expiry of the time limit.

Supplementary findings of fact

33. As to the claimant's understanding of the position during these events, I make the following supplementary findings of fact, based on the evidence already heard and the formal Tribunal documents.

34. Firstly, the claimant is clearly a highly educated and articulate person working in an academic field. She had no difficulty in representing herself at the October 2023 preliminary hearing or through her written submissions for this hearing. In doing so, she demonstrated both confidence and a relatively high degree of knowledge and understanding of the issues in her claims. Furthermore, the claimant's conduct during the latter months of her employment shows that she had a high level of understanding of her employment rights from the beginning of 2023. Her conduct then shows her to be assertive and capable of pursuing both her decisions and her employment rights.

35. The claimant was not confused as to whether her employment had ended when she decided to submit her first ET1 on 3 April 2023. On the contrary, she was adamant that she would not be the one bringing it to an end. She understood that the respondent was asking her to formally submit her resignation and that without that, her employment would be ongoing. The claimant specifically did not want her employment to end because she wanted to remain employed on a part-time basis so as to take up another part-time role. She also wanted to keep her employment alive to enable her to apply for funds in the future so that she could keep her affiliation with the respondent as a research associate.

36. The claimant's aspirations to be retained as an employee changed at some point in January 2023 and on 14 February she contacted Acas about potential claims. These included a possible constructive unfair dismissal claim as well as discrimination claims under the Equality Act 2010. Although the claimant then took unilateral steps to absent herself from work and duties in March and April, she knew that she had still not submitted any resignation or received any notice of termination from the respondent. The claimant therefore knew that her employment had not ended when she submitted her ET1 on 3 April.

37. In her witness statement for the October 2023 preliminary hearing, the claimant said the respondent had emailed her on 30 March saying she had advised Acas that she had given her resignation. She asserted that this was not true, and that "Acas advised me that I should give my resignation and I mentioned no, I read in Gov.UK that I should leave the job immediately if I cannot solve it". The claimant added: "She told me even if it is constructive, you should give resignation, I said ok because I did not want to get to an argument with ACAS".

38. By the time she saw the Response dated 23 May, the claimant was on notice that the respondent considered 18 April to be her EDT. She took no steps to investigate the implications this might have on her claims for unfair dismissal and notice pay.

39. By the preliminary hearing on 20 June the claimant demonstrated to Judge Robertson that she was aware of and understood the time limits applicable to her Equality Act claims. She was explicitly told by the judge that her unfair dismissal claim may have been brought prematurely. By this time the claimant was in no doubt that there may be a problem with the date she filed her claim, but again she took no steps to look into that.

40. At Judge's Sweeney's preliminary hearing on 24 August, the subject of the premature claim was raised again. This time the claimant did look into the matter, contacting Acas on 28 August and submitting her second ET1 the following day. The claimant named the EDT as 31 May, despite agreeing with the respondent's position at the preliminary hearing. Her stance was also contrary to her own statement in the Further Information where she identified 18 April as the EDT and referred to the P45 submitted to HMRC by the respondent.

41. I therefore find that when she submitted her second ET1 on 29 August, the claimant was in no doubt about the fact that her employment had ended in April, and probably on the 18th of that month, by virtue of:

    41.1 the date stated in the P45 that she had seen at the latest by early June;
    41.2 the content of the contemporaneous emails with the respondent around 18 April;
    41.3 the fact that she had received no wages at the end of April; and on a continuing basis, had carried out no duties for the respondent after March; and
    41.4 the respondent identifying 18 April as the EDT when filing its Response on 23 May.

42. The claimant further knew that she was at risk of a finding by the Tribunal that her EDT was 18 April 2023, which could jeopardise her unfair dismissal claim. Even if she did not understand the implications of the EDT relied on by the respondent, the claimant was left in no doubt that her claim might be premature when Judge Robertson raised this at the 20 June preliminary hearing and referred to it in her case management orders and case summary sent to the parties on 14 July.

43. It was only after the 24 August preliminary hearing that the claimant took steps to investigate the implications of her first ET1 being premature. She decided, opportunistically, to identify the EDT as 31 May 2023 when submitting the second ET1 as this would mean that claim was in time.

The law

44. Section 111 Employment Rights Act 1996 provides that:

> *(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) […] 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.*

45. These provisions are subject to the extension of time rules which mandate early conciliation through Acas. The 3 month primary time limit is met if a claimant initiates early conciliation within that period, beginning with the EDT. The Tribunal has the power to allow a late claim where it is satisfied that it was not reasonably practicable for the complaint to be presented in time.

46. The question of reasonable practicability is one of fact: Walls Meat Company Ltd v Khan 1979 ICR 52. The Court of Appeal said that presenting a complaint is not reasonably practicable "if there is some impediment which reasonably prevents, or interferes with, or inhibits" carrying out that act. Furthermore, the impediment may be "the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters". The Court added:

> "Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made […]"

47. In Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, the Court of Appeal reviewed the authorities, including Walls Meat Company Ltd v Khan. It concluded that to construe the words 'reasonably practicable' as the equivalent of 'reasonable' would be too favourable to employees. It also does not mean physically possible, which would be too favourable to employers, but it means something like 'reasonably feasible'.

48. A claimant's ignorance of his or her right to claim unfair dismissal may be a factor, but that ignorance must itself be reasonable. In Porter v Bandridge Ltd 1978 ICR 943, the Court of Appeal decided that the correct test is not whether the claimant knew of his or her rights but whether he or she ought to have known of them. The Court referred to Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA, in which Scarman LJ commented on the position where a claimant pleads ignorance as to his or her rights:

> "… does total ignorance of his rights inevitably mean that it is impracticable for him to present his complaint in time? In my opinion, no. It would be necessary to pay regard to his circumstances and the course of events. What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?"

49. This principle was dealt with in Trevelyans (Birmingham) Ltd v Norton 1991 ICR 488, EAT where the Court said that, when a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim.

50. In Meaker v Cyxtera Technology 2023 EAT 17 there was confusion about the date when the claimant's employment had terminated. In that context, the Court referred to the claimant's knowledge of payments calculated by the respondent by reference to its understanding of the EDT. The Employment Tribunal had taken the view that it was not reasonable for the claimant to have taken any other view than that his employment terminated on the date relied on by the respondent. The EAT said that even if the claimant considered that he had a good argument for a later EDT, he plainly knew that he was at risk of being ruled out of time.

51. In Software Box Ltd v Gannon 2016 ICR 148, the EAT considered the application of the 'not reasonably practicable' extension in circumstances where the claimant was mistaken in her belief that proceedings were already pending. Referring to Wall's Meat Co Ltd v Khan, the EAT stated that the focus should be on what was reasonably understood by the claimant when presenting her second claim and whether, on the basis of that understanding, it was not reasonably practicable for her to bring that claim earlier.

Written submissions

Claimant's submissions

52. The claimant submitted that she presented her first ET1 in circumstances that amounted to constructive dismissal and under the mistaken belief that her EDT

was 23 March 2023, after she ceased to work and the respondent ceased to pay her. This was her explanation for the delay in presenting the second ET1.

53. She says she acted promptly once she learned on 24 August that the first claim was brought prematurely, and that she made reasonable efforts to comply with the time limit "as soon as the legal position was made clear to her", at the August preliminary hearing.

54. The claimant said her reason for not bringing the second claim in time is because there was a case for constructive dismissal already before the Tribunal. She also relied on Judge Sweeney having described her claim as a claim for "direct" unfair dismissal, "not constructive", and asserted that the respondent had agreed with that labelling. She acted promptly after being made aware of that. Once the claim was characterised as a "direct" unfair dismissal, that meant it was not constructive unfair dismissal and so March 2023 could not be the EDT.

55. The claimant submitted that the respondent changed its position on the EDT at the October 2023 preliminary hearing, whereas previously it had known she did not intend to return to work after March 2023 and had accepted that March was her EDT.

56. The claimant relied also on inconsistent statements from the respondent during the proceedings. Whereas in the Response to the second claim the respondent had relied on an 18 April EDT, in the Response to the first claim it had stated the claimant would not return to work after March and denied any breach of contract. She said she relied on statements made by the respondent and the Tribunal and resubmitted her claim once she had clarification.

57. Referring to the difficulty and confusion surrounding the identification of the EDT, the claimant stated that her initial reference to constructive dismissal resulted from the respondent's misinterpretation of her statements. In support of this she referred only to the respondent's "unfounded claim about an unpaid leave agreement".

58. The claimant referred to what she saw as inconsistencies and contradictions in the information provided by the respondent in its first Response, where it had said the claimant had exhausted her right to annual leave. She nevertheless received a payment for accrued holiday pay in late May. The claimant referred to discussions with Acas which had been mentioned in her witness statement for the October 2023 preliminary hearing. There had been discussions about her leaving on 15 April but no such agreement was reached. She represented that as a "false statement" by the respondent, in contradiction to its reference to unpaid leave.

59. All of this was raised in the claimant's submissions to show examples of the respondent's alleged "failure to provide clear and consistent information" which she asserted directly contributed to her misunderstanding of the EDT.

60. The claimant submitted that her confusion about the EDT being in March 2023 was reasonable, given what was happening that month, with the absence from

work and her repeated statements that she would not be returning. That belief was reinforced by the respondent's proposals via Acas.

61. The claimant submitted that her belief was based on an understanding of the EDT, which was "the date on which an employee communicates their constructive resignation and it takes effect … not when the employer chooses to acknowledge it". She did not identify when that communication from her was made or when it took effect. She said her reply to the 18 April email was simply a "reconfirmation and reiteration" of her earlier position.

62. The claimant concluded by saying the Tribunal had failed to properly assess the complexities in determining the EDT. She acted in good faith and responded as soon as the legal position became clear.

Respondent's submissions

63. In its submissions the respondent referred the Tribunal to Trevelyans (Birmingham) v Norton and Wall's Meat Company Ltd v Khan (above). Where a claimant is generally aware of their right to claim unfair dismissal, they are obliged to seek information and advice about how to enforce that right. Even if they are genuinely ignorant or confused, that ignorance or confusion must in itself be reasonable.

64. Relying on Meaker v Cyxtera Technology the respondent submitted that if there is a dispute about the EDT it was still reasonably practicable for the claimant to present her claim when she knew she was at risk of being ruled out of time. The relevant circumstances of this case include the following:

    63.1 The claimant was in contact with Acas on 14 February 2023 and was in a position to find out about time limits.

    63.2 When she presented the first ET1 the claimant knew her employment had yet to terminate.

    63.3 The first ET3 dated 23 May put the claimant on notice that the respondent considered 18 April to be the EDT. That has been its consistent stance throughout.

    63.4 At the 20 June preliminary hearing the claimant was again on notice that the respondent considered the EDT to be 18 April. Therefore she knew she could be ruled out of time.

    63.5 The claimant's Further Information dated 28 July says the respondent ended her employment on 18 April.

65. Any mistaken belief had therefore been resolved by the respondent and Tribunal putting the claimant on notice in May and June of the EDT of 18 April. The claimant herself relied on this date in her Further Information, which resolved any confusion by 28 July at the latest. On each of these dates, any impediment arising from the claimant's mistaken belief had been removed. Even in reliance on the 28

July date, any confusion about the EDT was resolved, yet the claimant took no action to present her second claim for a month, which was not reasonable.

66. The claimant's confusion based on having been constructively dismissed in March 2023 was not a reasonable belief. She clearly knew about her rights and potential claims in general, and took no steps to make inquiries or seek advice despite her confusion about the EDT.

Conclusions

67. It is clear from the authorities referred to above that an impediment to bringing a claim within the statutory time limit can be a state of mind. However, whether a claimant relies on ignorance of their rights, or confusion about how to enforce them, that state of mind must be a reasonable one to hold in all the circumstances – Walls Meat Company.

68. It is not just a case of assessing what the claimant actually knew at the relevant points in time, but also what she ought reasonably to have known – Porter v Bandridge and Dedman.

69. The authorities also make clear that a claimant has a responsibility to seek information or advice about how to enforce their rights. In this case the claimant undoubtedly had a good understanding of her right to bring an unfair dismissal claim, even allowing for her confusion about whether this is labelled “direct unfair dismissal” or “constructive unfair dismissal”. They amount to the same type of complaint, albeit the routes to the claim are very different depending on which party ends the employment. Either the employer or the employee must terminate the contract in order to bring it to an end. It is not in dispute that the respondent in this case never took that step.

70. What is manifestly clear in this case is that the claimant wished to resign and treat herself as constructively dismissed. She used that language when in contact with Acas in February 2023 and in her first claim form. The claimant may not have understood the difference between a termination of employment and a ‘dismissal’ as defined by section 95 Employment Rights Act 1996. What is colloquially referred to as a ‘constructive dismissal’ is a case where an employee resigns in the circumstances set out in section 95(1)(c) of the Act. That person may then bring an unfair dismissal claim and try to persuade a Tribunal that they were dismissed. Such a claim may be referred to as a ‘constructive unfair dismissal’ claim, even though that is not the language of the Act. Either way, the employment must have ended, either by virtue of the employer terminating it expressly, or by the employee’s resignation.

71. The reason relied on by the claimant for not submitting her second claim in time was identified by the EAT when it allowed Ground 1 of her appeal, by reference to paragraph 6 of the claimant's witness statement:

> “If any other dates will be decided by the Employment Judge as end date, The reason this was not brought on time because there was a case for constructive dismissal already at Tribunal and both claimant and respondent were looking

> at it as constructive dismissal. It was suggested by Employment Judge Sweeney that it is unfair dismissal and respondent agreed to that. I brought it as soon as possible when it was clear that it was unfair dismissal, and the other claim will be dismissed because it was premature. I did not add any delay after it was clear to me it is unfair dismissal. I informed the tribunal immediately after I filled the ET1 again."

72. Therefore the reason was that the claimant had a claim for constructive dismissal which was already before the Tribunal. The purpose of this rehearing is to consider that reason and whether it was a good reason to explain why the claimant did not initiate her second claim until 28 August. I have considered the claimant's reasons by reference both to what she knew and what she ought to have known at various points in time.

73. I acknowledge that the claimant referred in both her witness statement and written submissions to the confusion she says existed about the type of unfair dismissal claim she was bringing. The first point to make is that I do not accept her interpretation of what Judge Sweeney said at the preliminary hearing. His case summary did not say that this case involved a dismissal by reason of the respondent terminating the employment, nor did the respondent agree with that contention. There was never any question of the claim being presented in two different ways, as there was never any evidence of termination by the respondent. Judge Sweeney was simply clarifying the law in an effort to assist the claimant.

74. I found that the insertion of this debate into the present case of little relevance or assistance in reaching my decision. I do not accept that the perceived difference between what the claimant terms a 'direct unfair dismissal' claim and a claim of 'constructive dismissal' was material to her decision-making when presenting her claims. On 3 April the claimant knew that she was trying to bring a constructive unfair dismissal claim, as was plain from paragraph 3.1 of her witness statement. Under the heading "Constructive dismissal", the claimant explicitly identified the claim and linked it to the respondent's conduct towards her, which she described as a "serious breach of contract":

> "The respondent denied my constructive dismissal (serious breach of contract) for 5 months that involves humiliation, bullying, harassment, and discrimination."

75. That is entirely consistent with the claimant understanding the nature of the claim she was bringing. I do not therefore accept that there was any misunderstanding about the type of claim the claimant was seeking to bring. If there was, I would have no hesitation in concluding that the claimant's misunderstanding was unreasonable and did not amount to any impediment preventing her from presenting her claim in time.

76. I would add that the nature of the claim was obviously in the claimant's mind at an early stage, as she had already discussed constructive unfair dismissal with Acas in February and March 2023. Her own evidence about a conversation with Acas on around 30 March shows that she was very aware of the need for a resignation to precede a constructive unfair dismissal claim.

77. Turning to the second claim, which is the one engaged by this rehearing, in conclude that the claimant's reason for presenting it late was the existence of the first claim – but not its characterisation.

78. The critical misunderstanding in the claimant's mind related to the premature presentation of the unfair dismissal claim before her employment had ended. On its own that may have weighed in favour of a reasonable misunderstanding. However, that ignores the claimant's responsibility for making enquiries or seeking advice about how to bring her claim. I note that on 31 January 2023 the claimant was telling the respondent that she intended to get a representative and take advice; that she would be collecting emails and documents to give to her representative; and she would not be attending further meetings until she had legal advice. It appears the claimant did not take any such steps.

79. Giving the claimant the benefit of doubt as to the prematurity of her first claim, any such doubt should have been dispelled as soon as there were further developments in the proceedings. Specifically, the claimant was made aware by the Response filed on 23 May that the respondent considered her EDT had not happened until 18 April, after her claim was presented. It should be a matter of logic and common sense that a person cannot claim to have been unfairly dismissed if their employment has not yet ended. Likewise, there can be no claim for failure to give (or pay for) notice of termination, if no such notice has been given.

80. From that point on, the claimant was on notice that there could be a problem with her first claim, but she took no steps whatsoever to investigate that or take advice. Had she done so, she would have found out that she had brought her claim prematurely and that she had ample time, up until 17 July 2023, to correct this by bringing a fresh claim.

81. On 28 May the claimant returned home from leave and at the beginning of June she checked the HMRC portal, which told her that the EDT was 18 April. She did not challenge that and in fact later relied on that EDT when submitting her Further Information on 28 July.

82. At the two preliminary hearings there was some confusion about who had terminated the employment, and when, but my conclusion is that it was the claimant who created that confusion in the way she presented her case. She knew well what steps she had taken between January and March 2023, absenting herself from work and yet refusing to give effect to a resignation. As later noted by Judge Sweeney and in the October 2023 judgment, the claimant did not want to resign.

83. The chronology of these events as outlined in the above findings of fact persuade me that the claimant was well aware of the position: she knew her employment was coming to an end but she also knew that neither she nor the respondent had given effect to any termination of employment.

84. Judge Robertson's observation at the 20 June preliminary hearing is very significant as to the state of the claimant's knowledge and understanding. Paragraph 31(m) of her case summary records the possibility that the first claim had been presented prematurely. The claimant appears not to have taken up the suggestion to reflect on the fact that her employment may have ended after presentation of the ET1. The claimant still had a month to act, but again did nothing.

85. It is therefore incorrect to say, as the claimant has repeatedly done, that she was not aware of the premature nature of her first claim until the preliminary hearing on 24 August. The claimant was present at both hearings (though I note the respondent had different representation then).

86. The claimant demonstrated to Judge Robertson her knowledge of the time limits applicable to her Equality Act claims. I conclude that there was no impediment to the claimant finding out about the time limits under the Employment Rights Act. She could have done so at any time from January 2023, and should have done so as soon as she became aware of the potential problem with her first claim.

87. Once the 24 August preliminary hearing took place, the claimant did act promptly to present her second claim after first initiating early conciliation with Acas. I do not fault her in relation to this timeframe. However, she had already ignored multiple prompts that should have alerted her to a potential problem with her first claim:

    87.1 Seeing the 18 April EDT in the Response dated 23 May;
    87.2 Seeing the same EDT on the HMRC portal at the beginning of June;
    87.3 Being told by Judge Robertson on 20 June that the claim may be premature;
    87.4 Having the above confirmed in the case summary sent to her on 14 July;
    87.5 Her own reliance on the 18 April EDT in the Further Information dated 28 July.

88. None of the above prompted the claimant to take any action whatsoever. If she was still under any misapprehension about her claims, that was not a reasonable position to hold. She had a good understanding that the correct EDT was likely to be 18 April, and said so herself until the 24 August preliminary hearing. Although she acted promptly then, her lack of action in the three months between 23 May and the second claim cannot reasonably be explained by a mistaken belief of ignorance of how to proceed. Furthermore, the claimant cannot reasonably rely on the respondent – as she now suggests – or the Tribunal to advise her on how to proceed. She was misled by nobody.

89. Although in her submissions the claimant said she misunderstood the correct EDT and what type of unfair dismissal claim she was bringing, I do not accept that this was actually the case. What she describes as the "evolving interpretations" on the EDT bear no connection to the contemporaneous events as I have found them. The claimant's submissions contained a number of inaccuracies and irrelevancies, for example about being misled by the respondent as to her annual leave. Her retelling of the circumstances of her departure did not fit the evidence or the findings of fact already made.

90. The key issue was for me to consider the claimant's explanation for not bringing her second claim by 17 July 2023. She relied on the fact that she had already brought a constructive dismissal claim. While any confusion about the EDT may have explained why the claimant brought her first claim prematurely, it did not explain why she took no corrective action after learning about the correct EDT. The lack of any attempt to investigate or understand the position between 23 May and 17 July is not reasonable, and there was no impediment preventing the claimant from finding out how to pursue her claim in time, if she was in fact mistaken in her understanding.

SE Langridge
Employment Judge Langridge

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON

22 October 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/