EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001434/2025

Held in Glasgow via Cloud Video Platform (CVP) on 14 October 2025

Employment Judge Mrs M Kearns

Mr S Lyttle	**Claimant** **In Person**
Sir Robert McAlpine Ltd	**Respondent** **Represented by:** **Mr P Menham - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was that the claimant's claim number **8001434/2025** is time barred and the Employment Tribunal does not have jurisdiction to hear it. The claim is dismissed.

REASONS

1. The respondent is a construction company. The claimant was employed by the respondent as a senior project manager from 3 March 1998 until the termination of his employment by reason of redundancy on 31 December 2024. On 30 April 2025, he notified ACAS of the current claims under the early conciliation rules. On 5 June 2025, ACAS issued an early conciliation certificate. On the same date - 5 June 2025 - the claimant presented an application to the Employment Tribunal in which he made claims of age discrimination, unfair dismissal and unauthorised deduction from wages (or alternatively, breach of contract) in respect of the non-payment of a bonus. Today's Preliminary Hearing was fixed to determine the issue of time bar.

Evidence

2. The claimant gave evidence on his own behalf. No documents were lodged by either party.

Findings in Fact

3. The following material facts were admitted or found to be proved:-

4. The claimant was employed by the respondent as a senior project manager. He was latterly engaged on buildings 4 and 5 of a construction project at Haymarket, Edinburgh. The project had started in 2022 and had been scheduled to finish in 2023. However, it had over-run, which was stressful for all concerned.

Claim for unauthorised deduction from wages

5. The claimant was present at two staff meetings in December 2023 at which one of the respondent's directors explained that the respondent would be introducing a staff retention incentive scheme because significant numbers of staff were leaving the project as it neared completion. So far as relevant for present purposes, the claimant's understanding was that people who did not resign from the respondent before 30 April 2024 would be entitled to a 10% bonus, which would be paid on 29 May 2024. Neither the claimant, nor any other employees received the bonus on 29 May 2024. The claimant queried this with the respondent in correspondence but payment was not forthcoming. A letter was then issued by the respondent which stated that the 10% bonus would be paid provided staff did not leave the project before practical completion on 31 August 2024. Neither the claimant, nor any of the other project staff received this bonus either, despite remaining in employment beyond 31 August 2024. The claimant corresponded with the respondent's HR department about this. John French wrote to the claimant on 26 March 2025 stating that as the project had not reached practical completion on 31 August 2024, he could not say whether the bonus would be paid. The reason why the claimant did not commence early conciliation for a claim for the unpaid bonus within the primary limitation period, (which ended 28 August 2024 in respect of the original retention scheme bonus and -presumably - on 27 December 2024 in respect of the second) was that he had worked for the respondent for 26 years and he had a high level of trust that they would act honourably and pay the bonus. Eventually, the respondent's Karen Brooks wrote in August 2025 to all those employees affected by the bonus scheme to say that as practical completion had not been achieved by 31 August 2024, the bonus would not be paid. The claimant felt aggrieved about this. He considered that the staff had been 'strung along' with the 'carrot' of a bonus until practical completion and had then been finally told it would not be paid in Ms Brooks' letter in August 2025.

Claim for unfair dismissal; and breach of contract claim for a sum outstanding on termination

6. A redundancy situation was declared by the respondent in around July 2024 and collective and individual redundancy consultations began. The claimant was involved in the collective consultations as an employee representative. The claimant had been told by the respondent's directors that he would be 'the last man standing' on the project and that he would be "there to put the lights out" in around April 2025. However, on 30 October 2024 John French of the respondent's HR department told the claimant that the project was nearing completion and the requirement for staff was reducing. Mr French told the claimant that his contract of employment would terminate by reason of redundancy on 31 December 2024 and that he should work from home until that date. He was told to do a handover and finish early unless someone needed him. The claimant was upset that he was effectively sat at home with very little work to do until his termination date. The parties agree that the effective date of termination of the claimant's employment was 31 December 2024. The claimant was paid 3 months' salary in lieu of notice on that date.

Claim for age discrimination

7. The redundancy consultation began with a meeting between HR and affected staff on 17 July 2024. The claimant's age discrimination and unfair dismissal case was that he should have been placed in a pool with Callum White, who was the other senior project manager on the B4 and B5 project. Mr White was aged 52 at that time. The claimant was 57. Shortly before the 17 July meeting, Mr White was asked by the respondent if he wanted to take on an alternative project in Edinburgh. He accepted this and as a consequence, he was not placed at risk of redundancy. The claimant's age discrimination case is that out of two senior project managers, the older one (the claimant) was made redundant and that out of two project directors, the older one was made redundant and the younger one was retained.

The length of the delay

8. The primary limitation period within which early conciliation for a claim for unfair dismissal, age discrimination and/or breach of contract should have been commenced ended on 30 March 2025 (at the latest). The claimant did not begin early conciliation with ACAS until 30 April 2025. Early conciliation ended on 5 June 2025 when ACAS issued the early conciliation certificate. The claimant presented his ET1 to the Employment Tribunal the same day. Since he had not begun early conciliation within the primary limitation period, he was not eligible for an extension of time to present his claim under the early conciliation rules and his claim was accordingly more than 9 weeks late.

The reasons for the delay

9. The claimant did not commence early conciliation within the primary limitation period because he was not in the right headspace. He was trying to get clear in his head whether he wanted to bring a claim against the respondent or not. He had worked for the respondent for 26 years, rising to become a senior project manager and it did not sit easily with him to make a claim. He also had a serious concern about his health at that time, which has now thankfully been allayed.

10. In January 2025, the claimant attended three job interviews, two of them for the job he ended up accepting. Those interviews took place around a week apart at the end of January. The claimant was offered the job in early March 2025 and he started work for his new employer on 23 or 24 March 2025.

11. The claimant has been aware for many years that employees in the UK have the right to make claims for unfair dismissal, breach of contract/unpaid wages and age discrimination. However, he did not know the time limits. He assumed they were about 3 years, similar to personal injury claims but he did not check. The claimant had access to the internet at home during the period leading up to 30 March 2025. He could have checked the time limit for tribunal claims but did not do so. It was only once he started his new job on 24 March 2025 that the claimant started to feel a bit better. On 30 April 2025, the claimant contacted a legal firm through his home insurance but was told his claims were out of time. He commenced ACAS early conciliation on the same date. He received an email from the conciliation officer around 9 May which told him he could just go ahead and make the claim or he could await the outcome of further conciliation. He elected to do the latter. He obtained the ACAS certificate on 5 June 2025 and presented his ET1 the same day.

Applicable Law

Unfair dismissal claim

12. Section 111(2) of the Employment Rights Act 1996 ("ERA") provides that claims for unfair dismissal may be presented to an employment tribunal and in relation to limitation, provides at subsection (2) as follows:-

> *"(2) Subject to the following provisions of this section, 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."

Age discrimination claim

13. Section 123(3)(a) Equality Act 2010 provides in relation to the time limit for discrimination claims:

*"**123 Time limits***

(1) Proceedings on a complaint within section 120 may not be brought after the end of –

(a) The period of 3 months starting with the date of the act to which the complaint relates, or

(b) Such other period as the employment tribunal thinks just and equitable.

Claim for unpaid bonus

14. Section 23 ERA relates to claims for unauthorised deductions from wages and states:

"***23 Complaints to employment tribunals.***

(1) A worker may present a complaint to an employment tribunal —

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

……..

(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

……

(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."

Alternative breach of contract claim for bonus

15. The Employment Tribunal Extension of Jurisdiction (Scotland) Order 1994 provides:

"***7 Time within which proceedings may be brought***

Subject to article 8B an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented –

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

(b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or

(ba) ……

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable."

Discussion and decision

Unfair dismissal and bonus claim

Was presentation in time not reasonably practicable?

16. Section 111 ERA places the onus on the claimant to persuade the tribunal that presentation of his claim in time was not reasonably practicable. That imposes a duty on him to explain precisely why it was that he did not present his complaint by midnight on 30 March 2025.

17. In order to establish that it was not reasonably practicable to present an application in time a claimant will ordinarily have to be able to point to some impediment or hindrance which made timeous presentation not reasonably practicable in the sense of not reasonably feasible. What is reasonably practicable is a question of fact.

18. As Mr Menham submitted, the claimant was very honest, open and frank about the reasons why he did not present any of his claims within the time limit. The main reasons were that he was (in his words): 'not in the right head-space' until late March 2025, when he began to feel better after starting a new

job. He also mentioned health concerns at that time. I have taken these fully into account. (I do not set them out here as they are private to the claimant and thankfully no longer a worry). Although the claimant had these concerns at the time and was also feeling very down until he started his new job, as Mr Menham submitted, he was not hospitalised during this period, nor did he mention seeing a doctor in relation to stress, low mood, depression or any other such matters during the primary limitation period. None of the undoubted stress that the claimant was under at this time prevented him from applying for and succeeding in finding new employment. This was a much more complex undertaking than filling in an online ACAS form to begin early conciliation. The delay was nine weeks. The reasons for the delay are set out in paragraph 9. The test I must apply is whether it was not reasonably practicable for the claimant to make his application/begin early conciliation in time. I have concluded that the claimant has not shown that it was not reasonably practicable for him to bring his claims for unfair dismissal and non-payment of a bonus in time. These claims are accordingly out of time and are dismissed.

Discrimination claim

Whether it would be just and equitable to extend time for the discrimination claim

19. The claimant also brings a claim of age discrimination under the Equality Act 2010 and this is subject to a different test.

20. The tribunal has the power under section 123(1)(b) to extend time if it is just and equitable to do so. Whilst tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test, the exercise of the discretion is still the exception rather than the rule and it is for the claimant to persuade the Tribunal that it should be exercised. The IDS Handbook on 'Practice and Procedure:1: Employment Tribunals (November 2023 edition) sets out at paragraph 5.130 the factors listed in section 33 of the English Limitation Act 1980, and considered in British Coal Corporation v Keeble and others 1997 IRLR 336. The EAT held that the court should consider the prejudice which each party would suffer as a result of the decision reached, and should have regard to all the circumstances of the case, in particular: the length of and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with any requests for information; the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action. Subsequently, in Southwark London Borough Council v Afolabi 2003 ICR 800, the Court of Appeal confirmed that whilst the factors in Keeble provide a useful checklist for tribunals, the list need not be adhered to slavishly.

21. I have taken into account the claimant's evidence and submissions and the submissions of Mr Menham. I have also had regard to all the circumstances of the case. The delay in this case is nine weeks. Mr Menham submitted that in a case where the limitation period is thirteen weeks, this is a significant delay. The reasons for the delay were that the claimant was unsure whether he wanted to make the claim and that he was not in the right headspace. I understand that this was a very difficult time for the claimant for the reasons he gave. However, it was not such that it caused the claimant to consult a doctor or attend hospital and no medical evidence was lodged. As discussed above, the claimant had a separate medical worry at this time which was later resolved and I have also taken this into account.

22. The claimant accepted that he had known of the possibility of making an age discrimination claim for many years. He did not know the time limit and had assumed it was three years. However, he had ready access to the internet and accepted that he could have checked this. He also had access to legal advice through his home insurance. As Mr Menham submitted, the claimant had three months during the primary limitation period within which he could have checked the time limits and he could also have checked in the two months between October and December 2024 when he was sat at home with little work to do. The claimant did not seek advice until 30 April 2025, by which time the claim was late.

23. With regard to the extent to which the cogency of the evidence is likely to be affected by the delay, no specific issues were founded on by the respondent and I did not find this to be a factor.

24. I have considered the prejudice each party would suffer if the discretion were exercised or not exercised. The prejudice to the claimant in not extending time is that he loses the opportunity to litigate an age discrimination claim. The tribunal is entitled to take into account the merits of the claim as pled. The basis of the claimant's case is that of the two senior project managers (himself and Mr White), the younger one was retained and the older one made redundant and the same was the case for the two project directors. However, more is required for an age discrimination claim than a difference in age and a difference in treatment. The claimant would need to point to something more suggesting that age was the reason for the treatment. The retention of the younger project director and the younger project manager gives a sample size of two; small enough to be by coincidence or by application of the redundancy selection criteria or any number of other factors. Secondly, as the claimant and his comparator were both in their fifties, it is not immediately clear that the difference in age was significant. This is not to say that the claim would not have succeeded but it is not obviously a strong discrimination claim as currently pled.

25. The prejudice to the respondent in extending time is the obvious prejudice (including time and expense) of having to meet a claim which would otherwise have been time barred.

26. I have considered all the relevant factors above. The claimant's delay in presenting the case is around nine weeks, against a limitation period of approximately thirteen weeks – a not insignificant delay. The reasons given for the delay were not persuasive and the claimant did not show that he acted promptly once he knew of the facts giving rise to the cause of action. On his evidence, he was ambivalent about making the claim. He knew of his right to bring an age discrimination claim and he had access to the internet but he did not check the time limit until it had already expired. Balancing the respective prejudice to the parties and considering all the circumstances, I am not persuaded that it would be just and equitable to exercise the discretion. It follows that the claimant's discrimination claim is out of time and the Tribunal has no jurisdiction to hear it.

Date sent to parties **27 October 2025**