



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001257/2025

Held by CVP in Glasgow on Wednesday 26 November 2025

Employment Judge: M Kearns

Mr G Mitchell

**Claimant
In person**

The Fountain Bar Limited

**Respondent
Represented by:
Ms A Forsyth
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was that:

- (i) the claimant's claim number **8001257/2025** was presented out of time;
- (ii) it was not reasonably practicable for the claimant to present it in time: and
- (iii) it was presented within such further period as the Tribunal considers reasonable.

The Tribunal accordingly has jurisdiction to consider the claim. Date listing stencils will be sent out to the parties for a final hearing.

REASONS

1. The respondent is a limited company engaged in the running of the Fountain Bar in Aberfeldy. The claimant was employed by the respondent as the bar manager from 18 August 2020 until the termination of his employment on 15 December 2024. On 10 March 2025, he notified ACAS of the current claim under the early conciliation rules. On 16 April 2025, ACAS issued an early conciliation certificate. On 19 May 2025 - the claimant presented an application to the Employment Tribunal in which he made a claim of unfair dismissal. Today's Preliminary Hearing was fixed to determine the issue of time bar.

Evidence

2. The claimant gave evidence on his own behalf. The respondent lodged a short bundle of documents.

Findings in Fact

3. The following material facts were admitted or found to be proved:-
4. The claimant was employed by the respondent as its bar manager from 18 August 2020 until the termination of his employment on 15 December 2024. On 10 March 2025, he notified ACAS of the current claim under the early conciliation rules. On 16 April 2025, ACAS issued an early conciliation certificate. The respondent named on the ACAS certificate was 'The Fountain Bar Ltd'.
5. The claimant had had some assistance with navigating his employer's disciplinary and appeal processes from the 'Empower the Worker' trade union. However, they did not advise him beyond the appeal stage. They were not assisting him with his tribunal claim. He sought legal representation but the three firms he approached were not willing to take his case on because he had got another job and had mitigated his loss.

6. The claimant knew that he had one month from the date of issue of his early conciliation certificate within which to present his tribunal claim and he therefore diarised 16 May 2025 as the date by which he would have to present his ET1 claim form. On 12 May 2025, the claimant presented an application to the Employment Tribunal, relying on the ACAS certificate. He made an error by putting the name of the respondent on the application as "Gavin Price". Mr Price is a director of the respondent and had been the person in charge of the claimant during his employment for all practical purposes.
7. Because the name of the respondent on the ET1 was different from the name of the respondent on the EC certificate, the Tribunal rejected the ET1 at the vetting stage and emailed the claimant on 14 May 2025 to notify him of this. The claimant had a lot going on at that point. The claimant and his wife had separated in December 2024 when he lost his job with the respondent. He had helped his wife move out of the accommodation provided by the respondent and when he returned to move his own property out, he discovered he was locked out of the premises and unable to get his things. He had found himself alternative accommodation in December 2024. He then moved house for the second time on 17 May 2025. He was also working hard at that time to try and save his marriage and was under enormous stress.
8. Because of all that he had going on, the claimant did not open the 14 May email from the Tribunal and become aware of his error until 18 May 2025. The first time he opened the email on 18 May, he thought the claim had been thrown out and he did not realise that the error was capable of being fixed until he spent time reading the email more carefully.
9. On 19 May 2025 - the claimant re-presented his application to the Employment Tribunal. This time he named the respondent as The Fountain Bar Ltd and the claim was accepted subject to time bar. Under the early conciliation rules, the claim was 3 days late.

Applicable Law***Unfair dismissal claim***

10. 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.*

(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of section (2)(a)."

11. Section 207B ERA provides as follows:

"207B Extension of time limits to facilitate conciliation before institution of proceedings

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section."

Discussion and decision

Whether the claim was presented out of time

12. We discussed the effect of sections 111 and 207B Employment Rights Act 1996 ("ERA") on the claimant's claim. I raised with the parties the case of Luton Borough Council v Haque 2018 ICR 1388 and whether that affected the calculation. However, having considered matters further, I now accept that Ms Forsyth's submission was correct and that section 207B(4) is the operative provision since the date of 20th April, obtained by adding the number of days in the conciliation period (37 days) to the end of the primary limitation period (14 March 2025) is not between Day A (11 March 2025, the day after the claimant notified ACAS) and Day B (16 April, when he received his EC certificate). The claim therefore required to be presented by 16 May 2025 as Ms Forsyth correctly submitted. I did give the parties 7 days to make further submissions on the issue. However, it seems to me that on reflection, Ms Forsyth's point was well made. If anything further arises on this point, an application for reconsideration may be made.

Was presentation in time not reasonably practicable?

13. 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 16 May 2025.

14. 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.

15. The claimant was frank about the reasons why he did not present his unfair dismissal claim within the time limit. He made a mistake in relation to the name of the respondent on the form. It is a common mistake among unrepresented parties. He named the person with whom he had had day to day dealings instead of the legal 'person' he had contracted with, which is a limited company. The claimant submitted his ET1 timeously on 12 May 2025. However, the claim was rejected because the respondent's name on the ET1 did not match the name on the EC certificate. An email was sent to the claimant on 14 May rejecting the claim.
16. The claimant and his wife had separated in December 2024 when he lost his job with the respondent. He had helped his wife move out of the accommodation provided by the respondent and when he returned to move his own property out, he discovered he was locked out of the premises and unable to get his things. He moved house for the second time on 17 May 2025. At that point, he was working hard to try and save his marriage. He was very stressed by the move and his relationship difficulties. Because of all that he had going on, he did not open the email from the Tribunal and become aware of his error until 18 May 2025.
17. Thus, between 12 May and 18 May, the claimant mistakenly believed the claim was proceeding. I concluded that because of his move and his marriage difficulty, it was reasonable that he had not checked his emails between 12 and 18 May. The first time he opened the email from the Tribunal on 18 May, he thought the claim had been thrown out and he did not realise that the error was capable of being fixed until he spent time reading the email more carefully.
18. Given that between 16 and 18 May 2025 the claimant was going through a number of very stressful life events at the same time – moving house, marriage difficulties, a new job and litigation - I concluded that the claimant's misapprehensions were reasonable in the circumstances. Once the claimant realised that he could re-submit the claim, he did so promptly on 19 May 2025.

The delay was 3 days. The test I must apply is whether it was not reasonably practicable for the claimant to make his application in time. I have concluded that the claimant has shown that it was not reasonably practicable for him to bring his claim for unfair dismissal in time.

19. Once the claimant became aware of his mistake and that it could be rectified, he rectified it promptly. I therefore consider that the further period of less than 24 hours that it took the claimant to re-present the claim was reasonable. I have concluded that the claimant's claim for unfair dismissal should be accepted under section 111(2)(b) ERA and that the Tribunal has jurisdiction to consider it. Date listing stencils should be sent to parties for a final hearing to be fixed.

Sent to the Parties

03 December 2025