



EMPLOYMENT TRIBUNALS

Claimants: Mr M Needham

Respondent: Tyne North Training Limited

HELD AT: Newcastle **ON:** 22 October 2025

BEFORE: Employment Judge Moss

REPRESENTATION:

Claimants: In person

Respondent: Mr Jamie Morgan (Counsel)

RESERVED JUDGMENT

The judgment of the tribunal is that:

The claimant's claim for unfair dismissal was presented out of time and is dismissed.

REASONS

1. By a claim form presented on 04 March 2025, the claimant brought a claim for unfair dismissal.
2. The purpose of this preliminary hearing was to decide whether the Employment Tribunal has jurisdiction to consider the claimant's claim, which depends upon whether such claim has been brought within the period in section 111 of the Employment Rights Act 1996. This requires the Tribunal to decide whether it was reasonably practicable for the complaint of unfair dismissal to have been presented by 02 March 2025 (which is three months from the effective date of termination of employment plus ACAS extension). In

the event of the Tribunal deciding it was not reasonably practicable for the complaint to have been presented by 02 March 2025, the Tribunal would need to go on to decide whether the complaint was presented within a reasonable period thereafter.

3. I was referred to a paginated bundle of documents comprised of 116 pages. I allowed a further 2 pages to be added to the bundle at the hearing. I had witness statements from the claimant and a witness on his behalf, Claire Robinson, and heard oral evidence from each of them (albeit very briefly from Ms Robinson). Mr Morgan produced a written skeleton argument on behalf of the respondent, supplemented by oral closing submissions. The claimant also made oral closing submissions.

Evidence and findings of fact

4. I find the following facts on a balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by or on behalf of the parties.
5. The claimant had been continuously employed by the respondent from 05 June 2006 until the date of his termination on 30 September 2024. The respondent's case is that the claimant was latterly employed on a fixed term contract with an expiry date of 30 September 2024. The claimant contends an agreement had been reached for his employment to continue beyond that date.
6. The claimant contacted ACAS under the Early Conciliation Provisions on 22 December 2024. ACAS issued the Early Conciliation Certificate on 02 February 2025. The claimant presented these proceedings on 04 March 2025. The primary time limit had expired on 02 March 2025.
7. The claimant advances reasons of ADHD and autism disabilities, and extreme IT issues on 02 March 2025, to explain his failure to submit the claim form by the due deadline.
8. The claimant had reviewed the claim form prior to 02 March 2025 and thought it seemed straightforward to complete. While the claimant could not recall during evidence whether he had made any attempt to review or complete the form as recently as 01 March 2025, he sent an email to the Tribunal on 24 April 2025 stating that he had done so and I find as a fact that he had addressed his mind to it on that date. On 02 March 2025 itself, the claimant was using a relatively new laptop and was asked to enter his iCloud password to be able to gain access. He was unable to recall his password and his anxiety began to build when he was repeatedly denied access. He persevered with his efforts to gain entry to the laptop throughout the day and night without success.
9. From first meeting him in December 2024, the claimant presented to Ms Robinson as suffering from constant anxiety and almost obsessive thinking over the circumstances surrounding the termination of his employment with the respondent. It was evident to her that he was not sleeping or eating well

and that his stress levels were dramatically increasing as the deadline of 02 March 2025 approached. On 02 March 2025 itself, Ms Robinson witnessed the claimant's mental health deteriorate as he became overwhelmed, angry and frustrated by his inability to gain access to his laptop. She describes him as going into a 'total meltdown', falling asleep at his computer from exhaustion and as being in a state of confusion asking her twice 'what is it I'm trying to do'. I found both the claimant's and Ms Robinson's evidence compelling that the circumstances he was confronted with on 02 March 2025 had a detrimental effect on his mental health.

10. The claimant succeeded in submitting his claim on 04 March 2025 after restarting his computer and being able to gain access without being asked for his iCloud password.
11. The claimant had his work computer available to him until he handed it back on 27 March 2025. His access to email history and certain files had been restricted following the termination of his employment. He could not recall whether it retained capability for him to access internet browsers. I accept his evidence that he did not contemplate using it on 02 March 2025 as he had previously dismissed it as being unworkable. The claimant did have a smartphone available on 02 March 2025 but did not give thought to using that, instead persisting with his attempts to access the new laptop in an effort to submit his claim.
12. The claimant had instructed solicitors on 17 October 2024 in connection with his dismissal. They exchanged correspondence with the respondent up until at least 19 February 2025 prior to proceedings being initiated. Beyond proceedings being commenced, the claimant's solicitors remained involved, contributing to the draft agenda in readiness for a preliminary hearing held on 08 August 2025. The claimant did not ask his solicitors to submit the claim form on his behalf. He involved them from time to time but did not instruct them to handle the whole case. No reason was given for that, such as cost or lack of confidence, and I find that it was simply because the claimant felt able to handle the matter of presenting the claim himself.
13. The claimant received diagnoses of autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD) on 01 May 2025. A specialist neurodevelopmental clinic report was produced by a multi-disciplinary team of that date. Following assessment, the claimant's strengths and challenges were recorded in the report, as were certain traits that could be regarded as generic or inherent as part of neurodivergence. The claimant was noted to have difficulties leading to anxiety, fatigue, exhaustion and restrictive functioning at times. A covering letter summarised that the assessment findings demonstrated difficulties with executive functioning and organisation and that the claimant had developed maladaptive coping strategies to try to manage these previously undiagnosed difficulties.
14. The claimant made a request for further information of the clinical team to obtain evidence about the potential impact of his conditions on his state of mind leading up to presentation of these proceedings. He received a

response dated 04 July 2025 that they were not able to comment on his state of mind at the relevant time, given they had not assessed that specifically in appointments and had not seen him on the dates he claimed to have been distressed.

15. The conditions the claimant has been diagnosed with are lifelong disorders and it cannot be assumed that sufferers are unable to complete basic tasks or meet relevant deadlines. The medical report (extracts from which make up 23 paragraphs of the claimant's 34 paragraph witness statement) does not provide evidence that the claimant's level of functioning prevented him from undertaking such tasks. It outlines both strengths and difficulties and several passages speak in generic terms about the challenges neurodivergent people can face. It does not provide evidence from which I am able to draw an inference that the claimant's neurodiversity was impacting on him to such an extent that it was an impediment to his presenting the claim by 02 March 2025.
16. I find the substantial cause of the claimant's failure to present his claim on time to be his inability to gain access to the device he intended to use to complete and submit the claim form when he chose to do so on the final day of the primary time limit. I accept that symptoms arising from the conditions he was subsequently diagnosed with may have been triggered by the failed attempts to access the claim form on 02 March 2025, and are very likely to have been experienced by the claimant at other times prior to that date. They may well have played a part in his ability to process his thoughts and emotions regarding the loss of his employment and no doubt contributed to heightening his anxiety when he was confronted with barriers to accessing his computer on the day. However, I do not find that the claimant's ability to function and carry out activities such as formulating and presenting a tribunal claim was impacted to any material extent by those conditions. Nor do I find that the reason he left it until the last day to attempt to complete the form was that he was incapacitated as a result of either or both of his conditions. There is no evidence of that being the case and, bearing in mind ASD and ADHD are lifelong conditions affecting sufferers to varying degrees, the diagnoses in themselves do not enable me to draw an inference in that regard.

Relevant law

17. Section 111(2) of the Employment Rights Act 1996 (the Act) provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it is presented before the end of the period of three months beginning with the effective date of termination, or 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.
18. I considered the following cases in determining the question of whether or not it was reasonably practicable for the claimant to have presented his claims in time:

Palmer and Saunders v Southend-on-Sea BC [1984] 1 All ER 945; Wall's Meat Co v Khan [1978] IRLR 499; London Underground Ltd v Noel [1999] IRLR 621; Dedman v British Building and Engineering Appliances [1974] 1 All ER 520; Consignia plc v Sealy [2002] EWCA Civ 878; Cross v NHS Somerset Clinical Commissioning Group [2024] EAT 20; Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490; Initial Electronic Security Systems Ltd v Avdic [2005] IRLR 671; Schultz v Esso Petroleum Ltd [1999] IRLR 388; Asda Stores Ltd v Kauser [2007] EAT 0165.

19. In *Palmer and Saunders v Southend-on-Sea BC*, and following its general review of the authorities, the Court of Appeal (per May LJ) concluded that "reasonably practicable" does not mean reasonable (which would be too favourable to employees), and does not mean physically possible (which would be too favourable to employers) but means something like "reasonably feasible".

The Tribunal should consider: (1) the substantial cause of the claimant's failure to comply with the time limit; (2) whether there was any physical impediment preventing compliance, such as illness, or a postal strike; (3) whether, and if so when, the claimant knew of his rights; (4) whether the employer had misrepresented any relevant matter to the employee; and (5) whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

20. Subsequently in *London Underground Ltd v Noel*, Judge LJ stated at paragraph 24 "The power to disapply the statutory period is therefore very restricted. In particular it is not available to be exercised, for example, "in all the circumstances", nor when it is "just and reasonable", nor even where the Tribunal "considers that there is a good reason" for doing so.

21. In *Wall's Meat Co v Khan* Brandon LJ said "...the presentation of a complaint is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits [performance of the act]. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. 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".

22. A claimant may know of his or her rights but be prevented from exercising them through either "illness, absence, some physical obstacle, or by some untoward an unexpected turn of events" which would make it not practicable to have presented the claim in time - *Dedman v British Building and Engineering Appliances*.

23. "The relevant test is not simply a matter of what was 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" – *Asda Stores Ltd v Kauser*.

24. In *Cross v NHS Somerset Clinical Commissioning Group* the EAT expressed a view that there is no general duty on a tribunal to be liberal in the application of the principles of section 111(2) to claimants generally and at large, commenting that time limits are strict in the employment tribunal and exceptions have to be properly construed and applied by reference to the evidence, and without reference to more general considerations of fairness or equity.

25. In *Lowri Beck Services Ltd v Brophy* concerning a claimant having misinterpreted the date of dismissal from correspondence, it was held that the question whether it was a reasonable mistake was one for the factual assessment of the Employment Tribunal applying the liberal approach endorsed in the authorities.

26. In *Schultz v Esso Petroleum Ltd* concerning an employee becoming seriously ill some 6 weeks prior to expiry of the time limit, the Court of Appeal rejected an argument that an extension of time should be refused since the claim could have been presented before the illness struck. It was held that although the whole period of three months is relevant, it is necessary to focus particularly on the latter part of the period of three months

27. The Court of Appeal in *Consignia plc v Sealy* held that a complainant was entitled to rely on the ordinary course of post, and there was no reason to penalise a complainant who had done so for not having tried to present his complaint at some earlier point in the three-month period. If the letter does not arrive at the time when it would be expected to arrive in the ordinary course of post (on the second day after it was posted where sent by first class post, excluding Sundays, bank holidays, Christmas Day and Good Friday, being days when post is not normally delivered), but is unexpectedly delayed, a tribunal may conclude that it was not reasonably practicable for the complaint to be presented within the prescribed period. Evidence would be required of an expectation that something other than the normal course of post applied to justify a finding that it was not reasonably practicable for the claim to have been presented within time.

28. In *Initial Electronic Security Systems Ltd v Avdic* the Consignia 'escape route' was said to apply equally to electronic submission of claim forms. It was stated that the reasonable expectation of the sender of an electronic mail communication is that it would arrive within a very short time thereafter. A distinction was drawn however, between a prospective claimant sending an email and it disappearing into the ether, and a scenario in which they were unable to meet the primary time limit because their computer had been stolen or irretrievably crashed. The latter would require further explanation as to why the claimant had left it so late. Mr Justice Burton (President) observed that "*the employment tribunal had erred in suggesting that there is a self-standing proposition that it does not matter why the claimant waited until the last*

*moment to present a complaint. Unless the **Consignia** defence becomes available, it will always matter why the claimant has left the presentation of the claim form until the last moment”.*

Conclusions

29. The claimant bears the burden of proving both that it was not reasonably practicable for him to have presented the claim in time and then that he presented it within a reasonable time thereafter. He has not satisfied me, on a balance of probabilities, that it was not reasonably practicable for him to have presented the claim in time.
30. Should there appear to be any conflict between the authorities on the question of whether a liberal or strict approach ought to be taken in determining the issue of reasonable practicability, I make it clear that I have construed the authorities in favour of the claimant and have adopted a liberal approach. I must however, in accordance with *Avdic*, have regard to why the claimant left it until the last minute to complete the form, because where a claim is delivered out of time due to some error on the claimant's part, the whole of the limitation period is open to scrutiny. The claimant simply took advantage of the whole period carrying with it obvious risks, and was then unfortunately beset with difficulties in accessing his laptop.
31. The claimant does not plead ignorance of his rights or lack of knowledge of the relevant time limit. He does not suggest that he was misled in any way by his legal representatives or the respondent. Having left it until the final day to attempt to complete and submit his claim form, and being unable to recall a password to enable him to gain access to his device, he was prevented from meeting the relevant deadline. He did not give thought to using a different device, but even accounting for the possibility of that being attributable to his state of anxiety, or symptoms of ASD or ADHD, impacting on his ability to think rationally that day, the same cannot be said in respect of why he left it until the last moment to complete the form. He had reviewed it beforehand and took the view it was straightforward and made a conscious decision to leave it until towards the end of the limitation period to complete it. The claimant was undoubtedly in a highly emotional state when confronted with unexpected computer difficulties on 02 March 2025 but he himself did not go so far as to say that he was unable to confront the task or would have been unable to complete the form had he attempted it sooner. He had instructed solicitors in connection with his dismissal and called upon their services intermittently rather than to handle the whole case on his behalf. He had not asked them to complete and present the claim because he felt able to do it himself.
32. In all of the circumstances, it was not only *possible* for the claimant to have submitted his claim by 02 March 2025, it was *reasonable* to expect him to have done that which was possible. The claimant has failed to establish that it was not reasonably practicable for him to have presented the claim within time.

33. For completeness, and this was essentially conceded by the respondent in closing submissions, had it not have been reasonably practicable for the claimant to have presented the claim by 02 March 2025, he did present it within a reasonable period thereafter, given it was presented as soon as he was able to gain access to his computer 2 days later on 04 March 2025. The fact of it being presented within a short period after the primary time limit had expired does not however, come to his rescue where it was reasonably practicable for him to have presented it within time.

Employment Judge Moss

Date 18/11/2025