



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000099/2025**

**Held in Glasgow on 24 September 2025**

**Employment Judge D Hoey**

**Mrs G Wilson**

**Claimant  
In Person**

**Diageo Limited**

**Respondent  
Represented by:  
Ms I Brown -  
Counsel  
[Instructed by  
Messrs Burness]**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

In terms of section 128(1) of the Employment Rights Act 1996, the claimant presented a complaint of unfair dismissal to the Employment Tribunal when she presented her amendment application to the Tribunal on 1 August 2015, this having been determined when the amendment application was granted. As a result the claimant is entitled to seek interim relief and a hearing shall be fixed without delay.

### **REASONS**

1. This was a preliminary hearing to determine a relatively narrow but fundamental point. Where a claimant chooses to seek to amend an existing claim to include unfair dismissal and interim relief, does the Tribunal have the power to consider an interim relief complaint where the unfair dismissal complaint is permitted to be included in the claim after the 7 day period to make a claim for interim relief has expired. In order to decide this issue, it is necessary to set out the procedural background in this case.

### **Background**

2. The claimant had raised a number of employment related complaints which were proceeding through the Tribunal. On 1 August 2025 the claimant was dismissed. Initially the respondent argued that the claimant had applied for interim relief without there being a complaint for unfair dismissal (because the application to amend to include interim relief made no mention of unfair

dismissal which followed in a later communication) but the respondent fairly conceded that in a subsequent communication on the same day the claimant had made an application which, when fairly read, made it clear that the claimant wished to amend the existing complaints to include both unfair dismissal and interim relief.

3. Had the claimant presented the complaint by way of an ET1 (and thereafter combined the claims) no issue would have arisen (since provided the ET1 was validly completed, that would have been treated as having been presented on the date it was sent to the Tribunal). In this case, however, no ET1 was presented and instead the claimant asked the Tribunal on 1 August to amend her claim to include unfair dismissal and interim relief. That application while made within the 7 day period was not considered until 14 August 2025, after the 7 day period to claim interim relief had expired.
4. On 14 August 2025 the claimant's application dated 1 August to amend her claim to include complaints of unfair dismissal was granted. The respondent took issue with the interim relief application arguing that it had been made out of time – since no unfair dismissal complaint had been validly presented (or accepted) within the 7 day period and this hearing had been fixed to determine that issue.

### **The applicable law**

5. Interim relief is a unique species of remedy found in section 128 of the Employment Rights Act 1996. Ordinarily, an ET1 form is completed setting out the automatic unfair dismissal claim, and ticking the box that interim relief is being sought. There is no early conciliation requirement where interim relief is sought and a claim must be made within 7 days of being dismissed. Unusually, there is no power to extend the time limit.
6. Section 128 (1) states that an employee who presents a complaint to an employment tribunal that he has been unfairly dismissed: a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in — (i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or ii) paragraph 161 (2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met, may apply to the tribunal for interim relief.
7. Section 128(2) states that “The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period

of seven days immediately following the effective date of termination (whether before, on or after that date)".

### Discussion

8. Interim relief is available where the employee "presents a complaint" of automatic unfair dismissal. The issue in this case is whether a complaint is "present[ed]" for interim relief when it is not included in an ET1 and is sent to the Tribunal in a communication seeking to amend an existing ET1.
9. In terms of the Employment Tribunal Procedure Rules 2024 a "claim" means "any proceedings before an Employment Tribunal making a complaint", and "complaint" means "anything that is referred to as a claim, complaint, reference, application or appeal in any enactment which confers jurisdiction on the Tribunal".
10. The meaning of "complaint" was considered in **Queensgate v Millet** UKEAT/0256/20/RN where Judge Tayler commented (obiter) at paragraph 28 that: "I accept that the word "application" in the definition of "complaint" in [the ET Rules] is not apt to cover applications in the course of case management; such as applications for further information, disclosure or the like". Case management applications do not amount to a 'complaint'.
11. An amendment application is a potential 'complaint' that only becomes a 'complaint' once judicial discretion is exercised; the amendment application is allowed; and jurisdiction for the complaint is conferred.
12. I considered whether "presenting a complaint" meant that claimants were required to lodge an ET1 (and a complaint could not be presented in any other way). The parties agreed that had the claimant done so no issue would have arisen in this case. However, having carefully considered the statutory basis and context, I am satisfied a complaint can be presented by an amendment application.

#### *"Presenting a complaint"*

13. The key issue is whether the complaint had been presented when it had been submitted by the claimant or when the amendment application had been determined. I have concluded that the former interpretation is the more natural interpretation. I did so having carefully considered the legislation in context.
14. Section 128 requires the claimant to present the unfair dismissal complaint to the Tribunal. That was done in the application to amend the claim to include a complaint of unfair dismissal. The complaint was presented when it was submitted to the Tribunal. That is a natural interpretation of the word "present". The complaint was not presented when the application was considered but

when it was presented. The complaint had already been submitted (or presented) when it was sent to the Tribunal. That is not, however, the end of the matter.

15. In order to give meaning to the words when interpreted in context, “present” within section 128(1) must mean present to the Tribunal the complaint in a form that properly results in the complaint being before the Tribunal. This means that simply sending a letter to the Tribunal (absent any ET1 or ongoing proceeding) could not be “presenting a complaint”. Sending such a complaint to the Tribunal is not “presenting a complaint” given the context. There requires to be a way in which the complaint could be considered by the Tribunal when viewed in context of the Rules.
16. Sending an ET1 with the complaint (which is otherwise valid) is clearly presenting the complaint. I see no violence in interpretation by finding that a complaint can similarly be contained in an amendment application. Claimants on a daily basis send complaints to the Tribunal in an amendment application, which are considered to be presenting such complains to the Tribunal. In other words, a complaint can be presented to the Tribunal in an amendment application just as equally as it can be presented in an ET1
17. The difficulty with an amendment application is whether the sending of the amendment application by itself is sufficient. This is important because it is possible that the application may not be accepted in which case there is no unfair dismissal complaint before the Tribunal. Without such a complaint, there can be no application for interim relief. Context, as ever, is important.
18. A similar issue could arise in an ET1 which is sent or presented to the Tribunal. Thus if an ET1 containing the relevant complaint is sent to the Tribunal but is invalid (such as not containing the prescribed information), in such a case, although the complaint was “presented” in the same way as a complaint contained in an amendment application is sent to the Tribunal, there would be no complaint of unfair dismissal before the Tribunal.
19. In the latter case, the Tribunal would only proceed to deal with interim relief once it is satisfied that an unfair dismissal complaint has been validly presented – raised before the Tribunal in a way that the Tribunal is legally required to consider it – in that case by being contained in an otherwise valid ET1. It is not therefore as simple as interpreting presenting a complaint to the Tribunal as meaning sending something to the Tribunal without considering the context.
20. By analogy, with regard to an amendment application in which a claimant presents an unfair dismissal complaint, the Tribunal could only proceed to determine an interim relief application once it is satisfied that the Tribunal is

legally required to consider the unfair dismissal complaint, namely once the claim has been amended to include the unfair dismissal complaint.

21. The fact the amendment application is likely to be considered outside the strict 7 day time limit is of no consequence, in the same way the fact the Tribunal considers an ET1 which contains a complaint for unfair dismissal is considered outside the 7 day period is of no consequence. The 7 day time limit is the time Parliament has given a claimant to present the complaint. It is not a limit placed upon the Tribunal in any way.
22. Logically therefore where a claimant presents a complaint for unfair dismissal by way of amendment within the 7 day period and that amendment is granted (at an obviously later date – even if outside the 7 day period), the claimant has presented to the tribunal a relevant complaint in respect of which interim relief is available. There is no reasonable basis upon which section 128 could be read so as to require the *Tribunal* to have accepted the complaint within the 7 day period. The only requirement is that the *claimant presents* the complaint within 7 days. Provided the complaint is presented within 7 days, and provided the amendment is permitted, the conditions within section 128 have been satisfied.
23. I considered the authority the respondent's agent provided that suggested the foregoing interpretation may be incorrect: **Hempsell v Cadent** 2602655/2020 (at paragraph 12 of the reconsideration application). In that judgment the Judge notes that there had been no valid claim before the Tribunal at the time the application had been submitted because the amendment had not been determined. It did not appear to have been argued before the judge that the same situation could arise in respect of an ET1 which had been presented within the 7 day period that had not been formally accepted. If the ET1 is formally considered and accepted on day 9, on day 8 it could be said there was no valid claim of unfair dismissal before the Tribunal. But that does not mean, once the ET1 had been checked, that there was then a valid claim before the Tribunal. The logical position is that where the relevant ET1 or amendment application is submitted in time, there *could* be a valid claim before the Tribunal. Whether or not there is such a claim is dependent upon the ET1 being accepted (in the sense as valid) or the amendment application being granted.
24. The natural interpretation of section 128(1) is that an employee requires to present the relevant unfair dismissal complaint to the Tribunal within 7 days. That requires to be presented either by ET1 or by amendment. But it is only when the ET1 is formally accepted (with the date of acceptance being noted as the date the ET1 was presented) and in relation to amendment it is only when the amendment has been judicially considered and accepted, with the date of acceptance of the amendment being the date of the amendment, that

a valid unfair dismissal complaint has been presented such that interim relief becomes available.

25. If a claimant presents the unfair dismissal complaint outside the 7 day time limit, interim relief is not available. That could be where the unfair dismissal complaint is presented in an ET1 which is lodged within the 7 day period but the ET1 is rejected and resubmission is outside the 7 day period. Or it could be where an unfair dismissal complaint is presented in an amendment application within the 7 day period but the amendment is rejected.

*Contrary submissions considered*

26. For completeness I considered the submissions of the respondent's counsel to assess whether my reasoning was correct.
27. Counsel argued that the interpretation I have given impacts upon other areas of the legislation. I do not accept that. Firstly as has been made clear before at appellate level, interim relief is a unique remedy. It is an important remedy that is only available where an unfair dismissal complaint has been presented within a 7 day period. The interpretation I have placed upon the statutory wording is only in respect of section 128 and is an interpretation I have found to be natural and what Parliament intended when viewed in the context of Employment Tribunal procedure and the remedy in question. Each provision requires to be considered in its own context.
28. Counsel's argument was to find as I have done means an amendment application which contains a complaint is to be considered by itself a complaint. That is not, however, the interpretation placed upon section 128. It is not just the act of sending the complaint to the Tribunal which results in the complaint being presented but the act of the complaint being considered a complaint that the Tribunal is to determine – whether by accepting the ET1 or by granting the amendment. The act of sending the amendment application is only the first, but necessary, stage in the process.
29. The interpretation I have placed upon the words does not go against established authorities. **Selkent** notes that there is a discretion to refuse amendments. Pleadings remain central to the Tribunal system. The presenting of the amendment application is the first stage but the amendment requires to be judicially considered before the complaint is before the Tribunal.
30. The interpretation I have arrived at avoids the concerns raised by counsel. The example counsel gave was a claimant who has an existing claim against their employer who is dismissed on 1 January. The claimant then applies for interim relief along with an application to amend their claim to include one of automatic unfair dismissal the same day. The amendment application is subsequently refused on 3 January. Counsel noted that if their amendment

application alone amounted to the 'present[ing] of a complaint', the tribunal would be bound to consider the interim relief application despite the amendment application having been refused and substantive claim of unfair dismissal having fallen away. The submission was that "the tribunal would be asked to award a remedy for a claim that does not exist".

31. However, as set out above, I consider that the Tribunal cannot consider interim relief until it has satisfied itself that the relevant unfair dismissal complaint has been presented within the 7 day period. That is likely to be done as soon as possible but probably after 7 days has expired. Provided, however, the amendment is granted the Tribunal would then be required to consider interim relief. The Tribunal would never be in the position of considering an award for a complaint that does not exist.
32. Counsel for the respondent helpfully referred to the authorities which place a favourable interpretation upon interim relief that supports an interpretation that seeks to reduce the technical barriers to claimants - see **Barley v Amey** [1977] ICR 546, where it was held that a validly made interim relief application could 'read together' with further letters where the application lacked specificity. Similarly, in **Bradley v Edward** [1979] I.C.R. 488 the Employment Appeal Tribunal (at page 490) held that, in considering whether or not a valid certificate had been given, a certificate from a trade union official could be read in conjunction with the IT1 initiating the complaint. The remedy and the statutory provisions require to be interpreted with that in mind.
33. While there is reference in counsel's submissions to the claimant's application in this case being "null and void" that was because initially the respondent was arguing interim relief was being sought before any unfair dismissal complaint had been presented. However, once the claimant clarified that on the same day a communication was issued making it clear (in the same document) that unfair dismissal and interim relief were being sought, that argument was, properly, not insisted upon.
34. Counsel for the respondent then argued that it was on 14 August 2025 when the matter came before the Employment Judge that the amendment application was allowed and so "This was the first point at which the Claimant could possibly have "present[ed] a complaint" for the purposes of section 128(1), and therefore the first moment at which she became entitled to apply for interim relief. But by then, it was too late: the 7-day window laid down by section 128(2) had passed. She was out of time."
35. That analysis does not properly take into account the fact a complaint for unfair dismissal *had* been presented to the Tribunal within the 7 day period – It was presented on 1 August 2025. While the application was *determined* on 14 August 2025, it had been *presented* on 1 August 2025. For the reasons

above, that approach is consistent with the wording Parliament chose. The question was when the complaint was presented.

36. The next argument counsel presented was to answer the argument the amendment is treated as being allowed on the date the amendment application was made. In other words, could a Tribunal consider the interim relief application was retrospectively made valid during the preliminary hearing on 14 August 2025. Counsel argued this relates to the 'relation back' doctrine which no longer applies in the tribunal since an amendment application is not retrospectively brought to life on the date it is allowed.
37. Counsel referred to **Galilee v Commissioner of Police** UKEAT/0207/16/RN and HHJ Hand QC (as he then was) who said: "amendments to pleadings in the ET, which introduce new claims or causes of action take effect for the purposes of limitation at the time permission is given to amend and there is no doctrine of "relation back" in the procedure in the Tribunal"
38. Counsel acknowledged in **Amey v Aldridge** EATS 0007/16 the Scottish division of the Employment Appeal Tribunal disagreed but that in **Douglas v North Lanarkshire Council** 2024 EAT 194 at paragraph 42, albeit *obiter*, the **Galilee** approach was preferred.
39. I considered this argument carefully. I do not consider that the issue in those cases is directly relevant. The point being argued in those cases was with regard to limitation periods and whether an amendment that is permitted results in the amended complaint being treated as part of the claim from the date of presentation of the claim. That is a different point to that in issue here. The issue here is one of statutory interpretation. The question is what Parliament meant by saying "an employee who presents a complaint to an employment tribunal...". I have found this means that a complaint can be presented to the Tribunal in an ET1 or in an amendment application. It also means the date the complaint is "presented" is the date it was sent to the Tribunal but that it can only be considered if the amendment is granted at which point the complaint is accepted. The relation back doctrine and the associated case law is not directly relevant.
40. I have decided that the decision on an amendment and the date thereof has no impact upon the date the complaint was presented. I also decided that the mere fact of presenting within the 7 day period is not enough, but it is an essential prerequisite. I can find nothing in the authorities presented to the Tribunal that suggest the foregoing interpretation cannot apply. There is nothing I have found that says a Tribunal cannot decide that an amendment is to take effect from the date the claimant made the application to amend.

41. The claimant's contention is that she be found to have presented the complaint when the amendment application was presented to the Tribunal. She is not arguing her application should be considered to have been presented at an earlier date. No authorities were presented to suggest that a Tribunal in determining an application to amend in Scotland cannot decide to accept the amendment with the outcome being the complaint was presented when it was presented to the Tribunal. To do so is fair. Forcing the claimant to be at the mercy of others is inconsistent and promotes uncertainty. All a claimant can do is present the complaint to the Tribunal within the time period. The time taken by the Tribunal to grant (or refuse) the amendment is not a matter that could reasonably be considered relevant to determine when the complaint was presented to the Tribunal. This is no different to the irrelevance of the time a Tribunal takes to determine whether an ET1 should be accepted or not.
42. I find support for my interpretation from the authorities to which counsel referred which emphasised the spirit and purpose of interim relief as being an urgent, expedited remedy: **Lunn v Aston** [2018] I.C.R. D11 and **Dandpat v University of Bath** [2010] EWCA Civ 785.
43. I accept that my interpretation does mean some delay may be occasioned since the amendment needs to be considered but that is not materially different from an ET1 being checked in the usual way. Tribunals understand the importance of expediting interim relief and do so. I do not accept that the interpretation I have arrived at "would cut across the urgent and expedited nature of the remedy Parliament intended" or that "Both parties would be in limbo as to whether the application exists for a substantial period of time, before the matter could be actually determined" or that "Parliament's intention in s.128 ERA would be seriously undermined". I consider that Tribunals would continue to expedite interim relief where it has been raised. ET1s that raise interim relief are expedited. An amendment application would be expedited in the same way.
44. I accept that an amendment is not automatically granted and that the respondent would be given the opportunity to object to the amendment. There is no guarantee the application would be granted and some delay is likely. However, the situation arises in the context of a claim that is already progressing through the Tribunal system. This is not therefore a situation that has only arisen. The claim is ongoing. The parties are working together pursuant to the overriding objective. The respondent would obviously know that it has dismissed the claimant and it is likely that the respondent would be in a position to respond urgently to whether or not there is any objection to the amendment. Delays are likely to be minimal. The fact some delay might arise is not a reason for not finding that Parliament considered a claimant to present

a complaint when the complaint is included in an amendment application (or an ET1).

45. Given the claimant could have presented a new ET1 with precisely the same complaint as is set out in the amendment, there may be few situations where the hardship or prejudice to the respondent would be such as to result in any objection from the respondent. In any event, it is for the Employment Judge to determine, having balanced the relevant factors. It is unlikely that any delays would be considerable and Tribunals are experienced in dealing with urgent applications and expediting matters.

#### *Timing*

46. Finally I considered whether in fact in this case the Employment Judge at the preliminary hearing accepted the amendment but only with effect from the date of the hearing (and did not accept that the amendment took effect from the date of the application).
47. The Judge granted the amendment application but there was no express reference to the date from which the application took effect. Had the Judge decided to grant the application only to take effect from the date of the hearing, there would be no power to consider interim relief. That was not what was decided however, since this hearing was convened to consider matters. It was likely that no thought had been given as to the date the unfair dismissal complaint had been presented given the number of issues being considered.
48. Having viewed matters objectively, it was likely that the Judge decided the application should be granted and given the application was made within the 7 day period he decided to grant the application with effect from the date it was made. Had he decided otherwise, interim relief would not have been able to progress. That was not what happened. The amendment had been considered and granted from the date it was made in this case. While the date from which the amendment took effect not been set out expressly, the only outcome that makes sense was that the application was granted with effect from the date the application was made to the Tribunal, which is the date the complaint was presented.

#### *Decision as to timing and next steps*

49. Having considered the context and circumstances, it was clear that the unfair dismissal complaint was “presented” on 1 August 2025 – when it was sent to the Tribunal. When the Judge considered the application at the hearing, the amendment was granted. That meant that the claimant had presented a complaint of unfair dismissal which required to be considered by the Tribunal. That complaint had been presented on 1 August, within the 7 day period. Consequently, an interim relief hearing will be fixed as a matter of urgency.

*A decision regarding whether the Tribunal has the power to hear an interim relief complaint is a case management order*

50. In terms of the Employment Tribunals Procedure Rules 2024 a “judgment” means a decision made at any stage of the proceedings (other than a decision under rule 14 (reconsideration of rejection of claim/response)), which finally determines — a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs); any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue); or the imposition of a financial penalty under section 12A of the Employment Tribunals Act;
51. A “case management order” is an order or decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment
52. I considered that the issue being considered in this case could finally determine an issue and dispose of the claim or part of a claim. It was in essence a jurisdictional issue, namely did the Tribunal have the power to consider the interim relief claim. Accordingly I decided the outcome to that question was a judgment and not a case management order. The judgment is that the Tribunal has the power to consider interim relief and a hearing must be fixed without delay.

**Date sent to parties**

**30 September 2025**