



EMPLOYMENT TRIBUNALS

Claimant: Alison Darbon
Respondent: Sainsburys Supermarkets LTD

Heard at: Watford Employment Tribunal
On: 2 February 2026
Before: Employment Judge French

Representation

Claimant: In person
Respondent: Mr J Fireman, counsel

JUDGMENT having been sent to the parties on 19 February 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. The claim was before me for a preliminary case management hearing to determine as set out in the hearing notice:
'whether the Claimant's claim is out of time and if not, whether it should be struck out on the grounds that it has no reasonable prospects of success. The tribunal will determine whether it was reasonably practical for the complaint of unfair dismissal to have been issued in time and if not, whether the claim was issued within such further period as is reasonable.'
2. I gave oral reasons for the decision at the hearing on 2 February 2026 and in accordance with rule 60, the claimant requested written reasons of the decision on 27 February 2026. This request was not referred to Employment judge French until 18 March 2026, and these reasons are provided as soon as possible thereafter.
3. The claimant had some connection issues at the outset of the hearing and eventually joined by telephone. Having done so, the claimant then indicated that she thought she had sent her only copy of her statement to the Tribunal. Her statement, however, was included in the bundle prepared by the respondent for which the claimant had a copy. I explained I was there to first determine the issue above regarding time limits, which was a narrow issue and would not otherwise be looking at the merits of the case or evidence. In the circumstances, the claimant confirmed that she was able to proceed.

Evidence

4. I had a bundle before me consisting of 67 pages which included a statement produced by the claimant on the issue at page 46 to 52. I heard evidence from the claimant who confirmed the content of her statement and the respondent put questions to her by way of cross examination. I heard submissions from both parties and had regard to the same.

The Law – Time limits unfair dismissal

5. The time for presenting a complaint of unfair dismissal is determined by s.111(2) of the Employment Rights Act 1996 which provides:-

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

6. The onus of proving that presentation in time was not reasonably practicable rests on the claimant. This “imposes a duty upon him to show precisely why it was that he did not present his complaint”- Porter v Bandridge Ltd 1978 ICR 943, CA.
7. The relevant test is not simply a matter of looking at 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 - Lady Smith in Asda Stores Ltd v Kauser EAT 0165/07.
8. What is reasonably practicable is a question of fact and so a matter for the tribunal to decide- Wall's Meat Co Ltd v Khan 1979 ICR 52, CA: ‘The test is empirical and involves no legal concept. Practical common sense is the keynote’- Lord Justice Shaw.
9. As Lord Scarman commented in Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA, where a claimant pleads ignorance as to his or her rights, the tribunal must ask further questions: ‘What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?’
10. Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented ‘within such further period as the tribunal considers reasonable’.

11. In University Hospitals Bristol NHS Foundation Trust v Williams EAT 0291/12 the EAT emphasised that this limb of S.111(2)(b) does not require the tribunal to be satisfied that the claimant presented the claim as soon as reasonably practicable after the expiry of the time limit in order to allow the claim to proceed. Rather, it requires it to apply the less stringent test of asking whether the claim was presented within a reasonable time after the time limit expired.
12. In Cullinane v Balfour Beatty Engineering Services Ltd and anor EAT 0537/10 Mr Justice Underhill, commented that the question of whether the period between expiry of the time limit and the eventual presentation of a claim is reasonable requires an objective consideration of the factors causing the delay and of what period should reasonably be allowed in those circumstances for proceedings to be instituted. Crucially, this assessment must always be made against the general background of the primary time limit and the strong public interest in claims being brought promptly.
13. In Nolan v Balfour Beatty Engineering Services EAT 0109/11 the EAT reiterated this last point, stating that tribunals, when considering whether to extend time under S.111(2)(b), should always bear in mind the general principle that litigation should be progressed efficiently and without delay. The EAT went on to hold that, when deciding what would have been a reasonable time within which to present a late claim, tribunals should have regard to all the circumstances of a case, including what the claimant did; what he or she knew, or reasonably ought to have known, about time limits; and why it was that the further delay occurred.

Conclusions

14. The response to the claim suggested that the claimant did not contact acas within the primary limitation period. The effective date of termination was 24.8.24. Early conciliation commenced on 21.11.24 and the certificate issued on 2.1.25. The ET1 was presented on 10.2.25.
15. The claimant therefore did contact acas within 3 months of the effective date of termination and the parties agreed that the conciliation provisions were such that she would have one month from the date of issue of the certificate in which to present her claim. It should have been presented by 2.2.25. Therefore, there is no issue in terms of Mrs Darbon's contact with acas. That was within time. The issue was with the subsequent filing of the ET1 on 10 February 2025.
16. The claimant clearly availed herself of the primary time limit of 3 months less 1 day because that was her evidence. Her position is that having contacted acas she could not find any information on how long she had from the issue of the certificate to present her claim, namely the further one-month period.
17. In that regard, I note that she has indicated that technology is not her strongest point, and that also she seemed to have a degree of misunderstanding in terms of the interplay or connection between acas and the Employment Tribunal. On her evidence there certainly appears, to have been some early confusion on her behalf in relation to acas' role and what that meant in terms of the subsequent Tribunal claim and in effect it appears her understanding, albeit misunderstood, was that acas would progress the claim and the separate process of the parties

trying to resolve the dispute by settlement.

18. That being said, I do consider that it was within Mrs Darbon's ability to have asked acas, once she got the certificate how long she then had to present the claim, and she did not do so. In that regard I have regard to Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA, as to what attempts the claimant made to find out that information. She clearly did not take that step but I would accept that this was because of her greater misunderstanding in relation to the two processes.
19. I am satisfied with the claimant's explanation in that regard and conclude that it was not reasonably practicable in the first instance to have submitted her claim on time and that is because of her misunderstanding and the limited information that she was able to find by way of the research.
20. I go on to consider whether the claim was presented 'within such further period as the tribunal considers reasonable' and conclude that it was not. This is not a question of whether it was presented as soon as possible after the expiration of the time limit and rather is a question of whether the claim was presented within a reasonable time after the time limit expired University Hospitals Bristol NHS Foundation Trust v Williams EAT 0291/12.
21. In that regard, the claimant stated in evidence that from 4 February 2025 acas had told her not that she was already out of time (which she was) but had told her that she was running out of time. At that point the claimant still does not avail herself of when the deadline is or was, and I consider it would have been reasonable for her to do so at that stage given the information provided to her.
22. Having then been told that information, there is a further delay to 10 February 2025 before the claimant submits the application. I may have considered that a further reasonable period had the claim form provided any level of detail, but it did not. The claimant simply ticked that she had been unfairly dismissed and provided no particulars at all within the claim form as to that. Therefore I do not consider that the claim form was presented in a further reasonable period in circumstances where the claimant had been told on 4 February 2025 that she was at the very least running out of time, and then what follows was simply a bare ET1, that in its format could have been presented at an earlier stage in light of the information available to the claimant.
23. That is also in the context as identified above where, whilst I have accepted the explanation at the first stage of the test, the claimant has not taken any additional steps to find out the date that presentation of the claim form was required, in circumstances where she has on her own admission been told that time is running out. I consider that in those circumstances the claimant should have sought to present this sooner than 10 February given the information was given to her on 4 February.
24. In those circumstances, I am not satisfied that the claim was presented within such further period as the tribunal considers reasonable. As such, the complaint is out of time and is dismissed.

Approved by:

Employment Judge French

27 March 2026

SENT TO THE PARTIES ON

27 March 2026

FOR THE TRIBUNAL OFFICE