



EMPLOYMENT TRIBUNALS

Claimant: Ms Stephanie Ehioze

Respondent: Elysium Healthcare Limited

Heard at: Watford via video

On: 10 March 2026

Before: Employment Judge MJ Smith

Appearances

For the claimant: In person

For the respondent: Mr Andrew Sugarman (counsel)

JUDGMENT

1. The application to strike out the claim under Employment Tribunal Rule 38(1)(e) is allowed.
2. The claimant's claim for unfair dismissal is dismissed.

REASONS

Introduction

3. The claimant was employed by the respondent, a company that operates specialist hospitals, residential settings and community based homes, as senior healthcare assistant, from 18 December 2017 until 31 October 2024. Early conciliation started on 13 December 2024 and ended on 17 December 2024. The claim form was presented on 24 February 2025. The claim was about unfair dismissal.

4. A preliminary hearing was listed on 10 March 2026 to deal with the respondent's strike out under rule 38(1)(a) of the Employment Tribunal Procedure Rules 204 on the basis that the claimant's claim has no reasonable prospects of success due to it being brought out of time.
5. The claimant was given an opportunity to clarify her claims and the chronology of events. The claimant accepted that she had been dismissed on 31 October 2024. Taking into account the ACAS dates the deadline for presentation of the claimant's claim to the tribunal was 3 February 2025.
6. The claimant gave sworn evidence during the course of the hearing and was questioned by me and by the respondent's representative. The claimant stated that she had been represented by a trade union representative throughout the capability process. When she could no longer pay her subscriptions the union was not able to act for her and she contacted the Citizen's Advice Bureau. She was advised to contact ACAS and did so. She stated that no one had informed her of the time limits at any point and that as she was unfamiliar with the system so did not think to ask. The claimant stated that although the ACAS Certificate was dated 17 December 2024 she did not receive the certificate until 30 January 2024. The claimant accepted that she had not read the information on the ACAS website in full and could not recall accessing the government website.
7. The respondent argued that the claimant's memory was affected by the lapse in time and the claimant's lack of contemporaneous notes. He respondent also argued that if the clamant had relied on any inaccurate advice form her trade union representative or anyone at the Citizen's Advice Bureau this would not enable her to escape the effects of the time limits. In any event it was argued that the claimant had access to the internet and the websites of ACAS and the government in order to find out what the time limits were.

Law

8. Rule 38 of the Employment Tribunal Procedure Rules 2024 provides:

38.— Striking out

(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—

(a) that it ... has no reasonable prospect of success;

9. Section 111 of the Employment Rights Act 1996 provides:

111.— Complaints to employment tribunal

- (1) A complaint may be presented to an [employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
- (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 subsection (2)(a).
- (3) Where a dismissal is with notice, an [employment tribunal]¹ shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.
- (4) In relation to a complaint which is presented as mentioned in subsection (3), the provisions of this Act, so far as they relate to unfair dismissal, have effect as if—
 - (a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,
 - (b) references to reinstatement included references to the withdrawal of the notice by the employer,
 - (c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and
 - (d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.
- (5) Where the dismissal is alleged to be unfair by virtue of section 104F (blacklists),
 - (a) subsection (2)(b) does not apply, and
 - (b) an employment tribunal may consider a complaint that is otherwise out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

10. The cases of ***Times Newspapers Ltd v O'Regan*** 1977 IRLR 101, EAT and ***Alliance and Leicester plc v Kidd*** EAT 0078/07 set out guidance for how the Tribunal should approach cases which involve bad advice from trade union representatives.

11. The case of ***Riley v Tesco Stores Ltd and anor*** 1980 ICR 323, CA set out guidance on the approach to be taken by the Tribunal in which bad advice was given to by an advisor at the Citizen's Advice Bureau.

12. I had regard to the test in respect of time limits as set out in section 111 of the Employment Rights Act 1996.

The evidence before me

13. The Tribunal had the following documents at the Preliminary Hearing:

a) Respondent's Preliminary Hearing bundle of 47 pages

14. I heard evidence under oath from the claimant. Both parties were given an opportunity to make submissions.

Strike out application

15. The respondent made an application to strike out the claim on one ground namely rule 38(1)(a) on the grounds that the claimant's claim has no reasonable prospects of success.

Rule 38(1)(a) Delay in presenting the claim

16. The respondent's application for strike out of the claimant's claim was made on the basis that the claimant had failed to present her claim by 3 February 2025 and was out of time.

17. The claimant, in her oral evidence, made efforts to recall events which had taken place over a year ago and it is likely that this lapse in time affected her ability to remember those events in sufficient detail. This was because she had not made any contemporaneous notes and had not kept any emails. It is likely that given the number of professionals from whom she had sought advice at least one of them would have mentioned the time limits for bringing a claim in the Employment Tribunal. Even if they had not, case law does not allow for the fault of an adviser to be used to escape the impact of not presenting a claim on time. The claimant had obtained advice from her trade union, the Citizen's Advice Bureau and ACAS.

18. The claimant had downloaded the ET1 claim form in order to fill it in and return it to the tribunal. The claimant obtained the form using the internet and, whether she obtained it from ACAS or via the government website, there would have been information relating to time limits. The claimant, in her evidence, accepted that she could not recall having read this information.

19. The claimant is the one to show that it was not reasonably practicable to present the claim on time. She was represented until her appeal hearing in November 2024 by her trade union representative and it is likely that she would have been aware of the time limits at that date and the need to present her claim to the tribunal on time. Even if this were not the case, the claimant cannot rely on bad advice from her trade union representative to escape the time limits.

20. The claimant also went to the Citizen's Advice Bureau when she could no longer afford the union fees and the union could no longer represent her. It is likely that the advisor at the Citizen's Advice Bureau would have informed her of the time limits. Even if they did not, the claimant cannot rely on bad advice from them to escape the time limits.
21. The claimant then went to ACAS and it is likely that she would have been informed of the time limits. ACAS are not legal advisors but a similar standard should apply to them in that the claimant cannot rely on any bad advice from them to escape the time limits.
22. I found that it was reasonably practicable for the claimant to have presented her claim in time.
23. The claimant stated that the ACAS certificate was not received until 30 January 2025 when it was dated 17 December 2024. It is likely that the claimant received it on 17 December 2024. This should have alerted the claimant to the issue of time limits.
24. I considered whether the claim was presented in a further reasonable period but the claimant could give no good explanation for the delay. It may be that her memory was such that she could not recall the matters sufficiently. It would have been clear by 17 December 2024 that she needed to consider the issue of time limits. The claimant had been represented at various points in the process and received advice from a number of professionals during the process. Given the lack of explanation as to the delay in presentation of the claim, I found that it was not presented within a reasonable further period and the claim is out of time.
25. I considered whether it was just and equitable to extend the time limits but the length of delay and the opportunities the claimant had to receive advice on the issue meant that I found it was not just and equitable to extend the time limits. As a result the claim for unfair dismissal had no reasonable prospects of success due to it being presented out of time.

Conclusion

26. The strike-out application is allowed as there is no reasonable prospect of the claimant succeeding on her claim due to the issue with the time limits. The claimant's claim for unfair dismissal is dismissed

**Approved by
Employment Judge MJ Smith
20 March 2026**

Judgment sent to the parties on:

27 April 2026

For the Tribunal:

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/