



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4106855/2024**

**Held in Edinburgh on 15 December 2025 at 10am via CVP/Kinly**

**Employment Judge Porter SIR**

**Ms Justina Ogundolani**

**Claimant  
In Person**

**Viewpoint Housing Association Ltd**

**Respondent  
Represented by:  
Ms # Misacas -  
Solicitor**

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

It is the judgment of the Employment Tribunal that the Tribunal does not have jurisdiction to hear the claimant's claims of Unfair Dismissal and Race Discrimination

### **REASONS**

#### **Introduction**

1. The claimant was employed by the respondents as a care assistant between the 11 February 2015 and the 21 May 2024 when she was dismissed on the grounds of gross misconduct. The date of dismissal was disputed in the pleadings; however agreement was reached at a later stage that the effective date of termination was the 21 May 2024. In these proceedings the claimant brings claims of unfair dismissal and race discrimination.
2. The claimant's ET1 was submitted on the 17 October 2024. It was not in dispute that the last date for submitting a timeous claim was 1 October 2024, having taken into account the provisions in the Employment Rights Act 1996 to accommodate Early Conciliation.
3. The case was listed for a Preliminary Hearing ("PH") on the 15 December 2025 on the issue of Jurisdiction/Time Bar. At the PH the claimant represented herself and the respondents were represented by Miss Misacas, solicitor.

4. At the outset of the PH the claimant was asked whether any reasonable adjustments were required for her and was advised that she could request breaks at any time.
5. The claimant alone gave evidence. Reference was made to an agreed Joint Bundle of Documentation numbered **1-55**.

### **Findings in Fact**

6. Following a disciplinary process there was a disciplinary hearing held between the respondents and the claimant on Wednesday 15 May 2024. At that hearing the claimant was represented by her trade union representative. The outcome of the disciplinary process was that the claimant was summarily dismissed for gross misconduct, with effect from the 21 May 2024. The reasons for her dismissal are set out in the respondents' letter to the claimant of the 28 May 2024 (**42-44**).
7. In advance of the disciplinary hearing, the claimant's trade union representative told the claimant that she could anticipate a written warning. After the disciplinary hearing he did not advise her of the right to bring Tribunal proceedings. Instead, he told her to focus on preserving her SSSC status.
8. The claimant was shocked by her dismissal. At the time of her dismissal, she had a clean disciplinary record. The claimant gave evidence that the dismissal affected her health. The Tribunal accepted the claimant's evidence but noted that the medical records produced by her (**45-55**) did not support this evidence.
9. Following a conversation with a friend the claimant contacted Acas. The date of receipt by Acas of EC notification is 18 July 2024 and the date of issue of the Acas certificate is the 29 August 2024 (**1**). The claimant gave evidence under cross examination that she had a conversation with an Acas official called Tony in September 2024 who advised her on the applicable time limits for bringing these Tribunal proceedings. The Tribunal accepted this evidence.
10. The claimant gave evidence that she attended the Citizens Advice Bureau in late September 2024 to ask them for advice in bringing a claim. She said that the Citizens Advice Bureau advised her to raise proceedings as soon as possible due to the imminent expiry of the applicable time limits. The Tribunal accepted this evidence.
11. The claimant gave evidence that she was too unwell to bring proceedings in the period between late September 2024 and the 17 October 2024 when her ET1 was received. This specific passage of evidence was not accepted by the Tribunal due to the absence of any supportive medical records covering that period.

12. The Tribunal noted that there was no evidence led of any prejudice to the respondents in allowing the claimant's claims of race discrimination to proceed although out of time.

### **Submissions**

#### *The claimant*

13. The claimant submitted that she did not get good advice from her trade union representative. To this end he did not advise her of the right to bring Tribunal proceedings following her dismissal.
14. The claimant submitted that her health had suffered as a result of her dismissal. She submitted that her dismissal had come as a shock after a 9 year unblemished record and that the extent of that shock had affected her health and caused her depression and anxiety.
15. The claimant submitted that she had no backing from her union and no support and that it was very difficult for her to investigate and navigate the Tribunal process.

#### *The respondents*

16. The respondents provided a summary of their submissions which is replicated below. This summary is therefore in the respondents' own words.

*"The Claimant has raised claims for unfair dismissal and race discrimination. It is the Respondent's position that these claims are out of time and, as such, the Employment Tribunal does not have jurisdiction to hear them.*

#### **UNFAIR DISMISSAL CLAIM - NOT REASONABLY PRACTICABLE**

*The burden is on the Claimant to establish that it was not reasonably practicable for her to present her claim in time. It is submitted that the Claimant has failed to give sufficient evidence to discharge that burden.*

*In regard to the medical evidence submitted by the Claimant which relate to the period between 21 May 2024 and 17 October 2024, the Claimant provided the following documents.*

*The GP letter dated 2 July 2024 at page 55 of the Bundle of Documents shows the Claimant had suffered with persisting lower back pain and was taking pain relief (analgesia) and doing ongoing exercises.*

*The post-operation letter at page 52 of the Bundle of Documents shows the Claimant was treated in the Day Surgery Unit at the Royal Infirmary of Edinburgh on 6 August 2024.*

*The Claimant has not provided any medical evidence as to why during the entire relevant period she was prevented from presenting their claim in time. The Respondent referred to the following case: Midland Bank plc v Samuels EAT 672/92.*

*Additionally, there is no medical evidence from the 6 August 2024 to the date of submission, to explain why it took the Claimant so long to submit her claim. It is noted that letter of 6 August 2024 confirms the Claimant attended hospital for a procedure. However, the procedure was a day surgery, and no medical evidence has been provided to support that there were any follow up appointments/complications. In fact, there is no documentary evidence of any significant impact on the Claimant's health during this lengthy period. Accordingly, the Tribunal is invited to find that the Claimant was able to raise the claims well before the date she did.*

*It is submitted that the Claimant knew how to investigate her rights (evidenced by her notifying ACAS within the relevant time limit and that she sought guidance and advice from the Citizens Advice Bureau). In the absence of any clear evidence to show she was so unwell during the full relevant period; the Tribunal is invited to find that it was reasonably practicable for the claim to be submitted on time.*

*The claimant's naivety and ignorance to the time limit is not reasonable. It is submitted that it is not credible that the Claimant would not have been advised by ACAS that the next step would be to submit a claim and that time limits would apply. Additionally, in evidence, the Claimant said she sought guidance from the Citizens Advice Bureau around the end of September and was told she should submit her claim as soon as possible. The Respondent referred to the following case in Trevelyan's (Birmingham) Ltd v Norton 1991 ICR 433.*

#### **A FURTHER REASONABLE PERIOD**

*It is submitted that the claim was not submitted within a further reasonable period for the following reasons:*

*The Claimant has offered no medical evidence and/or report relating to this period to show that she was unfit to raise the claim.*

*She received her ACAS certificate for 7 weeks, following it being issued on 29 August 2024. This was over 3 weeks after the hospital appointment, and there has in the Respondent's submission been no reasonable explanation for the Claimant's continued delay.*

*In evidence, the claimant stated that she sought guidance from the Citizens Advice Bureau around the end of September and was told to*

*lodge her claim as soon as possible. The Claimant did not do so until 17 October 2024.*

*If the Tribunal holds that it was not reasonably practicable for the Claimant to have submitted her claim within the time limit, it is submitted that a period of days after the time limit is not reasonable, and the Claimant could have submitted the claim for earlier. I invite the Tribunal to find that the claim is time barred and as such the Tribunal does not have jurisdiction to hear the claim and accordingly it should be dismissed in its entirety.*

### **DISCRIMINATION CLAIM - JUST AND EQUITABLE**

*It is submitted that the Claimant has not demonstrated that there was any exceptional reason/s to persuade the Tribunal to exercise discretion and allow the claim to proceed. This is having regard to all of the reasons I have submitted in respect of the unfair dismissal claim, but emphasising the following:*

*There is no medical evidence to show that the Claimant was unable during the entire relevant period to submit her claim on time.*

*The Claimant does not satisfy the “exceptional” reason by her apparent reliance on not understanding the relevant time period for submitting her claims. The Claimant had the initiative and knowledge to initiate ACAS proceedings, as confirmed in her evidence. It is submitted that it was not reasonable for her to be ignorant of the time limits, or to have been ignorant for the whole period until the claim was submitted. The Claimant demonstrated she was able to investigate matters, and in our submission has provided no reasonable explanation as to why she did not satisfy herself of what else was required after initiating the ACAS process and contacting the Citizens Advice Bureau.*

### **SUMMARY OF EVIDENCE**

*The Claimant offered no evidence during the hearing to overcome the test that it was not reasonably practicable for her to lodge her claim on time. The Claimant did not provide medical evidence as to why she was unable during the entire relevant period to lodge her claim on time. The Claimant’s ignorance to the relevant time limits is not reasonable and despite being in contact with ACAS and having received advice from Citizens Advice Bureau, and she still failed to present her claim within the required time limits.*

### **CONCLUDING SUBMISSIONS ON DISCRIMINATION CLAIMS**

*In conclusion, in respect of the discrimination claim, I invite the Tribunal to find that, in all the circumstances, the Claimant has not provided sufficient reason*

*why the claim was not raised in time to allow the Tribunal to exercise its discretion to extend the time limits. I remind the Tribunal that it must consider the whole period and not just the period after the expiry of time. The Claimant had for at least six weeks (42 days) to take adequate steps to address the matter during the ordinary time period extension. It is submitted that the claims are time barred and the Tribunal does not have jurisdiction to hear the claims which should be dismissed in their entirety.”*

### **The law**

17. The relevant law insofar as the claimant's claim of unfair dismissal is concerned is to be found in s111 of the Employment Rights Act 1996. There it is stated: *“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.”*
18. The issue of what is reasonably practicable is a matter for the Tribunal to decide and the onus remains on the claimant to persuade the Tribunal that the statutory hurdle has been met. The law remains as stated in **Porter v Bandridge Ltd 1978 ICR 943 CA** that the correct test is not whether the claimant knew of his or her rights but whether he or she ought to have known of them.
19. 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.’*
20. The relevant case law does not support the contention that the absence of correct advice from the claimant's trade union official renders it “not reasonably practicable” to submit a claim timeously (**King v Gemalto UK Ltd 2022 EAT 29**). At paragraph 14 of the case report of **King** it is stated (per John Bowers QC): *“I do not accept that absence of advice or incomplete advice where there is the means to discover the correct time limit now easily through the internet, can render it not to be reasonably practicable to comply.”*
21. Insofar as the claimant's claims of discrimination are concerned, the relevant statutory provision is to be found in **s123(1)(b) of the Equality Act 2010** which provides for a time limit of 3 months from the act complained of or *“such other period as the employment tribunal thinks just and equitable.”*

22. In **British Coal Corporation v Keeble and Ors (1997) IRLR 336, EAT** it was suggested that in determining whether to exercise their discretion to allow the late submission of a discrimination claim, tribunals will be assisted by considering factors including the length of, and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.
23. The nature of the discretion was considered in **Abertawe Bro Morgannwg University Local Health Board v Morgan (2018) ICR 1194** where it was stated at paragraph 18 (per Leggatt LJ) *"18, First, it is plain from the language used ('such other period as the employment tribunal thinks just and equitable') that Parliament has chosen to give the employment tribunal the widest possible discretion....section 123 (1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corp v Keeble (1997) IRLR 336) the Court of Appeal has made it clear the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi (2003) ICR 800 para 33...19 That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh.)"*
24. Tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test in s123. However, the exercise of that discretion is not a foregone conclusion. In the case of **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434** the Court of Appeal stated that there was no presumption that a Tribunal should extend time in a case of discrimination. The Court of Appeal went on to say that a Tribunal cannot hear a complaint unless a claimant convinces it that it is just and equitable to extend time as the exercise of the discretion is the exception rather than the rule.

## Discussion and Decision

### *Unfair Dismissal*

25. Firstly, the Tribunal considered whether or not the claimant's claim of unfair dismissal should be allowed to proceed under s 111 (b) of the Employment Rights Act 1996. To this end the Tribunal noted that at the time of dismissal the claimant had not been advised by her trade union representative that she had the right to bring a claim of unfair dismissal. The Tribunal did not, however, consider that the absence of advice from the claimant's union official rendered it 'not reasonably practicable' to submit her claim timeously. In doing so the Tribunal followed the ratio in the case **King v Gemalto Ltd**.
26. The Tribunal noted however that by late September 2024 the claimant had both spoken to Acas and attended the CAB. The Tribunal noted that the CAB had told the claimant to raise proceedings as soon as possible and had advised her of the imminent expiry of the time limits for doing so.
27. In determining the issue of whether the claimant's unfair dismissal claim should be allowed to proceed the Tribunal took into account that there was no medical evidence to substantiate the claimant's assertion that she was unable to submit an ET1 as she was unwell in the period between seeing the CAB in late September 2024 and submitting her ET1 on the 17 October 2024.
28. After taking into account the claimant's evidence and the relevant authorities the Tribunal concluded that it was reasonably practicable for the claimant to have submitted an ET1 timeously. For these reasons the claimant's claim of unfair dismissal is dismissed.

### *Race Discrimination*

29. The Tribunal then proceeded to consider whether the claimant's claim of race discrimination should be allowed to proceed although out of time on the basis of the "*just and equitable*" extension under s123(1)(b) of the Equality Act 2010.
30. The Tribunal commenced its deliberations by considering the length of, and reasons for the delay in submitting the ET1. The Tribunal noted that although the claimant's delay in submitting a timeous ET1 is relatively short, being some 17 days, the claimant provided no cogent evidence on the reasons for her delay. To this end, by late September 2024, the claimant was in receipt of advice from the CAB and from Acas that she should raise proceedings as soon as possible due to the imminent expiry of the relevant time limits. The claimant's explanation for not raising proceedings timeously was that she was unwell in the period late September 2024 to October 17 2024 when her ET1 was received. However, this passage of the claimant's evidence was not

accepted by the Tribunal as there was no medical evidence to substantiate this specific and significant period of ill health.

31. The Tribunal considered the issues of the promptness with which the claimant acted once she knew of the facts giving rise to the cause of action, and the steps taken by the claimant to obtain appropriate advice once she knew of the possibility of taking action.
32. The Tribunal noted that by 18 July 2024 the claimant had discussed her cause of action with a friend and had contacted Acas. There was no explanation forthcoming from the claimant, however, as to why it was not until September 2024 that she sought to obtain appropriate advice by speaking to Acas and contacting the CAB.
33. In reaching a decision on the issue of extension of time the Tribunal also took into account the fact that there was no evidence to substantiate the fact that the respondents would suffer any prejudice should the claimant's claim of race discrimination be allowed to proceed. However, the Tribunal concluded that this factor alone did not justify the granting of an extension of time under and in terms of s123(1)(b) of the Equality Act 2010.
34. In deciding not to extend time under s123(1)(b) of the Equality Act 2010 the Tribunal had regard to the words of the Court of Appeal in **Robertson v Bexley Community Centre t/a Leisure Link** that there is no presumption that time will be extended in cases of discrimination and that a Tribunal cannot hear a complaint unless a claimant convinces it that it is just and equitable to extend time as the exercise of the discretion is the exception rather than the rule.
35. It is for these reasons that the claimant's claims of unfair dismissal and race discrimination are dismissed.

**Employment Judge J Porter**

22 December 2025

**Date of Judgment**

**Date sent to parties**

30 December 2025