



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Alison Burke

**Respondent:** Dial Green Estates Management Ltd

**Heard at:** Watford Employment Tribunal CVP **On:** 2 April 2026

**Before:** Employment Judge Young

## **Representation**

Claimant: Mr James Khalid (Counsel)

Respondent: Mr Alex Lawson (Counsel)

**JUDGMENT** of Employment Judge Young, having been given orally and in writing on 2 April 2026, and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

# REASONS

## Introduction

1. The Claimant was employed by the Respondent, a company that ran a Pub, as a pub manager, from 1 April 2017 until 18 May 2024. Early conciliation started on 15 August 2024 and ended on 26 September 2024. The claim form was presented on 28 October 2024.

## Hearing

2. I received an agreed bundle of 254 pages, skeleton arguments from both the Claimant's counsel and the Respondent's counsel. The bundle contained 2 witness statements, one from the Claimant and one from Mr Michael Jordan of the Respondent. I heard oral evidence from both witnesses. I was also referred to case law (Remploy Ltd v Brain UKEAT/0465/10/CEA and two letters from the Respondent dated 1 April 2026.

## Claims & Issues

3. At the preliminary hearing on 19 January 2026, Employment Judge Dick listed this public preliminary hearing to deal with time limits to be dealt with as a substantive issue, the Claimant's applications for strike out of the

response and/or deposit orders, Judicial Assessment, should the judge consider it appropriate and depending on the result of (the time issues setting the date for a final hearing and making any other necessary case management orders.

4. As the time limits issue would (if the Claimant was not successful in showing that it was not reasonably practicable for her to have presented her claim in time) mean that all the Claimant's complaints would fall away, the Employment Tribunal dealt with the time issue first.

5. The issues in the case were:

5.1 Was the unfair dismissal complaint under section 111(2) of Employment Rights Act 1996, the wrongful dismissal complaint under article 7 of Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, the unauthorised deductions complaint section 23 of the Employment Rights Act 1996, and the holiday pay complaint under regulation 30(2) of the Working Time Regulations 1998 made within the time limit? The Tribunal will decide:

5.1.2 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?

5.1.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

5.1.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

#### Findings of Fact

6. The Claimant was given notice of termination of employment on 18 February 2024 and dismissed on 18 May 2024. I find that the Claimant's effective date of termination was 18 May 2024. The Claimant contacted ACAS with the support of her solicitor on 15 August 2024, 2 days before the expiry of the primary time limit. The Claimant's ACAS early conciliation certificate was issued on 26 September 2024 [208].
7. The Claimant gave evidence that she handed everything over in respect of responsibility for her claim to her solicitors and that she was aware that there was a time limit to present her claim and instructed her solicitors to present her claim form within the requisite time limit. I accept the Claimant's evidence on this.
8. The Claimant's Solicitors had the Claim form drafted by 23 October 2024 and were the representatives named on the claim form. The Claimant's Solicitors sent the claim form to the Industrial Tribunals and Fair Employment Tribunal (Northern Ireland) by post, which was received by them on 25 October 2024 [206]. However, the Industrial Tribunals and Fair Employment Tribunal (Northern Ireland) rejected the claim form, giving the Claimant the right to apply for reconsideration.
9. The Claimant applied to reconsider the decision and Watford Employment

Tribunal accepted on 9 April 2025 the claim form as presented on 28 October 2024 [204]. The Claimant's evidence, which I accept, was that the claim form was presented to Industrial Tribunals and Fair Employment Tribunal (Northern Ireland) as an administrative mistake.

10. Following the case management preliminary hearing on 19 January 2026 [122-124], the Claimant had contacted her solicitors when she found out that the claim form was out of time; however, unfortunately, by that time, the Claimant's solicitor had passed away. The Claimant's Solicitors responded that the Claimant would need to contact her executors in order to obtain further information. The solicitors were still in existence, and the Claimant withdrew her instructions from the date of that hearing and is now represented by counsel via direct access.

### The Law

9. Section 207B of the Employment Rights Act 1996 provides:

*“Extension of time limits to facilitate conciliation before institution of proceedings*

*(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a ‘relevant provision’). But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.*

*(2) In this section— (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact Acas before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

*(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

*(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

*(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.”*

10. Regulation 30B of the Working Time Regulations 1998 has similar provisions to the Employment Rights Act 1996 regarding early conciliation extending time. Regulation 30B states:

*“30B.—Extension of time limit to facilitate conciliation before institution of proceedings*

*(1) In this regulation—*

*(a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*

*(b) Day B is the day on which the worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

*(2) In working out when the time limit set by regulation 30(2)(a) expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

*(3) If the time limit set by regulation 30(2)(a) would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

*(4) The power conferred on the employment tribunal by regulation 30(2)(b) to extend the time limit set by paragraph (2)(a) of that regulation is exercisable in relation to that time limit as extended by this regulation.”*

11. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 also has this same provision in article 8B of that order.

#### Unfair Dismissal Time Limits

12. The time limit in respect of unfair dismissal is set out in section 111 of ERA.

13. Sections 111(2) & 111(2A) states “An employment tribunal shall not consider a complaint under this section (111 of the ERA 1996) 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 ( applies for the purposes of subsection 2A ) extension of time limits to facilitate conciliation before institution of proceedings”*

14. In the seminal case of Palmer and another v Southend on Sea Borough Council [1984] ICR 372, May LJ prompts Tribunals to have regard to the surrounding circumstances of each case in determining whether the Employment Tribunal has jurisdiction pursuant to section 111 EAT, and the following are named as examples of relevant circumstances at page 125 paragraph 34-35 of the decision. This list is by no means exhaustive:

- What was the substantial cause of the Claimant's failure to comply with the statutory time limit;
  - Whether the Claimant has been physically prevented from complying with the limitation period?
  - Whether at the time of dismissal and if not when thereafter, did the Claimant know he had the right to complain he had been unfairly dismissed?
  - Whether there has been any misrepresentation about any relevant matter to the Claimant?
  - Whether the Claimant was being advised at the relevant time, and if so, by whom?
15. Furthermore, the Court of Appeal concluded in Palmer that what was "reasonably practicable" means what was reasonably feasible.
16. Subsequently, Lady Smith giving judgment in the EAT in Asda Stores Ltd v Kauser EAT 0165/07 summarised the reasonable practicable test as follows *"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"* [paragraph 17]
17. In the Court of Appeal decision of Dedman v British Building and Engineering Appliances Limited 1974 ICR 53, Lord Denning MR famously stated that *"If a man engages skilled advisers to act for him — and they mistake the time limit and present [the claim] too late — he is out. His remedy is against them."* [See paragraph 61]

#### Wrongful dismissal

18. Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 states:
- "Subject to article 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented-*
- (a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or*
- (b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or*
- (ba) where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b).*
- (c) where the tribunal is satisfied that it was not reasonably practicable for*

*the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.”*

### Unauthorised Deductions

19. The relevant sections of section 23 Employment Rights Act 1996 set out the time limit provisions applicable to unauthorised deductions. Section 23 ERA states:

*“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*

*(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*

*(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*

*(3) Where a complaint is brought under this section in respect of—*

*(a) a series of deductions or payments, or*

*(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,*

*the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

*(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).]*

*(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”*

### Holiday Pay

20. The relevant subsections in Regulation 30 of the Working Time Regulations 1998 state:

*“(1) A worker may present a complaint to an employment tribunal that his employer—*

*[...]*

*(b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2), 16(1) or 16A [...]*

*(2) Subject to regulation 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented—*

*(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date*

*on which it should have been permitted to begin) or, as the case may be, the payment should have been made;*

*(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 or, as the case may be, six months.*

*(2A) Where the period within which a complaint must be presented in accordance with paragraph (2) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (2). [...]"*

### Analysis & Conclusions

21. It is not disputed by Mr Kalid on behalf of the Claimant that the claim form is out of time by 2 days. Mr Lawson agrees with this. The Claimant instructed solicitors to deal with her claim and instructed them in good time. Unfortunately, the Claimant's solicitor filed the claim form in the wrong jurisdiction by sending the claim form to the Northern Ireland Employment and Fair Tribunals. The Northern Ireland Employment and Fair Tribunals did not accept the claim form on 25 October 2024 when the claim form was received but declined jurisdiction and sent the claim form to the Watford Employment Tribunal. There was no evidence from the Claimant's Solicitors that suggested that the filing of the claim form in the Northern Ireland Employment and Fair Tribunals was not a mistake; indeed, the Claimant accepted that it was an administrative mistake. I apply Palmer v Southend, therefore conclude that if the Claimant's Solicitors could file the claim form at the Northern Ireland Employment and Fair Tribunals in time, then they could have filed the claim form at the Watford Employment Tribunal in time. It was therefore reasonably practicable for the Claimant to have presented her claim in time.
22. The Claimant's Counsel Mr Khalid sought to distinguish the facts of this case from the case of Dedman. Mr Khalid argued that the Claimant should not be penalised for her solicitor's mistake and that because she relied on her solicitor, who made a mistake, it was not reasonably practicable for her to bring her claim in time as she did all should have done. However, such facts do align with the premise set out by Lord Denning MR at paragraph 31 of Dedman v British Building and Engineering Appliances Ltd [1973] where Lord Denning MR refers to the ignorance of Mr Dedman's solicitors and concludes that ignorance meant that Mr Dedman had a claim against his legal advisors and not that it was not reasonably practicable for the claim form to have been presented. I do not consider that Dedman can be distinguished on the facts of this case as regards the negligence of the Claimant's solicitors. This is supported by comments of Lord Phillips at paragraph 31 in the Court of Appeal decision of Marks & Spencer v William Ryan about Dedman, where he states, "*The passage I quoted from Lord Denning's judgment in Dedman was part of the ratio. There the employee had retained a solicitor to act for him and failed to meet the time limit because of the solicitor's negligence. In such circumstances, it is clear that the adviser's fault will defeat any attempt to argue that it was not reasonably*

*practicable to make a timely complaint to an Employment Tribunal.”*

23. However, even if I am wrong about Dedman, and that it can be distinguished, the case of Remploy does not assist the Claimant, as I agree with the Respondent that the facts of that case are completely different to this case. The most important fact in that case was that the claim form was completed by the Claimant in that case, whilst in this case, the claim form was completed by the Claimant's Solicitors, and that is why it must have been reasonably practicable for the Claimant's Solicitors to have presented the claim form in time. As already concluded, it was reasonably practicable to present the claim form in time and the claim is out of time. I do not need to consider, therefore, whether it was reasonable to have presented the claim in the time period of 2 days, and I do not.
24. The claims are dismissed.

### Costs

25. The Respondent made an oral application for costs under rule 74 (2)(b) ETPR. Mr Lawson submitted on behalf of the Respondent that the Claimant's submissions were wrong in law. Mr Lawson referred to his written skeleton at paragraph 11f-k, where he references Mr Khalid's reference to the just and equitable test that is not relevant to the facts of this case. Mr Lawson submitted that the issue of negligence relevant to the time limit issue and points to the authority of Marks and Spencer PLC v William-Ryan [2008] ICR 193 as to the relevance of Lord Denning's comments in Dedman.
26. Mr Lawson added that right from the start, the claim form was issued in the wrong place. This matter was first raised on 19 January. The Respondent did not have a specific number in respect of costs but would rely on the Employment Tribunal taking a broadbrush approach in respect of costs.
27. Mr Khalid responded on behalf of the Claimant and submitted that the appropriate order is no order as to costs. The issue of jurisdiction was raised at a very late stage. If it was salient to the Respondent, it was something that should have been raised earlier. Mr Khalid said that the Claimant appeared to do what she could as far as her claim was concerned. Costs would not be appropriate in all the circumstances; the Claimant had very little money, if any, to pay costs.
28. Mr Lawson responded that Vaughn v London Borough of Lewisham & others UKEAT/0533/12 says that the Claimant not having means does not mean an Employment Tribunal can't award costs.
29. In the Employment Tribunal Procedure Rules, the section on Costs Orders and Preparation Time Orders is contained in rules 72 to 82 of The Employment Tribunal Procedure Rules 2024 ('ETPR'). Rule 74 deals with when a costs order may or should be made. Rule 74 states:

*“74.—(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in*

*respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.*

*(2) The Tribunal must consider making a costs order or a preparation time order where it considers that—*

*(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,*

*(b) any claim, response or reply had no reasonable prospect of success, or*

*(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.*

*(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned....”*

30. When an application for costs is made, the Employment Tribunal should follow through three stages to make the decision. The first stage is one (or more) of the criteria (for costs to potentially be awarded) as set out in the rules being met. In this particular case, the Respondent relies upon rule 74(2) (b). But if no criteria in the rules is met, there can be no order for costs. But if the threshold is met, the Employment Tribunal must identify which rule or rules contain the criteria which have been satisfied (and why).
31. The Employment Tribunal must ask if the rule that is met and is one which requires the Tribunal to consider making an award or is it one which says the Tribunal “may” consider making an award. Either way, if the criteria for a costs order are met, that means that the Tribunal has discretion to make an award, but it is not obliged to. Then the Employment Tribunal should identify what the relevant factors are to be taken into consideration in the case, and, taking into account all of the relevant factors (and ignoring anything which is irrelevant), ask itself whether an award should be made.
32. If the Employment Tribunal decides that an award is to be made, then the question is what is the amount of the award? (And what is the time for payment, etc).
33. A relevant factor is what advice did the party have? And from whom? When was the advice given? It can be a double-edged sword for a party that has taken legal advice. If they seek to argue that, since a lawyer advised them that the claim had merit, it was not unreasonable to pursue it, in all likelihood, they will have to waive privilege over the legal advice to make such an argument. On the other hand, the opposing party might seek to argue that the fact that the paying party had legal advice available shows that they ought to have understood the claim was hopeless, and/or that their conduct was inappropriate, and/or that a settlement offer that had been made was a good one. However, there is no requirement to do so to defend itself against the latter inference; where privilege is not waived, the Tribunal

will not make assumptions that the party specifically received advice that they were acting unreasonably, but the fact that advice was available to them is likely to undermine an argument that, as a litigant in person, they could not reasonably have been expected to anticipate the arguments being raised by the costs application.

34. The Respondent argued that the claim form had no reasonable prospect of success because it was out of time. The fact that the Respondent did not take issue with the matter at the start indicates that the Respondent did not consider that the matter had no reasonable prospect of success at the initial stage, and so the threshold for no reasonable prospect of success would not have been met until the Respondent raised it. But even when the matter was raised, the law is clear that such jurisdictional issues are fact-sensitive. The fact that the Claimant was limited in the information that she could obtain to explain the administrative mistake was not known until 30 January 2026, and by that time, the matter would have had to be determined at a hearing from that point onwards is determinative in the application. I consider, therefore, that the threshold has not been met and I do not award costs. Even if I considered that the threshold was met, I would not have awarded costs, as I concluded that the issue would have needed to be determined and therefore all costs associated with the prep work and counsel's attendance were properly incurred.

Approved by:

Employment Judge Young

Dated: 30 April 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON  
18 May 2026

.....  
FOR THE TRIBUNAL OFFICE

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

### **Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

### **Recording and Transcription**

**Case No: 3311751/2024**

Please note that if a Tribunal hearing has been recorded, you may request a transcript of the recording, for which a charge may be payable. 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:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>