



EMPLOYMENT TRIBUNALS

Claimant: Mr P Wendolowski

Respondents: DHL E-Commerce UK Limited (R1);
Katie Thomas (R2)
Kelvin Jenkins (R3)

Held at: Cardiff

On: 14th April 2026

Before: Employment Judge S Moore

Representation

For the Claimant: Mr P Wendolowski

For the Respondent: Ms M Sharp, Counsel

Interpreter: Mrs K Neale-Picard

JUDGMENT having been sent to the parties on 15 April 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

Background and Introduction

1. This claim was presented on 8 May 2025. It was presented against three Respondents, the company DHL eCommerce UK Ltd and two managers, Katie Thomas and Kelvin Jenkins. The Claimant had first contacted ACAS on 19 April 2025, and the certificate was issued on 1 May 2025. There was no ACAS certificate for Katie Thomas or Kelvin Jenkins. The claim was incorrectly accepted against Miss Thomas and Mr Jenkins by the administration staff without referral to a Judge.
2. Mr Wendolowski is a litigant in person, he is not legally qualified and English is not his first language. He is of Polish National origin.

3. The Claimant brought claims for unfair dismissal, whistleblowing, breach of contract, redundancy payments, holiday pay and wages. He had not ticked the race discrimination box but did include some information in the body of the claim form about potential race discrimination. The claimant said he had faced verbal abuse such as “*go back to Poland with the refugees*” but did not say when or who had made the alleged comments.
4. There was a Preliminary Hearing before Employment Judge Webb on 5 December 2025 who listed this preliminary hearing to decide whether all of the claims had been presented within the relevant time limits.
5. The Respondent asked the Tribunal to consider two other things at the hearing which was whether or not the Claimant should be allowed to amend his claim and whether to strike out the race discrimination claim because it had no reasonable prospect of success or, alternatively, ask the Claimant to pay a deposit of money in order to continue with the claim. these issues would only become live if time was extended.
6. The Claimant was ordered by Judge Webb to provide further information about his race discrimination claim and the wages claims, specifically the dates of the incidents relied upon by 19 December 2025.
7. The Claimant filed a witness statement dated 17 December 2025 (erroneously dated 2024). He set out some information about deductions but did not set out on what dates which deductions had been made. In relation to the discrimination and harassment complaints, the Claimant only set out one matter with a date which was that in January 2024, after raising concerns regarding workplace safety, Mr Jenkins is alleged to have said words to the effect of ‘*if you don’t like it, fuck off back to Poland*’. He also said that attempts to report those incidents and other problems to Katie Thomas were met with even more aggressive and dismissive responses. He went on to say as follows:

Instead, both Kelvin Jenkins and Katy Thomas reacted with verbal aggression, vulgar language, and statements such as “if you don’t like it, f off.”* These responses occurred every time I identified irregularities or sought explanations. Such behaviour was accompanied by remarks relating to my nationality and repeated statements that I “had no rights.”*

By way of example only, such incidents occurred on or around the following dates:

31 May 2019, 21 June 2019, 30 June 2019, 31 August 2019, 30 September 2019, 31 October 2019, 30 November 2019, 12 June 2019, and later on 31 May 2024, 30 June 2024, and 31 July 2024.

I emphasise that the above dates are illustrative examples only, and that similar situations occurred far more frequently throughout my cooperation with DHL.

8. The reasons the Claimant said he had delayed in bringing the claim in his statement of 17 December, were new reasons. The claim form had said the reasons were emotional strain. In the witness statement the Claimant said it was also because of intimidation, lack of support in legal knowledge,

English being his second language and being unfamiliar with UK employment law and time limits.

9. There was a bundle prepared by the respondent for the hearing. The claimant gave evidence and also had prepared a supplementary bundle.

Findings of fact

10. The Claimant operated a courier service for the First Respondent, DHL. There is a dispute, which I am not dealing with in this decision, about the status of the Claimant. The Respondent said he was a self-employed contractor operating under a Limited Company and it was a commercial contractual business relationship. They said the Claimant was neither a worker nor an employee. The Claimant very much disputes this and has brought his claims based on him being a worker or employee.
11. In 2024 R1 had concerns about the roadworthiness of vehicles used by the Claimant and his workers. The Claimant was very concerned that the financial remuneration offered by the Respondent for the courier services was, according to the Claimant, completely unviable.
12. R1 served notice of termination of the agreement between the Claimant and R1 on 5 July 2024, giving a 30-day notice period, ending on 4 August 2024.
13. The Claimant had started work elsewhere on 10 September 2024. There was no medical evidence that the Claimant was under emotional strain at the time.
14. Prior to the termination of the agreement the Claimant had been speaking to the Citizens Advice Bureau in June 2024, and I saw that on 3 June 2024 the Claimant had sent information to the Citizens Advice Bureau although I did not see what that information was.
15. On 18 June 2024 the Claimant had called ACAS helpline and was sent information about changing employment contracts, appealing dismissals, disciplinary procedures and a link to the unfair dismissal section on the ACAS website.
16. I have concluded that because there is no mention of discrimination in that email from ACAS, that the Claimant did not ask ACAS about discrimination at that time.
17. On 8 August 2024 the Claimant chased the Citizens Advice Bureau for a response, and he was sent links to a number of organisations who might be able to help him. These were Business Wales; We Are Advocates and the University of South Wales Legal Advice Clinic. The Claimant followed up on 13 August 2024 by contacting Advocate Enquiries and this time I saw what the Claimant had set out as his problems. They were, in the main, written as if they were problems with a commercial contract. He talks about contract law, competition act, a business code of conduct and Health and

Safety Regulations in the context of protecting sub-contractors from abuse. There was a mention about discrimination, but this is in the context of different treatment between employees and sub-contractors rather than anything to do with the Claimant's Polish National origin.

18. The Claimant was asked today what he did after the contact with We are Advocates in the August 2024 and he was not able to remember. Specifically, he was asked, did he do anything after that up until 3 November 2024, which was the date he should have lodged the claim. I also asked the Claimant if he had done any research himself, if he had access to the internet. The Claimant told me he has a mobile phone with internet access but did not do any research himself, citing language difficulties and lack of understanding of the legal process.
19. The next thing that happened was on 28 January 2025, the Claimant had received a reply from the University of South Wales Legal Clinic, apologising for the delay and advising a solicitor was unable to help as it was outside of the scope of what they could do. The Claimant told me by this date he knew about the time limits to bring a claim and he knew it was three months but due to the impact of working, family life and the need to collate and prepare documents, along with lack of experience, he did not contact ACAS for a period of almost another further three months until 19 April 2025.
20. Having considered all of those matters, the Claimant tried to seek advice between June and September of 2024 but there were long gaps of time when this was not followed up.
21. The discrimination claims remain very unclear apart from the allegation described above against R3 which is alleged to have happened in January 2024. Whatever the claims are, the last date on which they could have taken place would be 4 August 2024 as this was the last date he worked with any of the Respondents.

The Law

22. The statutory time limits in respect of the claims brought under the Employment Rights Act 1996 (unfair dismissal, whistleblowing, redundancy payments, holiday pay and wages) provide that the claim must be presented to the tribunal before the end of the period of three months beginning with the effective date of termination, or 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. The same wording applies for the breach of contract claim under Regulation 7 of the ET Extension of Jurisdiction (England and Wales) Order 1994.
23. The burden of proof is on the Claimant to show it was not reasonably practicable to have presented the claim in time. The Tribunal must go on to consider whether the further time in which the complaint was presented was

reasonable. These are questions of fact for the Tribunal (**Palmer v Southend-on-Sea Borough Council [1984] IRLR 119**). Ignorance by the Claimant of the right or procedure to bring a will not be grounds for an extension unless the ignorance was reasonable in the circumstances (**Wall's Meat Co Ltd v Khan [1979] ICR 52, C.A.**).

24. The unfair dismissal claim is a test of reasonable practicability so this is a two stage test and the burden of proof is on the Claimant to show that it was not reasonably practicable to have presented the claim in time and if I find that was the case, was the claim presented in such further period of time as I think to be reasonable.

25. The test for the discrimination claim is set out in Section 123 of the Equality Act 2010. This provides:

S123 EQA 2010 provides:

123 Time limits

(1) [Subject to [[section 140B]]] proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

26. The key date as to when time starts to run is the date of the act (**Virdi v Commissioner of Police of the Metropolis [2007] IRLR 24**).

27. In **British Coal Corporation v Keeble and others [1997] IRLR 336** the EAT suggested the following should assist Tribunals when considering the

exercise of discretion. The relevance will depend on the facts of the case. The Tribunal should consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular to:

- (a) the length of and reasons for the delay;
- (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
- (c) the extent to which the party sued had cooperated with any requests for information;
- (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and
- (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

28. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule (per Lord Justice Auld in **Bexley Community Centre (Trading as Leisure Link) v Francis Robertson [2003] EWCA Civ 576**).

29. In **Jones v Secretary of State for Health and Social Care [2024] IRLR 275**, the EAT considered extension of time on just and equitable grounds and cautioned against over reliance on **Bexley**, citing another Court of Appeal decision of **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640**. 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).

Conclusions

- 30. Assuming for the purpose of assessing time limits only, if the claimant was dismissed on the termination of the agreement, the effective date of termination was 4 August 2024 giving a primary limitation date for the unfair dismissal claim of 3 November 2024. This must also be the primary limitation date for the whistleblowing claim. The limitation for the wages claim is less clear as I did not know the date of the last payment to the claimant. The primary limitation date for the redundancy pay claim was 3 February 2025.
- 31. The claimant told the Tribunal that the last act of discrimination was on 31 July 2024 which would mean a primary limitation date of 30 October 2024. Even if we took 4 August 2024 (being his last day) as the last date where there could have been discriminatory acts, this still leaves the primary limitation date at 3 November 2024.

32. The claimant did not contact ACAS until 19 April 2025 over 5 months after the primary limitation dates and then did not lodge a claim for a further 3 weeks on 8 May 2025.
33. The length of the delay was substantial.
34. I did not find the reasons for the delay credible. As of 18 June 2024 the claimant was in possession of information from ACAS which would have given clear advice about time limits. The claimant said he was under emotional strain but he was well enough to secure alternative work and start new employment. He was able to articulate his dispute with R1 which was very much framed as issues with a commercial contract rather than employer / employee status. He had previously run a limited company and employed or sub contracted his contract with R1 to a number of workers. The claimant knew as of the end of January 2025 about time limits but still took no steps to contact Acas until 19 April 2025.
35. Ignorance of the law must be a reasonable ignorance and given the amount of information provided to the claimant by a number of sources, it was not, in my judgment, reasonable to remain ignorant of the time limits for so long. It was reasonably practicable to have brought the ERA 1996 claims in time and even when the Claimant learned about time limits, he then waited too long to contact ACAS.
36. I also have concluded that it is not just or equitable to extend time for the discrimination complaints for the following reasons. Both the Tribunal and the Respondents still do not know the claims they are facing as despite an order for further particulars, the claims remain unclear. There is not a sufficient level of detail to understand or meet the case that they face. The allegations are serious and based on alleged verbal remarks which would be difficult to collate and present evidence after such a long passage of time. Mr Jenkins would be expected to give evidence on a comment is alleged to have made over two years ago, with no context as to the circumstances such as exact date, time who was present when the comment was said and in what circumstances. The other allegations are even more vague, going back to 2019 with a then gap of 5 years until comments allegedly start again in 2024. The balance of prejudice of having to meet claims that go back as far as potentially 2019, but certainly to 2024, some two years later, lies with the Respondents. If time was extended I would be requiring the Claimant to provide further information again as the dates and details of the allegations are still not clear. Matters would have to be investigated afresh in particular there was no evidence before me in any of the documents that the claimant had raised the discrimination allegations with the Respondents prior to these proceedings.
37. For these reasons the complaints are dismissed as they are all out of time and time should not be extended under either statutory test.

Approved by:

Employment Judge S Moore

Date: 18 May 2026

Sent to the parties on: 04 June 2026

Katie Dickson
For the Tribunal Office.