



EMPLOYMENT TRIBUNALS

Claimant

Stefan Malajny

v

Respondent

Papa Luigi (Franchise)
1990 Limited

Heard at: Watford (via CVP)

On: 18 May 2026

Before: Employment Judge Grahame Anderson

Appearances

For the Claimant: In Person

For the Respondent: Mr. T. Perry (Counsel)

JUDGMENT

- (1) The Claimant did not present his claim within the primary time limit.
- (2) It was reasonably practicable for him to have done so.
- (3) Accordingly, the Claimant's claim is dismissed.

REASONS

- 1 These are the written reasons for a judgment I gave orally at the hearing on 18 May 2026. The Respondent asked for written reasons in an email dated 3 June 2026.
- 2 The Claimant, Mr. Stefan Malajny, has brought a claim of unfair dismissal.
- 3 Today's hearing was listed to determine a contested time point and analyse the following:

- 3.1 What was the effective date of termination?
- 3.2 Was the claim form presented in time?
- 3.3 If not, was it reasonably practicable for the claim to have been issued in time?
- 3.4 If not, was the claim issued within a reasonable further period?
- 4 The case was held by CVP. I had a 100-page bundle prepared by the Respondent. References in the form [B/**] are to that bundle.
- 5 I had a witness statement from Mr Pietro Scibelli. With the parties' agreement I treated an email submitted on 12 May 2026 as the Claimant's witness statement.
- 6 Both the Claimant and Mr Scibelli were cross examined and the Tribunal asked questions.
- 7 There were some technical issues but these were dealt with as best as could be. Mr. Perry helpfully assisted in sharing his screen to put documents to the Claimant. We took a number of breaks.

Factual Summary

- 8 The Claimant was employed by the Respondent, Papa Luigi (Franchise) 1990 Ltd, from 12 July 1990 until a disputed termination date in late 2024 or early 2025 [ET3/§12; B/35]. He worked as a manager and held a minority shareholding, and had a longstanding personal and business relationship with Mr Antonio Scibelli (Mr. Pietro Scibelli's father) and his family [ET3/§12–13; B/35].
- 9 The Respondent is a company operating franchised takeaway pizza restaurants [ET3/§14; B/35]. There were also associated business managing a property portfolio. The Claimant's role was said by the Respondent to involve day-to-day implementation, but with strategic decisions largely taken by Mr Antonio Scibelli [ET3/§15; B/35].

- 10 The parties began discussions about the Claimant's retirement in early 2022 [ET3/§19; B/36]. There is some dispute about the precise content of the discussions but there is no dispute that they culminated in an agreement dated 17 December 2024, under which the Claimant retired and received consideration including property transfers and indemnities, while transferring his shares [ET3/§2; B/33; ET3/§20; B/36]. The Claimant's position is that he was rushed in to this agreement: he says that he was initially told that a solicitor had to sign it but that the Respondent later changed tack and said that that was not necessary: it was said that if the Claimant agreed to a quick signature without having a lawyer check the document then he would receive certain additional payments. Although the date is not clear, there appears to have been a discussion at a Costa Coffee.
- 11 For entirely understandable reasons (he has been very unwell) Mr Antonio Scibelli did not give evidence about the precise content of the discussion. The Claimant's position is that he was told his "wages would be extended" and interprets that as meaning that his employment was extended by 8 weeks.
- 12 The Respondent contends that the Claimant's employment terminated on 31 December 2024 by mutual agreement [ET3/§2; B/33].
- 13 Whatever may or may not have been agreed at Costa Coffee, the agreement was reduced to a complex instrument prepared by lawyers [B/53]. The Claimant had arranged to have it checked by lawyers but then agreed to sign early. The Claimant did sign the instrument and then spoke to lawyers afterwards. He told us that that solicitor did not do unfair dismissal work and he was advised to speak to someone who did. He did not heed that advice.
- 14 The Claimant suggests that the agreement is "null and void" and so should be ignored for present purposes. There is no lawful basis for me to reach any such conclusion: it is true that, because the Claimant did not receive advice on it, it does not satisfy the statutory requirements for a Settlement Agreement ousting the jurisdiction of the ET to hear the Claimant's claims. But the Respondent does not contend that it does. However, there is no basis on which I can conclude that the agreement is a nullity. It plainly represents a

binding contract between the parties and, as I develop below, is the basis on which the Claimant's employment came to an end.

15 It is material to note that:

15.1 There is a Settlement Agreement at [B/53]. Recital B states that the Claimant's employment would terminate on 31 December 2024, as does clause 2.1.

15.2 Clause 2.5 stipulates that the Claimant will have served his notice as at 31 December 2024.

15.3 Cl. 8.1 required the return to of company property which the Claimant accepts he did.

15.4 Clause 4 provided for the payment of certain additional termination payments on dates in January and February 2025. The Claimant analyses these as an extension of his wages. It is true that they are in a similar or the same amount as his wages. But it is expressly stipulated that they are a tax-free termination payment (and there is no suggestion that they were not paid as such). The evidence suggests that this clause was added as an incentive for the Claimant to sign quickly.

15.5 There is a P45 statement at [B/46] stating the Claimant's leaving date to be 31 December 2024.

16 I accept Mr. Scibelli's evidence (at para. 27 of his statement) that the Claimant did no work for the Respondent after 31 December 2024. The Claimant says that he has continued to promote the company on social media. This, however, was in the nature of voluntary promotion based on, as he put it in cross-examination, his "love" of the company rather than being part of any ongoing contract.

17 Following and perhaps shortly before the termination, the Claimant had various health issues. These are dealt with in detail below. The Claimant

states that these conditions affected his ability to concentrate and deal with the situation [CI-Email/§1 *'my head would go fuzzy'*].

- 18 ACAS Early Conciliation was initiated on 26 March 2025 (Day A) and concluded with a certificate on 31 March 2025 (Day B) [B/5]. The Claimant presented his ET1 on 27 May 2025.

Was the claim in time?

- 19 The short point is that, if the Claimant's employment ended on 31 December 2024 his claims to the ET are out of time: they should have been presented by 30 April 2025.
- 20 If the Claimant's employment ended on 28 February 2025, they are in time.
- 21 It is plain to me that the Respondent is correct. The Claimant may have felt that he was being paid his wages until 28 February 2025 and that the effect of that was that in some way his employment was being extended. He was not and it was not.
- 22 He was receiving payments pursuant to the Settlement Agreement which had brought his employment to an end on 31 December 2024. That is abundantly clear from the instrument itself. Accordingly, applying s. 97 of the ERA 1996, the effective date of termination is 31 December 2024.
- 23 Accordingly the Claimant's claim is out of time.

Extension

Law

- 24 The Tribunal has a limited discretion to extend time where it is satisfied that it was not reasonably practicable for the complaint to be presented within the primary three-month period and that it was presented within such further period as the Tribunal considers reasonable. This is, as Mr. Perry described it, a limited discretion.
- 25 Where a claim is presented outside the primary limitation period, the Tribunal may consider whether to extend time on the basis that it was not reasonably

practicable to present the claim in time (s. 111(2)(b) of the ERA 1996). This is a two-stage enquiry.

- 26 First, the Tribunal must determine whether it was not reasonably practicable (in the sense of not reasonably feasible) for the Claimant to present the claim within the prescribed period. That assessment is fact-sensitive and may include consideration of, for example, the Claimant's knowledge of their rights, access to advice, and personal circumstances such as illness.
- 27 Second, if that threshold is met, the Tribunal must consider whether the claim was presented within such further period as is reasonable.
- 28 The burden of establishing both stages rests on the Claimant.
- 29 In *London Underground v Noel* [1999] IRLR 621, Judge LJ explained that in relation to the "not reasonably practicable" legislative formula 'The power to disapply the statutory period is therefore very restricted. In particular it is not available to be exercised, for example, "in all the circumstances", nor when it is "just and reasonable", nor even where the tribunal, "considers that there is good reason" for doing so.'
- 30 The expression "reasonably practicable" has been held to mean, "reasonably feasible": see *Palmer v Southend Borough Council* [1984] IRLR 119 CA.

Application

- 31 The Claimant does not suggest he was ignorant of his rights. In fact he appears to have been diligent in researching what the position was as regards Tribunal procedure. He referred to the fact that, during his employment with the company, he had been responsible internally for managing various tribunal claims so he is not a complete stranger to the process.
- 32 If the Claimant has been mistaken about his rights I would have found that the mistake was not a reasonable one applying *Wall's Meat Co Ltd v Khan* [1978] IRLR 499. The Claimant is plainly an intelligent and articulate man who has experience of tribunal litigation, had spent time researching the process and had, to at least some extent, access to legal advice.

- 33 But in truth, his case is that ill health made it not reasonably practicable to present his claim in time.
- 34 The medical records show that the Claimant came to medical attention in early 2025 with a number of physical and psychological symptoms, including a suspected breast abnormality, cardiovascular symptoms, and anxiety-related complaints.
- 35 The earliest relevant clinical event is a retrospective reference to a 24-hour ECG report dated 3 December 2024, with no symptoms recorded at the time [B/86]. This report was later interpreted as showing “nothing of concern”, with a clinical impression of anxiety [B/85–86].
- 36 On 23 January 2025, the Claimant attended his GP reporting breast soreness and a lump present for two to three weeks [B/86–87]. On the same date, an urgent referral was made under the two-week wait cancer pathway, reflecting clinical concern requiring prompt investigation [B/86]. An appointment at a breast clinic was arranged for 30 January 2025 [B/85–86].
- 37 Before that appointment, on 26 January 2025, the Claimant attended Accident & Emergency with chest pain [B/85–86].
- 38 On 30 January 2025, the Claimant attended the breast clinic, and the condition was diagnosed as gynaecomastia, measuring 13 mm on the right side [B/85–86]. This was a benign resolving the initial cancer concern.
- 39 The records show further GP engagements in February and March 2025. A consultation is recorded on 11 February 2025, with no detailed findings included in the extract [B/86]. On 7 March 2025, communication from a cardiac nurse confirmed that the ECG findings were not of concern but noted that the Claimant’s blood pressure had been “very high” during his A&E attendance [B/85]. The Claimant was advised to monitor his blood pressure [B/85].
- 40 On the same date, a clinical entry records that the Claimant reported daily palpitations and symptoms described as “shaky arms and sweaty palms”,

which he believed to be a panic attack [B/86]. It is recorded that he had restarted Citalopram, having ceased it two to three years previously, and the clinical impression is recorded as “anxiety” [B/86].

41 A further consultation occurred on 18 March 2025, although no specific findings are recorded in the extract [B/85].

42 I interpose here that the Claimant was able to commence early conciliation on 26 March 2025. It concluded on 31 March 2025. There was no further medical issue until, on 30 April 2025, the Claimant presented with a cough: he was managed through a Pharmacy First service pathway, indicating a comparatively minor condition at that stage [B/84].

43 After careful consideration. I have concluded that it was reasonably practicable for the Claimant to have presented his claims in time.

44 While in the early stages the Claimant was undergoing investigation for a potential cancer diagnosis, this had happily been resolved by March. I do not doubt that the Claimant experienced a great deal of stress associated with both the uncertain medical position and his dispute with the Respondent. I do not doubt that there were occasions between his termination and 25 May 2025 in which he would have been unable to focus on presenting a claim. However, I do not find that there is evidence before me that would permit me to conclude that any such inability lasted the entirety or even most of the relevant time period. It was intermittent.

45 Importantly, the Claimant was apparently able without incident to commence Acas EC and there was no medical intervention at all (save in relation to a cough) between Day B on 31 March 2025 and either (i) the primary time limit at the end of April and (ii) the date on which the Claimant did in fact present the Claim Form in May. There is no basis to suggest that in that time frame the Claimant was under any meaningful impediment that would have prevented him from taking the limited steps necessary to fill in a claim form.

46 On the contrary, there is evidence to suggest that the Claimant was well enough to be attending sporting and musical events throughout the relevant

period. I accept the Claimant's position that this does not, in and of itself, demonstrate that the Claimant was in a general sense "well". However it is an indicator, in my judgment, that the Claimant was not undergoing a general impediment from getting on with day to day activities.

- 47 More broadly, I have seen no medical evidence to suggest that the Claimant would have been prevented from preparing a claim form or, more precisely, that it was not reasonably feasible for him to do so.

Conclusion

- 48 Accordingly, the Tribunal's judgment is that the claim form was presented out of time. It was reasonably practicable for the Claimant to have presented it in time. As such, the ET has no jurisdiction to hear the Claimant's claim. It is therefore dismissed.

Approved by:

Employment Judge Grahame Anderson

Date: 9 June 2026

Sent to the parties on: 11 June 2026

For the Tribunal Office.

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