



EMPLOYMENT TRIBUNALS

Claimant: Destiny Devlin

Respondent: Leon Kennedy Limited

Heard at: Watford Employment Tribunal by CVP
Before: Employment Judge Freshwater

On: 13 May 2026

Representation

Claimant: in person

Respondent: Mr Munro (solicitor)

RESERVED JUDGMENT

1. The complaint of unfair dismissal is struck out under Employment Tribunal Rule 38(1)(a) because it has no reasonable prospect of success.
2. The complaint of discrimination related to race was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claim is therefore dismissed.

REASONS

Background

1. The claimant is Miss Destiny Devlin and the respondent is Leon Kennedy Limited. These are the parties to the case. For clarity, they will be referred to as the claimant and the respondent in this judgment.
2. A public preliminary hearing was listed to deal with two issues:
 - a. The respondent's application to strike out the claim of unfair dismissal on the basis it has no reasonable prospect of success; and
 - b. Whether it is just and equitable to extend time in respect of the complaint of discrimination related to race.

Procedure and hearing

3. The hearing took place remotely by CVP. There was no bundle of documents prepared for the hearing, and I read the ET1 and ET3 on the tribunal's electronic case management system before the hearing. The claimant presented a witness statement and gave oral evidence. I heard submissions from both parties.
4. Judgment was reserved. I apologise to the parties for the regrettable delay in the promulgation of this judgment.

The law

5. Section 123 of the Equality Act 2010 states, so far as is relevant, that:

“...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.”
6. Section 94(1) of the Employment Rights Act 1996 deals with the right not to be unfairly dismissed:

“An employee has the right not to be unfairly dismissed by his employer.”
7. Section 108(1) of the Employment Rights Act 1996 states that:

“Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.”
8. Section 108(3) sets out the statutory reasons when the requirement of two years continuous employment does not apply. The tribunal has no discretion which it may apply to go outside of these requirements.
9. Rule 38 of the Employment Tribunal Rules of Procedure 2024 states in so far as is relevant:

“(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...”

Findings

10. The claimant commenced her employment with the respondent on 25 June 2022. Her last working day was 22 April 2023. She was 16 years old for the duration of her employment.

11. The nature of her employment was as a crew member at a Burger King store. The respondent is the franchise owner of the store and was the claimant's employer.
12. The claimant's described the incidents that led to her dismissal in her evidence to me. In recording this, I note that the evidence is not accepted by the respondent, however I will take the claimant's case at its highest in reaching my decision. The claimant says that the treatment of her happened throughout her employment. It came to a head during a particularly busy period, when she was shouted at and told she was incapable. She felt disrespected in front of everyone and tried not to have a panic attack. She was then told to go on a break and she replied, in what she accepts was a sarcastic manner, that she would rather go home. In her oral evidence, she told me she had never meant to quit. She says that she was told to leave and not come back. A few days later, she was in college and pulled out of class because the police wanted to speak to her. The details of that interaction are unclear though the claimant's recollection was that somebody at work had made a welfare report about her. A conversation and text messages with the police officer followed. Initially the claimant did not want to take any action, but on reflection she contacted the police officer on 12 May 2023 to ask if a complain could be made. This resulted in an offer by the police officer saying she would speak to the claimant's management at work. The claimant assumes that this happened. The claimant made enquiries about her next shift and was told by her manager that they considered her to have quit without notice and had removed her from work rota.
13. The claimant studied for her A-levels in college. At some point in April or May 2024, the claimant found out some information about her former manager from a former colleague who was still working at the Burger King in question. That information was that the manager had apologised and said that he recognised his anger needed to be managed better. The claimant was pleased he had apologised and thought that would be the end of the matter. She said in her oral evidence that she wanted to carry on with her life and leave the past behind.
14. As part of her English A-level coursework, the claimant wrote about employment rights for young people including that age discrimination was prohibited under the Equality Act 2010. She left college and commenced a gap year. During that year, she obtained another job and had a chance encounter with a customer who had been a colleague of hers at Burger King. She was informed that the same manager involved in her complaints was being investigated in respect of a separate allegation of harassment (relating to somebody else). The claimant formed the view that he had not learned any lessons and was affecting other people. Her manager at her new place of work told her about the employment tribunal, and that was when the claimant contacted ACAS. Early conciliation commenced on 28 March 2025 and a certificate was issued on 14 April 2025.

15. The claimant's ET1 form was presented on 16 April 2025. In that claim form, the claimant said that she was discriminated against because of her race and had been unfairly dismissed. There was a wider narrative description of what happened and why she wished to pursue a claim.
16. In her evidence to the tribunal during this hearing, the claimant said that her complaints were as follows: unfair dismissal, race discrimination, sex discrimination, age discrimination and sexual harassment. She said that those who treated her unlawfully were management. The claimant has not made an application to amend her claim.
17. The reasons that the claimant did not present a claim form earlier are because of:
 - a. Her age and lack of understanding of her legal rights;
 - b. Her inexperience in the workplace;
 - c. She was unaware that there was an employment tribunal;
 - d. She was struggling mentally and financially at the time;
 - e. She believed that the police speaking to her manager was the best resolution available.
18. The claimant said that her sister worked in HR and she had discussed the case with her.

Conclusions

19. Whilst it is understandable, in light of her young age and inexperience in the workplace, that the claimant did not pursue a claim exactly within the requisite time limits the fact remains that the claims were presented significantly out of time (nearly 2 years from when her employment ended). The length of the delay is an important factor in this case.
20. The fact that the claimant was under the age of 18 does not automatically mean the normal rules about time limits apply. That said, the nature of the complaints that the claimant as described – taking them at their highest for the purpose of considering the extension of time limits – are very serious. She says that, as a 16-year-old, she was subjected to discrimination at work. At the time her employment came to an end, she was unaware of the fact she could bring a claim to the employment tribunal. In addition, she felt afraid and embarrassed. I accept her evidence that she was unaware of her rights. However, I think it would have been reasonable for her to consider what they might be and investigate when she was researching the legal rights of young people in the workplace and discussing what had happened with her sister who worked in HR. Her evidence was that she did not pursue any sort of complaint because she thought that things had changed at the Burger King. It was only when she realised that this was not the case, she began to seriously think about what could be done.
21. The claimant is clearly an intelligent and articulate person who is passionate about the subject of employment rights and so it is surprising that when she did become aware of her legal rights that her claims have

not been presented in a structured manner or with clarity about the type of claims that she wishes to proceed with. There was no application to amend or relabel her claim to include discrimination relating to sex or age, but it seemed apparent from her submissions that this was an important part of her case in addition to race discrimination. Additionally, she said during the hearing that her claim of unfair dismissal was one of automatically unfair dismissal related to discrimination. Discrimination is not one of the reasons in law that can make a dismissal automatically unfair. A dismissal that is discriminatory can, potentially, form part of a claim under the Equality Act 2010 but this was not what the claimant presented to tribunal. The role of the tribunal is to determine the applications and complaints that are made by the parties.

22. The claimant does not have two years' service which is necessary to succeed in a claim of constructive unfair dismissal under the Employment Rights Act 1996. She has not identified a statutory basis under which she could apply to amend her claim to one of automatically unfair dismissal – even orally during the hearing. There is, on the basis of the claim before me, no chance that her complaint of constructive unfair dismissal could be successful because she does not have the required period of service. It will therefore be struck out.
23. In reaching a decision about the claim of race discrimination that is brought under the Equality Act 2010, I have balanced the prejudice and hardship that would be caused between the parties if the claim were allowed to proceed out of time.
24. There was no complaint made to the respondent that meant the events that occurred could be investigated at the time. This means that the passage of time significantly prejudices the ability of the respondent to defend the claim. It may now not be possible for the respondent to contact potential witnesses, and those witnesses may have a poor recollection of events due to the passage of time. This is true, even accepting the claimant's explanation for making no internal complaint.
25. There is significant hardship to the claimant in not allowing her to pursue her claims, because she will not be able to seek a determination to resolve the complaints she has made. The complaints are serious ones. However, a factor against this is the fact that the claimant did not set out all of her complaints in her claim form and has not sufficiently particularised them.
26. Allowing the claim to proceed at this point, due to the length of delay, would significantly impact the respondent's ability to respond to the claim. The respondent explained that it has no contemporaneous records of what happened because no complaint was made at the time, and therefore no investigation has taken place. There is obvious prejudice to the respondent in trying to contact witnesses and in those witnesses being able to accurately recollect what happened.
27. In addition, I think that the reason for some of the delay was that the claimant had decided not to pursue or look into pursuing a legal

complaint. As she said in her evidence, she thought that management had changed. It was only when she believed this not to be the case she decided that she would pursue a complaint to the tribunal.

28. Taking all these factors into account, I am not satisfied it is just and equitable to extend time in respect of the complaint of discrimination under the Equality Act 2010.

Approved by:

Employment Judge Freshwater

7 July 2026

JUDGMENT SENT TO THE PARTIES
ON

16 July 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. If written reasons are provided they will be placed online.

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/