



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8001092/2025**

**Open Preliminary Hearing held in Edinburgh on 10 April 2026**

**Employment Judge R Mackay**

**Tribunal Member Mr J McCaig**

**Tribunal Member Mrs J Lindsay**

**Mr O Nnamuchi**

**Claimant  
In Person**

**Unison Scotland**

**Respondent  
Represented by:  
Mr Bathgate,  
Solicitor**

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

1. The claimant's claim under Section 64 of the Trade Union & Labour Relations (Consolidation) Act 1992 ("**TULCRA**") is dismissed having been presented outside the required time limit in circumstances where the Tribunal is satisfied that it was reasonably practicable for the claim to have been presented in time.
2. The claimant's application for the respondent's response to the claim to be struck out is refused.

### **REASONS**

#### **Introduction**

3. This preliminary hearing was originally set down to consider questions of time bar relating to a claim under s174 of TULCRA (right not to be excluded or expelled by a union) as well as the claim under s64 (right not to be unjustifiably

disciplined by a union). Prior to the hearing, the respondent conceded that the s174 claim was brought in time (there being a six-month time limit) meaning that only the s64 claim fell to be considered. The respondent defends both on their merits.

4. The claim under s64 is that the claimant was effectively expelled from the union by being told he was no longer a member. The subject matter of the s174 claim is the same.
5. Prior to the hearing, the claimant raised an issue about what he said was non-compliance by the respondent with an order of the Tribunal relating to the preparation of documents for the hearing. He asked for the defence to be struck out on that basis. Parties agreed that that issue would be dealt with by the Tribunal at the hearing.
6. The remainder of this judgment will deal with the question of time bar first before considering the claimant's strike out application.

#### **Time bar – Findings in Fact**

7. The claimant was a member of the respondent when employed at the University of Dundee. Union dues were deducted from his pay as part of a check off arrangement.
8. The claimant entered into email correspondence with a representative of the respondent regarding his union membership in October 2024. As part of that, he was told that his membership had lapsed earlier that year. The claimant saw this as amounting to unlawful expulsion from the union, forming the basis of this claim.
9. On 18 October 2024, a representative of the respondent emailed the claimant referring to an earlier letter from the union. It went on to say: *"In simple terms, you joined UNISON in May 2023. We received your payments through your salary with University of Dundee in June 2023 and July 2023. We have not received any membership payment from you from August 2023 onwards, therefore your membership has been lapsed"*.
10. The claimant engaged in further correspondence leading to a further email from the respondent on 18 November 2024. The email contained the following: *"You paid your membership until July 2023, then stopped paying... Because of the lack of payments, your membership was eventually cancelled"*.
11. An undated letter was sent to the claimant which according to his evidence he received on 12 December 2024. The letter referred to recent correspondence and the cessation of membership payments. It went on to state: *"Your payments to UNISON stopped in July 2023. We discovered this*

*during a routine data check in October 2024. You are therefore no longer a member of UNISON”.*

12. The claimant has raised a number of Tribunal claims in the past. He was aware that there is generally a three-month time limit for claims and that it is necessary to contact ACAS within that time limit.
13. The claimant contacted ACAS to commence early conciliation on 11 March 2025.
14. In response to a question as to why he did not approach ACAS earlier, his evidence was that the respondent had not told him his membership had lapsed “*in the proper way*” and that he would not rely on email. On being questioned further about this, the claimant’s evidence was that he was waiting for the letter referred to at paragraph 11 above. He was aware of the possibility of a claim against the union for being “expelled” at that time. Another reason given for not proceeding earlier was that he was very busy with his other employment Tribunal claims and several appeals against decisions, including an appeal to the Court of Session.

#### **Time bar - Relevant Law**

15. The relevant time limits in relation to a complaint under s64 of TULCRA is set out in s66.
16. These provisions state that a Tribunal shall not consider a complaint unless it is presented to the Tribunal before the end of three months beginning with the date of the making of the determination claimed to infringe the right, 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. There are provisions extending the time limit where an appeal is pending, but those are not applicable here.
17. In considering whether there is jurisdiction to hear such a complaint, Tribunals require to answer the following questions:
  - a) Was the complaint presented within the primary three-month time limit?
  - b) If not, was it reasonably practicable for the complaint to be presented within that period?
  - c) If not, was it presented within such further period as the Tribunal considers reasonable?

18. The question of a what is reasonably practical is a question of fact for the Tribunal. The burden of proof falls on the claimant. Whether it is reasonably practicable to submit a claim in time does not mean whether it was reasonable or physically possible to do so. Rather, it is essentially a question of whether it was 'reasonably feasible' to do so (***Palmer and Saunders v Southend-on-Sea Borough Council*** [1984] IRLR 119).
19. Whether the claim was presented within a further reasonable period requires an assessment of the factual circumstances by the Tribunal, to determine whether the claim was submitted within a reasonable time after the original time limit expired (***University Hospitals Bristol NHS Foundation Trust v Williams*** UAEAT/0291/12).

#### **Time bar – Submissions and Decision**

20. Mr Bathgate provided a skeleton argument in advance and agreed to make his submissions first. In essence, his position was that it was made clear to the claimant on 18 October 2024 and again on 18 November 2024, when the position was set out particularly clearly, that his union membership had lapsed. As such the time limit ran from the first date and if not, certainly from the second date. He submitted that the claimant was an assiduous litigant who knew the rules and had not presented any basis to suggest that it was not reasonably practicable for him to have presented his claim in time.
21. The claimant's submission was that the time limit should not start running before receipt by him of the letter on 12 December, and on that basis, it is in time.
22. The Tribunal first considered when the time limit began to run. The relevant time is the date on which the determination claimed to infringe the right was made. Here, the determination is said to be the lapsing of the claimant's union membership. Whilst on the evidence, the actual lapsing may have been earlier, the Tribunal was content to accept parties' submissions that communication of the decision amounted to the relevant determination. It was satisfied that the first the claimant formally knew of the issue was on 18 October 2024. It was also satisfied that the communication was clear and unambiguous that union membership had lapsed. That was reinforced by the email of 18 November 2024, but in the view of the Tribunal, the first email was sufficient.
23. On that basis, the claim is out of time. The Tribunal did not accept that the time limit should run from the date of the letter received by the claimant. That letter was further confirmation of what had already been said. It did not represent a fresh determination; it merely confirmed what had been said before.

24. The Tribunal went on to consider whether it was reasonably practicable for the complaint to have been presented in time. Considering the test in **Palmer and Saunders** it considered that it was. The claimant did not suggest any impediment in his ability to do so. He was aware of his right to claim and of the relevant time limit during the relevant period. Despite having been made aware of the infringement asserted on more than one occasion, he chose to wait for further confirmation before proceeding and could readily have done so earlier. The explanation about not submitting the claim earlier due to his being occupied with other claims falls very far short of complying with the relevant test. If a claimant chooses to engage in multiple claims, it is reasonable to expect that they will prioritise them so as to ensure that time limits are complied with.
25. It is not, therefore, necessary to address the question at paragraph 17(c) above.
26. For these reasons, the claim under s64 is dismissed. As noted above, the claimant is able to advance substantially the same case under s174.

### **Strike out Application – Relevant Law**

27. The Tribunal has power to strike-out the whole or part of a claim or response under rule 38 of the Employment Tribunal Procedure Rules 2024 (“**the Rules**”), among other things: “for non-compliance with any of these Rules or with an order of the Tribunal”.
28. The process for striking out under rule 38 involves a two-stage test (**HM Prison Service v Dolby** [2003] IRLR 694, EAT; **Hasan v Tesco Stores Ltd** UKEAT/0098/16). First, the Tribunal must determine whether one of the specified grounds for striking out has been established; second, if one of the grounds is made out, the Tribunal must decide as a matter of discretion whether to strike out or not.
29. In **Baber v Royal Bank of Scotland** UKEAT/0301/15 it was emphasised that strike-out decisions are not automatic or punitive, and Tribunals must consider the overriding objective of dealing with cases fairly and justly. Several factors were identified to be considered when a Tribunal is deciding whether to strike out for non-compliance:
- a. The magnitude of the non-compliance.
  - b. Whether the failure was the responsibility of the party or their representative.
  - c. The extent to which the failure causes unfairness, disruption or prejudice.

d. Whether a fair hearing is still possible.

e. Whether striking out or a lesser remedy would be an appropriate response.

And, even in cases of deliberate failures, the fundamental question for the Tribunal is whether the parties' conduct has rendered a fair trial impossible.

### **Strike out Application – Submissions and Decision**

30. The claimant asked that the response be struck out on the basis of non-compliance by the respondent with a case management order.
31. The relevant order, dated 2 February 2026, required parties to exchange all documents to be relied upon at this preliminary hearing by 27 February 2026. By 6 March 2026, the respondent was to provide the claimant with a digital version of the joint bundle.
32. Mr Bathgate accepted that the bundle was produced late. The main reason for this, he submitted, was that the claimant had asked for the full Tribunal case file to be produced and that that led to delay as he was having difficulty accessing the portal. The claimant had previously asked for other documents to be produced by the respondent. The respondent refused on the grounds of relevance and no further Tribunal order was sought. The bundle was sent to the claimant on 2 April 2026.
33. The bundle ultimately produced was simply a paginated version of the documents on the Tribunal portal. It did not include any other documents from the respondent. The claimant was asked at the start of the hearing if he had any other documents he wished to be added to the bundle. He produced one document which was accepted. It was not ultimately relevant to the matters under consideration at this hearing.
34. The Tribunal considered the two-stage test and was satisfied that there had been non-compliance by the respondent with an order of the Tribunal. The bundle was not sent to the claimant by the date required.
35. In considering whether the response should be struck out, the Tribunal had no hesitation in deciding that this case fell very far short of the standard required to justify that course of action.
36. The breach was minor. The respondent's representative had a plausible explanation for the delay. It did not present any unfairness or prejudice – the bundle was simply a re-ordering of documents the claimant already had. The claimant had the bundle well in advance of the hearing and it proceeded as planned with no delay or prejudice. There is no question that a fair trial of the substantive claim is in any way prejudiced.

37. For these reasons, the claimant's application for strike out is refused. As an aside, however, it might have been helpful for the respondent's representative to have done more to keep the claimant updated given the difficulties experienced with the portal.
38. The remaining claim may proceed to a final hearing in due course.

**Employment Judge: R Mackay**

**Date sent to parties: 7 May 2026**