



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001636/2025

Held in Glasgow on 4, 5 and 6 August 2026

Employment Judge E Mannion

Mr P Joyce

**Claimant
In person**

Lidl Great Britain Limited

**Respondent
Represented by
Mr N MacDougall
Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is as follows:

1. The claim for constructive unfair dismissal having been withdrawn is dismissed.
2. The claim for unlawful deduction of wages having been withdrawn is dismissed.
3. The claim for disability discrimination was brought outside of the statutory time limits and so is dismissed.

REASONS

Introduction

1. This is a claim for section 15 discrimination arising from disability and failure to make reasonable adjustments. All claims are denied by the respondent.
2. The claim originally included a claim for constructive unfair dismissal and unlawful deduction of wages. The claimant confirmed at the outset of the hearing that he was not proceeding with the unfair dismissal claim as he had no losses, having found work within a few days of his resignation. He confirmed that he received the outstanding wages from the respondent in the

days leading up to the tribunal hearing and so was no longer pursuing that cause of action either. Both claims were withdrawn.

3. A bundle of documents were agreed between the parties. After the claimant's case concluded, he sought to include two additional documents, namely, the documents he maintained that he attempted to give Mr Gallagher on 10 January 2025. This was objected to by the respondent on a number of grounds including timing, relevance, and prejudice. I decided not to include these documents as they were not directly relevant to the issues for determination. The claimant's evidence was that he attempted to give the documents and this was rebuffed. The documents themselves were not reviewed by Mr Gallagher and then rejected. As such, bringing the documents themselves into evidence would not take us any further or assist me in my determination. The question was whether Mr Gallagher refused to take physical medical evidence from the claimant on 10 January 2025 and whether this was an act of unfavourable treatment.
4. The claimant intended on calling a witness Mr Jim Ferguson and it was agreed with the respondent that he would be called on the second day of hearing. Mr Ferguson did not attend as directed on the second day of hearing. Calls and text messages from the claimant to Mr Ferguson on that day went unanswered. The claimant confirmed that he spoke to Mr Ferguson in the weeks leading up to the hearing and understood that he would attend. The hearing finished early on the second day given Mr Ferguson's absence and the claimant was advised that Mr Ferguson's evidence could be taken at 10am on the third day but that if he did not attend, the case would proceed to submissions as the respondent's evidence had now ended. As Mr Ferguson did not attend on the morning of 6 August and the claimant had not had a response to his calls or messages, the evidential part of the hearing closed and we moved to submissions.
5. At the outset of the hearing, the list of issues prepared by the respondent was discussed and agreed.
6. I explained the process of the hearing for the benefit of the claimant, in particular the need to put his position to the respondent's witnesses and challenge their evidence if he did not accept it. The purpose of submissions and what they should cover was also explained to the claimant both at the outset of the hearing and at the end of day two. Mr MacDougall for the respondent confirmed that he intended to provide a written submission and would be in a position to provide this to the claimant to review in advance. This was done on the evening of 5 August.
7. I heard from the following witnesses in the following order:

- (i) the claimant
- (ii) Mr Dale Gallagher (witness for the respondent)
- (iii) Mr Mark McLeod (witness for the respondent)

Relevant law

8. **Section 123 of the Equality Act 2010** states that a complaint of discrimination must be made to the employment tribunal before “the period of three months starting with the date of the act to which the complaints relates or such other period as the employment tribunal thinks just and equitable.”
9. The discretion to extend time is broader than under the “not reasonably practicable” formula (**DPP v Mills 1998 IRLR 494**), and the court’s power to extend time on the basis of what is just and equitable entitles the tribunal to take into account anything which it judges to be relevant (**Hutchison v 25 Westward Television Ltd 1977 IRLR 69**). Factors which would assist a Tribunal to decide whether to exercise their discretion include the length and reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with requests for information the promptness at which the claimant acted once they knew of facts giving rise to the cause of action; and the steps taken to take appropriate advice once the claimant knows of the possibility of taking legal action (**British Coal Corporation v Keeble and others 1997 IRLR 336**). These Keeble factors are a guide for tribunal, rather than a list to be adhered to slavishly (**Southwark London Borough Council v Afolabi 2003 ICR 800**). The relevance of these factors depends on the individual circumstances of the case (**Department of Constitutional Affairs v Jones 2008 IRLR 128**).
10. When exercising discretion, as well as the Keeble factors, the Tribunal is also required to carry out a balance of prejudice exercise (**Szmidt v AC Produce Imports Ltd EAT 0291/14**).
11. The onus is on the claimant to persuade the tribunal that it is just and equitable to extend time, but the exercise of discretion is the exception rather than the rule (**Robertson v Bexley Community Centre 2003 IRLR 434**).

Submissions

12. Both parties made submissions at the conclusion of the evidence. For brevity, these are not included in detail here but for the avoidance of doubt, these submissions were carefully considered when coming to the decision below.

Findings in fact

13. The Tribunal makes the following findings of fact on the balance of probabilities having considered the evidence heard.
14. The claimant was employed by the respondent as a warehouse operative, working from the regional distribution centre numbered 490 in Motherwell.
15. He worked night shift. His primary duty was to “pick” stock, which would then be loaded onto trucks and delivered to the respondent stores across Scotland. He worked primarily in the bulk department of the warehouse although he was contracted to work across the various departments in the warehouse.
16. At some point in 2024, and in particular in the months September 2024 to January 2025, the claimant’s line manager was Dominic McHughan. Mr McHughan worked on the day shift and had limited interaction with the claimant. He was responsible for any annual leave requests or absences the claimant might have had. He did not set the claimant’s tasks when on shift. This was left to the team leaders and the night shift manager.
17. The night shift manager from 1 September 2024 was Dale Gallacher. He did not have direct line management of the claimant. Nor was the claimant part of his team. There were three team leaders on night shift during this period: Tony (John) Hartley; Robert Alexander; and John Paul Connolly.
18. The claimant alleges that from September to November 2024, Mr Gallacher treated him unfavourably by requesting that he work in other departments, namely the ambient department, that he did not accept medical information provided by the claimant, and specifically that he refused to accept physical medical information provided on 10 January 2025. He also alleges that the requirement to work in other departments outside of the bulk department placed him at a substantial disadvantage and the respondent failed to make reasonable adjustments to alleviate the disadvantage. The relevant period was September 2024 to 10 January 2025.
19. On 10 January 2025 an altercation occurred when Mr Gallacher asked the claimant to undertake tasks in the ambient department as there were no further tasks to undertake in the bulk department for that shift. The claimant refused, saying he was unable to undertake tasks in the ambient department due to his disability and that he would instead go home. The altercation further developed at the pod, the office space in the warehouse where the team leaders and managers were based. Mr Gallacher arrived to the pod to see the claimant angrily engaging with Mr Hartley about the request to work in the ambient department. He asked the claimant if he was heading home, to try and take the heat out of the situation but this further angered the claimant. The claimant left the pod and soon returned asking for a meeting with Mr Gallacher and asking that he be accompanied by a colleague, Jim Ferguson.

The meeting took place in the minutes following this. It did not resolve matters. Over the course of the altercation in the pod, including the meeting, the claimant was, in his own words, irate, absolutely fuming and annoyed. He raised his voice. He swore, saying words to the effect “are you fucking sure?” and “are you fucking ready?” repeatedly to Mr Gallacher. It was reasonable for Mr Gallacher and other witnesses to perceive his behaviour towards them and his temperament as aggressive.

20. On 12 January 2025, the next shift the claimant was scheduled to undertake, he was suspended pending a disciplinary investigation into his role in the altercation. He did not undertake any further work for the respondent prior to his resignation on 11 April 2025.
21. On 13 January 2025 the claimant raised a grievance by email against Mr Gallagher in respect of the events of 10 January 2025. In the email, he referred to the potential to raise a constructive dismissal claim.
22. During his period of suspension, he sought advice from a family member with legal training and a friend who was a trade union representative. He understood that time limits applied to employment tribunal cases but not the specifics of those time limits.
23. He spoke with Acas prior to his resignation on 11 April 2025 who provided him with information about raising a claim. This included information about time limits and that claims needed to be “put in as quickly and efficiently as possible”. His letter of resignation refers to him receiving further legal advice and liaising with a legal representative.
24. He did not undertake any internet research but knew “from the beginning” that he was being discriminated against by Mr Gallacher. He read some information about time bar in respect of the use of CCTV.
25. He did not raise his discrimination claim initially because he was still trying to “resolve things” with the respondent and was still an employee of the respondent. He felt that it was not the “way to go about it” – raising a discrimination claim while also attempting to resolve things internally.
26. Once his employment came to an end on 11 April 2025, he took up new employment five days later.
27. He began Acas Early Conciliation on 13 May 2025 and received his certificate on 24 June 2025. He raised his tribunal claim on 2 July 2025.

Decision

Did the claimant raise his claim for discrimination in time, namely three months from the date of the last act of discrimination?

28. It is not in dispute that the claimant's claim for discrimination covered the period September 2024 through to 10 January 2025. The final act of discrimination occurred on that latter date. In accordance with Section 123 of the Equality Act 2010, the last date for raising his claim would therefore be 10 April 2025. His claim was not raised before the Employment Tribunal until 2 July 2025. In the intervening period, he engaged in Acas Early Conciliation between 13 May and 24 June 2025. As his claim was out of time when he engaged in Early Conciliation, he does not benefit from the 'stop the clock' provisions of the conciliation process.
29. While the claimant initially had a constructive dismissal claim, which stemmed from his resignation on 11 April 2025 and was brought in time, he cannot benefit from that. Even if he had not withdrawn his constructive dismissal claim, the discrimination claim is separate and subject to the time bar rules.

Did the claimant bring his claim in such other period as is just and equitable?

30. I considered that the claimant had the benefit of trade union advice, some legal advice, albeit informally, and information from Acas in respect of time scales for raising a tribunal claim while he was in the limitation period for his discrimination claim. Specifically, he knew from speaking to Acas the need to present a claim "as quickly as possible". A review of the Acas website or a google search would have identified the time period being three months for raising a claim.
31. He understood that he was being discriminated against by the respondent from September 2024 onwards. It was not something he considered in hindsight once his employment came to an end or something he understood only after speaking with an adviser.
32. Once his employment ended on 11 April, he could have begun the process of bringing a claim almost immediately. He understood he may have a claim, both in terms of discrimination and constructive dismissal and he understood that time limits applied. A further month passed before the claimant began the Acas process. His focus on finding new work resolved fairly quickly as he began a new role on 16 April. The claim itself was not lodged until 2 July.
33. While the discretion afforded to the tribunal to extend time is a wide one, it is not an unfettered discretion. The exercise of discretion in favour of an extension must be justified and is the exception rather than the rule.
34. I considered the balance of prejudice and noted that if discretion was not exercised in the claimant's favour, he would not be entitled to proceed with

his claim. On the other hand, the respondent would not benefit from the statutory time limit and has been put to the expense of defending a claim which was raised out of time. I considered that discretion should not be exercised in a claimant's failure simply because they would lose the right to bring a claim in the absence of such discretion. Rather this is a factor to consider in the round.

35. I found that it was not just and equitable to extend the limitation period to 2 July 2025. The claimant believed during the three month limitation period that he had been discriminated against and also knew in that period that there were time limits which applied to bringing that claim. He received advice from a number of sources to that effect. While he did not wish to raise a claim when still employed and was attempting to resolve the grievance and disciplinary issues, by 11 April he recognised that things could not be resolved by way of those internal processes hence his resignation on that date. The only explanations offered as to why he waited until 2 July to raise his claim, was that he is not legally trained/qualified, he was busy and was looking for new employment, which he obtained by 16 April. The delay is substantial. The claim was raised five months and three weeks after the last alleged discriminatory act on 10 January. The prejudice to the claimant was considered but did not override the above factors.
36. Taking all of this into account, the tribunal has determined that discretion should not be exercised in favour of extending the limitation period to 2 July and so the claimant's claim is out of time and cannot be determined.

Date of Judgment

11 August 2026

Date sent to parties

18 August 2026