EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000398/2026

Held in Dundee via Cloud Video Platform (CVP)/Kinly on 22 September 2026

Employment Judge J Porter SIR

Mr R Boyd	**Claimant** **In Person**
Soufflet Bairds Malt Limited	**Respondent** **Represented by:** **Ms M Dalziel -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Employment Tribunal Orders that this case is set down for a Hearing on the Merits on 1, 2 and 3 February 2026

REASONS

Introduction

1. The claimant was employed by the respondents as a malt technician between the 22 February 2002 and the 13 September 2025. On the latter date he was dismissed on the grounds of conduct. In these proceedings he claims he was unfairly dismissed. He also claims disability discrimination.

2. There was a Preliminary Hearing on the 30 June 2026 before EJ Kemp. Following the PH the case was listed for an Open Preliminary Hearing on the 22 September 2026 on the issue of Time Bar. The OPH took place on the CVP/Kinly platform. At the OPH the claimant represented himself and the respondents were represented by Mrs Dalziel, solicitor.

3. The parties were in agreement that the case was presented 4 days late all as recorded by EJ Kemp in his Note of the 30 June 2026.

4. At the outset of the case there was a discussion and explanation on the terms of the overriding objective with reference to the role of the Employment Judge

in ensuring that parties are on an equal footing in circumstances such as these, where a party represents themselves.

5. At the Preliminary Hearing the claimant alone gave evidence. The parties referred to a Joint Bundle of Documentation numbered 1-88. The Tribunal made the undernoted Findings in Fact from the evidence of the claimant.

Findings in fact

6. Following his dismissal, the claimant had problems with alcohol addiction which resulted in him going into a rehabilitation unit in December 2025. He was, in his words, 'in a bad place' He felt better in January 2026 and contacted ACAS that month, receiving his ACAS certificate on the 11 January 2026 . He thereafter contacted Citizens Advice in Arbroath but there was a delay in getting an appointment as Erica Morgan, the Employment Advisor only works on Mondays for a few hours. He met with Erica Morgan in early February and she completed the ET1 with him and told him it was submitted. However, the ET1 was incomplete which resulted in the letter of 3 February (84) being sent to the claimant. The CAB then wrote to the claimant (84) stating-

7. At this point in time the claimant's evidence was that he was heavily medicated on amitriptyline and codeine as he was in significant pain with his hip and was scheduled to have a hip replacement on the 9 February 2026. These medications made him drowsy and unable to concentrate. The Tribunal accepted this evidence and also accepted his evidence that in this period he attempted to submit the claim form which was rejected due to there being too many characters.

8. Following the claimant's hip operation his medication changed and he was on medication which did not make him drowsy. He felt able to complete the claim form and send it on the 15 February 2026.

Observations on the evidence

9. The Tribunal found the claimant to be an honest and credible witness.

The law

10. S111(2) of the Employment Rights Act 1996 provides:

"111(2) an employment tribunal shall not consider a complaint under this section unless it is presented to the Tribunal-

(a) Before the end of the period of three months beginning with the effective date of termination;

(b) 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."

11. What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. An appeal will not be successful unless the tribunal has misdirected itself in law or has reached a conclusion that no reasonable tribunal could have reached.

12. S123 of the Equality Act 2010 provides:

*"**Time Limits***

Proceedings on a complaint within s120 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."

13. While employment tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test in s123, it does not necessarily follow that exercise of the discretion is a foregone conclusion - **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434 CA**. The onus remains on a claimant to convince a Tribunal that an extension of time is just and equitable.

Submissions

14. The claimant did not give submissions

Discussion and decision

15. The Tribunal gave careful consideration to the evidence, and the able submissions of Mrs Dalziel.

16. The Tribunal considered firstly the issue of the claimant's claim of unfair dismissal. To this end the 'not reasonably practicable' test was considered. Insofar as the 'not reasonably practicable' test is concerned the Tribunal noted that at the material time the claimant had taken advice and was aware of the statutory time limits. The Tribunal noted that although they accepted the evidence of the claimant on the effect of his painkillers no medical evidence was produced. The Tribunal also noted the offer of the CAB to assist despite the difficulty in getting an appointment with Erica Morgan.

17. After considering the above factors the Tribunal concluded that it was 'reasonably practicable' for the claimant to have submitted his claim timeously and accordingly the claimant's claim of unfair dismissal is dismissed.

18. The ‘just and equitable’ discretion afforded to claims of discrimination is a wider one although the onus remains on a claimant to satisfy the Tribunal. To this end the Tribunal noted that they believed the evidence of the claimant that his painkillers made him drowsy and unable to concentrate leading up to his hip replacement. The Tribunal accepted the evidence claimant had contacted the CAB timeously but late due to his difficulties with addiction; had believed that Erica Morgan had submitted his form timeously; then in the critical period between the 3 and 9 February had difficulty presenting the ET1 timeously due to the effects of his pain relief.

19. In reaching the decision to allow the claimant’s claim of disability discrimination to proceed the Tribunal had regard to the fact that the delay was one of 4 days, that that delay was explained by the claimant and that the delay would have little effect of the cogency of the evidence resulting in little or no visible prejudice to the respondents. Against that background the Tribunal, in all the circumstances, considered that the balance of prejudice was greater to the claimant in being unable to pursue his claims than to the respondents.

Date sent to parties 01 October 2026