



# EMPLOYMENT TRIBUNALS

**Claimant:** Felix Viegas

**Respondents:** Simon Thompson (1)  
Simon Aires (2)  
Kenneth Coke (3)  
Darren Miller (4)  
Victor Gibbons (5)  
Gurmeet Virk (6)  
Royal Mail Group Ltd (7)

**Heard at:** Reading (by video) **On:** 01 November 2024

**Before:** Employment Judge Housego

## Representation

**Claimant:** Godfrey Mukanga, lay representative

**Respondent:** Jon Gregson, Solicitor, of Weightmans LLP

# JUDGMENT

The claims are struck out, as out of time.

# REASONS

## Law

1. A claim for unfair dismissal must be presented within 3 months of the effective date of termination<sup>1</sup>, extended in a variety of ways by the requirement to obtain an Early Conciliation Certificate from ACAS before filing a claim. What the extension is depends on when the notification is

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<sup>1</sup> Employment Rights Act 1996 S 111 Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, 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, or

(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.

given by the Claimant and when the certificate is issued<sup>2</sup>. If not so filed, time may be extended for such further time as is reasonable, but only if it was not reasonably practicable for the claim to have been filed in time.

2. General guidance for the parties about the approach of the Tribunal in such cases (not all will be applicable) is:

The test for extending time has two limbs to it, both of which must be satisfied before the Tribunal will extend time:

- first the Claimant must satisfy the Tribunal that it was not reasonably practicable for the complaint to be presented before the end of the three-month primary time limit
- if the Claimant clears that first hurdle, she must also show that the time which elapsed after the expiry of the three-month time limit before the claim was in fact presented was itself a 'reasonable' period.

3. Hence, even if the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the three-month time limit, if the period of time which elapsed after the expiry of the time limit was longer than was 'reasonable' in the circumstances of the case, no extension of time will be granted.

4. As regards the first limb of the test, it is quite difficult to persuade a Tribunal that it was 'not reasonably practicable' to bring a claim in time. A Tribunal will tend to focus on the 'practical' hurdles faced by the Claimant, rather than any subjective difficulties such as a lack of knowledge of the law, an ongoing relationship with the employer or the fact that criminal proceedings are still pending. The principles which tend to apply are:

- section 111(2)(b) ERA should be given a liberal construction in favour of the employee
- it is not reasonably practicable for an employee to present a claim within the primary time limit if he was, reasonably, in ignorance of that time limit
- however, a Claimant will not be able to successfully argue that it was not reasonably practicable to make a timely complaint to an Employment Tribunal, if he has consulted a skilled adviser, even if that adviser was negligent and failed to advise him correctly
- there may be exceptional circumstances where that principle may not apply, namely where the adviser's failure to give the correct advice about time limits is itself reasonable, for example, where both the Claimant and the adviser have been misled by the employer as to some material factual matter such as the date of dismissal
- where a claimant has consulted skilled advisers, such as solicitors, the question of reasonable practicability is to be judged by what he could have done if he had been given such advice as they should reasonably in all the circumstances have given him

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<sup>2</sup> S207B of the Employment Rights Act 1996.

- the question of reasonable practicability is one of fact for the Tribunal, and should be decided by close attention to the particular circumstances of the particular case
- a Claimant can rely on failure to act in reliance on advice from, for example, Tribunal employees or government officials. In DHL Supply Chain Ltd v Fazackerley [2018] UKEAT 0019\_18\_1004 the EAT held that the Employment Tribunal did not err in finding that it was not reasonably practicable for the claimant to have brought proceedings in time when he relied on incomplete advice from Acas that he should exhaust an internal appeal process first before considering starting a Tribunal claim
- it is not reasonably practicable to bring a claim if a Claimant is unaware of the facts giving rise to the claim. However, once they have discovered them, a Tribunal will expect them to present the claim as soon as reasonably practicable, rather than allowing three months to run from the date of discovery
- if a Claimant knows of the facts giving rise to the claim and ought reasonably to know that they had the right to bring a claim, a Tribunal is likely not to extend time. If the Claimant has some idea that they could bring a claim but does not take legal advice, a Tribunal is even less likely to extend time
- if a letter is posted by first class post, it is reasonable to assume that it will be delivered two days later (excluding Sundays and Bank Holidays). If it is not, a Tribunal is likely to extend time. However, the onus is on the Claimant to ensure that it does arrive in time: he must take all reasonable steps to check. Claimants' representatives should therefore always make a note of when they would expect to receive a response from the Tribunal (or Acas) and to chase if it has not been received
- if an employee makes a mistake on a claim form which means that it is rejected by an Employment Tribunal (such as incorrectly stating the early conciliation certificate number) and thereafter the time limit for the claim expires while he is labouring under the misunderstanding that he has not made a mistake, that misunderstanding—provided it is reasonable in the circumstances—may justify an extension to the time limit on the basis that it was not reasonably practicable for him to have brought the claim in time
- where an error on the part of solicitors leads to an initial employment tribunal claim being rejected and a corrected resubmitted second claim being presented out of time, in deciding whether it was 'not reasonably practical' for the resubmitted claim to be presented in time, the employment tribunal must assess the reasonableness of the solicitors' original error. This involves taking into account all the circumstances (eg in North East London NHS Foundation Trust v Zhou (JURISDICTIONAL POINTS - Claim in time and effective date of termination) [2018] UKEAT 0066\_18\_0507 the claimant had completed her own ET1 form to save costs and her solicitors did not spot her error in respect of the early conciliation certificate number) and a recognition that not every omission, however technical, is unreasonable. In accordance with the principle in Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379 CA):

- if the error which led to the first claim being rejected was reasonable, and the claimant and her solicitors thereby believed a valid claim had been presented in time, the tribunal may find that it was not reasonably practicable to present the second claim in time, however
  - if the error on the part of the solicitors was not reasonable, then the claimant is bound by their error, and it would have been reasonably practicable for the claim to have been presented in time
5. If the first limb of the test is satisfied, the Claimant must then satisfy the second as well: even if a Tribunal concludes that it was not reasonably practicable for a Claimant to present the claim within the three month time limit (or extended period where the requirement for early conciliation applies) no extension of time will be granted unless the claim was presented within a 'reasonable' time (judged according to the circumstances of the case) thereafter.
  6. If a Tribunal concludes that the extent of the delay between expiry of the primary three-month limitation period (or extended period where the requirement for early conciliation applies) and the date the claim was presented was objectively unreasonable, the fact that the delay was caused by the Claimant's advisers rather than by the Claimant makes no difference, and hence a time extension will be refused.
  7. The law is clearly set out by Eady J in Paczkowski v Sieradzka (Jurisdictional Points : Extension of time: reasonably practicable) [2016] UKEAT 0111\_16\_1907 (19 July 2016), particularly at paragraph 19 onwards.

## **Chronology**

8. In this case:
  - 8.1 On 31 August 2023 the Claimant was dismissed. This is the date he put in the claim form.
  - 8.2 The Claimant's three-month period for filing a claim of unfair dismissal ended on 29 November 2023. (This is because the period is expressed as months. The 30 November 2023 is three months and one day, as November has 30 days. If November had 31 days, the last day would have been 30 November.) The Claimant does not dispute this.
  - 8.3 On 30 November 2023 the Claimant started the Acas early conciliation period. This is one day outside the three-month period. Therefore none of the provisions relating to Acas early conciliation extend time. This is because time had already expired, the day before he put in the Acas notification.
  - 8.4 On 15 December 2023 the Acas early conciliation certificate was issued.
  - 8.5 On 13 January 2024 the Claimant filed this claim. It is solely a claim of unfair dismissal (it refers to public interest disclosure but in the context of his claim of unfair dismissal).

### **The Claimant's case**

9. The Claimant says it was not reasonably practicable for him to file his claim within three months of dismissal for a variety of reasons:
  - 9.1 At the time he was experiencing severe mental health issues. He missed appointments with his medical team, his sleep pattern was affected, and he was affected by prescription medication.
  - 9.2 Because of his mental health issues he encountered significant challenges in navigating the judicial system.
  - 9.3 He had been supported by his union, but they ceased to do so, citing a conflict of interests.
  - 9.4 He made unintentional errors in his Acas notification and in his ET1 and this was due to his mental health issues.
  - 9.5 He was not able to afford representation and had been unable to get free help from charities, university law clinics and others.
  - 9.6 He had faced eviction and debt management problems which compounded matters.

### **Evidence and submissions**

10. Ms Viegas gave evidence, as to the above. He provided no medical or other evidence in support of his contentions that it was not reasonably practicable for him to present his case in time, and that he had done so in a reasonable further period.

### **Consideration of reasons**

11. As there is no medical evidence before me, the Claimant cannot show that it was not reasonably practicable for him to file his claim by reason of mental health issues. There was a letter from the Claimant's GP which he had sent to the Tribunal and to the Respondent, which I did not have but which was read to me. It stated that the Claimant has back problems for which he has pain killers such as co-codomol and work related stress had affected him so that he was prescribed mirtazapine, diazepam and bromazepam. These are powerful drugs, but I do not know the doses nor is there any evidence before me that they result in confusion such that filing an Employment Tribunal claim is not reasonably practicable.
12. Point 2 is essentially the same: that mental health issues made it hard for him to navigate the process. It is very easy to start the Acas early conciliation period online and the claim form is also very easy to complete online.
13. The Claimant lost the support of his union, but many claimants put in their claims by themselves. The loss of union support did not make it "not reasonably practicable" for him to submit the claim in time.
14. The errors he says he made by reason of mental health issues are not specified, but whatever they were they did not have any effect on the timeline.

15. He was not able to get representation, but all he had to do was what in the end he did – just fill in the form online and give an idea of why he said his dismissal was unfair. He could have done that on 01 September 2023.
16. There was no evidence of eviction or debts, but while these events would have been very stressful, it takes very little time to fill in the forms. The Claimant did not say that he did not have access to the internet.
17. In his evidence the Claimant told me that he sent in the claim form when in India for an MRI scan. That would not have prevented him from lodging the claim and shows that he was able to travel to India.

#### **Other matters**

18. The Claimant and his representative wished to raise a large number of other matters and sought many documents of differing types. I did not deal with these requests for the limit of this hearing was to decide whether it was reasonably practicable for the claim to have been filed in time, and if not whether it was filed within such further period as I consider reasonable.

#### **Conclusion**

19. I find that the Claimant has not shown, on the balance of probabilities, that it was not reasonably practicable for him to file his claim within the limitation period of three months. That means the claim must be struck out.

#### **Such further period as is reasonable**

20. My conclusions about the reasonable practicability of filing the claim earlier are determinative of this application, but even had the Claimant succeeded in showing that over this period it was not reasonably practicable to file the claim there is a second stage, which is that it was then filed within such further period as is reasonable.
21. Had I reached this stage, the claim would still have to be dismissed. The early conciliation certificate was issued on 15 December 2023. The time is not extended by the Acas early conciliation period, because the claim was already out of time. It was not until 13 January 2024 that he filed the claim, so that by then the claim was 6 weeks out of time. Even if it is thought reasonable to wait for the Acas early conciliation period to expire, the Claimant still did not file his claim for almost a month after getting the Acas early conciliation certificate (15 December 2023 – 13 January 2024). This is not a reasonable further period. Accordingly, even if the Claimant had satisfied me that it was not reasonably practicable to submit the claim within three months, I would still have struck out the claim as out of time.

Employment Judge Housego  
Date 01 November 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON  
11/12/2024

FOR THE TRIBUNAL OFFICE – N Gotecha