



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Agboola  
**Respondent:** The Spencer Group

**Heard at:** Ashford

**Before:** EMPLOYMENT JUDGE CORRIGAN  
Sitting Alone

## Representation

**Claimant:** In Person  
**Respondents:** Mr G Anderson, Counsel

**PRELIMINARY HEARING** On: 4 July 2019

## JUDGMENT

1. It was not reasonably practicable to present the claims of dismissal/detriment in time and the Claimant presented the claims within a further reasonable period. The Tribunal therefore does have jurisdiction to consider those claims.
2. It was just and equitable to extend the time limit for the direct sex discrimination claim to the date the claim was submitted.

## REASONS

1. The Claimant was made redundant from his position after informing the Respondent of his intention to take adoption leave. His case is that the way the redundancy process was handled, access to his work email without his consent, breach of his confidentiality and the decision to dismiss him amounted to less favourable treatment because of sex and/or detriment/dismissal for seeking to take adoption leave. His comparators for the sex discrimination claim are actual female employees who have taken maternity leave and adoption leave. He says that in any event the dismissal was unfair as there was no potentially fair reason, the decision was predetermined, the process conducted was too fast and no alternative work was considered. The Claimant does not rely on any actions which post-date the dismissal. The date of dismissal was 21 September 2018.

2. The Preliminary Hearing was listed to consider whether the Tribunal has jurisdiction to hear the claims on the basis they may have been submitted outside the applicable time limits. The primary deadline was 20 December 2018. The Respondent did not rely on any earlier deadlines in respect of the process leading up to dismissal. The Claimant contacted ACAS on 18 December 2018 (in time) and the certificate is dated 10 January 2019. The deadline is therefore extended to one month after 10 January 2019, namely 10 February 2019. The claim was submitted on 20 March 2019.
3. The issues for me to consider were therefore whether it was reasonably practicable for the Claimant to submit his claims on time, and if not whether he submitted them within such further period as was reasonable (detriment/dismissal) and whether it is just and equitable to extend time (discrimination). There is some case law about the meaning of “reasonably practicable”, for example *Asda Stores Ltd v Kauser* EAT 0165/07 where it was said it is not simply a question of what was possible but whether in all the circumstances it was reasonable to expect what was possible was done.
4. I heard evidence from the Claimant on his own behalf and there was a bundle of documents to which the Claimant added additional documents.
5. I found the following facts. The Claimant appealed his dismissal on the same day as his dismissal. The text of the appeal and the text of his claim are the same and the Claimant essentially copied and pasted the text of his appeal into his claim.
6. The Claimant’s father who lived in Nigeria died suddenly on 24 November 2018. Nevertheless the Claimant travelled to Hull to attend his appeal of dismissal on 27 November 2018. The Claimant also obtained another job in November, but postponed the start date until January 2019.
7. The adoption process was ongoing, in the context that the Claimant and his wife had had multiple failed IVF attempts and previous adoption attempts had not been successful. Their baby was placed with them on 6 December 2018. The Claimant was concerned that his redundancy and the death of his father would impact on the success of the adoption. The Claimant’s social worker advised that he suspend the other issues in his life and concentrate on bonding with his baby. During the adoption proceedings the Judge gave similar advice to concentrate on being a new family. The Claimant had responsibility for his father’s funeral but he postponed this and blocked calls from upset friends and relatives in Nigeria to allow his baby to settle into their family.
8. The Claimant nevertheless did obtain another job in November (though he postponed the start date until January, fully committing from 15 January 2019) and contacted ACAS on 18 December 2018. He also provided a schedule of loss. On 12 January 2019, when conciliation ended, the Claimant believed the ACAS officer said to leave things with her. I accept he believed that meant she would progress his claim as this is consistent with his later email on 20 March 2019 when he chased up progress. He also erroneously believed the three month deadline ran from the end of the ACAS process. Had he known he had to submit the claim he would have done so earlier, as it only took 10 minutes to copy and paste his appeal. He contacted two solicitors but they were too expensive. He also accepted that he has been able to use google to research aspects of his case.
9. On 5 March 2019 the adoption order was made. The Claimant then turned to the arrangements for his father’s funeral including setting the date and restoring his relationships in Nigeria.
10. It was then that the Claimant emailed ACAS on 20 March 2019 asking for an update on the progress of his case. The ACAS officer responded at which point he discovered that he should have submitted the claim himself. He then submitted the claim that day.

11. In conclusion, on the one hand it was possible for the Claimant to submit his claim on time by 10 February 2019. He attended his appeal hearing three days after his father's sudden death, he was able to contact ACAS prior to the deadline and to provide a schedule of loss as part of the conciliation process. He took note of the ACAS certificate and contacted solicitors. He accepted that it ultimately took ten minutes to copy and paste his appeal letter into the claim form and submit. He accepted that he has been able to conduct his own research on google in respect of the law regarding his claims and that had he realized the deadline was 10 February 2019 he would have submitted on time.
12. The Claimant essentially made a mistake and erroneously believed the ACAS Officer had said leave it with her and that she would progress his claim and that the three month deadline ran from the date of the certificate.
13. However, this mistake was made in the context of the Claimant dealing with multiple significant life events, with his father's sudden death on 24 November 2018 just shortly before his daughter was finally placed with him after years of IVF and adoption attempts. His daughter was placed with the family on 6 December 2018 and he was concerned that his redundancy and his father's death should not jeopardise that placement. The advice received by their social worker was to clear other challenges from their minds and focus on settling their daughter. It is recorded from early in the placement that it was going well but that does not undermine his case that he was advised to give it priority and his evidence that the new placement was challenging (which I accept). During this time the family was also going through the tribunal process which led to the adoption. During that process the Judge dealing with the case also made comments that the family needed to prioritise their daughter. The family were also under a period of intense scrutiny during the process until the final adoption order of 5 March 2019.
14. That the Claimant had obtained other work was a necessity due to the financial situation of the family and I do not see that as inconsistent with his prioritizing his daughter and the adoption pursuant to the social worker's advice.
15. I also accepted the Claimant's evidence that his decision to put his father's funeral on hold was a significant decision that damaged his reputation amongst those who knew his father in Nigeria. This was a difficult decision which reflects the strength of the priority he was giving to his daughter. It was also his first priority once the adoption order was made to organize the funeral date and repair his reputation and relationships.
16. I accept that this was a very difficult time for the Claimant with three important matters going on with the adoption, his father's death and his redundancy and this case. His way of handling these was to prioritise the adoption until the adoption was formalized on 5 March 2019 and then to prioritise his father's funeral and repairing his reputation and relationships in Nigeria. The third priority was this tribunal claim. Once he had dealt with the other priorities he emailed ACAS on 20 March 2019 chasing up what was happening and it was then that he understood it was his responsibility to submit the claim and he submitted it on that date.
17. He did make an error in the context of dealing with all these significant life events. I find his approach to those events was a reasonable approach to take and it is not reasonable in all the circumstances to expect the Claimant to have done more to ensure his claim was submitted on time. It was not reasonably practicable to submit on time in these circumstances.
18. Once he had dealt with these two issues he turned to the Tribunal claim and contacted ACAS for an update on 20 March 2019. The ACAS Officer called him and he realized he needed to submit the claim. He did so the same day. He therefore acted promptly

to address the Tribunal claim once the other matters had been addressed and as soon as he realized the error he submitted the claim the same day. I consider he submitted within such further period as was reasonable.

19. For all the above reasons I also consider it just and equitable to extend the time limit to 20 March 2019 in respect of the discrimination claim.

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**Employment Judge Corrigan**  
Ashford  
9 January 2020