

JERSEY / JUDGMENT

# Kevin Turner v Drain It Limited

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL IN THE MATTER BETWEEN  
KEVIN TURNER CLAIMANT AND DRAIN IT LIMITED RESPONDENT TRIBUNAL JUDGMENT  
Reference: [2025] TRE 99A Before: Advocate C E Whelan MBE, deputy chair DECISION The  
Claimant's application for leave to appeal is refused

## Introduction

1. In consequence of that refusal, the Respondent's application for a stay pending the determination of the application for leave to appeal no longer serves any purpose and is dismissed.
2. The Claimant's surviving claim for wrongful dismissal or notice pay is to proceed to case management.

## REASONS

### Introduction

3. This decision concerns two applications arising from the Tribunal's judgment dated 24 July 2026. The first is the Claimant's application for leave to appeal that judgment to the Royal Court. The second is the Respondent's application for a stay of the remaining proceedings pending determination of the Claimant's leave application.
4. Following a preliminary hearing on 13 July 2026, the Tribunal found that the claims of unfair dismissal and discrimination had been presented out of time and dismissed them accordingly. The Tribunal's decision did not determine the separate claim for wrongful dismissal or notice pay, which remains outstanding. It is a contractual matter arising at common law and is therefore not caught by statutory prescription.
5. The Claimant's application for leave to appeal was lodged on 20 August 2026. The Respondent submitted its application for a stay later that day. The Respondent seeks a stay of the outstanding wrongful dismissal or notice pay claim and has also notified the Tribunal that its representative is unavailable until 1 September 2026.

6. The Claimant contends, in effect, that the Tribunal erred in law in its treatment of the statutory provisions governing the computation of the eight-week limitation period relevant to the statutory claims now under discussion, and in its conclusion that the amendment which came into force on 17 April 2026 did not operate to revive claims which had already become prescribed, such as the statutory claims in this case. The judgment of 24 July 2026
7. The Claimant's employment terminated on 17 February 2026. His claim form was received by the Tribunal on 14 April 2026.
8. Under the method of computation which the Tribunal had previously applied, including in *Derouet v Quantum Building Supplies Limited* [2024] TRE 22, the relevant eight-week period expired on 13 April 2026. The claim form was therefore received one day after the expiry of that period.
9. On 17 April 2026, Article 1(9) of the Employment (Jersey) Law 2003 ('the Law'), introduced by the Employment and Discrimination (Amendment) (Jersey) Law 2026, came into force. It now makes express provision as to the day on which a period stated in days, weeks, months or years begins and ends. Applied to the dates in this case, that method of calculation would permit a claim to be presented on 14 April 2026.
10. The terms of Art. 1 (9) are included for ease of reference as follows: 'Wherever this Law refers to a period of time in days, weeks, months or years, the period expires at the end of the day that completes the number of days, weeks, months or years specified. Example: the act complained of takes place on Thursday 1 January 2026. The complainant has 8 weeks to make a claim to the Tribunal. The 8-week period begins at the start of Friday 2 January and ends at the end of Thursday 26 February 2026.[2]'
11. The question before the Tribunal was therefore not simply how eight weeks should now be calculated. The question was whether legislation which came into force on 17 April 2026 was to be applied to a claim which, under the law as previously understood and applied, had already become prescribed.
12. The Tribunal concluded that the amendment contained no express retrospective provision and no transitional provision reviving claims which had already become prescribed. Applying the presumption against retrospective interference with accrued rights and defences, the Tribunal held that the amendment did not deprive the Respondent of the limitation defence which had accrued before the amendment came into force.
13. In reaching that conclusion the Tribunal considered, among other authorities, *L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd* [1994] 1 AC 486 and *Yew Bon Tew v Kenderaan Bas Mara* [1983] 1 AC 553., a judgment of Privy Council. The Tribunal also considered the importance of finality and the authorities concerning the effect of subsequent legal developments upon decisions already made. The statutory right of appeal

14. Article 94(1) of the Employment (Jersey) Law 2003 provides: “A person aggrieved by a decision or order of the Tribunal may, on a question of law only, appeal to the Royal Court by applying to the Tribunal for leave to appeal.”
15. An appeal from the Tribunal is therefore available only on a question of law. Specifically, the application for leave is not an opportunity to rehear the preliminary issue or to substitute a different view of the facts or the merits.
16. The meaning of “a question of law” was considered by the Royal Court in *Raducan v Pizza Express Limited*

[2020] JRC 253, following *Sumera v Atlantique Seafood* [2019] JRC

164. Those authorities indicate that a question of law may arise where:
  - a) the Tribunal got the law wrong or misapplied the law;
  - b) the Tribunal had no evidence to support a conclusion or finding of fact;
  - c) the Tribunal made a decision which no reasonable tribunal could have made, or reached a conclusion which was obviously wrong; or
  - d) the Tribunal failed to follow the correct procedure and that failure affected the

### **judgment.**

17. Importantly, therefore, a disagreement with a conclusion properly open to the Tribunal, does not of itself amount to a question of law. It is necessary to identify a legal error which, if established, is capable of affecting the decision. The proposed appeal
18. The Claimant’s central contention is that the Tribunal erred in its interpretation and application of the statutory provisions governing the calculation of the limitation period. The Claimant maintains that the 2026 amendment was a clarification rather than a substantive change, and simply demonstrated what the statutory provisions had always meant. On that basis, he says that the claim presented on 14 April 2026 was within time.
19. The Tribunal takes this to amount to an argument about the intention of the legislature and as such the Claimant’s application for leave is in effect an application simply to rehearse in the Royal Court those arguments which it deployed unsuccessfully in the Tribunal below. That is not a point of law within the examples given in *Raducan*.
20. The Tribunal did not overlook the Claimant’s argument that the amendment was described as clarificatory or as legislative housekeeping. The judgment addressed that submission directly. It accepted that the operative limitation provisions themselves had not been amended and that ancillary materials supported the description of the amendment as a clarification.

21. The Tribunal nevertheless concluded that the description attached to the amendment could not be conclusive. It considered the legal effect which would follow if the new provision were applied to the Claimant's case. That effect would be to convert a claim which had already become prescribed, under the law as previously understood and applied, into one capable of proceeding.
22. The Tribunal then applied the established presumption against retrospective legislation affecting accrued rights or defences. It found no express wording, necessary implication or transitional provision requiring the amendment to operate in that manner, reviving a claim which had become defunct under the law as previously understood. It was on that basis, rather than through any failure to recognise the Claimant's argument, that the Tribunal declined to give the amendment retrospective effect.
23. The proposed appeal identifies no authority or statutory language which the Tribunal failed to consider and which required it to reach the opposite conclusion. Nor does it identify any incorrect legal test applied in the judgment. The application instead renews the submission that the amendment ought to have been characterised as purely a clarification and applied to the Claimant's case.
24. Such characterisation would not by itself answer the distinct question whether it operates retrospectively so as to remove an accrued limitation defence. The judgment treats those as separate questions and gives reasons for its conclusion on each. The Claimant's disagreement with that conclusion does not demonstrate that the Tribunal got the law wrong or misapplied it, or otherwise give rise to a point of law as that phrase has been understood in the cases cited in the Tribunal's judgment.
25. Nor is this a case in which the Tribunal lacked evidential or legal basis for its conclusion. The material dates were not in dispute. The conclusion rested upon the wording and commencement date of the amendment, the absence of an express retrospective or transitional provision, and the authorities concerning accrued limitation defences and retrospective legislation.
26. The conclusion cannot properly be described as one which no reasonable tribunal could have reached or as obviously wrong. It followed a recognised line of legal analysis and was explained in written reasons.
27. No procedural irregularity affecting the judgment has been identified. The parties were heard upon the prescription issue at the preliminary hearing. The Tribunal identified the issue placed before it, considered the competing submissions and gave reasons for its decision. Discretion to extend time
28. The application also refers in general terms to the exercise of any available discretion concerning time limits. That does not disclose a separate point of law in this case.

29. The judgment did not determine the matter by exercising a broad discretion between competing considerations. Its conclusion was that the material claims had already become prescribed and that the subsequent amendment did not revive them. No freestanding discretion was identified under which the Tribunal could disregard that conclusion merely because the claim was late by one day. It is anyway difficult to avoid the old saw that hard cases make bad law; it is equally difficult to avoid the fact that this is not the first case to turn on a slender time margin, or that the Tribunal at least since *Skrzat v Jersey Telecom Group Limited* (2001) JET 1005-66/11 has been heavily insistent on the observation of time rules as a matter of statutory application and in the interests of good order in the Tribunal.
30. If the Claimant's case is that a particular statutory power to extend time was engaged, it was necessary to identify that provision and the legal basis upon which it was said to apply. The application does not demonstrate that the Tribunal failed to apply any statutory discretion which was properly before it. Finality
31. The Claimant's case may be thought to have a degree of apparent attraction because the claim was presented only one day after the expiry date calculated under the Tribunal's former practice and because the legislature altered or clarified that method of calculation shortly afterwards.
32. Those circumstances were not overlooked. They formed the substance of the issue which the Tribunal decided. The judgment recognised the possible unfairness from the Claimant's perspective (although why eight weeks was too little time for him to file his claims has not been explored) but concluded that the competing requirement of legal finality, together with the Respondent's accrued limitation defence, could not be displaced without clear legislative language.
33. Leave to appeal is confined to a question of law. It cannot be granted simply because the result is severe or because the point raised is of practical interest. The application must identify an arguable legal error capable of leading to the judgment being set aside. I am unable to identify such an error here, and I also repeat that which is said earlier about the Tribunal's necessarily close insistence upon the observance of time limits.

## Conclusion

on leave

34. In the premises and taking the proposed grounds individually and together, I find that they do not disclose a question of law upon which leave to appeal should be granted.
35. In particular:
- a) the judgment identified and applied the presumption against retrospective interference with accrued rights and defences;

- b) it expressly considered the argument that the amendment was clarificatory;
  - c) it addressed the absence of any provision expressly reviving claims which had already become prescribed;
  - d) its conclusion was supported by the statutory wording, the commencement date and the authorities cited;
  - e) no finding has been identified which lacked any evidential or legal foundation;
  - f) the conclusion was not one which no reasonable tribunal could have reached; and
  - g) no procedural failure capable of affecting the judgment has been demonstrated.
36. The application therefore amounts, in effect, to a request that the matter be reheard so that the legal conclusion reached in the judgment be decided differently. That is insufficient to establish a question of law for the purposes of Article 94 of the Law, as that article has thus far been understood.
37. Leave to appeal is refused. The application for a stay
38. The Respondent applied for a stay of the remaining wrongful dismissal or notice pay proceedings pending determination of the Claimant's application for leave to appeal.
39. That application was understandable when made. If leave had been granted, there would have been a question whether it was proportionate to continue with the outstanding claim while the appeal was pending.
40. The application for leave has now been determined and refused. The stated basis for the stay has therefore fallen away. There is no purpose in staying the proceedings pending a decision which has now been made.
41. The Tribunal does not therefore grant an administrative stay until 4 September 2026, as had previously been proposed in draft. Such an order would be unnecessary and would sit uneasily with the immediate refusal of leave.
42. The Respondent's application for a stay is dismissed. That does not prevent the Respondent from making a fresh application if materially different circumstances arise, although any such application would have to identify the precise proceedings or application said to justify a stay and explain why continuation of the notice pay claim would cause material prejudice or procedural inefficiency. The outstanding claim
43. The wrongful dismissal or notice pay claim remains extant. It was not determined by the judgment of 24 July 2026 and is not subject to the present refusal of leave.

44. That claim should now progress in the usual way. The Respondent has notified the Tribunal that its representative is unavailable until 1 September 2026. It is proportionate to take that short period of unavailability into account when arranging the next case-management step, but it does not require a formal stay of the proceedings.

## Orders

A. The Claimant's application for leave to appeal is refused. B. The Respondent's application for a stay pending determination of the leave application is dismissed as no longer necessary. C. The Registrar shall list a case management hearing in relation to the surviving wrongful dismissal or notice pay claim on the first convenient date after 1 September 2026, having regard to the parties' availability. D. Unless otherwise directed by the Tribunal, the parties shall provide the Registrar with their dates of availability and any concise proposals for the future conduct of that claim within seven days of notification of this decision. Orders accordingly. Advocate C. E. Whelan MBE, Deputy Chair Date: 28 August 2026

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