

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102474/2018

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Held in Glasgow on 4 May 2018

Employment Judge: Ms L Doherty

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Mr Douglas Craeg

**Claimant
In person**

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Avondale Coaches Ltd

**Respondent
Represented by:-
**Mr Gold –
Director****

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

- (1) The Tribunal does not have jurisdiction to consider the claimant's claim for unauthorised deduction of wages under Section 13 of the Employment Rights Act 1996 (ERA);
- (2) The respondents have failed to pay the claimant's holiday entitlement and are ordered to pay the claimant the sum of Two Hundred and Fifty Pounds (**£250**).

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REASONS

- 1 The claimant presented a claim of unauthorised deductions of wages, and failure to pay holiday pay to the Employment Tribunal on 8 February 2018. The claim was resisted. A Hearing was fixed to determine the claim.

2 The claimant attended the Hearing in person, and the respondents also
attended, represented by one of their Directors, Mr Gold.

3 Prior to the Hearing there had been an exchange of correspondence between
the parties, and from discussions at the commencement of the Hearing, it
5 emerged that there was a measure of agreement between the parties on a
number of material points, which are noted below.

4 Firstly, the respondents concede that the claimant is due 4 days holiday pay
for accrued leave; the claimant agrees that that is correct.

5 From discussions, it emerged that the claimant is claiming that the
10 respondents made deductions from his wages over two periods of
employment. The first period of his employment ended on 29 May 2017. It
was agreed that from the point when the claimant's employment came to an
end, wages of £398.46, have not been paid to him.

6 It is the respondents position that they are entitled to offset this amount
15 against a £500 charge for damage caused to a bus as a result of an accident
which was the claimant's responsibility.

7 It was also agreed that the claimant commenced work with the respondents
again on 15 June 2017, and that after he did so, the respondents made a
series of 11 deductions from his wages commencing on 22 June, and ending
20 on 7 September 2017, of £20 per week.

8 The date of receipt by ACAS of the Early Certificate of notification was 5
January 2018, and the ACAS Certificate was issued on 26 January 2018.

9 As indicated above, the claim was lodged on 8 February 2018.

10 The discussion which took place therefore identified that there is an issue of
25 time bar in this case in connection with the claimant's claim for unauthorised
deduction of wages, it being accepted that the last deduction in the series of

deductions was made on 7 September 2017, and that the first deduction was in May 2017.

11 The substantive issue in this case is whether the respondents were entitled
5 to make the deductions in terms of the Employment Rights Act 1996 (the
ERA).

12 There was a brief adjournment of the Hearing, and the parties were provided
with copies of Sections 14, and 23 of the ERA.

13 Enquiry was made as to whether parties wished to proceed with the Hearing,
or wished time to prepare further; neither side sought an adjournment, and
10 both indicated a willingness to proceed with the Hearing.

14 It was explained to the parties that the Tribunal would have to consider the
issue of time bar as this was determinative of whether the Tribunal had
jurisdiction to consider the claim for non-payment of wages.

15 Both the claimant and Mr Gold gave evidence.

15 **Findings in Fact**

16 The respondents are a coach company, who employ a number of coach
drivers.

17 The claimant, whose date of birth is 10 June 1968 was employed by the
respondents initially from 23 February 2017 until 29 May 2017. The claimant's
20 employment came to an end on that date.

18 The claimant began working for the respondents again; his employment
commencing on 15 June 2017, and ending on 27 October 2017.

19 The respondents have a policy of charging their drivers an excess of £500 if
they are in an accident which is deemed to be their fault.

20 The claimant had signed a document in February, prior to the commencement
of his employment on the first occasion with the respondents, in the following
terms: -

5 *“I Douglas Craeg was told at my interview that in the event of an
accident that was my fault I would be responsible for the excess only
if it was my fault.”*

21 It was a condition of his taking up the job that he signed this.

22 The claimant was involved in an accident at some point prior to 29 May 2017
which was deemed to be his fault, as a result of which the bus he was driving
10 was damaged.

23 When the claimant left the respondent’s employment on 29 May 2017 it was
agreed that he was due wages of £398.46, however that these were not paid
to him. The respondents held back payment of these wages against the £500
charge for damage to the bus.

15 24 The claimant decided to return to work with the respondents, commencing on
15 June. The respondents considered they were due the balance of the £500
charge, and they made a series of deductions from the claimant’s wages of
£20 per week, commencing on 22 June 2017. The last deduction was made
on 7 September 2017.

20 25 This was the respondent’s normal practice in the event a driver was involved
in an accident which was deemed to be the driver’s fault.

26 The claimant left the respondent’s employment on 27 October 2017. He
expected payment of holiday pay to be paid in his final wage, but it was not.

25 27 During the second period of his employment, the claimant worked four days
per week, and his net pay was £250 per week. The respondents accepted

the claimant is due holiday pay, which they assessed on a gross basis at £277.20

28 The claimant was aware of the existence of Employment Tribunals, and that they dealt with claims arising from employment.

5 29 He felt aggrieved at what the respondents had done in making deductions from his wages, and he considered that they were not entitled to make these deductions. He did not think the respondents had the required written authorisation to allow them to make the deductions which they had.

10 30 The claimant contacted ACAS on 6 or 7 December 2017. He understood having spoken to them, that he should notify the respondents about his complaint, and he e-mailed the respondents on that date.

31 The claimant sent a Registered Letter to the respondents on 13 December 2017 but received no reply.

15 32 The claimant had no previous involvement in an Employment Tribunal, and did not seek advice, or carry out any research about bringing a claim.

33 The claimant gave the requisite notice to ACAS on 5 January 2018, and an ACAS Certificate was issued on 26 January 2018. The claimant lodged his claim on 8 February 2018 before the Employment Tribunal.

Submissions

20 **Claimant's Submissions**

34 The claimant submitted that the time bar provisions did not apply in his case, as the respondents had illegally withheld wages. The legislation supported the position that the respondents were not entitled to make the deductions which they did as they did not have the necessary written authorisation. On
25 that basis the claim should be allowed to proceed.

35 The respondents were not entitled to withhold the wages, and the claim be upheld. The claimant had signed the document in February under duress.

Respondent's Submissions

36 For the respondents Mr Gold submitted that the respondents were following
5 a practice and there was no question of the claimant having to sign the declaration which he had done in February under duress. This was something which all the respondent's employees signed.

37 Mr Gold submitted the respondents were a fair employer. He accepted that the claimant was due holiday pay amounting to 4 days, and he accepted that
10 even taking into account the respondent's position that they were entitled to make deductions amounting to £500, due to an error on their part £118.46 had been incorrectly held from the claimant's wages. Mr Gold indicated that regardless of any determination of issue of time bar, the respondents would pay these monies to the claimant.

Consideration

38 The first issue for the Tribunal to determine in this case is whether it has jurisdiction to consider the claim of unauthorised deduction of wages, and failure to pay holiday pay.

39 Section **13** of the ERA creates the right not to suffer an unauthorised
20 deduction of wages. Section **23** of the ERA deals with complaints to the Employment Tribunal and provides as follows: -

25 "23 (1) *A worker may present a complaint to an Employment Tribunal that an employee has made a deduction from his wages in contravention of Section 13 (including deduction made in contravention of that section as it applied by virtue of Section 18(2))....*

(2) *Subject to sub section (4) an Employment Tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with*

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(a) *In the case of a complaint it related to deduction by the employer, the rate of payment of the wages from which the deduction was made, or*

(b) *In the case of a complaint relating to payment received by the employer, the date when the payment was received.*

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(3) *Where a complaint is brought under this section in respect of*

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(a) *A series of deductions or payments, ... the reference is sub section (2) to the deduction of payments are to the last deduction of payment in the series or to the last payment so received.*

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(4) *Whether the Employment Tribunal is satisfied that it was not reasonably practicable for the complaint under this section to be presented before the end of the relevant period of three months the Tribunal may consider the complaint if it is presented within such a further period as a Tribunal considers reasonable.”*

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It was a matter of agreement in this case that in fact there are two deductions of wages in issue here. The first deduction was made when the claimant's employment came to an end on 29 May 2017, and the second deduction is part of a series of deductions the last of which was made on 7 September 2017. Both claims are therefore out of time.

41 The Tribunal therefore had to consider whether time should be extended
under the provisions of **Section 23(4)** on the basis that it was not reasonably
practicable for the complaint to be presented before the end of the relevant
three-month period, and if it is satisfied on that point, it would then have to go
5 on to consider whether it was presented within such further period as was
reasonable.

42 If the onus of proving the presentation in time was not reasonably practicable
rests on the claimant.

43 What is reasonably practicable is a question of fact for the Tribunal. It has
10 been said that the reasonably practicable, means something like “*reasonably
feasible*” ; it is not a case as simply looking at what was possible, but to
consider in the facts, and if it was reasonable to expect what was possible to
have been done.

44 The Tribunal was satisfied in this case that the claimant was aware of the
15 existence of Employment Tribunals and their function in dealing with
employment disputes.

45 The claimant was aggrieved at what his employer had done. The Tribunal
was satisfied that the claimant was aware he could he could make a complaint
about this. He contacted ACAS in December with a view to pursuing his
20 complaint with his employer. He was able to act on the information which
ACAS gave him, writing to his employer at that time.

46 The Tribunal was satisfied that the claimant was generally aware of his rights
to complain, notwithstanding he had not been involved previously in an
Employment Tribunal. In these circumstances, ignorance of the time limit for
25 bringing a claim is rarely an acceptable reason for delay. The claimant is
reasonably considered to have been put on an enquiry as to the time limit,
and has an obligation to find out if there is a time limit for presenting a claim.
There was no explanation as to why he had not taken the step seeking advice,
or contacting ACAS, or indeed lodging the claim, until after the expiry of the

time limit. The claimant's suggested in submission that he thought the time limit ran from the date when he received his last wages. However, he did not suggest that any deduction was made from his last wage slip, and the claimant was aware that there had been a series of deductions made from his wages, the last of which was on 7th September 2017. The first set of deductions occurred in May, but the claimant did nothing about this till, at the earliest, December 2017.

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47 The ACAS certificate does not have the effect of extending the time limit, as the presentation of the ACAS notification was after the time limit for presenting the claim had expired.

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48 Taking all these circumstances together, the Tribunal was not satisfied that it could conclude that it was not reasonably practicable for the claim to be lodged within the three-month period, and therefore concluded that it did not have jurisdiction to determine the complaints of unauthorised deduction of wages.

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49 There is one matter which the Tribunal would say further in relation to this. That relates to what was said by Mr Gold in the course of giving evidence. He acknowledged that the respondents had, on their own calculations, withheld wages of over £100 in error, which were in fact due to the claimant and indicated these would be paid. While the Tribunal does not have the power to make an Order that the respondents do so, considering Mr Gold's comments, it would seem appropriate that they now do so.

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50 In relation to the claim for holiday pay in respect of leave which had accrued but not been taken at the conclusion of the claimant's employment, time bar does not apply, in that the claimant expected to receive payment on the date of his last salary which was 9 October 2017. The effect of the ACAS Certificate is to extend time in this case so that that claim was presented on time, and accordingly the Tribunal will make an award of holiday pay in the sum of £250. The Tribunal arrived at this figure on the basis of the claimant's evidence that he was paid £250 per week net, for working a four-day week,

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and the respondents accepted that the claimant was due four days holiday pay. The respondents only had a gross as opposed to a net figure, and if either party requires to review the Tribunal's decision in relation to the amount of unpaid holiday pay, then it would be open to them to do so and the Tribunal would consider any such application.

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Employment Judge: Laura Doherty
Date of Judgment: 11 May 2018
Entered in register: 14 May 2018
and copied to parties

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