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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case Number: 4106905/2019**

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**Heard in Glasgow on 1 August 2019**

**Employment Judge Lucy Wiseman**

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**Mrs Margaret Burns**

**Claimant  
Represented by:  
Ms A Young  
Friend**

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**South Ayrshire Council**

**Respondent  
Represented by:  
Ms C McMenamin  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The claim was presented in time and will now proceed to be listed for a Hearing.

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**REASONS**

1. The claimant presented a claim on 14 May 2019 alleging there had been an unauthorised deduction from wages.
2. The respondent entered a response denying there had been an unauthorised deduction from wages and asserting the claim had not been brought within the applicable time limit.

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**E.T. Z4 (WR)**

3. The Preliminary Hearing today was arranged to determine the issue of timebar.
4. I heard submissions from each representative and I was referred to a small number of documents produced by the claimant's representative.

5 **Claimant's submissions**

5. The claimant applied for voluntary severance and, by letter of the 9 July 2018, she was advised her application had been formally approved and that her employment would end by mutual agreement on the 18 October 2018.
6. The letter went on to advise the claimant she would have *"immediate access to [your] pension benefits ... In addition you will receive a Severance Payment of £27,242. You have previously received an illustration of benefits due to you and this agreement is based on your final benefits being the same or similar to those figures"*.  
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7. The letter attached a document entitled "Voluntary Severance – Indicative Financial Implications".  
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8. Ms Young submitted no-one from the employer informed the claimant at any time that the amount she received would not be increased as a result of the impending 2018/19 national pay settlement.
9. The claimant understood that the voluntary severance amount she was to receive was calculated based on her contractual weekly wage, which was shown in the illustration document, and subsequently confirmed by the Payroll Manager in an email dated 6 March 2019 (document 3).  
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10. Ms Young submitted the claimant's contract had been in force up until the termination date of 18 October 2018, and states that her terms and conditions of employment are in accordance with the NJC collective agreements.  
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11. The Scottish National Joint Council agreed a 3.5% pay increase for the financial year 2018/19 on 3 March 2019. This was back-dated to 1 April 2018.

12. The claimant's position is that her severance pay should be re-calculated and increased by £954.
13. The claimant wrote to the respondent on 5 March 2019 to request this payment be made.
- 5 14. The claimant was advised by email of 6 March 2019 (document 6) that "*back pay won't include a voluntary severance adjustment*". The email went on to explain that a severance payment was not a wage-related payment, and was not covered by the same rules as wage-related payments (such as weekly wages and holiday pay). The email confirmed that severance payment was based upon an employee's contractual weekly rate of pay, as at the calculation date.
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15. The Scottish National Joint Council pay award was implemented and back dated, and the claimant received a payment of wages and holiday pay into her bank account on 13 March 2019.
- 15 16. Ms Young submitted 13 March 2019 was the date the claimant knew she would not be paid the £954 increase in severance pay. Accordingly this was the date time started to run.
17. The claimant contacted ACAS on 29 March 2019 and received an Early Conciliation Certificate on the 22 April 2019. The claim was presented on 14 May.
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**Respondent's submissions**

18. Ms McMenamain referred to the terms of section 23 of the Employment Rights Act, and the three month time limit for presenting a claim.
19. Ms McMenamain submitted this was a voluntary severance where the claimant had asked for figures to consider, and had been provided with them. The claimant accepted the figures offered. The calculation of the figures given to the claimant was based on a formula which included the contractual rate of pay.
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20. Ms McMenamain referred the Tribunal to document 1 (being the letter of the 9 July 2018 sent to the claimant) where the claimant had been asked to sign the following:

5                   *“I, Margaret Burns, agree that my employment with the Council will end on 18 October 2018 through mutual agreement with the Council on the terms outlined above”.*

21. The respondent’s primary position was that the severance payment was not wages, or a contractual figure: it was a sum the parties had agreed on to end the contract. Accordingly the outcome of any collective bargaining was irrelevant.
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22. Ms McMenamain submitted the claim was time barred and should not be allowed to proceed.

### **Discussion and Decision**

23. I had regard firstly to the terms of section 23 Employment Rights Act which provides that:
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*“ 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:-*

- (a) *in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made ..”*
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*Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers necessary.”*

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24. I next had regard to the fact there was no dispute regarding the fact the claimant’s employment ended on 18 October 2018, and although there was

information to suggest when the severance payment was paid to the claimant, I assumed it was made on that date.

5 25. The claimant's case is that the subsequently agreed pay award for 2018/19 which was back dated to 1 April 2018, ought to have increased the calculation of her severance payment because the contractual weekly pay, which was the basis of the severance payment calculation, had increased.

10 26. The rights or wrongs of that position was not the issue before the Tribunal today. The issue for me to determine is whether the claim was presented in time.

15 27. I was satisfied, in terms of considering the time limit for bringing the claim, that the claimant expected to be paid the sum of £954 in March 2019, when she was paid the back dated increase to wages and holiday pay. The sum was not paid, and accordingly 13 March 2019 was the date when the alleged deduction occurred.

20 28. The claim was presented on 14 May. The claim was presented within three months of the date of payment from which the deduction was made.

25 29. This claim will now proceed to be listed for a Hearing.

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30 **Employment Judge: Lucy Wiseman**  
**Date of Judgment: 02 August 2019**  
**Date sent to parties: 07 August 2019**

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