



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104840/2019

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Held in Glasgow on 16 August 2019

Employment Judge P O'Donnell

10 **Mr G O'Brien**

**Claimant  
In Person**

**R Gilmour & Sons Ltd**

**Respondent  
Represented by:  
Mr V Hart -  
Managing Director**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claims of unlawful deduction  
20 of wages and breach of contract were presented outwith the time limit set down in  
s23(2) of the Employment Rights Act 1996 and the Employment Tribunals Extension  
of Jurisdiction (Scotland) Order 1994 respectively. Further, that it was reasonably  
practicable for the claimant to have presented the claim within the relevant time limit.  
In these circumstances, the Tribunal does not have jurisdiction to hear those claims.

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### REASONS

#### Introduction

1. The Claimant has brought complaints relating to payments he alleges he was owed by the Respondent at the end of his employment.
2. The Respondent resists these claims on a number of grounds, primarily on  
30 the basis that the claim was lodged out with the relevant statutory time limits.
3. This hearing was listed to determine the issue of time bar.

#### Evidence

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

4. The Tribunal heard evidence from the Claimant. The Respondent did not lead any evidence.

5. The Respondent produced a bundle of documents comprising primarily of the Tribunal correspondence including the ET1 and ET3.

5 **Findings in fact**

6. The Tribunal made the following relevant findings in fact.

7. The Claimant commenced employment with the Respondent as a roofing labourer on 31 October 2017 and his employment came to an end on 22 December 2017.

10 8. When he received his final salary, it did not include certain payments which the Claimant had been expecting such as holiday pay and pay in lieu of notice. This prompted the Claimant to look at earlier wages and he believed that these were less than they should have been.

15 9. The Claimant sent an email to the Respondent during the 2017 Christmas period in relation to this but received no reply. He sent a subsequent email in January 2018 as well as a letter but had no reply to either of these.

10. The Claimant, therefore, contacted ACAS on 16 January 2018 when he commenced Early Conciliation. He learned about ACAS from his mother who had previously worked for a trade union.

20 11. The Early Conciliation period came to an end on 16 February 2018 and the Certificate was issued on this date.

25 12. During the conciliation, the Claimant had spoken to the Conciliation Officer, Rachel Goacher, about the time limit for lodging a claim in the Employment Tribunal. The Claimant knew that there was a time limit for sending in forms and he believed this was 12 weeks.

13. At this time, the Claimant was assisting his mother in looking after his father who had been diagnosed with terminal cancer. He commenced a new job on 14 February 2018 and combined this with caring for his father.

14. The Claimant lodged his ET1 in April 2019. He was prompted to do so after his father passed away when he passed the Respondent's premises and realised that he had heard nothing further about his claim. He contacted ACAS to find out why he had not heard anything and was told it was because he had not lodged his claim. He then submitted his ET1.

**Claimant's submissions**

15. The Claimant accepted that his claim had not been lodged within the relevant time limit.
16. He was asking the Tribunal to hear his claim out of time because it was not reasonably practicable for him to lodge his claim in time; he was caring for his father which had been his priority and he had been confused about the process with all the emails that had been going around.
17. When he recalled the case, he lodged it straightaway.

**Respondent's submissions**

18. The Respondent's agent made the following submissions.
19. Whilst sympathetic with the Claimant's position, Mr Hart submitted it was reasonably practicable for the Claimant to have lodged the claim in time; the Claimant had raised the issue with ACAS; he was aware of the time limit; he had been able to attend work in his new job.

**Relevant Law**

20. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.
21. Section 23(2) states that the Tribunal shall not consider a complaint of deduction of wages unless it is presented within 3 months of the date of payment of the wages. Where there are a series of deductions then s23(3) states that the time limit runs from the last deduction in that series.

22. The Tribunal has discretion under s23(4) to hear a claim outwith the time limit set in ss23(2) and (3) where they consider that it was not reasonably practicable for the claim to be presented within the 3 month time limit and it was presented within a further period that the Tribunal considers to be reasonable.
23. An employee is entitled to notice of the termination of their employment. The amount of any such notice can be found in the contract of employment or by way of the minimum statutory notice to be found in section 86 of the Employment Rights Act 1996.
24. Where an employer does not give the correct notice of dismissal then an employee can recover damages for this breach of contract equivalent to the salary they have lost for the relevant period.
25. The Tribunal was given the power to hear breach of contract claims by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994. The 1994 Order provides that any claim for breach of contract must be lodged within 3 months of the end of the claimant's employment. It contains a discretion for the Tribunal to hear a complaint out of time in similar terms to the discretion under s23(4) of the 1996 Act set out above.

**Decision**

26. The Tribunal finds that the claims for unlawful deduction of wages and breach of contract were not presented within the relevant time limit under s23 of the Employment Rights Act 1996 or the 1994 Order, respectively. The claimant left employment on 22 December 2017. The primary time limit for lodging either claim would have expired on 21 March 2018. The claimant contacted ACAS to commence Early Conciliation within the primary time limit; the case was in Conciliation for 31 days and so the extended time limit expired on 21 April 2018. The ET was lodged in April 2019, almost a year later.
27. The Tribunal considered whether or not it would exercise its discretion under s23(4) ERA or the 1994 Order to hear the claim out of time. For the reasons set out below, the Tribunal considered that it would not do so.

28. The Tribunal considered that it was reasonably practicable for the claim to have been presented in time. Whilst the Tribunal has the utmost sympathy with the position in which the Claimant found himself with his father being diagnosed with terminal cancer and providing care for him, it was clear that the Claimant was able to contact ACAS and engage with the Early Conciliation process so he could equally engage with the process for lodging his ET1.

29. Further the Claimant was aware that there was a short time limit for lodging the claim in the Tribunal so there is no question of ignorance of the time limits (which, in any event, does not normally provide a valid excuse for lodging a claim late).

30. For these reasons, the Tribunal considered that it was reasonably practicable for the Claimant to have lodged his claim in time.

31. In these circumstances, the claims for unlawful deduction of wages and breach of contract being lodged out of time and the Tribunal not being willing to exercise its discretion to hear those claims out of time, the Tribunal does not have the jurisdiction to hear the claim.

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**Employment Judge: P O'Donnell**  
**Date of Judgment: 20 August 2019**  
**Date sent to parties: 28 August 2019**