



# EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

DF99 LIMITED

V

COMMISSIONERS FOR  
REVENUE AND CUSTOMS

HELD AT: CARDIFF

ON: 25 NOVEMBER 2019

BEFORE: EMPLOYMENT JUDGE S POVEY  
(SITTING ALONE)

REPRESENTATION:

FOR THE CLAIMANT:

MR BUTT (ACCOUNTANT)

FOR THE RESPONDENT:

MR RUCK KEENE (COUNSEL)

## JUDGMENT

1. The appeal against the notice of underpayment was brought out of time and in breach of section 19C(3) of the National Minimum Wage Act 1998. It is therefore struck out.
2. For the avoidance of doubt, the hearing of this appeal listed for 29 November 2019 is vacated.

## REASONS

1. This was an appeal by DF99 Limited ('the Claimant') against the Commissioners for Revenue and Customs ('the Respondent') decision to serve a Notice of Underpayment ('the Notice') on the Claimant pursuant to section 19 of the National Minimum Wage Act 1998 ('the NMW Act').
2. The Claimant denied that it had paid any of its employees less than the applicable minimum wage under the NMW Act. However, the Respondent asserted, as a preliminary issue, that the Claimant's appeal had been brought outside of the time limits laid down by the NMW Act and, as a result, the Tribunal had no jurisdiction to consider the appeal.

3. The following material facts were not in dispute:
  - 3.1. The Notice was dated 28 June 2019 and was received by the Claimant on 29 June 2019;
  - 3.2. The Notice informed the Claimant that any appeal to the Tribunal had to be made “*by 29 July 2019*”;
  - 3.3. In the course of three telephone conversations between the parties and an email from the Respondent to the Claimant, the appeal deadline of 29 July 2019 was re-stated by the Respondent;
  - 3.4. The Claimant presented its appeal to the Tribunal by email on 29 July 2019.
4. Section 19C(3) of the NMW Act mandates that any appeal to the Tribunal “*must be made before the end of the 28-day period.*” The 28-day period is defined in section 19(8) as “*the period of 28 days beginning with the date of service of the notice of underpayment.*”
5. On the basis that the Notice was received by the Claimant on 29 June 2019, the end of the 28-day period was 26 July 2019. The Claimant brought its appeal on 29 July 2019, after the end of the 28-day period.
6. Understandably, the Claimant relied upon the five separate occasions (in the Notice, during three telephone conversations and in an email) that the Respondent stated that the deadline for appealing was 29 July 2019. Mr Ruck Keen for the Respondent accepted that each of those representations had been in error. The Respondent had got the date wrong.
7. Did those errors provide any relief to the Claimant from the requirements of the NMW Act? In my judgment, they did not. No provision to extend the time limit exists within the NMW Act itself. As explained to Mr Butt, I was unable to find any legal authority which permitted an extension of the time limit. Neither the Respondent nor the Tribunal appeared to have any such power. The 28-day time limit is strict. If it is missed, for whatever reason, the Tribunal does not have the power to determine an appeal.
8. That conclusion will, to both the Claimant and the general reader, seem unjust and unfair. It was the Respondent who repeatedly gave the Claimant the wrong time limit but then relied upon the Claimant’s misplaced reliance on that time limit to defend the subsequent appeal. In seeking to create a regime that promotes certainty and limits complexity, there will always be the risk of anomalies arising. When those anomalies are founded in a prevailing sense of injustice, they are all the more difficult for the losing party to endure.
9. However, the Tribunal, like the parties, must follow, apply and abide by the law. It is for Parliament, not the courts and tribunals, to address any iniquities that the NMW Act inadvertently produces.

10. For all those reasons, the Claimant brought its appeal out of time and the Tribunal has no jurisdiction to determine it. It must therefore be struck out.

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**EMPLOYMENT JUDGE S POVEY**

**Dated: 9 February 2020**

Order posted to the parties on

.....19 February 2020.....

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For Secretary of the Tribunals