EMPLOYMENT TRIBUNALS

Claimant: **Ms C Short**

Respondent: **Ms L Matthews**

Heard at: **Cardiff** **On: 6 August 2020**

Before: **Employment Judge Harfield (sitting alone)**

Representation:
Claimant: In person
Respondent: In person

RESERVED JUDGMENT

It is the decision of the Employment Judge sitting alone that:

- the claimant's complaint of disability discrimination was presented out of time and it is not just and equitable to extend time;
- the claimant's complaints of unfair dismissal, wrongful dismissal (notice pay), unauthorised deduction from wages (holiday pay and arrears of statutory sick pay) were presented out of time and it was reasonably practicable for the complaints to have been presented in time;
- the claimant's complaint of failure to pay a statutory redundancy payment is within time and can proceed.

The claimant's complaints of disability discrimination, unfair dismissal, wrongful dismissal and unauthorised deductions from wages are therefore dismissed. The claim for a statutory redundancy payment can proceed.

REASONS

Introduction

1. The claimant undertook Acas early conciliation between 16 September 2019 and 16 October 2019. The claim form in this case was presented on 20 December 2019. It raises complaints of disability discrimination, unfair dismissal, redundancy payment, notice pay, holiday pay and arrears of pay. At a case management preliminary hearing on18 February 2018 Employment Judge Jenkins identified that the arrears of pay claim related to a failure to pay the claimant statutory sick pay for the period 1 April 2019 to 29 April 2019. The case management order also identifies that it was not in dispute that the claimant's employment ended on 29 April 2019 but that a substantive issue in the case was whether that dismissal was fair by reason of redundancy or whether (as contended by the claimant) it was by reason of disability and/or by reason of a TUPE transfer and therefore unfair and discriminatory. The disability relied upon is identified as anxiety and depression and/or a back condition. The alleged acts of disability discrimination are identified as relating to the decision to dismiss the claimant.

2. The respondent presented a response form denying the claims. At the case management hearing before Employment Judge Jenkins it was identified that the claimant's claims may not have been presented within the primary time limits. In particular, given the date the claim form was presented and the dates of early conciliation any complaint about something that happened before approximately the middle of August 2019 was potentially brought out of time. It was noted that the claim for a redundancy payment would have a longer time limit.

3. At that first case management hearing the case was listed for a final hearing and orders made to get the case ready for that final hearing. The original intention was to determine the time limit points as part of that final hearing. However, the final hearing due to start on 1 June 2020 did not take place because of the restrictions on in person hearings arising out of the Covid 19 Pandemic. The hearing was converted to a telephone case management preliminary hearing before Employment Judge Moore. Employment Judge Moore noted the time limit issues and decided rather than relisting all of the claims for a full hearing it would be proportionate to list a preliminary hearing to determine whether the claimant's complaints were presented outside the relevant time limits in the Employment Rights Act 1996 and the Equality Act 2020 and, if so, whether they should be dismissed on the basis that the Tribunal has no jurisdiction to hear the claims. The case was therefore listed for this public preliminary hearing by video which came before me today. A direction was made for the claimant to prepare a written witness statement explaining why her claims

were not lodged within the relevant time limits, and why it was not reasonably practicable to have presented it in time and/or why it would be just and equitable to extend time for the disability discrimination claim.

4. I received a written witness statement from the claimant and she also gave oral evidence in response to questions from the respondent and from myself. The parties were also given the opportunity to make closing comments. There was no directions order for the provision of a bundle of documents for the preliminary hearing. I identified with the claimant at the start of the hearing that whilst her witness statement referred to a bundle of documents I did not have a bundle before me. I explained I accepted that there had been no requirement to produce one but that I wanted to be sure that I had before me (and that the respondent had access to) the documents said to be relevant to the time limit issues I was deciding. It became apparent that the references to the bundle related to a bundle produced for the non-effective final hearing. A dispute about the handing over of that bundle had arisen between the parties that there was no need for me to adjudicate upon but the situation with the adjournment of the listed final hearing meant (through no fault of the claimant) the bundle was not ultimately delivered to the Tribunal either. The situation, however, resolved itself as the key documents appeared to be correspondence passing between the parties between 29 April 2019 and 29 August 2019 which the claimant had appended to her claim form in any event. In the course of her evidence the claimant also referred to her health and she had previously sent to the Tribunal and the respondent some medical records and an impact statement in preparation for the final hearing (which would include a dispute about whether the claimant was disabled). I therefore confirmed that prior to reaching my decision I would read the relevant medical evidence. There was no request that I read anything else by way of documentary evidence said to be relevant to the time limit issues.

Relevant Legal Principles

<u>The Equality Act 2010</u>

5. The discrimination complaints were brought under the Equality Act 2010. The time limit for such complaints is found in section 123 as follows:-

> "(1) Subject to Sections 140A and 140B proceedings on a complaint within Section 120 may not be brought after the end of –
> (a) the period of three months starting with the date of the act to which the complaint relates, or
> (b) such other period as the Employment Tribunal thinks just and equitable."

6. The case law on the application of the "just and equitable" extension includes *British Coal Corporation –v- Keeble* [1997] IRLR 336, in which the Employment Appeal Tribunal ("EAT") confirmed that in considering such matters a Tribunal can have reference to the factors which appear in Section 33 of the Limitation Act 1980. As the matter was put in Keeble:-

"that section provides a broad discretion for the court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as a result of the decision to be made and also to have regard to all the circumstances and in particular, inter alia, to –

(a) the length of and reasons for the delay;
(b) the extent to which the cogency of the evidence is likely to be affected by the delay;
(c) the extent to which the party sued had cooperated with any request for information;
(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;
(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action."

7. In *Robertson –v- Bexley Community Centre (T/A Leisure Link) 2003 [IRLR 434]* the Court of Appeal considered the extent of the discretion. The Employment Tribunal has a "wide ambit". At paragraph 25 of the judgment Auld LJ said:-

"it is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse. A Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

8. Subsequently in *Chief Constable of Lincolnshire –v- Caston [2010] IRLR 327* the Court of Appeal in confirming the Robertson approach confirmed that there is no general principle which determines how liberally or sparingly the exercise of discretion under this provision should be applied.

9. In *Department of Constitutional Affairs –v- Jones [2008] IRLR 128* the Court emphasised that the guidelines expressed in Keeble are a valuable reminder of factors which may be taken into account, but their relevance depends on the facts of the particular case. Other factors may be relevant too. At paragraph 50 Hill LJ said:-

"*The factors which have to be taken into account depend on the facts, and the self directions which need to be given must be tailored to the facts of the case as found".*

The Employment Rights Act 1996

10. The time limit for an unfair dismissal complaint appears in section 111(2) of the Employment Rights Act 1996:

"(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –
(a) before the end of the period of three months beginning with the effective date of termination, or
(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

11. Two issues may therefore arise: firstly whether it was not reasonably practicable for the claimant to present the complaint within time, and, if not, secondly whether it was presented within such further period as is reasonable.

12. Something is "reasonably practicable" if it is "reasonably feasible" (see *Palmer v Southend-on-Sea Borough Council [1984] ICR 372*, Court of Appeal). The court approved the statement in *Bodha v Hampshire Area Health Authority [1982] ICR 200* that the existence of a pending internal appeal does not of itself justify a finding that it was not reasonably practicable to bring a claim.

13. Ignorance of one's rights can make it not reasonably practicable to present a claim within time as long as that ignorance is itself reasonable. An employee aware of the right to bring a claim can reasonably be expected to make enquiries about time limits: *Trevelyans (Birmingham) Ltd v Norton [1991] ICR 488* Employment Appeal Tribunal. 9. In *Marks and Spencer Plc v Williams-Ryan* [2005] ICR 1293 the Court of Appeal reviewed some of the authorities and confirmed in paragraph 20 that a liberal approach in favour of the employee was still appropriate. What is reasonably practicable and what further period might be reasonable are ultimately questions of fact for the Tribunal.

14. The time limit for bringing an unauthorised deduction from wages claim is set out in section 23(2) of the Employment Rights Act. A Tribunal is not to consider a complaint unless it was presented before the end of the period of three months beginning with the date of the payment of the wages from

which the deduction was made (or the last in a series of deductions). Under section 23(4) where the Tribunal is satisfied that it was not reasonably practicable for the complaint to have been presented within that three month period the Tribunal may consider the complaint if it is presented within such further period as the Tribunal considers reasonable.

15. Section 164 of the Employment Rights Act 1996 sets out the time limits for presenting a claim for a statutory redundancy payment. Generally an employee will lose entitlement to a statutory redundancy payment unless one of the following 4 events occurs before the end of a period of 6 months beginning with the relevant date:

    (i) the payment is agreed and paid;

    (ii) the employee makes a written claim for the payment to the employer;

    (iii) the question as to the employee's right to, or the amount of, the payment has been referred to the employment tribunal;

    (iv) the employee presents a claim of unfair dismissal to a Tribunal.

16. The "relevant date" means the effective date of termination pursuant to section 145(2).

17. However, section 164(2) also provides that if one of those things does not happen within the 6 month period the employee will not be deprived of their right to a redundancy payment if during a further period of 6 months the employee:

    (i) makes a claim for the payment by notice in writing given to the employer; or

    (ii) the question of the employee's right to, or the amount of, the payment has been referred to the employment tribunal; or

    (iii) the employee presents a claim of unfair dismissal to a Tribunal

    (iv) and it appears to the Tribunal to be just and equitable that the employee should redundancy payment. The Tribunal must have regard to the reason shown by the employee for the failure to take any of the steps identified and all other relevant circumstances.

Breach of contract claims

18. Contractual notice pay provisions can either be implied by statute under section 86 of the Employment Rights Act 1996 or the product of a contractual agreement. Contractual claims are brought under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Under article 7 a claim must similarly be presented within 3 months beginning with the effective date of termination of the contract giving rise to the claim with the provision for the Tribunal to extend time where satisfied that it was not reasonably practicable for the claimant to have presented the claim within the primary time limit and where satisfied the claim was presented within such further period as the Tribunal considers reasonable.

Relevant Findings of Fact

19. Based on the witness evidence and documents I found the relevant facts to be as follows.

20. The claimant was employed as a cleaning assistant. The claimant's employment transferred to the respondent under TUPE (the Transfer of Undertakings Protection of Employment Regulations) in April 2019. There is a dispute between the parties (which I do not need to resolve) as to when the claimant's period of continuous employment started as the claimant says she had been subject to earlier numerous TUPE transfers with her original employment start date being November 2018. The respondent states that continuous employment only dates back to 26 September 2016. In the run up to, and at the time of, the TUPE transfer the claimant was on sick leave. The claimant says she had been absent with chest pains (caused by stress and anxiety), anxiety/depression, sciatica and severe back pain and she had been off work from 18 February 2019.

21. The sequence of events that led to the termination of the claimant's employment is in dispute and not for me to determine here. However, the claimant received a letter dated 29 April 2019 stating the respondent was giving the claimant formal notification of the termination of her employment on the ground of redundancy. The letter states that the claimant's notice period was 2 weeks but that she would not be required to work after 29 April 2019. It says that the final payment of salary would be paid on 10 May 2019. The claimant was told she had the right to appeal in writing within 7 days. A calculation of a redundancy payment was attached based on 2 years' service.

23. The claimant was unhappy with the situation, in part because she considered any redundancy payment should be based on 10 years'

continuous employment. Some telephone calls took place between the parties although the content of those calls is in dispute. The claimant sought advice from the Citizens Advice Bureau and they drafted a letter for the claimant to send dated 16 May 2019. This letter said that as of that date no payments had been received from the respondent and that the settlement proposal was inadequate as it did not take into consideration the claimant's full period of continuous employment of 10 years and did not include holiday pay and sick pay that were owed. The claimant stated she calculated the redundancy payment owed was £2378.

24. The letter sought a review of the redundancy package offered, the decision to withhold payment, and a written response to the points raised by 30 May 2019. The letter said "*Your failure to pay my statutory entitlements will lead to me taking further steps, namely engaging ACAS early conciliation with a view to proceeding to the Employment Tribunal if necessary."*

25. The claimant accepted in oral evidence that the CAB had told her at that first meeting about the time limits that applied for bringing an employment tribunal claim and that, in particular, ACAS early conciliation had to be commenced within 3 months. She said, however, that the CAB had also told her she should write to the respondent first. The claimant also accepted that sometime around this time she also did her own research online about employment tribunal claims and that she was aware of the need to generally commence ACAS early conciliation within the 3 month period.

26. The respondent sent a short response on 29 May 2019 acknowledging the claimant's letter and saying "*we will be in touch in due course."* It is not in dispute that there was no further written response from the respondent.

27. Sometime on or around 29 August 2019 the claimant sought more advice from the CAB. They assisted her with writing a further letter dated 29 August 2019 which says it is attaching further evidence about the claimant's start date being in 2008 and that she was entitled to a redundancy payment of £2378. The letter notes the respondent's response of 29 May 2019 and that no further communication had been received. It says the claimant will be contacting Acas to take the matter forward with a view to proceeding to the Employment Tribunal if conciliation should fail.

28. The claimant accepted in oral evidence that the CAB told her that her claim may now be out of time but that the Tribunal had a discretion to potentially extend time. She said that the CAB told her to start Acas early conciliation. The Acas early conciliation certificate states that they received early conciliation notification on 16 September 2019. The

claimant could not explain in evidence why there was the delay between seeing the CAB on or around 29 August 2019 and starting Acas early conciliation other than that she thought she had had other telephone discussions with Acas.

29. Early conciliation came to an end on 16 October 2019. The claimant said in evidence, which I accept, that the CAB or Acas had not suggested to her that she did not have to see the whole conciliation period through and that she could have brought early conciliation to an end at an earlier date (potentially on 16 September 2019) in order to speed up being able to get the Acas certificate and present her Tribunal claim.

30. The claimant said that the CAB also assisted her with drafting her Tribunal claim form and they printed it off for her and told her to post it by recorded delivery. She accepted in oral evidence this may have been some time towards the latter part of October 2019. She could not explain why the Tribunal did not receive her posted claim form until 20 December 2019.

31. The claimant's position in general was that she was following the advice she was given by the CAB which was to send the initial letter and wait for a response from the respondent. She says that she was following the process that the CAB told her to follow and that they only told her it was now time to contact Acas after there was no response in correspondence from the respondent by which time the time limit had expired. She said that the respondent had failed to respond to the claimant's letters. The claimant said that missing the time limit was therefore not her fault. The claimant also referred to her physical and mental health. The respondent's position, in short, was that the claimant knew the time limits that applied and it was her own responsibility to make sure that her claim was presented in time.

32. The claimant also said in oral evidence that she was particularly reliant on following the CAB's advice due to her anxiety problems that she said were being made worse by the situation. The claimant's impact statement prepared to assist the Tribunal in determining the question of disability talks about the claimant suffering from stress related chest pains and anxiety that she said was, at the time of her dismissal, in part preventing her from working. But the impact statement does not say that the claimant's anxiety affected her in practical terms in a way that would have affected her ability to understand employment tribunal time limits or take steps to present an employment tribunal claim or engage in Acas early conciliation or undertake steps such as form filling. A GP letter dated 19 February 2020 confirms that the claimant was unfit for work from February to November 2019 and that the claimant was suffering from anxiety due to a variety of factors, as well as back pain and sciatica. The GP letter states that the level of anxiety was great enough to provide episodic chest pain

requiring paramedic assistance[1]. The claimant's contemporaneous GP records record the claimant visiting her GP on 18 February 2019 with anxiousness and anxious tightness across her chest. She was prescribed medication. The entry also recorded her difficulties with sciatica. On 15 April 2019 they show the claimant was complaining of low back pain and her physical difficulties in working as well as recording that the anxiety was continuing with chest tightness. A referral letter dated 16 April 2019 referred to the claimant's back pain and sciatica with high levels of anxiety second to work stress and relationship difficulties. An entry dated 12 July 2019 refers to chest tightness and that the claimant wanting to get back to work but her anxiety was high and stress. On 6 September 2019 the GP recorded that the anxiousness was the same story and that the claimant had stress headaches and poor sleep. The GP referred to the claimant not having managed to unpack in the last 2 months since the GP saw her. She was stressed that her room was untidy but had joined the gym and had a medical coming up for her benefits application. The claimant was still getting some back pain. The GP records say the GP was talking to the claimant about counselling and to make small goals and try them. By November 2019 the claimant was looking for work.

Discussions and Conclusions – the disability discrimination claim

33. I will first consider the factors identified in *Keeble* and other factors of relevance in relation to the disability discrimination claim.

Length of delay

34. The act of discrimination is said to be the decision to dismiss the claimant. At the very latest that happened on 29 April 2019. This means that the primary limitation date and the date by which Acas conciliation should have commenced was 28 July 2019. The claimant did not enter Acas conciliation until 16 September 2019 some 7 weeks late. The claimant did not present her employment tribunal claim until 20 December 2019. This was some 20 weeks after the original time limit and some 9 weeks after the early conciliation certificate was issued. Acas conciliation can extend the time limit for commencing employment tribunal proceedings in various ways depending upon the individual circumstances of each case. In many cases it can potentially give claimants at least an additional month to commence proceedings after the conciliation certificate is issued. However, the law is clear that only applies where Acas early conciliation commences before the expiry of the primary time limit. Entering Acas early conciliation late, after the expiry of the primary limit will not extend the time limit (albeit it is still necessary to get the certificate to be able to present the Tribunal claim)[2]. With a primary time limit of only three

[1] To the best that I can determine the most recent paramedic visit was 8 July 2018
[2] See Pearce v Bank of America Merrill Lynch and Others UKEAT/0067/19/LA

months, a delay of a further 7 weeks in starting Acas early conciliation is a significant period. The delay between receiving the Acas certificate and commencing employment tribunal proceedings is also a significant period as is the overall gap in time between 28 July 2019 and 20 December 2019. This is not a case where the claim was just a few days late.

Reason for the delay

35. I accept that the CAB told the claimant that she should correspond with the respondent before starting Acas early conciliation (and the Tribunal after that). This is generally sensible advice, particularly if the claim is one where the Acas Codes of Practice on disciplinary and grievances procedures may apply, or apply to part of the claim and time limits allow that dialogue to happen. The respondent had also offered the claimant a right of appeal. I also accept that the respondent, whilst saying that there would be a written response to the claimant's letter of 16 May 2019 did not then provide one. Whilst there is clearly a dispute that is not for me to resolve here as to why there was a fracturing of the relationship between the claimant and the respondent, even with the fracturing of that relationship it would have been good practice on the respondent's behalf to have responded to the claimant's letter.

36. However, that has to be set within the context that the claimant knew early on what the time limits for commencing employment tribunal proceedings were. She knew both from her own research and from the CAB that she was supposed to start Acas early conciliation within 3 months. She knew that early on, at least by 16 May 2019 if not before. By the time the three months passed on 28 July 2019 over two months had passed since the claimant's initial letter without a response from the respondent and around 1 month since the respondent had said she would be in touch but then did not do so. In my judgment the claimant had responsibility for and should reasonably have been monitoring the overall time limit. In the run up to 28 July 2019 the claimant should reasonably have, whether through her own research or via the CAB, checked whether even without a response from the respondent she should be starting Acas conciliation. The claimant should reasonably have then understood that the absence of a response from the respondent did not extend time limits and she could reasonably then have started Acas conciliation in time. There is no suggestion that the responsibility for such monitoring was in the hands of the CAB. They had told the claimant what her first practical step should be but had also told her what the overall time limit was. Even if the CAB told the claimant to go back and see them when the respondent had responded in writing, I do not consider that this reasonably absolved the claimant of the responsibility for monitoring the timescales overall.

37. I have taken into account the evidence about the claimant's health and I accept that she was suffering from anxiety. However, there is no evidence before me that this stopped the claimant understanding the time limits or prevented her from taking steps to commence Acas early conciliation in time. Starting Acas early conciliation is not a complicated task. The claimant was, for example, able to contact the CAB, give them instructions and take their advice and able to undertake tasks such as making social security benefits applications.

38. I also do not accept that there was good reason for the delay in the claimant commencing Acas early conciliation on 16 September 2019 having seen the CAB again on or by 29 August 2019. This is over two weeks in circumstances where the claimant had been told by the CAB her claim was now potentially out of time and she should reasonably have understood the need to start the process to get an Acas certificate and then issue Tribunal proceedings was urgent. I accept that the claimant may reasonably have thought she needed to see the whole Acas early conciliation period through and not bring it to an end early so I can understand the gap in time between 16 September 2019 and 16 October 2019. However, on receipt of the Acas certificate I do not accept there was good reason for the claimant delaying in presenting her employment tribunal claim. Even if the claimant was seeking help from the CAB again, she should reasonably have understood how urgent the situation was. Further, the claimant accepted that she probably saw the CAB again some time around the latter part of October 2019 and she was unable to account for why the claim form did not reach the Tribunal until 20 December 2019.

Impact of the Delay on the Evidence

39. This case turns on evidence about events in around February 2019 to April 2019. The key witnesses are the claimant and the respondent. It was not suggested to me that the delay in the claimant commencing proceedings was likely to have a significant impact on the ability of witnesses to recall matters or the availability of documentary evidence.

Promptness of Action

40. The claimant acted promptly in initially getting advice from the CAB and in doing her own research about employment tribunal time limits. I have already found that the claimant otherwise did not act reasonably promptly in commencing Acas early conciliation or presenting her employment tribunal claim once she had the Acas certificate.

Steps to get professional advice

41. As stated, the claimant did act promptly in getting advice from the CAB on or around 16 May 2019. I was not given a complete evidential picture throughout the whole period about when exactly the claimant tried to get further advice and assistance from the CAB and the dates when she was able to see the CAB advisors. On the evidence that is available to me I consider she should have acted more promptly to get further advice or undertake her own further research before the 3 month time limit that she knew about for commencing Acas early conciliation expired. On the evidence available to me I also consider that the claimant could have acted more promptly in getting assistance with lodging her tribunal claim once she had the Acas certificate.

The extent to which the respondent co-operated with requests for information

42. As already stated, I accept that the respondent should reasonably have responded to the claimant's letter of 16 May 2019.

Decision

43. Putting those matters together overall, whilst I accept this is not a case in which it said the cogency of evidence will be significantly affected by the delay and whilst I accept the respondent should as a matter of good practice have responded to the claimant's correspondence, this is also a case in which the claimant knew the time limits and knew them from early on. Whilst I also accept the claimant was told by the CAB she should correspond first with the respondent, I have found that the claimant should reasonably have been monitoring the timescales and the overall 3 month time limit with a view to commencing Acas early conciliation. I do not accept the claimant's medical condition was a significant barrier to that. The delays were significant. Taking into account all these factors, and applying the test set out in the legislation, in my judgment the claimant has failed to show it would be just and equitable to extend time and the disability discrimination claim is dismissed.

Discussions and conclusions – the unfair dismissal and notice pay claims

44. The primary time limit for the unfair dismissal claim and the notice pay claim both run from the effective date of termination of 29 April 2019 giving the same primary time limit of 28 July 2019. For the reasons I have already given above, particularly the claimant's overall awareness of the three month time limit, I consider it would have been reasonably practicable for the claimant to have presented her claim within time. By 16 May 2019 she was aware of the need to enter Acas conciliation within 3 months and it was reasonably practicable for her to have ascertained and

understood whether from the CAB or from her own internet research that the fact she did not have a response from the respondent did not stop the time limits running. That the respondent's response to the claimant's correspondence had not been received does not in itself does not make it not reasonably practicable to bring a claim. The Court of Appeal confirmed that in the *Palme*r case (although it is still a relevant factor that I took into account). The unfair dismissal claim and the notice pay claim are dismissed.

Discussions and conclusions – the unauthorised deductions from wages claim (arrears of pay and holiday pay)

45. The time limit here runs from the date that the deduction from wages was made. The claimant was expecting to receive her final pay on 10 May 2019. This means that the primary time limit was 9 August 2019 but the claimant did not enter Acas early conciliation until 16 September 2019, some 5 weeks late. For reasons very similar to those already given above I find it was reasonably practicable for the claimant to have commenced her claim within time. She knew the 3 month time limit applied and could reasonably have taken steps to have understood that she needed to commence Acas early conciliation by then and have taken the appropriate action to do so. The unauthorised deduction from wages claim for arrears of pay and holiday pay are dismissed.

Discussions and conclusions – the redundancy pay claim

46. Different time limits apply for the statutory redundancy payment claim. The claimant preserved her right to claim a statutory redundancy payment by putting her claim in writing to the respondent on 16 May 2019 which was well within the 6 month period. The Tribunal has jurisdiction to hear that complaint and it can proceed to a final hearing. I have issued a separate case management order to make the final arrangements to get that complaint ready for hearing.

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Employment Judge R Harfield
Dated: 6 August 2020

JUDGMENT SENT TO THE PARTIES ON 10 August 2020

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS