



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant  
MRS J COMPTON**

**AND**

**Respondent  
ROYAL MAIL GROUP LTD**

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT: BRISTOL      ON:    5<sup>TH</sup> OCTOBER 2020**

**EMPLOYMENT JUDGE MR P CADNEY  
(SITTING ALONE)**

**MEMBERS:**

**APPEARANCES:-**

**FOR THE CLAIMANT:-      WRITTEN SUBMISSIONS**

**FOR THE RESPONDENT:-      WRITTEN SUBMISSIONS**

### **JUDGMENT**

The judgment of the tribunal is that:-

1. The claimant's claim for unlawful deduction from wages is dismissed having been presented out of time.

### **Reasons**

1. With the consent of the parties this decision has been made on the basis of the pleadings and their written representations as set out below.

2. By a claim form lodged on 6<sup>th</sup> March 2020, following receipt of an ACAS EC certificate dated 6<sup>th</sup>-7<sup>th</sup> January 2020, the claimant brought a claim for unlawful deduction from wages relating to allowances that were not paid during a period of suspension.
3. The respondent resisted the claim, and one of the grounds of resistance is that the claim has been brought out of time in that it relates to a period of suspension between 10<sup>th</sup> April and 13<sup>th</sup> July 2019. The claimant therefore had three months from that point in which to present the claim if it was to be presented within the primary limitation period; that is to say that at least the ACACS early conciliation process would have needed to have commenced by 12<sup>th</sup> October 2019 and the claim presented within no more than one month from its conclusion for the claim to have been presented in time. In respect of the substantive claim it asserts that the claimant did not perform scheduled attendance overtime and therefore necessarily was not entitled to be paid for it whilst suspended.
4. The respondent proposed that the claimant set out the reason for the delay in writing, following which they would set out their objections to an extension of time, following which the tribunal would determine the case on the papers, given the restrictions on hearings imposed by the coronavirus pandemic. The claimant agreed and provided her statement on 2<sup>nd</sup> July 2020. She states she suffered from severe depression, high levels of anxiety and other effects which meant that she “did not return to any form of normality until January 2020”. In support she has supplied medical evidence in the form of Occupational Health referrals.
5. Section 23 (2) of the Employment Rights Act 1996 provides that a complaint shall be presented within three months of the unlawful deduction complained of. Where the complaint relates to a series of deductions the last date is the relevant date (s23 (3)). S 24 provides that where it was not reasonably practicable for the complaint to have been presented within the three month limitation period that the tribunal may consider the complaint if it is presented “within such further period as the tribunal considers reasonable”.
6. The respondent asserts that the medical evidence shows that the claimant was fit to return to work on 25<sup>th</sup> November 2020; that she had prior to that been in correspondence with the respondent on 23 and 25 September 2020, and attended a formal conduct meeting on 14 October 2019 which she was able fully to participate in. After her return, on 31<sup>st</sup> December 2019 she was able to send an appeal letter in relation to a grievance, and was sufficiently aware of the possibility of bringing a claim by at the latest 6<sup>th</sup> January 2020 when she commenced ACAS early conciliation.
7. The respondent accordingly submits that it was firstly reasonably practicable for the claim to have been presented in time by 12<sup>th</sup> October 2019; but that even if that is wrong that on the claimant’s own case she was able to participate and commence the process of bringing a claim on 6<sup>th</sup> January 2020. There is no medical evidence that relates to the period between 6<sup>th</sup> January 2020 and 6<sup>th</sup> March 2020, and no contention set out by the claimant that there was any other impediment preventing

- her from bringing the claim at that point. There is therefore no explanation for the subsequent delay after 6<sup>th</sup>/7<sup>th</sup> January 2020.
8. In my judgement as this is to be determined on the papers and as I have heard no evidence, I should make every possible assumption in the claimant's favour. It follows for the purposes of this decision firstly that I accept that it was not reasonably practicable by reason of her medical condition to present the claim within the primary limitation period. The next question is whether it was presented within a reasonable time thereafter. Again, in respect of that question I will accept that it was not reasonable to require the claimant to consider bringing a claim until the New Year of 2020, when on her own case she returned to a "form of normality.". However, given that she was able to participate in the ACAS early conciliation process from 6<sup>th</sup> January 2020 it must follow that from that point there was no impediment to her presenting a claim.
  9. Whilst the question of what is a reasonable time must be decided in the particular circumstances of the individual case I am required to take into account the primary time limit and the public interest in claims being brought promptly, and the fact that once the impediment to bringing a claim is removed the claimant can reasonably be expected to act promptly. In this case even if the claimant had had the benefit of the extension of time provided by entering into ACAS early conciliation within the primary limitation period (which she does not) she would still have only had until 7<sup>th</sup> February 2020 to present her claim. In my judgement to delay for a further two months after entering into early conciliation means that the claim was not presented within a reasonable period following the expiry of the primary limitation period.
  10. It follows that as the claim is out of time I am bound to dismiss it.

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**EMPLOYMENT JUDGE CADNEY**

**Dated: 5th November 20**

