



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Susan Dinley  
**Respondent:** Godinton Academy Trust

**Before:** EMPLOYMENT JUDGE CORRIGAN  
Sitting Alone

## Representation

**Claimant:** In person  
**Respondent:** Miss J Talbot, Headteacher

**CVP HEARING ASHFORD**                      **On:**                      **9 November 2020**

## JUDGMENT

*This was a remote hearing which was not objected to by the parties. The form of remote hearing was V-CVP. A face to face hearing was not held because it was not practicable. I was referred to bundles prepared by each side.*

1. The Claimant's claim is out of time and therefore is dismissed.

## REASONS

1. This matter had been listed for a final hearing. The Respondent had difficulty connecting to CVP. The Tribunal clerk sought to assist Miss Talbot to connect and Miss Talbot attempted to connect using a number of different devices but unfortunately was unable to connect by video. She was however able to connect by telephone. Miss Talbot agreed to the matter continuing with her being connected by telephone whilst we discussed the issues.
2. The parties confirmed that the claim is unlawful deduction of wages and/or breach of contract based on the Claimant's terms and conditions rather than a claim for accrued statutory holiday pay.
3. The Claimant's employment ended on 31 May 2019 and she received her final pay on that date. The dispute relates to that final payment. A claim for

unlawful deduction of wages should be presented within three months beginning with the date of the deduction (s23 (2) Employment Rights Act 1996). A breach of contract claim should be presented within three months beginning with the effective date of termination of the employment contract (article 7 Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994). Both deadlines can be extended if the employee contacts ACAS and commences early conciliation within that period.

4. The Claimant agreed that she contacted ACAS to commence early conciliation on the Tribunal deadline for both claims of 30 August 2019. ACAS issued a certificate dated 30 September 2019, giving an extended deadline of 30 October 2019 (s207B Employment Rights Act 1996, article 8B Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994).
5. The Claimant's position was that ACAS had told her that the certificate above was issued prematurely and that in fact early conciliation continued after 30 September 2019 with conversations between ACAS and the Respondent on 3 October 2019 and ACAS and the Claimant on 30 October 2019. I therefore gave the Claimant time to contact ACAS to ask if they would issue a later certificate to reflect this. The Claimant spoke with ACAS and confirmed that they said it was not "up to them to extend the certificate". She said they told her it was up to the Judge, which I understood to be reference to the power to extend time where it was not reasonably practicable to submit in time (as set out below).
6. The position was therefore that the certificate was dated 30 September 2019 giving the extended deadline of 30 October 2019. The Claimant agreed she submitted her claim on 1 November 2019. This was therefore out of time unless it was not reasonably practicable for the Claimant to submit the claim in time and she submitted within such further period as I considered reasonable (s23(4) Employment Rights Act 1996, article 7 (c) Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994).
7. It is unfortunate this had not previously been identified as an issue, however as it is a matter of jurisdiction it was an issue I nevertheless was obliged to consider. I therefore considered this first as a preliminary issue. Miss Talbot confirmed she was content to proceed with the telephone connection for this issue.
8. The Claimant gave evidence and I also considered documents within both party's bundles. I found the following facts.
9. The Claimant began taking issue with her final pay entitlement and presenting her own calculation to the school by July 2019. She contacted

ACAS on the last day of the unextended Tribunal deadline. The time on the ACAS notification is 4.50pm (p67 Claimant's electronic bundle).

10. The response from ACAS dated 6 September 2019 referred the Claimant to their booklet on early conciliation. The Claimant said in evidence that this stated that there was a minimum one calendar month from date of receipt of the certificate to bring a claim in Tribunal and that some cases might have longer than one month. It said that working out the exact deadline can be complicated and that a claimant might want to get legal advice. I find the Claimant was therefore on notice that she might well only have one month following the certificate to issue her claim.
11. The certificate was issued on 30 September 2019 without any conciliation taking place. I note that under the early conciliation process at that time ACAS had up to one month to attempt to resolve the dispute, which could be extended if there was a reasonable prospect of achieving a settlement. The date on the certificate therefore likely reflects the end of that one month period.
12. The email from ACAS accompanying the certificate informed the Claimant that ACAS cannot advise about when a Tribunal claim should be submitted and that it was the Claimant's responsibility to submit her claim on time (p72 Claimant's electronic bundle).
13. The Claimant was surprised to receive the certificate without there having been any conciliation and so she rang ACAS. She was told to hold fire for a few weeks and she would be contacted. She says she continued to ring and kept being told someone would get back to her, although she also went on a cruise during this period.
14. She finally spoke with her conciliator towards the end of the afternoon on the 30 October 2019, knowing that was the last day to put in a claim. She says in that conversation he acknowledged that the certificate of 30 September 2019 was issued prematurely. I do not find this credible as the certificate was likely issued at the end of the usual one month for ACAS to attempt conciliation. In addition, in the conversation with the Respondent on 3 October 2019 (mentioned below) ACAS confirmed the date of the certificate was 30 September 2019 and did not say the certificate was issued prematurely. The Claimant was also given an opportunity to explore with ACAS the possibility of rectifying this today and ACAS have indicated they cannot do so.
15. The Claimant says the ACAS conciliator then told her there was no specific timeframe and that she should put the claim in as soon as possible. He did not say the deadline was that day and he indicated there was some leeway.
16. The Claimant then spent some time going over her calculation and submitted on 1 November 2019.

17. Although the Claimant worked as a HR Manager herself she has not had any prior experience of ACAS or Tribunal claims, though she is able to do her own online research.
18. She accepts she left contacting ACAS until the last day in August and also left submitting the claim to the deadline because she really wanted to resolve the matter by early conciliation rather than bring a claim.
19. The Respondent had not had the same difficulty getting a call back from ACAS.
20. ACAS did have a conversation with the Respondent about conciliation on 3 October 2019. He opened that call by explaining the role of ACAS and that they are not representatives or legal experts. He confirmed that the certificate went to the Claimant on 30 September 2019 and said to the Respondent (incorrectly) that she had until 29 October to decide whether to bring a claim. As referred to above, he did not say that the certificate was sent prematurely (p125 Respondent's electronic bundle).
21. The Claimant issued her claim on 1 November 2019. In box 15 of her form she said the following:

“Unfortunately, due to ACAS being inundated with cases at the moment, my conciliator had not had the opportunity to contact either myself or my ex-employer between the time of my notification to them (30/8/19) and the issue of the Early Conciliation Certificate on 30/09/2019.

Upon contacting ACAS after receipt of the certificate I was advised that my employer hadn't been contacted yet. I was asked to wait a few weeks before contacting them again. I was told I had a month from issue of certificate to lodge a claim.

As I still had not been contacted by the [30 October] 2019, I telephoned ACAS again. I was told that they had been in contact with my ex-employer but apologised for not contacting me to discuss their response.

As I was now up to the time limit to make a claim, I am submitting this now but would have liked to have had some form of conciliation...”

She did not mention there that ACAS said she had leeway with the claim and it evidences her knowledge of the one month deadline from 30 September 2019.
22. The Respondent had a further call with ACAS on 14 November 2019. In that the Respondent asked if the Claimant had to submit her paperwork to the Tribunal by 30 October 2019. Miss Talbot recorded the reply that he said to her that there was no specific timeframe and that a bit of time beyond this date is acceptable especially as there had been a delay in ACAS speaking to the Claimant (p126 Respondent's electronic bundle). This supports the Claimant's account of what she was told on 30 October 2019.

23. Turning to my conclusions. I had to consider whether it was reasonably practicable for the Claimant to submit her claim prior to 30 October 2019. It is clear she knew the deadline was 30 October 2019 some time before. She made that clear in her claim form.
24. She had the ACAS certificate dated 30 September 2019 and had already prepared several versions of her calculations and sent them to the Respondent. The reality is that whilst the claim needs to be submitted prior to the deadline it is not vital that the calculation is completely accurate. It was reasonably practicable for the Claimant to submit her claim at some point between receipt of the certificate and the 30 October 2019.
25. The reason she did not is because she preferred to resolve the matter by early conciliation. It was nevertheless reasonably practicable for her to have submitted her claim sooner to preserve her position and to continue to conciliate with ACAS.
26. Even if ACAS said to her that she had more time on 30 October 2019, taking that together with other ACAS communications it is clear that they stated that they cannot advise about deadlines and that submitting her claim in time remains her responsibility.
27. She knew approaching that call that she was at the deadline and she could have prepared her claim ready to submit on that day.
28. The claim is therefore out of time and I do not have jurisdiction to hear it.

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**Employment Judge Corrigan**  
London South  
11 November 2020

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