



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4103800/2020**

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**Held in Glasgow on 30 November 2020**

**Employment Judge A Jones**

10 **Mr T Bidwell**

**Claimant  
In Person**

15 **Cuckoos69**

**Respondent**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The Tribunal does not have jurisdiction to consider the claimant's claim.

**REASONS**

**Introduction**

1. The claimant lodged a claim on 20 July 2020 claiming that his former employer had failed to pay him a tax rebate of around £446. The claimant's  
25 employment with the respondent had ended on 31 December 2019.

2. A hearing took place on the cloud video platform. There was some confusion in the notice of hearing which had been sent to the claimant. The initial notice of hearing had indicated that the hearing was a preliminary one to consider the issue of time bar and whether the Tribunal had jurisdiction to consider the  
30 claimant's claim. However, subsequent notices of hearing which set out the details of the hearing indicated that the hearing was a final hearing.

**Evidence**

3. The claimant, who appeared in person, indicated that he understood that the hearing was to deal with the entire matter. However, on questioning by the Tribunal the claimant was aware that there was an issue regarding the timing of the claim and whether it had been lodged in time. I explained that unless the Tribunal had jurisdiction to consider his claim, it could not go on to consider to whether his claim had merit. Therefore, evidence was taken from the claimant in relation to the circumstances surrounding the claim. The respondent had not lodged a response to the claim and had not taken any part in the proceedings.
4. The claimant said that he had been paid in cash by the respondent. He did not receive payslips. His employment ended on 31 December 2019. When he was arranging his tax affairs towards the end of the tax year, he discovered that he ought to have received a tax rebate. The claimant contacted HMRC and was advised that this would have been paid to him by his employer.
5. The claimant then sought to contact his former employer. He messaged him through Facebook, which was the only method of contacting him he had. The claimant provided copies of an exchange which was dated 9 April 2020. The claimant also provided a copy of payslips received by him. The claimant continued to correspond with his former employer until 30 April. The claimant then said that he believed that his former employer had blocked him from contacting him.
6. The claimant sought advice from HMRC, which he found difficult due to the pandemic. He did manage to speak to someone on one occasion and was advised that he would have to seek to recover the sums through the Employment Tribunal. He believed that this was around June 2020. He had also spoken to the CAB, although he believed that he was given incorrect advice by them.

7. Part II of the Employment Rights Act 1996 ('ERA') deals with circumstances in which claims of unlawful deduction from wages are brought. Section 23(2) provides that :-

5 *"An employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –*

*(a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made."*

- 10 8. Section 23(4) goes on to provide that:

15 *"Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to have been presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable."*

9. The tax rebate appeared to have been deducted from the claimant's pay in a payslip on 8 November 2019. The claimant did not receive the payslip at that time, so was not aware that this payment ought to have been made to him at this stage. He did receive the payslip soon after his employment terminated.

- 20 10. At the very latest, the claimant became aware that he ought to have received a tax rebate in April 2019. He was also aware at this time that the payment ought to have been made by his employer. He did not raised proceedings until 20 July 2020. The Tribunal has sympathy with the position of the claimant in that it appreciates that it would have been difficult to obtain advice between  
25 April and July due to the pandemic. However, the Tribunal is of the view that even if it had not been reasonably practicable for the claimant to have lodged a claim within three months of the end of his employment, that is by 30 March, then the period between the expiry of that time limit and the lodging by the claimant of his claim was not reasonable.

11. Lady Smith in **Asda Stores Ltd v Kauser EAT 0165/07** sought to define what was meant by 'not reasonably practicable' in the following words: 'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.
12. The Tribunal concluded that while it may not have been reasonably practicable for the claimant to have lodged a claim by 30 March, the further delay in raising proceedings was not reasonable. It would have been reasonable of the claimant to have raised proceedings soon after he realised his former employer had disengaged from any contact with him, which was at the end of April 2020.
13. In these circumstances, the Tribunal does not have jurisdiction to consider the claimant's claim.
- 15 Employment Judge: Amanda Jones  
Date of Judgment: 04 December 2020  
Entered in register: 15 December 2020  
and copied to parties