



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** BY CVP VIDEO LINK  
**BEFORE:** EMPLOYMENT JUDGE BALOGUN  
**BETWEEN:**  
24 BRITISH MAINTENANCE LIMITED

**Claimant**

And

**THE COMMISSIONERS FOR HM REVENUE AND CUSTOMS**

**Respondent**

**ON:** 4 February 2021

**Appearances:**

**For the Claimant: Mr D Smith, Director**  
**For the Respondent: Mr Moretto, Counsel**

## **JUDGMENT ON PRELIMINARY ISSUE**

The appeal against the respondent's Notice of Underpayment issued under the National Minimum Wage Act 1998 is struck out for want of jurisdiction as it was presented out of time.

## **REASONS**

1. This was a hearing was to consider whether the claimant's appeal against the respondent's Notice of Underpayment (the "Notice") pursuant to section 19 of the National Minimum Wage Act 1998 ( the "Act") should be struck out on grounds that it was presented out of time.
2. Section 19C(3) of the Act requires an appeal against the Notice to be made before the end of a specified 28 day period. The 28 day period means 28 days beginning with the date of service of the Notice (Section 19(8))

3. The Notice was dated 5 September 2019 and was served on the claimant on 6 September 2019. That is evidenced by the claimant's signed post office receipt.
4. The Notice provides that the appeal must be lodged by 6 October 2019. Although strictly speaking, 28 days from the date of service is 4 October 2019, the claimant was not prejudiced by having the extra 2 days.
5. The claimant's appeal was received by the Tribunal on 9 October 2019, as evidenced by the Tribunal date stamp. The claimant asserted that notwithstanding the date stamp, he in fact presented his appeal earlier and that he had email evidence to prove this. As the said email was not before the Tribunal, the hearing was adjourned briefly so that it could be emailed to counsel for the respondent and the Tribunal. Unfortunately, the email did not assist the claimant for 3 reasons: first, it was an email to the HMRC not the Tribunal, second, it was dated 7 October 2019, after the time limit had expired, and third, the opening line says: "*Just to inform you I have filed for appeal by post today*". That is consistent with the Tribunal receipt date of 9 October 2019. I therefore find that the Tribunal date stamp accurately reflects the date of receipt and that the appeal was presented out of time.
6. The EAT decision: Bajracharaya t/a Newari Handicraft v The Commissioner for HM Revenue and Customs UKEATPA/0796/17/BA makes clear that the Tribunal's general powers to extend time under Schedule 1, Rule 5 of the Employment Tribunal Procedural Rules 2013 do not apply to section 19C of the Act. The Tribunal therefore has no power to consider an appeal presented out of time.
7. In the circumstances, the Tribunal has no jurisdiction to consider this appeal and it is accordingly struck out.

Employment Judge Balogun  
Date: 4 February 2021