



# EMPLOYMENT TRIBUNALS

**Between:**  
Mrs M Roper  
**Claimant**

**and** Mellors Catering Services Limited  
**Respondent**

**Heard at:** Leeds **on:** 24 February 2022

**Before: Employment Judge Cox**

**Representation:**

Claimant: In person  
Respondent: Did not attend – written submissions only

## RESERVED JUDGMENT AFTER PRELIMINARY HEARING

The claim is dismissed, having been presented out of time.

### REASONS

1. The Respondent provides catering services to schools. The Claimant works for the Respondent as a general kitchen assistant at Rawmarsh Community School. After a period of early conciliation through ACAS from 9 to 15 June 2021, she presented a claim to the Tribunal on 18 June 2021 alleging that the Respondent had failed to pay her the correct amount of holiday pay during a period from March to September 2020.
2. The Tribunal has to decide as a preliminary point whether it has power to deal with the claim in the light of the date on which it was presented and the time limits for such claims.

3. The time limit for presenting a claim of underpayment of holiday pay is slightly different according to how the claim is categorised. If it is viewed as a claim under the Working Time Regulations 1998 (WTR) that an employer had failed to pay a worker any part of the amount due to her for a period of leave under Regulation 16(1) WTR, the claim must be made before the end of the period of three months beginning with the date on which it is alleged the payment should have been made (regulation 30(2)(a)). The claim can proceed, however, if the Tribunal is satisfied that it was not reasonably practicable for the worker to present the claim by that date and she has presented it within a further period that the Tribunal considers reasonable (Regulation 30(2)(b)).
4. If the claim is viewed as a claim that the employer has made an unauthorised deduction from the worker's wages (which includes holiday pay), the claim must be made before the end of the period of three months beginning with the date of payment of the underpayment or, if there is a series of underpayments, before the end of the period of three months beginning with the last underpayment in the series (Section 23(3) of the Employment Rights Act 1996 – the ERA). If the Tribunal is satisfied that it was not reasonably practicable for the worker to present the claim by that date, the claim can still proceed if the Tribunal accepts that it was made within a further period the Tribunal considers reasonable (Section 23(4) ERA).
5. In either case, the legislation extends the time limit for bringing a claim to allow for the period of early conciliation through ACAS, but only if the worker contacted ACAS to start the early conciliation process within the basic three month time limit (see Regulation 30B WTR and Section 207B ERA).
6. At the Preliminary Hearing, the Claimant confirmed that the dates on which she believed she had been underpaid holiday pay were 1 and 29 May, 24 June, 24 July and 21 August 2020. For the purposes of establishing whether the claim has been presented in time, the Tribunal views this as an alleged series of unauthorised deductions from wages ending with 21 August 2020. As she did not contact ACAS under the early conciliation procedure until 9 June 2021, the period of early conciliation does not extend the time limit for her claim. Her claim should have been presented by 20 November 2020. It was not in fact made until nearly seven months later.
7. It is for the Claimant to establish that it was not reasonably feasible for her to present her claim within the usual three-month time limit. The fact that a Claimant does not know of her right to bring a claim or the time limit for bringing it does not mean it was not reasonably feasible for her to present the claim, unless it was reasonable for not to know about the right and the time limit. The Tribunal takes judicial notice of the fact that information about how to enforce the right to holiday pay is readily available on the internet, including on

Government and ACAS websites that are authoritative, free and easy to access.

8. On 21 September 2021, the Tribunal directed the Claimant to provide a statement setting out her evidence on why her claim was not presented earlier 14 days before the Preliminary Hearing. On 26 November 2021 that direction was varied to require the Claimant to provide her statement 28 days in advance of the Hearing. The Claimant did not submit a statement but she and various of her fellow Claimants did send in a letter in which they said that they were unaware of their rights “at this time”. They had discovered that an ex-colleague had put a claim in against the Respondent and been paid out, but she had been told not to disclose this to anyone else. At the Preliminary Hearing, the Claimant gave oral evidence about the circumstances surrounding her claim. On the basis of that letter and oral evidence, the Tribunal makes the following findings.
9. When the Claimant was on furlough leave, she did not think that what she was being paid was right. She had not been receiving wage slips whilst she was on furlough because usually her manager printed them out for her and gave them to her at work. When she returned to work at the beginning of the autumn term in September 2020, the Claimant and her colleagues discussed the matter and agreed that their pay over the furlough period had not been right. They raised the issue with their manager, Ms Batty, who in turn raised it with her manager, Ms Lax. Ms Lax eventually got back to Ms Batty and confirmed that the payments had been correct, so the Claimant and her colleagues accepted this. Later that term, one of the Claimant’s colleagues found out that a former colleague of theirs, who had left the company in September, had made a claim for holiday pay and received a payout. They raised the matter again with Ms Batty and asked for copies of their wage slips but never received them.
10. The Claimant and her colleagues all agreed that they had not been paid correctly and eventually contacted ACAS. ACAS were contacted under the early conciliation procedure on 9 June 2021 and the Claimant and her colleagues brought their claims together on one claim form on 18 June 2021.
11. Based on these findings, the Tribunal does not accept that it was not reasonably feasible for the Claimant to have presented a claim within the three-month time limit. At some point during the autumn term 2020, and within the time limit, she and her colleagues all believed that their pay had not been right during furlough and she also knew that a former colleague had made a Tribunal claim and received a payout from the Respondent. Although the Claimant had been told by a senior manager that the payments she had received were correct, she took no steps to check whether this was in fact the case nor how to enforce her rights if she had been underpaid. She could reasonably have been expected to take some steps, given the amount of

information available on the internet, which she could have sought help to access if necessary, and the free advice, including advice about time limits, that would have been available from ACAS.

12. As the Tribunal does not accept that it was not reasonably practicable for the Claimant to present her claim in time, the claim is dismissed.

Employment Judge Cox  
Date: 25 February 2022