



# EMPLOYMENT TRIBUNALS

**Between:**

Mrs S Fletcher  
**Claimant**

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

**Heard at:** Leeds **on:** 15 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 catering assistant at Meadowhead School. After a period of early conciliation through ACAS from 3 to 12 July 2021, she presented a claim to the Tribunal on 16 July 2021 alleging that the Respondent had failed to pay her the correct amount of holiday pay. At the Preliminary Hearing, she confirmed that she believed she had been underpaid holiday pay during a period of furlough leave from April to the first or second week of 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 three month time limit (see Regulation 30B WTR and Section 207B ERA).
6. There is nothing in the claim form to indicate the dates of the holidays that the Claimant says were underpaid, nor the dates on which the Claimant received her alleged underpayments of holiday pay, and she did not provide that detail in her oral evidence to the Tribunal. Nevertheless, for the purposes of establishing whether the claim has been presented in time, the Tribunal assumes in the Claimant's favour that her claim is of a series of unauthorised deductions from wages and that she did not receive the final instalment of underpaid holiday pay until the Respondent's pay date on 18 September 2020. As she did not contact ACAS under the early conciliation procedure until 3 July 2021, the period of early conciliation cannot extend the time limit for her claim. She should have presented her claim by 17 December 2020. It was not in fact made until 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 her lack of her awareness of her right and the time limit was reasonable. 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, for example, 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. She did, however, attend the Preliminary Hearing and the Tribunal invited her to give whatever evidence she wanted to give on the circumstances surrounding the timing of her claim. The Tribunal makes the following findings based on that evidence.
9. On her return to work after her furlough leave ended in September 2020, the Claimant discussed with her colleagues what they had been paid while on furlough. They agreed that the amount of holiday pay was wrong. On a date the Claimant could not recall, they eventually contacted their union, UNISON. The union took the issue up with the Respondent but was a long time coming back with the news that the Respondent did not intend to pay. In around May 2021, the Claimant found out from her colleagues and manager that the deadline for a Tribunal claim had been December. The Claimant was unable to recall why she did not bring a claim at that point.
10. In the light of all these findings, the Tribunal does not accept that it was not reasonably feasible for the Claimant to present her claim in time. Although she believed in September 2020 that she had not been paid the correct holiday pay, she took no steps to find out about her rights or how to enforce them. She eventually approached her union, but when it informed her that it was unable to get the Respondent's agreement to pay, she still took no steps to find out about her rights. The union should have informed her about the deadline for bringing a claim to the Tribunal, since it would have been well aware of the importance of time limits. Even if it did not do so, the Claimant cannot rely on a failing by her advisors to establish that it was not reasonably practicable for her to bring a claim in time.
11. Even if the Tribunal had accepted that it was not reasonably practicable for the Claimant to take action until someone informed her of the time limit for a claim in May 2021, it would not have accepted that the claim was presented within a

further reasonable period. The Claimant did not approach ACAS under the early conciliation procedure until 3 July 2021, over a month later.

12. The claim is therefore dismissed.

Employment Judge Cox  
Date: 25 February 2022