



EMPLOYMENT TRIBUNALS

Claimant: Mr H Wijker

Respondent: «resp_name»

Heard at: Cardiff (In person)

On: 25 January 2022

Before: Employment Judge G Cawthray

Representation

Claimant: In person

Respondent: Not in attendance

JUDGMENT having been sent to the parties on 27 January 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues

1. The Claimant has brought an unlawful deduction from wages claim. The Respondent did not submit a response. Prior to the hearing the Tribunal has notified the Claimant that it was not appropriate to make a decision on the papers alone because there appeared to be time limit issues.
2. I explained to the Claimant that the first issues that needed considering related to time.
3. The Claimant accepted that he had not presented his claim in the primary time limit, therefore the issues I had to determine in relation to time limit are:
 - 1) Was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 2) If it was not reasonably practicable for the claim to be made within the time limit, was it made within a reasonable period?

Evidence

4. The Claimant had provided a witness statement and gave oral evidence, followed by submissions. The Claimant provided a number of documents, including a timeline.

Facts

5. The Claimant was employed as a Cleaner and as set out in the ET1, he worked for the Respondent between October 2020 and left employment on 5 May 2021.
6. The Claimant is dyslexic.
7. On 6 May 2021, with the assistance of his mother, the Claimant emailed Pinel Rawal of the Respondent and explained he had not received all his pay slips, queried how much annual leave he had accumulated, queried payment for 29 January 2021 (when he attended a funeral) and also asked for confirmation of payment made in December 2020 when he was self-isolating.
8. The Claimant had not raised these queries whilst he remained employed, and they came to light on him checking matters were in order when he resigned.
9. Pinel Rawal replied on the same day to say she was processing payroll and would look into the queries.
10. The Claimant, with assistance from his mother, sent a further email to Pinel Rawal on 28 May 2021. In the email he stated that he had not received payment for the last 3 days at work, which included a bank holiday. He also explained he was still waiting on a response to the queries he had previously raised.
11. On 10 June 2021 the Claimant text Pinel Rawal. I was not provided with a copy of the text but accept the Claimant's evidence that the text asked if she had received his emails.
12. On 19 July 2021 the Claimant, with assistance from his mother, wrote a letter to the HR/Wages department. It was hoped that the addressee would help Pinel Rawal identify the nature of the queries. The letter clearly and succinctly set out that the Claimant considered he had not received the following:
 - Pay for his last 3 working days
 - Holiday pay for 29 January 2021
 - Outstanding holiday pay (noting save for 29 January 2021 the last leave he took was pre October 2020)
 - Payment for self-isolation period from 16 December.
13. The Respondent did not reply to the Claimant, save for the email on 6 May 2021.
14. The Claimant was paid weekly, in arrears.
15. The final wages were due to be paid on 14 May 2021.
16. The ordinary time limit would expire **13 August**.
17. The Claimant undertook research online and contacted ACAS on 27 July 2021. The Claimant, in oral evidence, explained that ACAS told them the clock would be paused but didn't remember ACAS saying anything about an extra month.
18. ACAS EC ended 18 August 2021.
19. The Claimant had made several requests for information from the Respondent, and no information was provided.
20. The Claimant, and his mother worked at reviewing the papers they had and piecing together missing information. This took them longer than

expected. There was a lack information, his mother had long covid and the claimant worked full time. The Claimant's grandfather is terminally ill, but no dates of the diagnosis were provided.

21. The claim should have been submitted by 18 September 2021 - a month after ACAS EC ended.
22. The Claimant submitted his ET1 on 18 October 2021.

Law

Time limits

23. An unauthorised deduction from wages claim must be brought within 3 months beginning with the date of payment for the wages from which the deduction was made as set out in section 23 of the Employment Rights Act 1996.
24. Section 23 of the Employment Rights Act sets out the approach to time limits, as below:

"23 Complaints to employment tribunals.

(1) A worker may present a complaint to an employment tribunal—

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

(b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),

(c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or

(d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

(2) Subject to subsection (4), 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, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be 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.

(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

(4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).

(5) No complaint shall be presented under this section in respect of any deduction made in contravention of section 86 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deduction of political fund contribution where certificate of exemption or objection has been given)."

25. If the complaint is about a series of deductions or payment, the three-month time limit starts to run from the date of the last deduction or payment in the series.
26. For a number of deductions to be a series there has to be sufficient frequency of repetition, that is a sufficient factual and temporal link. A gap of more than three months between any two deductions will break the "series" of deductions.
27. The time for presenting a claim is extended for the duration of ACAS Early Conciliation.
28. Time may be extended if it was not reasonably practicable to present the claim in time and it was presented within a reasonable time thereafter.
29. Time limits should be adhered to strictly (relevant case being *Robertson v Bexley Community Centre 2003 EWCA CIV 576.*)
30. The test for extending time has two limbs to it, both of which must be satisfied before a Tribunal will extend time:
 - first the Claimant must satisfy the Tribunal that it was not reasonably practicable for the complaint to be presented before the end of the 3 month primary time limit.

- If the Claimant clears that first hurdle, he must also show that the time which elapsed after the expiry of the 3 month time limit before the claim was in fact presented was itself a 'reasonable' period.
- 31. The burden of proof is upon the claimant to establish that it was not reasonably practicable for him to submit his claim within the extended time limit. As set out in *Porter v Bandridge Ltd 1978 ICR 943 CA* “[there is] a duty upon him to show precisely why it was that he did not present his complaint”.
- 32. What is reasonably practicable is a question of fact - “*The test is empirical and involves no legal concept*” (*Wall’s Meat Co Ltd v Khan 1979 ICR 52, CA*) *Shaw LJ. 16*. It is not a question of reasonableness but whether it was impracticable to present a claim in time (*Trusthouse Forte (UK) Ltd v Halstead EAT 213/86, EAT*).
- 33. Even if the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the 3 month time limit, if the period of time which elapsed after the expiry of the time limit was longer than was 'reasonable' in the circumstances of the case, no extension of time will be granted.
- 34. In considering whether a claim was submitted within a further reasonable time means a Tribunal must consider all the circumstances of the particular case, including what the claimant did; what he or she knew, or reasonably ought to have known, about time limits; and why it was that the further delay occurred.
- 35. I considered the principles derived from case law.

Conclusions

- 36. The Claimant agreed that his claims had been presented outside the time limit.
- 37. The first issue to be determined therefore was whether or not it was reasonably practicable for the Claimant to have submitted his claims within the relevant 3-month time limit. If I were to decide that it was not reasonably practicable, then I would have to consider the next stage of the test, including in the statutory provisions referred to above relating to time limits.
- 38. The Claimant knew there may be an issue in relation to his annual leave and statutory sick pay shortly after his employment ended and contacted the Respondent on 6 May 2021, the day after his employment ended, raising queries regarding pay slips and outstanding leave. The email makes specific reference to leave taken on 29 January 2021 relating to a funeral and isolation in December 2020.
- 39. The Claimant contacted the Respondent further, on 28 May 2021 stating that he hadn't been paid for the last 3 days he worked and also stating he had not heard back in relation to his queries about holiday pay and SSP.
- 40. On 19 July 2021 the Claimant wrote a clear letter, with assistance, to R's HR/wages dept setting out clear summary of the of issues, and requesting a response by 22 July 2021.
- 41. I accept the Claimant was trying to seek information and resolve the matter, I also accept that the Claimant was trying to piece together information and that this was a difficult task due to various factors - the lack of information, his mother had been unwell and that he had started a new job, as set out in findings of fact.

42. However, by 19 July 2021 the C clearly understood the matters that form the basis of his claim. The letter to the Respondent was clear. It is important to note that the ET1, submitted on 18 October 2021, contained no further detail than the letter dated 19 July 2021. Indeed, the letter is clearer than section 8.2 of the ET1.
43. There was no evidence put to me that the Claimant was ignorant of the time limits – the Claimant had researched and contacted ACAS. There was no evidence or argument that the Claimant had been given any misleading information.
44. There was no clear explanation of why the Claimant could not present his claim by 18 September 2021 – the extended ACAS deadline, especially considering the claim as presented was no more detailed than the letter dated 19 July 2021.
45. Although I appreciate this was a difficult situation for the Claimant and he was seeking to resolve matters and raised issues with the Respondent in the first instance, the law is clear - time limits must be strictly adhered to.
46. I took into account that the Claimant had, with assistance from his mother, identified concerns and complaints at an early stage and conducted online research. The case law sets out that he was under an obligation to investigate his legal rights and obligations in respect of the time limits which apply to claims in an Employment Tribunal.
47. Accordingly, I concluded that it was reasonably practicable for the Claimant to bring his claims in time.
48. My conclusion is therefore that the claims against the Respondents had not been submitted within the 3-month time limit as extended by ACAS and that it had been reasonably practicable for the Claimant to have complied with and submitted his claim form within the requisite period.
49. It is not necessary for me to consider the second limb of the test.

Employment Judge G Cawthray

Date 13 March 2022

REASONS SENT TO THE PARTIES ON 21 March 2022

FOR THE TRIBUNAL OFFICE Mr N Roche