



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Amarshi

**Respondent:** Red Hair and Beauty Limited

**Heard at:** Watford (by CVP)

**On:** 31 March 2022

**Before:** Employment Judge Maxwell

## Appearances

For the claimant: in person (assisted by her son)

For the respondent: no attendance

## JUDGMENT

1. The Claimant's unfair dismissal claim is dismissed as it was presented outwith the period provided for in section 111(2)(b) of the Employment Rights Act 1996 and the Tribunal has not jurisdiction.
2. The Claimant's unlawful deductions claim is dismissed as it was presented outwith the period provided for in section 23(2) or (3) of the Employment Rights Act 1996 and the Tribunal has not jurisdiction.
3. Pursuant to section 164(1)(c) of the Employment Rights Act 1996, the Claimant had 6 months in which to refer her complaint to the Employment Tribunal, which she did and the Tribunal does have jurisdiction to determine this complaint.

## REASONS

### Background

4. The Claimant contacted ACAS on 27 November 2020, she received a certificate on 1 December 2020 and presented a claim on 3 December 2020, complaining of:
  - 4.1 Unfair dismissal;
  - 4.2 Arrears of pay;
  - 4.3 Redundancy pay.

5. The Claimant says she was not correctly paid at the rate of 80% from 20 March to 30 June 2020 and was then dismissed, without a redundancy payment.
6. The Respondent entered a response on 7 January 2021, denying the claim. This included an assertion that the Claimant had presented her claim out of time and should be struck out. No other grounds of resistance were provided.
7. By an order of 18 February 2021, the Respondent was required to send its response to the substantive claim. This was done in grounds attached to a letter of 8 March 2021, which contended the Claimant was correctly paid during furlough and when she was invited back to work, she refused. When this refusal was maintained the Claimant was dismissed for gross misconduct.
8. On 15 April 2021, EJ Lewis issued an unless order requiring the Respondent to set out its defence to the claim. The most likely explanation for this is an administrative error due to lockdown and remote working.
9. The Respondent sought a set aside of the unless order. Whilst this application was not responded to, the relevant order was ineffective since the Respondent had already done what was required.
10. By a letter of 5 December 2021, EJ Alliot ordered:
  - 10.1 a preliminary hearing to determine, whether the Tribunal has jurisdiction to hear the claims as it appears to have been brought out of time;
  - 10.2 the Claimant to provide a witness statement explaining why she had not brought her claims in time, why she says it was not reasonably practicable to have done so and why they were brought within a reasonable time thereafter.
11. By a letter of 17 March 2022, the Respondent's representative advised the Company had ceased trading, would not attend the hearing but maintained its defence.

## **Facts**

12. The Claimant was employed by the Respondent business from 1 July 2013.
13. As with many other employees during this period, the Claimant was placed on furlough.
14. In terms of the payments she received, these were:
  - 14.1 £1,000 on 27 May 2020;
  - 14.2 £833 on 27 June 2020;
  - 14.3 £400 on 30 July 2020;
  - 14.4 and she says they amounted to an underpayment.
15. The Claimant was dismissed by receipt of her P45. Although this included a termination date of 30 June 2020 she had not previously been told that she was

dismissed. As the P45 was not received until 28 July 2020, that was the date on which her employment terminated.

16. In terms of why she did not bring a claim sooner, the Claimant provided a statement attached to an email of 27 December 2021, which I accepted as accurate and this provided:

**Thank you for your letter, in which Judge Alliot directed me to send a witness statement by 29 December explaining why I did not bring my claim in time, why it was not reasonably practicable to have brought them in time and why I brought the claim in a reasonable time thereafter.**

**My employment was terminated while I was on furlough and without adequate notice. I worked there for 7 years and received my P45 by post on the 20th July 2020, but the end of employment date was marked as 30 June. Additionally, I did not receive any written notification of the reason for my termination at the time (let alone a valid one). The twenty-day delay in receiving my P45, along with not being given a reason for my termination made it more difficult for me to consider next steps.**

**I was also not given the statutory minimum notice period for my dismissal - being immediately out of work without any notice period or redundancy pay, meant my focus during this time had to be on the immediate need to secure my short-term finances (such as applying for universal credit, applying for council tax reductions, applying for other work, etc.), rather than on filing a complaint against my former employer.**

**Additionally, my previous furlough wages (before she terminated my employment) were also often sent months late. As a result I felt there was a possibility that my former employer would eventually come to an arrangement with me regarding my departure terms, albeit months late. I therefore tried to be as patient as possible in order to resolve the issues amicably. However, I submitted my claim once it became clear that my former employer was not willing to engage.**

17. In addition to the matters set out above, the Claimant was also seeking to care for her 80-year old mother.
18. The Claimant found out about how to bring a claim by “Googling” this.

## **Law**

19. In the ordinary course, a claim of unfair dismissal under the Employment Rights Act 1996 (“ERA”) must be presented within three months of the date when employment terminated. A claim of unlawful deductions must be presented within 3 months of the date of the wages which were short. A claim for redundancy pay can be presented up to 6 months after termination.
20. That time period may be extended by the operation of the ACAS EC scheme:
- 20.1 the period from the day after Day A (when the claimant contacted ACAS) and Day B (when the certificate was sent) is not counted;
- 20.2 if the time limit would otherwise expire in the period of one month following issue of the EC certificate, it is extended the end of that period.

21. Where a claim is presented outwith the primary limitation period, the Tribunal has a discretion to extend time under ERA, where:
- 21.1 it was not reasonably practicable for the claimant to have presented the claim within the 3-month period;
- 21.2 the claims was presented within a further reasonable period.
22. The onus is upon a claimant to prove that is was not “reasonably practicable” for a claim to have presented within the specified time period. This represents a high hurdle to a late claim; see **Saunders v Southend on Sea Borough Council [1984] IRLR 119 CA**, May LJ giving the judgement of the Court said:
- 22. In the end, most of the decided cases have been decisions on their own particular facts and must be regarded as such. However we think that one can say that to construe the words 'reasonably practicable' as the equivalent of 'reasonable' is to take a view too favourable to the employee. On the other hand 'reasonably practicable' means more than merely what is reasonably capable physically of being done – different, for instance, from its construction in the context of the legislation relating to factories: compare *Marshal v Gotham (1954) AC 360*. In the context in which the words are used in the 1978 Consolidation Act, however ineptly as we think, they mean something between these two. Perhaps to read the word 'practicable' as the equivalent of 'feasible' as Sir John Brightman did in *Singh's case* and to ask colloquially and untrammelled by too much legal logic – 'was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months?' – is the best approach to the correct application of the relevant subsection.**
23. A claimant will not establish that it was not reasonably practicable to bring a claim before an Employment Tribunal simply by relying upon ignorance of the right to bring such a claim, or the time in which that might be done, rather the reasonableness of such ignorance will need to be established. In **Walls Meat Company Limited v Khan [1978] IRLR 499 CA**, Lord Denning MR said:
- 15. I would venture to take the simple test given by the majority in *Dedman's [1973] IRLR 379 case*. It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time? Ignorance of his rights — or ignorance of the time limit — is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences. [...]**
24. With the passage of time the existence of Employment Tribunals and the right to bring claims of unfair dismissal and discrimination have become well known. As such, prospective claimants will in most cases struggle to persuade an Employment Tribunal that they were unaware of the right to bring a claim, and those who aware of such rights will, therefore, be on notice of the need to take advice as to how and when such a claim may be made; **see *Trevelyan (Birmingham) Limited v Norton [1991] ICR 488 EAT***:
- From the cases, it is our view that the following general principles seem to emerge. The first, as time passes, so it is likely to be much more difficult for applicants to persuade a tribunal that they had no knowledge**

**of their rights in front of industrial tribunals to bring proceedings for unfair dismissal [...] Second, that where an applicant has knowledge of his rights to claim unfair dismissal [...] then there is an obligation upon him to seek information or advice about the enforcement of those rights.**

## Conclusion

25. The Claimant contacted ACAS on 27 November 2020. With respect to her claim presented on 3 December 2020:
  - 25.1 The unfair dismissal claim was late (the primary limitation period expired on 27 October 2020 and so this was not extended by ACAS conciliation);
  - 25.2 The unlawful deductions claim was late (the primary limitation period expired on 29 October 2020 and so this was not extended by ACAS conciliation);
  - 25.3 The redundancy payment claim was in time.
26. In her argument, the Claimant placed particular emphasis upon the lack of any notice of dismissal. This meant that securing an income was her priority, which she did by means of applying for benefits and new employment. Such a circumstance is, however, far from uncommon in the case of those claiming unfair dismissal. Frequently, complaint is made by someone who was dismissed summarily and in such cases their most pressing need will, usually, be replacing their lost income and meeting outgoings. These facts do not, however, tend to demonstrate that it was not reasonably practicable to present a claim.
27. The fact the Claimant was hoping her employer would come to an agreed arrangement with her is also something she has in common with many others in similar circumstances. Few individuals want to find themselves in a court or tribunal and most would prefer to find an amicable solution. Legal proceedings are generally a last resort. Again, however, this does not lead to the conclusion that it was not reasonably practicable to contact ACAS sooner and present a claim.
28. The Claimant found out about bringing a claim by searching online. Whilst I accept that during this time it would have been difficult for her to seek advice face to face, given she had access to the internet, she could use this, as in fact she did. The real reason for the lateness of this claim appears to be the first matter she raised and that to which her son returned when making closing submissions on her behalf, which is that because she was dismissed without notice, her focus was on addressing her income.
29. Whilst the Claimant's explanation is entirely understandable, the "not reasonably practicable" test represents a high hurdle and none of these factors (separately or taken together) come close to satisfying that.
30. The Tribunal has no jurisdiction to determine the Claimant's complaints of unfair dismissal and unlawful deductions.
31. Her redundancy payment claim was presented in time and this will be determined at a final hearing.

**Case Number: 3314575/2020**

EJ Maxwell

Date: 31 March 2022

Sent to the parties on:

8/4/2022

For the Tribunal Office:

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