



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. G. Jones

**Respondent:** OEAJ Limited

**Heard on:** Video (CVP)

**On:** 6 June 2022

**Before:** Employment Judge S Evans (sitting alone)

## Representation

**Claimant:** No attendance and no representation

**Respondent:** No attendance and no representation

# JUDGMENT

The claimant's claims were presented out of time and are dismissed.

# REASONS

1. A referral for early conciliation by ACAS was made on the 1st of March 2021 and a certificate numbered R117381/21/89 was issued on 1<sup>st</sup> March 2021.
2. The claimant's ET1 was received by the Employment Tribunal on 24th March 2021. The particulars of claim attached to the ET1 stated "the role was resigned on 3/11/2020".
3. Paragraph 8.1 of the ET1 listed claims for notice pay, holiday pay, arrears of pay and "other payments". The particulars of claim detailed claims of unpaid salary and overtime, holiday pay and contractual payments in relation to fuel allowance and pension contributions. All were stated to relate to periods between July 2020 and November 2020
4. Paragraph 4 of the particulars of claim stated that the respondent delayed access to pay slips for the duration of employment until 3<sup>rd</sup> March 2021.

5. No other documents were before the tribunal for the hearing today and neither party attended the hearing. The Tribunal staff attempted to contact the claimant by telephone and left a message but no contact has been received and no explanation given for the claimant's absence from the hearing.
6. Under s.23(2) Employment Rights Act 1996, a complaint of unlawful deduction of wages shall not be considered unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made or, under s.23(3), where a complaint is brought in respect of a series of deductions, before the end of the period of three months beginning with the last deduction in the series. Under s.23(4), where the 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.
7. Under Regulation 30(2) Working Time Regulations 1998, a complaint shall not be considered unless it is presented before the end of the period of three months beginning with the date on which it is alleged that the payment should have been made or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months .
8. Under Article 7 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or, where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.
9. All of the claimant's claims fall within the provisions outlined in paragraphs 6 – 8 above. Accordingly, there were three issues for the Tribunal to determine today:
  - Were the claims brought in time?
  - If not, was it reasonably practicable for the claimant to bring the claims within the relevant time limits?
  - If not, did the claimant bring the claims within such further period as the Tribunal considers reasonable ?
10. Using the information provided in the ET1 and the attached particulars of claim, I find that the latest date on which any of the claims arose was 30<sup>th</sup> November 2020, namely the date the claimant's employment with the

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respondent ended. The primary period for commencing the claim in the Employment Tribunal therefore ended on 27<sup>th</sup> February 2021. As that date was a Saturday, the ET1 should have been received by the Tribunal no later than 26<sup>th</sup> February 2021.

11. The reference to ACAS was outside the primary period as it was not made until 1<sup>st</sup> March 2021. It therefore has no effect in extending the time limit for issue of the claim.
12. None of the claims listed in the ET1 were brought in time as the ET1 was not received until 24<sup>th</sup> March 2021.
13. The burden is then on the claimant to show that it was not reasonably practicable for the claimant to bring the claims within the relevant time limits. Apart from a reference to pay slips being delayed until 3<sup>rd</sup> March 2021, there is no information before me as to the reason why the claimant did not issue within the time limit. There is no suggestion from the claimant that he was waiting for the payslips before issuing, and he referred the matter to ACAS before they were received. I find that the reference to the delayed pay slips does not provide an explanation for the delay. The claimant has not discharged the burden of showing that it was not reasonably practicable to bring the claims within the relevant time limits.
14. As the claimant has not discharged this burden, the third issue identified above falls away.
15. The Tribunal has no jurisdiction to deal with the claims and, accordingly, they are dismissed.

Employment Judge S. Evans

Date 6<sup>th</sup> June 2022

JUDGMENT SENT TO THE PARTIES ON 9 June 2022

FOR THE TRIBUNAL OFFICE Mr N Roche