



EMPLOYMENT TRIBUNALS

Claimant: Miss E Ngimbi

Respondent: Pride Media Ltd

JUDGMENT

The Tribunal does not have jurisdiction to hear the claim as it was presented outside the 3-month time limit set out in section 23(3) of the Employment Rights Act 1996 and, it was reasonably practicable for the claim to have been presented within this statutory time limit.

REASONS

1. The Claimant attended the hearing representing herself. No one attended on behalf of the Respondent and no explanation for this non-attendance was received. The Tribunal called and emailed the Respondent but was unable to make contact.
2. The Tribunal confirmed that the Respondent had acknowledged receipt of the Notice of Hearing and so was aware of the hearing.
3. The Tribunal noted that there had already been several unsuccessful attempts to hear the case and, that most recently the Respondent had been granted a postponement of the hearing listed on 6 January 2022, due to Mr Cushnie of the Respondent suffering from Covid-19. No medical evidence was provided in support of this application at the time or afterwards.
4. The Tribunal identified that there was a jurisdictional issue regarding the claim potentially having been presented outside the statutory time limit.
5. The Tribunal concluded that it was in accordance with the overriding objective to consider this jurisdictional issue in the absence of the Respondent.
6. The parties had not produced a bundle of documents and the Claimant confirmed that she had not seen any documents or witness statements from the Respondent. The Claimant stated that she had emailed her witness statement to the Tribunal on Monday 2 May

2022. This had not made its way to the file, but the Claimant confirmed that this witness statement did not deal with the reasons why her claim had not been presented earlier.

7. The Tribunal therefore heard oral evidence from the Claimant.
8. The Claimant confirmed that the date of the last in the series of deductions from wages related to her salary payment for March 2020. This fell due on the first working day of April 2020, on or about 1 April 2020. The Claimant confirmed that no later payments were owed to her for either notice or holiday pay.
9. The Claimant explained that she had received assurances from Mr Cushnie of the Respondent that she would receive the amounts owing to her and so she waited for this to materialise. When they did not, she decided to bring a claim. She had not been aware of the requirement to commence Early Conciliation through ACAS and so this took her some time to research which is why she did not submit her EC form until 19 August 2020.
10. The Claimant confirmed ACAS had informed her that her claim might be out of time.

The Law

11. Section 23 of the Employment Rights Act 1996 states (so far as relevant):
12. *“(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*
 - (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) ...the date of payment of payment of the wages from which the deduction was made*
 - (3)references in subsection (2) to the deduction or payment are to the last deduction or payment in the series*
 - (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.”*
13. Guidance for employment tribunals on the question of time limits for protection of wages claims was provided by the EAT in *Taylorplan Services Ltd v Jackson & ors* 1996 IRLR 184, EAT. The correct approach is for the Tribunal to consider the following questions:
 - Is this a complaint relating to one deduction or a series of deductions by the employer?
 - If a series of deductions, what was the date of the last deduction?
 - Was that deduction within the period of three months prior to presentation of the claim?
 - If not, was it reasonably practicable for the complaint to have been presented within the three-month period?
 - If not, was the complaint nevertheless presented within a reasonable time?

Decision

14. The Claimant presented her claim for unlawful deductions from wages on 13 October 2020.
15. The Claimant's claim relates to a series of deductions with the last deduction having been made on the first working day of April 2020, on or about 1 April 2020.
16. The Claimant was required to commence Early Conciliation within 3 months less a day from the date of the last deduction which was on or before 30 June 2020.
17. The Claimant commenced Early Conciliation through ACAS on 19 August 2020, which was approximately 7 weeks outside the statutory time limit set out in section 23(3) of the Employment Rights Act 1996.
18. The Tribunal notes that the not reasonably practicable test is a strict one and that there are good reasons why this is so; not least the need for parties to have legal certainty. A claimant's lack of knowledge of the time limit or the requirement to commence Early Conciliation is not relevant to this test. The reasons put forward by the Claimant for the delay in commencing Early Conciliation, whilst understandable, are insufficient to satisfy the Tribunal that it was not reasonably practicable for her to do so within the three-month time limit.
19. It is therefore not necessary to consider whether the claim was presented in a further reasonable period.
20. The Tribunal does not have jurisdiction to hear the Claimant's claim and it is therefore dismissed.

**Employment Judge Rea
25 May 2022**