EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102091/2022

Held by Cloud Video Platform on 28 June 2022

Employment Judge M Robison

Mrs R Muir	**Claimant**
	Represented by
Mr R M Bertram - Thornhill	**CAB Advisor**
Queensberry Event Hire Ltd	**Respondent**
	Represented by:
	Mrs S Duncan

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

i) The respondent's name is changed to Queensberry Event Hire Ltd;

ii) The claim, although lodged out of time, was lodged within a reasonable period after it became reasonably practicable to do so;

iii) The respondent shall pay to the claimant the following sums:

a. £1,272 (gross) in respect of unpaid wages;

b. £214.88 in respect of unpaid mileage allowance.

REASONS

1. The claimant lodged a claim in the Employment Tribunal on 12 April 2022 claiming arrears of pay. The respondent entered a response resisting the claims.

2. At the final hearing, which was heard on cloud video platform, the claimant was represented by Mr R M Bertram, of Dumfries and Galloway CAB.

3. Both Mrs S Duncan and Mr W Duncan attended to represent the respondent. Following discussion, it was agreed that the respondent would be represented by Mrs Duncan, because Mr Duncan was to give evidence. The result of that however was that Mr Duncan sat with Mrs Duncan throughout the hearing, and in particular throughout the evidence of the claimant.

4. It should be noted that it was subsequently confirmed that the correct respondent is Queensberry Event Hire Ltd. The respondent's name had originally been registered as William Duncan, Queensberry Event Hire, and that was changed by agreement.

5. As well as hearing evidence from the claimant, the Tribunal heard evidence from Ms Mia Graham, a former colleague of the claimant. For the respondent, the Tribunal heard evidence from Ms N Thomson, who has replaced the claimant in the role of events co-ordinator, as well as from Mr Duncan.

6. With regard to the issues for determination, it was confirmed at the outset that this is a claim for arrears of pay only, specifically in relation to overtime and for mileage. Although both parties had referred to a number of other matters, and in particular the respondent's retrospective concerns about the claimant's performance, it was confirmed that these were not relevant to the issues for determination.

7. It was noted too that there was an issue of whether the claim was time barred, which required to be determined by the Tribunal following evidence.

8. During the hearing, reference was made to an index of productions lodged by the claimant and separately to productions lodged by the respondent, which are referred to in this judgment by page number.

9. As there was insufficient time on the day of the hearing for submissions, parties were given seven days to lodge written submissions, which have been taken into account in reaching this decision.

Findings in fact

10. On the basis of the evidence heard and the documents lodged, the Tribunal finds the following facts admitted or proved.

11. The respondent hires out marquees for weddings and events and operates a wedding venue at the Dalswinton Estate. The organisation is run principally by the company director, Mr William Duncan, with assistance from Mrs Sophie Duncan.

12. The claimant commenced employment with the respondent in or around November 2019. She was initially paid at an hourly rate.

13. From 2 March 2020, the claimant was engaged as "Queensberry Events Coordinator and Dalswinton Venue Manager". The claimant was then paid a salary of £19,500 per annum (R2). That equated to £1,625 gross per month which is an hourly rate of £9.38.

14. The claimant's terms and conditions of employment were set out as follows: annual salary based on 40 hours per week**;** 28 days holidays; overtime worked during busy period (April-October) to be reimbursed as time in lieu of payment; time in lieu not to be used between April-October and to be agreed with the company director to be reimbursed as time in lieu of payment; 45 minute unpaid break per working day; notice period of 30 days to be given, not including holidays.

15. The job role included key performance indicators and targets. While a performance review would take place during an annual meeting with director on key performance indicators, there was no element of performance related pay.

16. Initially the claimant had not appreciated that she was not entitled to a paid lunchbreak. This was brought to her attention by Mr Duncan, who advised that if she wanted to take a break at lunchtime then she would require to start earlier

or finish later to make up the time. Thereafter, she did not take a break at lunch time, but would eat lunch at her desk.

17. Between end March 2020 and end March 2021, the claimant was furloughed, with furlough ending in June 2021 (C51).

18. From at least April 2021, the claimant recorded hours worked on a spreadsheet maintained on the respondent's computer, either on the same day or shortly thereafter.

19. In or around June 2021, the claimant was advised by Mrs Duncan that she should record miles driven for company errands with a view to these being reimbursed. Ms Graham was also advised to claim mileage at the same meeting. The claimant subsequently recorded miles driven in the spreadsheet, from July 2021.

20. In or around end July 2021, the claimant's salary was increased to £12 per hour which equates to £2,080 per month gross.

21. The claimant was paid this gross salary for June (see payslip dated 5 July 2021 C51), July (see payslip dated 5 August 2021 C51), August (see payslip dated 3 September 2021 C52), September (see payslip dated 5 October 2021 C52) and October (see payslip dated 5 November 2021 C53).

22. Following an incident which took place on 25 September 2021, the claimant handed in her notice. She worked five weeks' notice until her resignation, taking effect on 5 November 2021.

23. The claimant's last day of employment was 5 November 2021. She was therefore due to be paid for the days that she worked in November and also outstanding overtime. She worked the full week of 1 to 5 November with no overtime, a total of 39 hours.

24. From the spreadsheets maintained, the claimant was due to be paid overtime for the following hours: 17.75 for April (C18); 19 for May (C21); 23.76 for June (C24); 67.4 for July (C28); 23.74 for August (C32); 37.97 for September (C36); and 24.5 for October (C40 and C39).

25. The claimant received a final pay slip and P45 attached to an e-mail dated 6 December 2021. That final pay slip showed payment for 112 hours (which the respondent subsequently stated to be overtime or payment for time in lieu in addition to 39 hours in November) and holiday pay totalling 80.69 hours.

26. By e-mail dated 15 December 2021 (C6), the claimant responded attaching images of excel spreadheets showing her hours. She advised that total time of in lieu after her last day of 5 November 2021 was 246.01.

27. She stated in regard to the November payslip, "not sure if maybe you put the November payslip as the December hours remaining instead of my November salary? November payslip should just be the normal salary with 39 hours worked and using up 137 hours of time in lieu".

28. With regard to the December payslip, it stated "For December the payslip should be the remaining 112.01 hours in lieu".

29. With regard to "holidays" she states, "I think the holidays need to go on the last payslip (so next month) but not sure if that makes a difference? If my calculation was correct I had a total holiday as 13.1 days oweing".

30. Under fuel, she stated, "I've still got a few miles of fuel oweing, which is on the November excel for £184.95, but no rush".

31. Under P45 she stated, *"Not sure if my P45 needs to be dated from next months payslip if it has to include all the time in lieu…"*

32. By e-mail dated 23 December 2021, the respondent responded: *"*I can give you a detailed breakdown of approved hours if you like, however the last payslip was your last from me. I went through your requests and your final payslip and P45 are correct – you were in a salaried position to do a job not on an hourly rate……" (C9)

33. In response, in an e-mail dated 15 January 2022, C10, the claimant stated,

"My agreed working hours were 40 hours per week with time in lieu for any hours worked over the 40-hour work week. If pay is calculated hourly or as a salary it comes out the same in the end. There were several weeks over the year where I exceeded the contracted 40 hours with the additional hours to be redeemed as time in lieu. I have attached my timesheets for the period

discussed which also include the accumulated mileage I am still owed…..Please could you send a breakdown of the hours that have gone into the final payslip and a copy of my signed contract (which is in the office). The payslip sent on 3/12/21 doesn't match what I was expecting for my final payment. Please send the pay owed (as I have summarised below) at the

earliest convenience".

34. The claimant received no reply to that e-mail and by e-mail dated 22 February (C11) sent a reminder.

35. Mr Duncan replied by e-mail dated 23 February C12 as follows:

"You were contracted to do a job with targets, which you failed to come anywhere near. I can send you a breakdown of these targets and show you how far you fell short if you wish but don't think it is necessary.

It was clear from your e-mail and reaction to your errors that you were out of your depth and finding the job difficult which has become even more apparent

on review – if you took more time to get through your work schedule than necessary then that is on you".

36. Given the tone of the e-mail, the claimant was of the view that she was not going to be able to open a dialogue regarding payment of the outstanding sums she considered due.

37. The claimant, who is not a UK citizen, was in the UK on a visa which was due to expire at the end of February. She therefore took time during February to

compile a large document of papers for her visa application. She attended an interview relating to this application in Glasgow during March.

38. The claimant then decided to undertake internet research how she could obtain outside help to pursue the claim. She ascertained that she would require to get in contact with ACAS.

39. The claimant intimated early conciliation on 28 March 2022.

40. Around the same time, the claimant got in touch with the CAB in Dumfries. She was advised by Mr Bertram that she should complete an ET1 form as soon as possible. She was not until that time aware of any three month time frame to present her claim.

41. The claimant completed that ET1 claim form herself, citing, with his permission, Mr Bertram as her representative. This was lodged on 12 April 2022.

42. The claimant was in any event of the view that she was due to receive a further payslip in January 2022 for December in regard to the outstanding sums she said was due.

Relevant law

43. Section 13 of the Employment Rights Act 1996 states that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is authorised by a statutory provision or a relevant provision of the worker's contract or he has the worker's consent.

44. Section 23(1) states that a worker may present a complaint to an employment tribunal that his employer has made a deduction from his wages in contravention of Section 13.

45. Section 23(2) states that an employment tribunal shall not consider a complaint unless it is presented before the end of the period of three months beginning with the day of payment of the wages from which the deduction was made.

46. Section 23(4) states that where the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the appropriate date, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

47. The Court of Appeal has recently considered the correct approach to the test of reasonable practicability (*Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490). Lord Justice Underhill summarised the essential points as follows:

> 1. The test should be given "a liberal interpretation in favour of the employee" (*Marks and Spencer plc v Williams-Ryan* [2005] EWCA Civ 479, which reaffirms the older case law going back to *Dedman v British Building & Engineering Appliances Ltd* [1974] ICR 53);
>
> 2. The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was "reasonably feasible" for the claimant to present his or her claim in time: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119….
>
> 3. If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will [not] have been reasonably practicable for them to bring the claim in time (see *Wall's Meat Co Ltd v Khan* [1979] ICR 52); but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made;
>
> 4. If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (*Dedman*)…

5. The test of reasonable practicability is one of fact and not law (*Palmer*).

Tribunal deliberations and decision

Observations on the evidence and the witnesses

48. The Tribunal heard evidence from the claimant and from Ms M Graham.

49. The Tribunal found the claimant to be a credible and reliable witness. She gave her evidence in a calm and measured fashion, was careful to reveal when she could not remember details, and I had no hesitation in accepting her evidence.

50. Mrs Duncan tried to suggest that it was odd that she could not remember some important details but was clear about others. I did not accept this to be significant, indeed it is as I might expect from all witnesses, including the respondents.

51. The Tribunal was impressed by the manner in which Ms Graham gave her evidence, which the Tribunal had no hesitation in accepting.

52. The Tribunal heard evidence from Mr Duncan. I accept his evidence as credible and broadly reliable. He was prepared to concede where he felt that, in retrospect, he had made a mistake about how he had dealt with a matter.

53. There was a dispute about whether or not it had been agreed that the claimant was to receive a mileage allowance, but the claimant relied on what was said at a meeting with Mrs Duncan, at which Mr Duncan was not present.

54. The difficulty for Mr Duncan was that he seemed to think that he could chose to ignore the terms of the employment contract because he thought that it was appropriate. This was evident for example in the way that he had calculated what he considered the claimant was due in overtime on the termination of her contract. It was evident too in the evidence he gave to support his position that the claimant should not be entitled to claim mileage, which related to his view that if she had done her job properly, she would not have needed to undertake the miles which she did.

55. It is clear that this is what is uppermost in the respondent's mind from the first paragraph of their response form. Further, in submissions, the respondent said that they believed that the claimant had "abused [Mr Duncan's] generosity".

56. The Tribunal also heard evidence from Ms N Thomson, who now holds the event co-ordinator position which the claimant had held. Mr Bertram had expressed concern about the relevance of her evidence, which related only to her own contractual terms and conditions and how she found the workload. I agreed that this of course tells us nothing about the contractual arrangement between the respondent and the claimant. I noted that the respondent sought to emphasise that she could do all her work in her weekly contracted hours (which I noted she stated was 45 hours per week, so five hours more than the

claimant in any event), but again this is irrelevant to the question of the contractual terms of the claimant's contract.

Time bar

57. This is a claim for unlawful deduction from wages only. As noted above, claims for the unlawful deduction from wages should be lodged within three months of the day of payment of the wages from which the deduction was made.

58. The claimant's position was that she expected to receive a final payment of salary on 5 January 2022, the claimant having commenced early conciliation on 28 March, which would mean that the claim was lodged in time.

59. I accept that in this case there was some ambiguity about when the last payment might have been due. I understood from the claimant's evidence, including references in documents, that she assumed that she would be paid the overtime hours in the months of November and December, when she expected to receive her normal salary to take account of the overtime hours worked. She expected to receive holiday pay on the last pay date. I gathered from Mr Duncan's evidence that this was his understanding of the claimant's position.

60. Had that been the case then the last payment date, as I understood it, would have been around 5 January 2022. If that were correct, then the claim ought to have been lodged by 4 April 2022. Although the claim was lodged on 12 April, the claimant did intimate early conciliation on 28 March 2022, and the EC certificate was issued on 8 April 2022 which would have made the claim in time.

61. However, the standard and undoubtedly appropriate practice is for a respondent to pay all outstanding sums due on termination of employment. The last payment due would have been for November, and as I understood it the claimant should have expected to receive pay for the days worked in November and for outstanding sums due on 5 December 2021.

62. The time limit then for presenting the claim would be 4 March 2022. The

claimant did not approach ACAS until the end of March, by which time the claim was already out of time, so that claimant could not rely on any extension for conciliation.

63. I accept therefore that the claim in this case was lodged out of time. However, I have a certain discretion to allow claims which are out of time. This relates to the circumstances where it was not reasonably practicable for the claim to have been lodged in time.

64. By reference to the guidance provided by Underhill LJ, I am obliged to give the test "a liberal interpretation in favour of the employee". Further, the test relates not only to physical impracticability, but I require to consider whether it was reasonably feasible that the claim could have been presented in time. This includes where an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case.

65. In such circumstances, the question is whether that ignorance or mistake is reasonable. In this case, the claimant's evidence was that as she understood the parties had parted amicably, that an agreement would be reached about the outstanding sums due. She thought that she would receive subsequent monthly salaries covering the time in lieu accumulated. There was an e-mail exchange when the respondent offered to provide a breakdown of their calculation, but they failed to do so. The claimant sought to follow up the matter toward the end of February but was advised that all money owed had been paid. The claimant's evidence was that she then spent time focusing on renewing her visa application.

66. The claimant is not a British citizen. She gave evidence that she was unaware of the three month time limit for lodging claims in the employment tribunal. I accept that in her case her ignorance of her rights was reasonable. She gave evidence that she undertook her own research towards the end of March 2022 when she realised from the tone of the respondent's e-mails that they had no intention of settling her claim. She understood only then the requirement to

contact ACAS and she also got in touch with the CAB. I accept therefore that it was not reasonably practicable for the claimant to lodge the claim in time due to her reasonable ignorance of the time limit.

67. The test is a two stage one: if I find that it was not reasonably practicable to have lodged the claim in time, then I must find that the claimant lodged the claim within a reasonable period after it became reasonably practicable, for the extension to be permitted. In this case the claimant said that she contacted ACAS and the CAB around the same time and it was then that she appreciated that there were time limits. She was advised by Mr Bertram to lodge the claim as soon as possible even before getting an appointment with him. She did that, contacting ACAS first as required, the EC certificate being issued on 8 April 2022. The claimant then completed and lodged the claim on 12 April. I find in the circumstances that the claimant lodged the claim within a reasonable time after it became practicable for her to do so. I find therefore that the claim is not time barred.

Unpaid wages claim

68. Under section 13 of the Employment Rights Act referenced above, an employer will only be entitled to deduct wages if there is a relevant term in the contract of employment permitting this. It is thus important to determine the terms of the contract of employment agreed. As noted above, in the paperwork lodged prior to the hearing, reference was made to matters which were not relevant to the question of whether or not there were outstanding sums due to the claimant. These related in particular to the claimant's performance. There was however no dispute that the claimant's terms and conditions in her contract relating to pay were not performance related.

69. On the crucial matter of the written contract of employment, the respondent lodged an unsigned copy, and Mr Duncan appeared to suggest in evidence that the claimant had removed the signed copy. However I noted that the claimant made a request for the signed copy in the e-mail of 15 January and it would have

been in her interests to have lodged it if she did have a copy in her possession. I assume that the signed copy has simply been mislaid.

70. Notwithstanding, I accepted the respondent's submissions that the document which the respondent lodged was an unsigned copy of the claimant's contract. The claimant essentially accepted that its terms were at least broadly the same as she understood from the signed version**.**

Unpaid break

71. On the matter of the 45-minute break, which the claimant did not recall from her contract, in fact this is confirmed by her own evidence. She stated that when she had initially taken a break at lunchtime, she was advised by Mr Duncan that lunchbreaks were unpaid and if she wanted a lunch break then she would require to come in earlier and/or leave later to make up her hours. Her evidence was that thereafter she did not take lunch breaks but that she, along with Mr Duncan, had lunch at her desk. The claimant quite plausibly said that she remembered the conversation well because she changed her practice after it.

72. This is an important point, because Mr Duncan advised that in calculating how much overtime the claimant was due on the termination of her employment, Mr Duncan had chosen to discount 45 minutes each day which he said represented an unpaid lunch break.

73. The claimant's position is that the deduction for a 45 minute break each day to justify the deduction has never been explained to the claimant prior to the hearing; despite numerous requests for a breakdown.

74. In any event, I considered that calculation to be an arbitrary decision for which there was no justification from the claimant's contract or indeed from previous practice.

75. I noted in particular from the payslips and the claimant's time sheets, that the claimant was paid for working 40 hours per week, and that no deduction was

apparently made during the currency of the contract for the 45 minutes unpaid lunch break.

76. I conclude therefore that while the contract allowed for a 45 minute unpaid break, the claimant did not take a break of 45 minutes during the working day, and that the respondent was not therefore entitled to deduct that from the sums claimed as overtime.

Time off in lieu/overtime

77. The contract also make clear the position regarding TOIL, and that is that "overtime worked during busy period (April-October) shall be reimbursed as time in lieu of payment"; and that "time in lieu cannot be used between April October and must be agreed with the company director".

78. The respondent accepted that this meant, on termination, the claimant would be entitled to claim pay for overtime worked. Indeed overtime was paid but only at a sum which the respondent apparently thought was fair and reasonable given how good they had been to the claimant; and given the alleged deficiencies in her performance which they became aware of after she had left. No performance deficiencies were raised with the claimant during the course of her employment however, and even if they were, these could not be relied upon to reduce the claimant's pay when the contract did not allow for such deductions. It may be expected that such matters should be addressed in an alternative way.

79. This also belies Mr Duncan's suggestion that it was perfectly possible to do all of the contracted work in the 40 hours stated (particularly in the "busy season"). It is apparent that at no time when the claimant worked for the respondent was she advised that she should not be working the hours that she was working. The evidence was that she completed her hours on an ongoing basis on a spreadsheet which the respondent self-evidently also had access to and would check periodically at

least. While the contract stipulated that the time to be taken off would require to be approved by the company director, clearly any refusal to accept that over time recorded was legitimate should have been addressed at the time that the entries were made. The respondent's conclusion that she was due 112 hours was as stated an arbitrary one which apparently only related to making deductions for the 45 minute lunch break; and had nothing to do with any specific entry relating to overtime claimed.

80. I also took account of the fact that the respondent's written defence did not match the defense presented by Mr Duncan in evidence. In particular, Mr Duncan accepted that, despite requests, no detailed breakdown had been given to the claimant of how he had calculated the 112 hours of overtime which

he decided that he would pay, again apparently on the basis that she was lucky to have been paid what she was paid at all.

81. While in evidence, Mr Duncan indicated that he had deducted 45 minutes per day from what was claimed, which totalled 104 hours, Mr Bertram suggested that that would not amount to a balance of 112 hours to be paid and he could not work out how the calculation had been made. In the written defence, the respondent also referenced claims for arriving early before 9 am and working late after 5 pm; and also for driving staff home after shifts. This was denied by the claimant and indeed in any event not challenged at the time, the claimant having recorded her hours on the day or soon afterwards.

82. It was not made clear to the Tribunal where these entries in the claimant's time sheets were, although Mr Duncan had misunderstood at least one of the entries. However, and indeed as I understood his evidence, Mr Duncan confirmed that he did not rely on these when it came to the overtime calculation made. He expressed concern about some of the entries, but the matter was never raised with the claimant at the time although it was accepted that the time sheets, in respect of hours worked at least, were completed at the time.

83. This tends to suggest that the respondent was not in fact clear about how they had come to decide that 112 hours of overtime would be paid, but not the balance sought by the claimant.

84. Mr Duncan said in evidence that it was ultimately up to the claimant to record her hours on a spreadsheet and that he had not asked her to do this. If this was not required, it was not clear to me how the respondent could know what time off in lieu the claimant might be entitled to outwith the period April to October.

85. I therefore accepted that the claimant was entitled to be paid in lieu, as overtime, on the termination of her contract, for the hours which she had submitted at the time that she had worked as overtime.

86. I conclude therefore that the claimant is entitled to be paid 39 hours worked in November 2021 plus 179 hours of overtime worked during April to October 2021 which totals 218 hours. The claimant was paid for 112 hours. The balance due is therefore for 106 hours. Based on a monthly gross salary of £2,080, which equates to £12 gross per hour, that amounts to a gross payment due of £1,272.

Mileage allowance

87. I also ultimately accepted the claimant's evidence that an agreement had been reached that she would be paid a mileage allowance. Although this was not a written term of the contract, I accepted that a verbal agreement had been reached.

88. I noted that although the respondent said that they did not pay a mileage allowance to anyone else, they had agreed to pay a mileage allowance to Ms Graham, who was working at the same time with the claimant. I noted that the entries commenced in July 2021, after the discussion with Mrs Duncan regarding claiming mileage. I took account of Ms Graham's evidence in coming to that conclusion. The Tribunal did not hear evidence from Mrs Duncan about

this discussion, and as Mr Duncan said in evidence he was not party to it. The fact that the claimant included entries only from July, or at least claimed mileage only from July, supports the claimant's position that an agreement was reached at that time.

89. I noted Mr Duncan's evidence that the "mileage" column was added to the timesheets by the claimant after she had left, and not at the time, and that he said was supported by the fact that such payments would be made at time but were not. Unfortunately, that point was not put to the claimant, so I did not have her evidence on that matter. However, even if these columns had been added later, based on the claimant's evidence, I noted that she said she had notes relating to miles undertaken, so it would not make any difference to whether these sums were due or not.

90. In coming to the conclusion that an agreement had been reached to pay mileage, I was also influenced by the fact that when the claimant pointed out that she still had mileage due, in the e-mail of 15 December 2021, no reference is made in the subsequent e-mail response to any specific suggestion that she was not entitled to mileage allowance at all.

91. The claimant has recorded the miles which she said that she had undertaken doing company business and what that business was and there was apparently no dispute that she had not undertaken these journeys. In any event I accepted the claimant's evidence that these were necessary journeys for deliveries or laundries etc. Rather, Mr Duncan's refusal to pay mileage apparently came down to an argument that the claimant ought not to have required to undertake the trips she said that she had if she had done her job properly. This however is not a valid response to an argument about a contractual agreement. This is particularly when the matter was not raised during the currency of the contract.

92. I therefore accept the claimant's evidence that she had undertaken 477.5 miles of company business between July and October 2021. There apparently being

no dispute that should be paid at 45 pence per mile, I accept that the claimant is due the sum of £214.88 for unpaid mileage.

Conclusion

93. I appreciate that the respondent is a small business and that small businesses often operate on a more flexible basis. It cannot however be an excuse for ignoring contractual terms which have been agreed or altering terms in retrospect as suits respondents. Any concerns about the claimant's performance should have been dealt with at the time in the appropriate way.

94. I therefore conclude that, although the claim was lodged outwith the three month period from the day on which the final sums due ought to have been paid, I accept that it was not reasonably practicable for the claimant to have lodged the claim in time, and that the claimant lodged the claim within a reasonable period after being made aware of the relevant time limit.

95. I find that the claimant is entitled to payment of overtime of £1,272 gross (from which tax and national insurance should be deducted as appropriate) and of £214.88 in respect of unpaid mileage allowance.

Employment Judge: M Robison

Date of Judgment: 12 July 2022

Entered in register: 12 July 2022

and copied to parties