



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Dickinson

**Respondent:** RAPT DEV London Limited

**Heard at:** London Central by video (CVP)

**On:** 9 August 2022

**Before:** Employment Judge E Burns (sitting alone)

**Appearances:**

**For the Claimant:** in person

**For the Respondent:** Sophie Smith, Solicitor

## RECONSIDERATION JUDGMENT

1. The judgment dated 10 March 2022 striking out the claimant's claim is revoked.
2. The claim will not proceed in the employment tribunal, however, because the claimant wishes to pursue the same claim in the county court.

## REASONS

3. The claimant works as a bus driver for London United Busways Limited. In order to do his job he needs a licence to drive a Passenger Carrying Vehicle, commonly referred to as a PCV licence.
4. In 2020, he took a holiday abroad and got stuck there due to the pandemic. While he was away, his PCV licence expired. This meant that when he was able to return to the UK, he was not able to drive buses until it was renewed.
5. London United Busways Limited was supportive of his position and he was placed on furlough to enable him to apply to the DVLA to rectify the problem. He had been unable to do this while he was away.

6. The claimant's license was returned to him by the DVLA on 3 July 2020. The DVLA made a mistake, however, and failed to endorse it correctly. This led to London United Busways refusing to allow him to work between 7 July and 28 August 2020.
7. The claimant is paid weekly in arrears. His last wages form which deductions were taken were due to be paid to him on 4 September 2020.
8. The claimant presented a claim to the employment tribunal on 5 January 2021 for the unpaid wages. In Box 2.2 he named Victor Sabberton as the respondent and cited the ACAS certificate number R232075/20/23.
9. In fact, the ACAS certificate bearing this number was issued in the name of RAPT DEV London. RAPT Dev Transit London Limited is the parent company of London United Busways Limited. RAPT DEV London is a trading name it uses. The certificate gave the dates of conciliation as having started on 21 December 2020 and ended on 31 December 2022.
10. It appears that the tribunal rejected the claim because the name of the respondent on the EC certificate did not match the name of the respondent in the claim form. It wrote to the claimant to tell him this on 15 March 2021.
11. He replied on 25 March and 30 March to ask how he could remedy the defect. The tribunal did not respond until 23 July 2021. He was asked if he would like to substitute RAPT DEV London as the respondent to the claim.
12. It appears the claimant replied on 6 August 2021 confirming that he did want to do this as the tribunal updated its records and recorded the respondent as having the name RAPT DEV London. There is no record of the claim having been served on RAPT DEV London at this time, however. The respondent did not present a Response.
13. The case was listed for a hearing on 20 April 2022. The tribunal wrote to the claimant on 14 April 2022 to ask him if he wanted to continue with the claim because the tribunal had heard nothing further from him since 6 August 2021. The letter was sent by email. The claimant did not reply.
14. The hearing took place on 20 April 2022, but was not attended by either the claimant or the respondent. Employment Judge Sullivan wrote to both parties proposing to strike the claim out as it was not being actively pursued. He gave the claimant until 29 April 2022 to respond and in the meantime, listed a further hearing on 13 May 2022. The letter was again sent by email.
15. As the claimant had not responded by 29 April 2022, I struck his claim out in a judgment dated 10 May 2022.
16. Unbeknownst to me the respondent had on 6 May 2022 contacted the tribunal to ask for a copy of the claim to be sent to it. Rather than simply send it by email, the tribunal served the claim at this time. This was done on 21 July 2022, even though the claim had been struck out by this date.

17. On 20 May 2022, the claimant applied for a reconsideration of the decision to strike his claim out. In his application he explained that he had not received a notice of hearing for 20 April 2022 hearing. He had received the notice of hearing for the 13 May 2022 hearing, but not the other correspondence. He discovered the letters of 14 April and 29 April 2022 in his email junk box when searching for video joining instructions for the hearing of 13 May. He had rung the tribunal only to be told the hearing had been cancelled and the claim struck out. The tribunal has a record of this telephone conversation.
18. At today's reconsideration hearing, the claimant had prepared a detailed witness statement explaining the position. With the agreement of the parties, I did not hear that evidence.
19. Instead, I explained to the parties that it seemed to me that the claim had been presented out of time. This was on the basis that normal time limit for a claim of unauthorised deductions of wages is found in section 23(2) of the Employment Rights Act 1996. That section provides that a claim must be brought before the end of the period of three months. Section 23(3) goes on to say that the three months runs from the date the last payment was meant to be made. In this case that date was 4 September 2020.
20. The normal time limit is extended by section 270B of the Employment Rights Act 1996 to take account of the obligation to enter into early conciliation facilitated by ACAS.
21. Based on the date of 4 September 2020, the claimant would have had to commence ACAS early conciliation by 3 December 2022, but according to the ACAS certificate he referred to his claim form did not commence early conciliation until 21 December 2021. The result was that his claim was out of time, even disregarding the fact that the claim had been rejected for a defect that had not been remedied until 16 August 2022.
22. I also explained tribunal may still consider a claim presented outside the normal time limit if it is satisfied that:
  - it was not reasonably practicable for the claim to be presented within the normal time limited; and
  - the claimant has presented it within such further period as the tribunal considers reasonable.

I explained this was a very strict test.

23. The claimant then said he had begun the Acas conciliation process on 2 December 2020. He provided email evidence that he had contacted Acas on 2 December 2022 using the respondent's correct name of London United. He did not appear to have been issued a certificate however and I note that the reference number on the email is R225896/20. This is a different number to the one in the claim form.

24. I explained to the parties that I was not deciding the time point, as I had not heard any witness evidence on it. However, it appeared to me, based on seeing the documents, unlikely that the claimant would be able to rely on this earlier contact with Acas. This was because if he had been issued with an Acas certificate it would have had a different number. He would need to overcome the hurdle of having not presented a claim form using the correct Acas reference number and having not tried to remedy this defect by amending his claim form to change the Acas number until over 18 months later.
25. Having heard this explanation, and having taken time to discuss the position with the person assisting him, the claimant indicated that he would like to withdraw his claim in order to pursue it in a county court where there is a much longer time-limit of 6 years for bringing claims for unpaid wages.
26. In order to enable him to do that I suggested I revoke the strike out judgment I had made and not issue a judgment dismissing the claim on withdrawal under Rule 52 of the Tribunal rules. The parties were in agreement with this suggestion, which is why I have proceeded as I have.
27. I note that the claimant has subsequently requested written reasons for why the claim was held to be out of time. As noted in this judgment, I did not actually decide that his claim was out of time. I gave him a clear indication that I thought it would be held to be out of time however for the reasons set out above.

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**Employment Judge E Burns  
25 August 2022**

JUDGMENT SENT TO THE PARTIES ON

.25/08/2022

FOR THE TRIBUNAL OFFICE