



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms P Gkolfi

**Respondent:** Divine Motions Healthcare Services Ltd

**Heard at:** London South – Croydon (by video) **On:** 6 October 2022

**Before:** Employment Judge C M Macey

## **Representation**

Claimant: Did not attend

Respondent: Did not attend

# JUDGMENT

The claimant's claim for unauthorised deductions from wages is dismissed. The tribunal does not have jurisdiction to consider the claimant's claim of unauthorised deductions from wages having regard to the appropriate statutory time limits.

# REASONS

## **Preliminary matters**

1. Neither the claimant nor the respondent attended the hearing. I noted the following matters before proceeding with the hearing in the parties' absence under Rule 47 of the Employment Tribunal Rules of Procedure 2013:
  - a. The respondent failed to send an ET3 to the Tribunal and the claimant had correctly stated the respondent's registered office on the ET1 dated 25 November 2020.
  - b. The Notice of Hearing dated 5 August 2022 was sent to the correct contact details provided by the claimant.
  - c. The claimant was contacted by telephone on the afternoon of the hearing at 2 pm and at 2.20 pm by the Tribunal. The claimant did not answer the telephone.
  - d. The Tribunal contacted the claimant by email on the afternoon of the hearing and there was no response prior to the hearing starting.

- e. No reason was provided by the claimant in advance of non-attendance.
- f. The remote hearing room was kept open for either of the parties to attend for the entire two hours allocated to the hearing.

### **Background and Issues**

- 2. The claimant was a carer at the respondent from June 2020 until the claimant stopped working for the respondent at the beginning of July 2020, she then submitted her timesheets by email to the respondent and expected payment by the end of July 2020. The claimant entered into Early Conciliation with ACAS on 14 November 2020 and the certificate was issued on 20 November 2020. The claim was presented on 25 November 2020.
- 3. This hearing was listed as a final hearing but there is a preliminary issue to determine, whether or not the Tribunal has jurisdiction to consider this claim.

### **The Law**

- 4. The statutory test, in respect of the claim of unauthorised deductions from wages, is set out in Section 23(2) and Section 23(4) of the Employment Rights Act 1996, namely:

*(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) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or  
(b)....*

*(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 time as the tribunal considers reasonable.*

- 5. The effect of early conciliation by ACAS (“Early Conciliation”) on this time limit is set out in Section 207(B) subsections (2) – (4) of the Employment Rights Act 1996, namely,

*(2) In this section-*

*(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of Section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and  
(b) Day B is the day on which the complainant or the applicant concerned receives or, if earlier, is treated as receiving (by virtue of*

*regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

*(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

*(4) If a time limit set by a relevant provision would (if not extended by this section) expire during the period beginning with Day A and ending one month after Day B, the time limit expires at the end of that period.*

6. I referred myself to the guidance in the cases of **Wall's Meat Co Ltd v Khan [1979] ICR 52, EWCA**, as to the Tribunal's discretion in such matters and also that as stated in **Porter v Bandridge Ltd [1978] ICR 943, EWCA**, the burden of proof is upon the claimant and that in respect of ignorance of rights, the correct test is not whether the claimant knew of his or her rights but whether he or she *ought to have known of them*.

### **The Facts**

7. In determining the facts I have had regard to the claimant's ET1 and the Early Conciliation certificate issued by ACAS on 20 November 2020.
8. The claimant's ET1 states that the claimant worked for the respondent until the beginning of July 2020, that she submitted her timesheets by email to the respondent and expected payment by the end of July 2020, i.e., 31 July 2020. The primary time limit is, therefore, 30 October 2020.
9. The claimant telephoned and sent SMS text messages to the respondent chasing for payment. The claimant resent her timesheets by email and was promised by the manager at the respondent that payment would be made by the end of September 2020. Payment was not made by the end of September 2020 and the respondent did not answer the claimant's telephone calls after the end of September 2020.
10. The claimant did not present a claim or commence Early Conciliation within the primary time limit.
11. The claimant commenced Early Conciliation on 14 November 2020 and ACAS issued the certificate on 20 November 2020. The claimant contacted ACAS after the primary time limit had expired.
12. There was no physical restriction on the claimant preventing the claim form being presented in time in October 2020.
13. **Finding.** I find that it was reasonably practicable for the claimant to present her claim by 30 October 2020, for the following reasons:
  - a. The claimant stopped working for the respondent at the beginning of July 2020, she submitted her timesheets and expected payment by the end of July 2020.

- b. The burden is on the claimant to prove that it was not reasonably practicable to present her claim by 30 October 2020 and the claimant has not presented any evidence to the Tribunal.
- c. Applying **Bandridge**, the claimant ought to have known of the three-month time limit, for the following reasons:
  - i. because a Google search for “unpaid wages” does indicate the time limit for the claim of unauthorised deductions from wages.
  - ii. The claimant’s telephone calls to the respondent demonstrate that she did have some awareness that she had not been paid her wages when they were due by the end of July 2020 and that she was entitled to those monies.

14. Within such further period as was reasonable. As I have found that it was reasonably practicable for the claimant to meet the primary time limit, I do not, strictly speaking, need to consider the issue of the claim being presented within such further period as was reasonable, but nonetheless I find that even if I were incorrect to consider that it was reasonably practicable to meet the time limit, the claimant clearly did not present her claim within such further period as was reasonable. I conclude this for the following reasons:

- a. She delayed a further 3 weeks in total after the primary time limit.
- b. After ACAS issued the Early Conciliation certificate the claimant did not submit her claim for a further five days.
- c. There is a strong public interest in claims being brought promptly, against a background where the primary time limit is three months (**Cullinane v Balfour Beatty Engineering Services Ltd** **UKEAT/0537/10**).

**Conclusion**

15. For these reasons, therefore, the claimant's claim for unauthorised deductions from wages is dismissed, because the tribunal does not have jurisdiction to consider the claimant's claim of unauthorised deductions from wages having regard to the appropriate statutory time limits.

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Employment Judge Macey

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Date: 6 October 2022

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