



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mrs. D Vaghasiya

v

K N Care Limited trading as Caremark

**Heard:** via Cloud Video Platform in the Midlands (East) region

**On:** 2 December 2022

**Before:** Employment Judge Ayre (sitting alone)

**Representatives:**

**Claimant:** In person

**Respondent:** Did not attend and was not represented

## JUDGMENT

The claim is out of time and the Tribunal does not have jurisdiction to hear it.

## REASONS

**Background**

1. The claimant was employed at a care home operated by the respondent.
2. On 19 August 2022 the claimant issued a claim in the Employment Tribunal, following a period of early conciliation that started on 10 August 2022 and ended on 12 August 2022.
3. The claim form included claims for holiday pay and 'other payments'. The claimant alleged that she had worked for the respondent for more than three months but had not been paid for two days' induction or for

holiday pay. Her claim also included matters which the Tribunal does not have jurisdiction to hear, such as a complaint about failure to provide a P45, or to return monies paid by the claimant to the respondent for a visa application.

4. The claim was served on the respondent at 38 Lodge Road, Southampton SO14 6RJ. According to Companies House, that address is the respondent's registered office.
5. The deadline for filing a response was 22 September 2022. No response has been received by the Tribunal.

### **The Proceedings**

6. The respondent has played no part in the proceedings. It has not filed a response to the claim and did not attend today's hearing.
7. In preparation for today's hearing the claimant sent in a number of documents, which I have read. She gave evidence under oath at the hearing.

### **The Issues**

8. The questions to be decided at today's hearing were:
  - a. Were the claims presented in time?
  - b. If they were:
    - i. Did the respondent make an unlawful deduction from the claimant's wages in respect of two days' pay for attending an induction?
    - ii. Is the claimant entitled to holiday pay?
    - iii. Did the respondent fail to provide the claimant with a pay slip?

### **Findings of Fact**

9. The claimant was employed by the respondent from 29 December 2021 until 9 April 2022. Although her employment started on 29 December, she did not actually carry out any work for the respondent until 14 January 2022.
10. The claimant undertook a two day induction in January 2022. Her hours of work varied. Some weeks she would work 11 hours, others she would work 25 hours.
11. The respondent made three payments to the claimant in respect of salary.

12. The first payment was itemised in a pay slip dated 28 February 2022. The claimant was paid £830.44 net. This payment was in respect of 83.5 hours worked in January and February 2022.
13. The second payment was itemised in a pay slip dated 31 March 2022. It was for £1,222.66 net for 122.50 hours worked in March 2022.
14. The claimant's employment terminated on 9 April, but she was paid for the whole of April. On 3 May 2022 the claimant was paid £1,222.66. She did not receive any pay slip with the payment on 3 May.
15. In July 2022 the claimant contacted ACAS for advice. She was told by ACAS of her right to bring an employment tribunal claim and that she should file her claim as soon as possible because of the three month time limit for doing so.
16. The claimant did not take legal advice and represented herself in these proceedings.
17. When asked why she had not put her claim in earlier, she said that she was not aware of her right to bring a claim until July when she spoke to ACAS. In response to the question as to why she waited from July until 10 August before starting early conciliation she said that she did not know. She was not sure whether to issue a claim and had been trying to resolve matters directly with the respondent.
18. The claimant started a new job with a different employer on 4 May 2022 and was working throughout the period from 4 May until she started early conciliation on 10 August.

## **The Law**

### Unlawful deduction from wages

19. Section 13 of the Employment Rights Act 1996 ("**the ERA**") states that:

*"(1) An employer shall not make a deduction from wages of a worker employed by him unless –*

- (a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
- (b) The worker has previously signified in writing his agreement or consent to the making of the deduction...*

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."*

20. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deduction from wages to the Employment Tribunal. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4) which provide as follows:

*“(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....*

*(3) Where a complaint is brought under this section in respect of –*

*(a) a series of deductions or payments...*

*the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

*(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.”*

#### Failure to provide an itemised pay slip

21. Complaints for failure to provide an itemised pay slip can be made to an employment tribunal under section 11(1) of the ERA. Where the employment relationship has ended the claim must be made within three months of the date the employment terminated 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 application to be made before the end of the three month period (section 11(4) of the ERA.

#### Holiday pay

22. The time limit for presenting claims for holiday pay under the Working Time Regulations 1998 (“**the WTR**”) is set out in Regulation 30(2) which provides as follows:

*“Subject to regulation 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented –*

*(a) Before the end of the period of three months...beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;*

(b) *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”.*

23. Time limits for presenting claims are a jurisdictional issue (***Rodgers v Bodfari (Transport) Ltd 1973 325 NIRC***) and if a claim is out of time, the Tribunal must not hear it. The parties cannot agree to waive a time limit, so even if a respondent does not seek to argue that a claim is out of time, the Tribunal still has no jurisdiction to hear the claim if it is in fact out of time.

24. The principle that a Tribunal cannot hear a claim that is out of time applies even where the claim has merit (***Bewick v SGA Forecourts Ltd ET Case No.2501693/2014***).

25. In cases, such as this one, in which a question arises as to whether it was reasonably practicable for the claimant to present her claim on time, there are three general principles that fall to be considered –

- a. The question of reasonable practicability should be interpreted liberally in favour of the claimant.
- b. It is a question of fact as to whether it was reasonably practicable for the claimant to present her claim on time; and
- c. It is for the claimant to prove that it was not reasonably practicable for her to present her claim on time.

26. In ***Palmer and another v Southend-on-Sea Borough Council [1984] ICR 372***, the Court of Appeal concluded that ‘reasonably practicable’ does not mean ‘reasonable’ or ‘physically possible’, but rather ‘reasonably feasible’.

## Conclusions

27. The claimant’s employment terminated on 9 April 2022. The primary time limit for the claim that the respondent failed to provide her with an itemised pay slip runs from this date and expired on 8 July 2022, more than one month before the claimant started early conciliation.

28. The last payment made by the respondent to the claimant was made on 3 May 2022. The primary time limit for the complaints of unlawful deductions from wages and for holiday pay runs at the latest from this date and expired on 2 August 2022, 8 days before the claimant started early conciliation.

29. All of the claims have therefore been presented out of time.

30. The claimant contacted ACAS in July 2022 and was made aware of the right to bring claims in an Employment Tribunal and of the three month time limit for doing so. She was told by them to start proceedings as soon as possible. She did not do so.

31. At the time the claimant first spoke to ACAS and became aware of her right to bring a claim and of the time limit, she was still in time to bring a claim. She waited however until the following month before starting early conciliation.

32. The claimant told me that she did not know why she waited or why she did not start proceedings earlier, other than that she hoped to be able to resolve matters amicably with the respondent. Whilst this is, in some respects, admirable, the fact that parties are trying to resolve matters without recourse to the Tribunal does not, except where early conciliation is taking place, stop the clock from running when it comes to time limits.

33. The claimant was working from 4 May 2022 onwards and has produced no evidence today that it was not reasonably practicable for her to submit her claims in time.

34. Whilst I have sympathy for the claimant, and recognise that she is a litigant in person, time limits in Employment Tribunals exist for an important public policy reason and must be respected. Exemptions of time should be the exception and not the rule.

35. The claimant has not discharged the burden of showing that it was not reasonably practicable for her to submit her claim on time. Accordingly, all of the claims are out of time and the Tribunal does not have jurisdiction to hear them.

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Employment Judge Ayre

2 December 2022

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