



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104298/2022**

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**Held via Cloud Video Platform (CVP) in Glasgow on 1 December 2022**

**Employment Judge M Sangster**

10 **Mr T Pattison**

**Claimant  
Represented by  
Ms E McCummiskey -  
Lay Representative**

15 **Hillhouse Quarry Group Limited**

**Respondent  
Represented by  
Ms C Greig -  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that the Tribunal has no jurisdiction to consider the claimant's complaints of unfair dismissal and unauthorised deductions from wages, which are dismissed.

### **REASONS**

25 **Introduction**

1. The claim was set down for an open preliminary hearing to determine whether the Tribunal has jurisdiction to hear the claim, or whether it was presented out of time. The claimant brings complaints of unfair dismissal and unauthorised deductions from wages.
- 30 2. The Tribunal heard evidence from the claimant and his partner, Ms McCummiskey. The respondent also led evidence from Colin Shepherd, Operations Manager for the respondent.

3. A joint set of productions was lodged, extending to 27 pages, a further document was lodged by the respondent, with consent, on the morning of the preliminary hearing.

### Findings in Fact

- 5 4. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.
5. The claimant's employment terminated on 19 February 2022.
6. Prior to the termination of his employment his partner, and representative in these proceedings, Ms McCummiskey, had contacted acas to discuss issues in relation to his employment, on his behalf. Ms McCummiskey and the claimant were aware that early conciliation required to be commenced within three months of the termination of the claimant's employment.
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7. Around the end of March 2022, Ms McCummiskey spoke to an acquaintance, who either works in HR or is an employment lawyer, and obtained advice about how to proceed and to check she was on the right track with how she was progressing matters. Ms McCummiskey spoke to that individual again around the end of April 2022. Ms McCummiskey also conducted research on the internet in relation to how to progress matters.
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8. The claimant engaged in early conciliation between 3 May and 13 June 2022. All contact with acas was via Ms McCummiskey, acting on the claimant's behalf.
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9. Towards the end of the early conciliation period, in week commencing Monday 6 June 2022, Ms McCummiskey received an email from the acas conciliator. This included a statement that *'the main thing to be aware of once the certificate has been issued is that the time limit to make the claim is no longer paused. General advice is that you have at least 1 month from the date on the certificate to make the claim.'* This reflected what Ms McCummiskey had seen on the www.gov.uk website. She assumed that this meant that there was no firm time limit for lodging a claim and made no further enquiries about when the claim should be lodged.
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10. Ms McCummiskey intended to submit a claim to the Tribunal, on the claimant's behalf, within a month, but work and a busy family life engaged her and she did not have sufficient time to focus on doing so. Ms McCummiskey and the claimant have three children, currently aged 10, 12 and 18. The period from 13 June to 13 July 2022, was particularly busy, with the school year ending, school holidays commencing and making plans for a family break away. Ms McCummiskey commenced a period of annual leave at the end of July 2022. She completed the ET1 on 31 July 2022, prior to the family leaving for their break. It was lodged with the Tribunal on 1 August 2022.

### 10 Observations on Evidence

11. The only real dispute between the parties was in relation to the date the claimant's employment terminated. The Tribunal preferred the evidence of the claimant and Ms McCummiskey on this point. The claimant gave clear evidence on this point and both he and Ms McCummiskey could anchor the date of resignation to the date the claimant attended for interview, which they had checked against their records. Mr Shepherd gave evidence that he could not recall the date of the conversation, but did recall it occurring on a Thursday, with the claimant's employment terminating the following day. He could not provide any explanation of why he believed the conversation took place on a Thursday. In any event however, as explained below, little turned on this.

### Submissions

12. Ms Greig, for the respondent, provided a summary of the legislative provisions and, in summary, submitted as follows:

- a) The claimant's employment terminated on 18 rather than 19 February 2022;
- b) The claim was lodged 18/19 days out of time;
- c) The claimant requires to demonstrate that it was not reasonably practicable for him to lodge his claim in time. He has not done so. The reasons provided are not sufficient to demonstrate this. Reference was

made to the case of *Wall's Meat Co Ltd v Khan* [1978] IRLR 499, particularly paragraphs 15 and 43-44; and

- 5 d) If the Tribunal find that it was not reasonably practicable for the claim to be lodged in time, it was not submitted within such further period as was reasonable.

13. Ms McCummiskey gave a very short submission, stating that the claimant commenced early conciliation in time and she understood from acas that the claimant had at least a month after early conciliation to submit a claim.

### Relevant Law

- 10 14. The relevant time limits in relation to complaints of unauthorised deductions from wages and unfair dismissal are set out in sections 23 and 111(2) of the Employment Rights Act 1996 (**ERA**).

- 15 15. These provisions state that a Tribunal shall not consider a complaint unless it is presented to the Tribunal before the end of three months beginning with the effective date of termination, 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 complaint to be presented before the end of that period of three months.

- 20 16. S207B ERA provides for the extension of the three month time limit, in specified circumstances, to enable parties to participate in early conciliation, prior to raising proceedings.

17. In considering whether there is jurisdiction to hear complaints of unfair dismissal and unauthorised deductions from wages, Tribunals require to consider the following questions:

- 25 a) Were the complaints presented within the primary time limit, as extended by early conciliation, where applicable?
- b) If not, was it reasonably practicable for the complaints to be presented within that period?

c) If not, were they presented within such further period as the Tribunal considers reasonable?

18. The question of a what is reasonably practical is a question of fact for the Tribunal. The burden of proof falls on the claimant. Whether it is reasonably practicable to submit a claim in time does not mean whether it was reasonable or physically possible to do so. Rather, it is essentially a question of whether it was 'reasonably feasible' to do so (*Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119).

19. Whether the claim was presented within a further reasonable period requires an assessment of the factual circumstances by the Tribunal, to determine whether the claim was submitted within a reasonable time after the original time limit expired (*University Hospitals Bristol NHS Foundation Trust v Williams* UKEAT/0291/12).

### Discussion & Decision

20. The Tribunal considered whether the claim was presented within the primary time limit. The Tribunal noted that the effective date of termination of the claimant's employment was 19 February 2022. As the claimant engaged in early conciliation between 3 May and 13 June 2022, the primary time limit in respect of the complaints against the respondent was extended to 13 July 2022.

21. As an aside, the Tribunal also noted that this date, 13 July 2022, would have been the same even if it had found that the claimant's employment terminated on 18 February 2022, as asserted by the respondent.

22. The claim against the respondent was lodged on 1 August 2022. The claim was accordingly not presented in the primary three month time limit. It was submitted 19 days after it expired.

23. The Tribunal then considered whether it was reasonably practicable for the claim to have been presented within the primary time limit, i.e. between 19 February and 13 July 2022. The claimant relied upon the fact that both he and Ms McCummiskey were unaware of the time limits in relation to claims.

24. Where a claimant asserts that they were unaware of the time limits, the crucial question for the Tribunal is whether, in the circumstances, the claimant was reasonably ignorant of the time limits (*Wall's Meat Co Ltd v Khan* [1978] IRLR 499). Where a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right (*Trevelyan's (Birmingham) Ltd v Norton* 1991 ICR 488, EAT).
25. The claimant was obviously aware of his right to complain of unfair dismissal and unauthorised deductions from wages from early May 2022: he commenced early conciliation in relation to those complaints on 3 May 2022.
26. Whilst the claimant and his representative were informed by acas, and saw on [www.gov.uk](http://www.gov.uk), that after receipt of an early conciliation certificate, claimants have 'at least one month' to make a claim, neither he nor his representative made any further enquiries regarding this. In particular, they did not make any further enquiries, or undertake any further research, to ascertain whether, given his particular circumstances, he only had a month to lodge his claim, or whether he had longer. Instead, they assumed that there was no firm deadline, when this is not the case – while some individuals, who commence early conciliation soon after the termination of their employment, may have more than a month to lodge a claim, the claimant only had one month to do so after early conciliation.
27. Given that the claimant knew of the right to bring a claim, and that there are time limits for doing so, but failed to make proper enquiries about when time expired in his particular circumstances, the only answer to the question of whether he was reasonably ignorant of the time limit is no.
28. Given all the circumstances the Tribunal found that the claimant did not demonstrate that it was not reasonably feasible for him to lodge a claim in the period from 18 February to 13 July 2022. While he may not have known of the time limits for raising his claim, he ought to have ascertained this and could have readily done so.

29. In light of the above, the Tribunal concluded that it was reasonably practicable for the claimant to have lodged his claim within the primary time limit. As he did not do so, the Tribunal does not require to consider whether the claim was submitted in a reasonable further period.

5 30. The Tribunal accordingly concluded that it does not have jurisdiction to consider the claim. The claimant's complaints of unfair dismissal and unauthorised deductions from wages are therefore dismissed on the basis that they were presented out of time.

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Employment Judge: M Sangster  
Date of Judgement: 02 December 2022  
Entered in register: 05 December 2022  
and copied to parties

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