



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Amir

**Respondent:** Clocktower Cars UK Limited

**Heard at:** London South Employment Tribunal  
**On:** 11 October 2022

**Before:** Tribunal Judge Milivojevic acting as an Employment Judge

## Representation

Claimant: In person

Respondent: Mr F Jan, Manager  
Mr Qazi, Operations Manager

JUDGMENT having been delivered orally on 11 October 2022 and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 (“ET Rules”), the following reasons are provided:

# REASONS

## The Claims

1. The Claimant was employed by the Respondent as a telephonist. He commenced working for the Respondent in April 2015.

2. The Claimant entered into early conciliation on 23 March 2022 and an ACAS certificate was issued on 22 April 2022. By way of an ET1 submitted on 25 May 2022 the claimant brought claims for :

- notice pay (also known as wrongful dismissal); and
- that he had been subject to unauthorised deductions from his wages.

3. The Claimant’s claim for wages was that the Respondent had claimed furlough payments on his behalf, but that these had not been paid to the Claimant. In essence, he had agreed to a contractual variation to his wages in that he agreed to be furloughed but he was not paid the agreed varied sum. In their ET3 the Respondent resisted all of the claims. In respect of the furlough payments, the Respondent asserted that the Claimant had been paid all sums due, in cash. The ET3 also identified that the claim for unlawful deductions had been submitted outside of the primary time limit. In relation to the claim for notice pay, the Respondent submitted that the Claimant had not provided any notice when he left

employment and therefore was not entitled to any notice pay.

### **Issues, procedure and evidence heard**

4. The hearing began with a discussion about the issues to be decided by the Tribunal. As part of that discussion the Claimant conceded that he had told the Respondent that he was moving out of the area and would no longer be available for work. On that basis, the Claimant confirmed that he was no longer pursuing his claim for notice pay. That part of his claim was dismissed by the Tribunal.

5. In relation to the unlawful deduction from wages claim, the Claimant confirmed that this related solely to the period of furlough, where the Respondent claimed financial assistance from the Government for the purposes of making furlough payments to the Claimant.

6. The parties agreed that the documents provided to the Tribunal by the Respondent represented the sums which were due to the Claimant during that period. The Respondent stated that the Claimant had been paid in cash (less deductions due for rent of a residential room), whereas the Claimant said that these sums were due, but had not been paid to him.

7. As the sum due to the Claimant for the relevant period was agreed, the only issue which the Tribunal was required to determine in relation to the substantive claim of unlawful deductions from wages was:

- a) what sums had been paid to the claimant (if any), and
- b) what, if any compensation was owed to the claimant as a result.

8. However, before considering those substantive issues, it was necessary to consider whether the claim was submitted within the relevant time limits. If the claim was not submitted within those time limits, then the tribunal would not have jurisdiction to hear it. The issues in relation to whether the claim had been submitted in time were :

- a) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?
- b) If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
- c) If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- d) If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

9. It was agreed that in order to determine the time limit point, the Tribunal should hear all of the evidence in the claim. If the Tribunal found that the claim had been submitted in time, then the Tribunal could decide the substantive claim as part of the same judgment.

10. The Tribunal received a witness statement and schedule of loss from the Claimant. The Claimant also provided his HMRC employment statement and the pay slips for April 2020 to July 2020. The Respondent provided payslips from

October 2019 to November 2021 and the Claimant's P45. The Claimant gave oral evidence. Mr F Jan gave evidence on behalf of the Respondent. As Mr Jan had not provided a witness statement he was questioned about the contents of the ET3 and where his account differed from those of the Claimant. As both parties were unrepresented, the Tribunal asked a number of questions to clarify matters and ensure that the areas required to be covered by the list of issues were addressed in questions to the witnesses. Both parties made clear and helpful oral submissions at the conclusion of the evidence.

11. During Mr Jan's evidence, Mr Qazi (who was present but did not provide witness evidence) sought to make a number of comments. Whilst these were no doubt intended to assist the Tribunal with the facts of the case, I reminded Mr Qazi that when Mr Jan was giving his evidence, it should be Mr Jan's evidence alone and that Mr Qazi could provide his own evidence if he so wished (which ultimately he declined). In any event Mr Qazi's participation did not have any impact on the Tribunal's decision which focused on the evidence given by the Claimant himself, for the reasons set out below.

## **Facts**

12. The following are the facts which are relevant to the issue of time limits.

13. There were a number of agreed facts, as set out in this paragraph. The Claimant started work in April 2015 as a part-time telephonist for the Respondent. At the same time as starting work, the Claimant lived in premises on the same site as his place of work, and rented this from the Respondent. On or around 31 October 2021 the Claimant notified Mr Jan that he was moving out of the premises and moving out of the area, and that he would no longer be available to work for the Respondent. The Claimant moved out around this date. Despite this the Claimant carried out a few further shifts, up until 17 November 2021. The Claimant did not work for the Respondent after this date.

14. The Claimant's claim related solely to furlough payments. His claim was that he was not paid furlough payments due from mid- March 2020 to September 2021. The last payment would have been due as part of his pay at the end of September 2021. The Claimant confirmed that he had been correctly paid by the Respondent for work done in October 2021 and November 2021.

15. The Claimant commenced ACAS early conciliation on 23 March 2022, and the ACAS certificate was provided on 22 April 2022. The Claimant issued his ET1 on 25 May 2022.

16. The Claimant's ET1 set out that his claim had been delayed because he considered that he was given false hope by the Respondent that they would address this issue, and then they ignored him, which is when he contacted ACAS and then the Tribunal.

17. When the Claimant was questioned in relation to why he had not complained to the Respondent during his employment (about not receiving furlough payments), the Claimant explained that he had discussed this with the Respondent, and had been told that there were initial difficulties with claiming the furlough payment. The Claimant said that he did not feel comfortable taking this further whilst he remained living on the Respondent's premises.

18. In oral evidence, the Claimant stated that he had contacted the Respondent before Christmas 2021 and was told that they were very busy and would resolve matters after Christmas.

19. Mr Jan accepted that there had been contact with the Claimant in November and December 2021 but that Mr Jan's version of events was that these discussions were him asking the Claimant to do further work for the Respondent, and was not about unpaid monies.

20. The Claimant said that he tried to contact the Respondent in January and February 2022 but that they did not answer him. The Claimant's ACAS certificate stated that he contacted ACAS on 23 March 2022. When asked why he did not contact ACAS sooner, the Claimant said that he had contacted the Citizens Advice Bureau ("CAB") before this, and he had also spoken to ACAS prior to March 2022.

21. The Claimant said that he spoke to CAB in or around January 2022. The Claimant said that by this point the Respondent was no longer answering his calls and that it was clear to him that they were ignoring him. He said that CAB advised him to contact ACAS. The Claimant said that CAB had initially told him that they could write a letter to the Respondent, but then said that the Claimant should contact ACAS instead.

22. The Claimant told the Tribunal that he initially contacted ACAS in February 2022. He said that CAB had not informed him of any deadlines within which to make a claim, but that when he contacted ACAS, he thought that they had told him that he had 3 months to make a claim, that he may already be "out of time" and that it "depended on the court" as to whether time would be extended.

23. The Claimant did not provide the Tribunal with any documents to confirm that he had contacted either CAB or ACAS in January/February 2022. The Claimant said that in February 2022 when he had contacted ACAS he had spoken to an "operator". He said that the operator gave him a number to contact in order to commence early conciliation. When asked why he did not do this until 23 March, the Claimant said that he was busy with work and other things but did not give any further details.

24. When asked why he took over a month from receiving the ACAS certificate to issue his ET1 claim form, the Claimant read out from the email which ACAS sent to him when providing his certificate. That email said words to the effect of *"Please note there is a limited time to lodge your claim, this may be a minimum of one month, but that it may be more and that he needed to obtain legal advice to determine the precise time limit"*. The Claimant said that he did not take any legal advice.

25. Although it was accepted that the Claimant received all pay due to him for work carried out in October 2021 and November 2021, and that the Claimant did not do any work for the Respondent after 17 November 2021, the Claimant did not receive a P45 until August 2022. The P45 set out that the Claimant's last day of employment was 17 November 2021 but the Claimant sought to rely on the P45 being dated as 4 August 2022 as evidence that he was still employed by the Respondent and that the Tribunal should accept his claim. Mr Jan gave evidence that the P45 was issued late due to difficulties with his accountant.

26. Unfortunately, a significant proportion of the oral evidence was not corroborated by documentary evidence, and there were significant areas of factual dispute between the Claimant and the Respondent. For the reasons set out below, it was not necessary to resolve a number of these factual disputes.

### **The Law**

27. The relevant time limit provisions are as follows:

#### Employment Rights Act 1996

##### *Section 23*

(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) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

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

- (a) a series of deductions or payments, or
- (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

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.

(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

(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.

##### *Section 207B*

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).[...]<sup>2</sup>

(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 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 subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

28. When the Tribunal is considering whether it was “reasonably practicable” for the Claimant to have submitted his claim on time, this means something akin to “reasonably feasible” as set out in *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA*. Further, the onus is on the Claimant to satisfy the Tribunal of those facts, as set out in *Porter v Bandridge Ltd 1978 ICR 943, CA*. - “That imposes a duty upon him to show precisely why it was that he did not present his complaint”.

29. If the Tribunal were to find that it was not reasonably practicable for the Claimant to have submitted his claim in time then the Tribunal will need to undertake the exercise set out in Section 23(4) of the Employment Rights Act 1996, to determine whether the Claimant presented his claim in a further “reasonable” period. In considering this test, what is reasonable is less stringent than “reasonably practicable” – see *University Hospitals Bristol NHS Foundation Trust v Williams EAT 0291/12* but the tribunal should have regard to the the general background of the primary time limit, and the strong public interest in the claim being brought promptly, as outlined in *Cullinane v Balfour Beatty Engineering Services Ltd and anor EAT 0537/10*

### **Conclusions**

30. The Tribunal concluded that the last alleged unlawful deduction from the Claimant’s wages was on 30 September 2021. The Tribunal accepted the Claimant’s case that the payments due to him under the furlough scheme from March 2020 to 30 September 2021 were part of a series of continuing deductions. As a result, the 3 month primary time limit for claiming unauthorised deductions from wages (in respect of all of the furlough payments) expired three months later, on 29 December 2021.

31. The Claimant commenced early conciliation on 23 March 2022, almost 3 months after the primary time limit had expired. As the primary time limit had already expired before early conciliation was commenced, this is not a case to which S207B applies. Therefore the Tribunal needs to consider whether it was not reasonably practicable for the Claimant to present his claim within that primary time limit.

32. Although the Tribunal did not determine the factual dispute as to whether the Claimant had in fact received cash in hand for all of the furlough payments due (less any agreed rent), for the purposes of determining the issue of time limits, the Tribunal accepted the Claimant’s explanation that he did not feel able to submit a claim against not only his employer, but also his landlord, particularly during the covid period. However, the Claimant moved out on 31 October 2021 and had also told his employer that he would not be available for further work after this date. In the Tribunal’s judgment this barrier no longer applied to the Claimant bringing a claim after that date. At that point, two months of the primary limitation period remained.

33. The Claimant also gave evidence that he contacted the Respondent and was told that they would resolve the issue once the busy Christmas period was over. The Respondent denied that this conversation took place. If for these purposes,

the Tribunal prefers the Claimant's evidence and these conversations took place, then the Tribunal concludes that this does not mean that it was not "reasonably feasible" for the Claimant to submit his claim on time. On the Claimant's case some of the money owed to him had been owed since March 2020. He had remained employed by the Respondent during that period, and had, until October 2021, effectively been a tenant of the Respondent. He had worked for and been paid by the Respondent in October 2021. Having not paid monies to the Claimant for all of that period whilst there was a continuing relationship, in the judgment of the Tribunal it was not reasonable for the Claimant to accept any assurances from the Claimant that he would be paid. On the Claimant's account, he contacted the CAB and ACAS in January and February 2022. The Claimant did not give sufficient reasons why he could not have reasonably contacted ACAS in November or December 2021 in order to seek advice as to his position, and particularly in relation to time limits. On this basis the Tribunal concluded that the Claimant's claim was out of time and that the Tribunal did not have jurisdiction to hear it.

34. In the alternative, even if it were not reasonably practicable for the Claimant to have submitted his claim on time, due to a combination of being a tenant of the respondent and then on the basis of a promise from the Respondent to pay him the money due shortly after Christmas, the Claimant did not submit his claim within a further reasonable period. The Claimant's clear oral evidence was that by January 2022 the Respondent was ignoring him, and that he sought advice from the CAB as to his rights. The Claimant stated that CAB advised him to speak to ACAS, and that he did so in February 2022 (although there was no documentary evidence to this effect). The Claimant's oral evidence was that he was told by ACAS at that point that he may already be out of time.

35. The Claimant did not contact ACAS to formally commence conciliation until 25 March 2022. When asked about the delay between contacting CAB in January, and then ACAS in February, and again in March 2022 to commence conciliation, the Claimant said that he could not remember the exact dates, but that he had been busy due to work and life. The Claimant did not provide any other details of his work circumstances or other events in his life. The Claimant said that in February 2022 having spoken to ACAS he contacted the Respondent again, and that this was part of the reason for his delay in commencing early conciliation.

36. The Claimant told the Tribunal that by some point in February 2022 he had already been informed that time limits applied to his claim and that he may already be out of time. In the Tribunal's judgment the Claimant did not act reasonably to submit his claim after he was informed of the time limits. The Claimant had already made it clear to the Tribunal that by January 2022 he considered that the Respondent was now ignoring him, and was not going to pay him. In the Tribunal's judgment it was not reasonable for the Claimant to delay again in February/March 2022 to try to contact the Respondent. The Claimant did not give any detailed reasons as to what in his work or private life meant that he could not have contacted ACAS to start formal conciliation, or submit his ET1 sooner. In those circumstances the Tribunal concludes that it was not reasonable for the Claimant not to have submitted his claim sooner.

37. Similarly, when the Claimant received his conciliation certificate, ACAS informed the Claimant that time limits would apply to his claim, and that he would have a minimum of one month to submit his claim. The Claimant gave oral evidence that he did not seek legal advice as he thought he would be required to

pay for this. There was no evidence that the Claimant sought to contact CAB again. In the Tribunal's judgment, the email from ACAS should be considered alongside the fact that the Claimant had already been told that his claim was likely to be out of time. The Claimant did not seek to clarify the time limit, either by his own research or by contacting CAB. Nor did he submit his claim inside the minimum one month period as set out in the ACAS email. Instead he submitted his claim on 25 May 2022. The Claimant did not provide any evidence as to why he could not have submitted his claim shortly after he received the ACAS certificate on 22 April 2022, or why he did not do so within a month of 22 April 2022.

38. In summary, the Claimant's account is that after contacting the CAB, the Claimant delayed in January/February 2022 before making contact with ACAS (as CAB had advised him to do so) in February 2022. The Claimant delayed in February/March 2022 before contacting ACAS again on 25 March 2022 to formally commence the conciliation process. The Claimant then delayed from the issue of his conciliation certificate on 22 April 2022 to 25 May 2022 when he submitted his ET1. On the Claimant's own evidence, during his first call with ACAS, the Claimant was told that time limits would apply to his claim and that he may well be out of time. Against that backdrop, and for the reasons set out above, the Tribunal concluded that even if it were not reasonably practicable for the Claimant to have submitted his claim within the primary time limit, he did not submit it within a further reasonable period. The onus was on the Claimant to demonstrate that he acted reasonably, and in the Tribunal's judgment, he did not do so.

39 In those circumstances it is not appropriate to extend the time limits. The Claimant's claim was submitted out of time and the tribunal does not have jurisdiction to hear those claims. As a result, it is not necessary or possible for the Tribunal to determine the substantive claims as the Tribunal does not have jurisdiction

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**Tribunal Judge Milivojevic** acting as an  
Employment Judge

Date **04 January 2023**

JUDGMENT SENT TO THE PARTIES ON  
Date **10 January 2023**

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FOR THE TRIBUNAL OFFICE

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