



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss K Chodzynska

**Respondent:** Bluewood Recruitment Limited

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

**On:** 27 January 2023

**Before:** Employment Judge Ayre

## Appearances

Claimant – in person

Respondent – Mr R Stevens, director

## JUDGMENT

1. The name of the respondent is amended to Bluewood Recruitment Limited.
2. The claim for unlawful deduction from wages is out of time and the Tribunal does not have jurisdiction to hear it.
3. The claim for a statutory redundancy payment fails and is dismissed.

## REASONS

### Background

1. The claimant was employed by the respondent as a health care assistant from 13 November 2020 until 24 April 2022.
2. Early conciliation started on 4 May 2022 and ended on 6 May 2022. The claim form was presented on 10 October 2022 and included claims for a redundancy payment, arrears of pay and 'other payments'.
3. The respondent defends the claim.

## **The proceedings**

4. I heard evidence under oath from the claimant and, on behalf of the respondent, from Mr Richard Stevens, director. Neither party submitted any documents.
5. Mr Stevens' evidence was limited to the name of the claimant's former employer. The claimant had issued her claim against 'Bluewood Healthcare' which does not appear to be a legal entity. She did not have a copy of her contract of employment or any pay slips with her during the hearing.

## **The issues**

6. The issues for determination today were as follows:
  - a. Was the claim for unauthorised deductions from wages made within the time limit in section 23 of the Employment Rights Act 1996?
  - b. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
  - c. 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?
  - d. If the claim for unauthorised deduction from wages was made in time, did the respondent make any unauthorised deductions from the claimant's wages?
  - e. Does the claimant have sufficient service to bring a claim for a statutory redundancy payment?
7. The claimant told me that she was claiming £500 in respect of unpaid wages for April 2022. In the alternative she claims that sum as a statutory redundancy payment.

## **Findings of fact**

8. The claimant was employed by Bluewood Recruitment Limited. Bluewood Healthcare is a trading name and is not a legal entity. Bluewood Recruitment Limited trades under the name Bluewood Healthcare.
9. The claimant's employment with Bluewood Recruitment Limited started on 13 November 2020 and ended on 24 April 2022. During her employment she was paid every two weeks.
10. The claimant was last paid by the respondent at the beginning of April 2022. She did not receive any further payments for the month of April and was expecting to be paid approximately £500 in wages at the end of April.

11. The claimant was paid a bonus of £600 at the start of April and was told that this was a mistake and that her pay had been reduced to take account of the mistaken bonus payment.
12. In April 2022 the claimant became aware, through speaking to friends, of the possibility of bringing a claim in an Employment Tribunal. She decided that she wanted to bring a claim to recover the money that she believes is owing to her.
13. On 4 May 2022 the claimant contacted ACAS and began early conciliation. The early conciliation certificate was issued on 6 May 2022. The claimant then took no further steps to issue her claim until October 2022. Her claim was presented to the Tribunal on 10 October 2022.
14. When asked why she had waited until October 2022 to issue her claim, the claimant said that it was a mistake on her part. She told ACAS in May that she wanted to bring a claim and had mistakenly thought that they would do it on her behalf. She acknowledged that this was a misunderstanding on her part, and that it had always been her intention to put in a claim. She did not take any legal advice and was not aware of the time limit for bringing claims in the Employment Tribunal.

## **The Law**

### Unlawful deductions from wages

15. 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.”*

16. 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."*

17. Time limits are extended to allow for Early Conciliation. In summary, the period beginning with the day after Early Conciliation starts up to and lasting until the day upon which ACAS issues the Early Conciliation Certificate does not count for the purposes of time limits, so that the clock does not run during that period.
18. 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. The Court of Appeal in ***Radakovits v Abbey National plc [2010] IRLR 307*** confirmed that time limits go to jurisdiction and that jurisdiction cannot be conferred on the Tribunal by agreement or waiver, so that an employer's decision not to raise a time point will not bind the Tribunal.
19. 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 his claim on time.
20. 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'.

### Statutory redundancy payments

21. Section 155 of the Employment Rights Act 1996 provides that "*An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.*"
22. Section 163 of the ERA gives employees the right to make complaints to employment tribunals in relation to redundancy payments. Section 164 of the ERA provides that an employee loses her right to a statutory redundancy payment unless one of a number of events happens within six months of the 'relevant date'. The effect of this provision is that claims for redundancy payments should be made within six months of the relevant date.

### **Conclusions**

### Unlawful deduction from wages

23. The claimant was due to be paid at the end of April 2022. Even assuming that the payment of April's wages was due on the very last day of April, 30 April 2022, the primary time limit for issuing proceedings expired on 29 July 2022. Two days would be added on to that for early conciliation, extending the deadline to 31 July 2022.
24. The claimant did not issue her claim until 10 October 2022. It was, therefore, two months and ten days late. This is a significant delay.
25. The claimant was aware of her legal rights, and specifically of the right to bring a claim in an Employment Tribunal, from April 2022 onwards. She was able to start the process by contacting ACAS in early May and she completed the early conciliation process on 6 May, well within the time limit. She then waited more than five months before issuing proceedings.
26. The reason she did not submit her claim earlier was due to a mistake on her part and a misunderstanding of the process. She was also not aware of the time limits, despite being aware of the right to bring a claim and of how to start the process, by contacting ACAS.
27. The claimant was aware of her rights, but made a mistake about how to enforce them, and was not aware of time limits. Given her knowledge of the right to make a complaint, and of the need to contact ACAS as a first step, it would in my view have been reasonable for her to take steps to find out about time limits and about the process to be followed once the early conciliation certificate has been issued by ACAS.
28. The claimant started early conciliation well within the time limits and could have issued proceedings earlier. Whilst I accept that the claimant was not aware of the time limits, the question is not, whether she knew of her rights, but whether she ought to have known of them (*Porter v Bandridge Ltd [1978] ICR 943, C*).
29. The claimant has produced no compelling evidence to suggest that it was not reasonably practicable for her to issue her claim on time.
30. It would, in my view, have been reasonably practicable for the claimant to present her complaint of unlawful deduction from wages on time, but she failed to do so. The Tribunal therefore does not have jurisdiction to hear her claim.

### Statutory redundancy payment

31. The claim for a statutory redundancy payment was presented to the Tribunal within six months of the date upon which the claimant's employment terminated (which I have taken to be the 'relevant date'). It is, therefore, in time.
32. The claimant was employed by the respondent from 13 November 2020 until 24 April 2022. Her continuous employment with the respondent lasted less than 18 months.
33. Section 155 of the ERA provides that employees must have at least two years' continuous employment in order to be entitled to a statutory redundancy

payment. As the claimant has less than two years' continuous employment her claim for a statutory redundancy payment fails and is dismissed.

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Employment Judge Ayre

Date: 27 January 2023