



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Ralfa  
**Respondent:** Mr A Aarons  
**Heard at:** East London Hearing Centre  
**On:** 17 July 2023  
**Before:** Employment Judge S Povey

## Representation

For the Claimant: In Person  
For the Respondent: In Person

**JUDGMENT** having been sent to the parties on **27 July 2023** and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

1. At the culmination of the hearing on 17 July 2023, I provided my judgment and reasons orally to the parties.
2. On 19 July 2023, the Claimant made a request for written reasons for my decisions. These are those reasons.

### Background

3. This is a claim brought by De Ralfa (hereafter referred to as the Claimant) against Andrew Aarons (hereafter referred to as the Respondent). The Claimant alleges that he is owed £195 by the Respondent in respect of unpaid wages.
4. ACAS Early Conciliation began on 22 November 2022 and ended on 24 November 2022. The claim was presented to the Employment Tribunal ('the ET') on 15 December 2022.

5. In his claim form, the Claimant alleged that he had been employed by the Respondent from 18 July 2022 to 18 August 2022 as a plant packer. The Respondent did not respond to the claim in form ET3. However, in email correspondence with the Tribunal, he alleged that the Claimant was a self-employed contractor and never entitled to wages. In addition, the Respondent reported that he had been hospitalised as a result of suffering a stroke.

6. By a letter dated 4 May 2023, the parties were notified of the hearing of this claim on 17 July 2023.

### **The Relevant Law**

7. Section 13 of the Employment Rights Act 1996 states as follows (so far as relevant):

- (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.
- (2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—
  - (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
  - (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
- (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.

...

8. By virtue of section 23(1) of the Employment Rights Act 1996, “a worker may present a complaint to an employment tribunal...that his employer has made a deduction from his wages in contravention of section 13.”

9. By reason of sections 23(2) & 23(4) of the Employment Rights Act 1996 the ET shall not consider a complaint of unauthorised deduction from wages unless it is presented:

- (a) Before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made, or
- (b) Where the ET is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of three months, the ET may consider the complaint if it is presented within such further period as the ET considers reasonable.

### **The Hearing on 17 July 2023**

10. Both the Claimant and the Respondent attended the hearing, which was relocated to the ground floor boardroom at the Import Building because of the Respondent's mobility issues.

11. The Claimant provided further evidence in support of his claim. The Respondent explained that he had not filed a response to the claim because of his hospitalisation and subsequent difficulties with his right-sided movement. He maintained that the Claimant was never employed by him.

12. The Claimant provided the following information in response to my questions of him:

- 12.1. The Respondent had told him at the outset of his employment that he would be paid £10 per hour.
- 12.2. The Claimant had received various bank transfer payments from the Respondent for work undertaken, as follows:
  - 12.2.1. £294 on 27 July 2022
  - 12.2.2. £300 on 3 August 2022
  - 12.2.3. £81 on 5 August 2022
  - 12.2.4. £375 on 11 August 2022.
- 12.3. The claim was for unpaid wages for work undertaken on 11, 14 & 16 August 2022.
- 12.4. The Claimant expected to be paid every Wednesday for work undertaken in the previous seven days. As such, he had expected to be paid on 17 August 2022 for the work undertaken on 11, 14 & 16 August 2022. No payment had been forthcoming from the Respondent.

- 12.5. The Claimant had given the Respondent a further week from 17 August 2022 to pay the wages owed. When no payment materialised, the Claimant told the Respondent that he would take action to recover the sums owed.
- 12.6. The Claimant first approached ACAS in mid-September 2022. During this time, ACAS made the Claimant aware of the time limits for bringing a claim in the ET (which the Claimant recalled to be 90 days), although ACAS did not tell the Claimant that his claim was out of time. The Claimant also undertook his own research.
- 12.7. After the conclusion of Early Conciliation on 24 November 2022, the Claimant wanted to give the Respondent further time to pay the outstanding wages and sent him messages by WhatsApp. That, the Claimant said, was why he waited for a further three weeks before presenting his claim to the ET.
13. I explained to the Claimant that in respect of the three-month time limit for presenting his claim:
- 13.1. It started running from 17 August 2022, the date when he expected to be paid for the work allegedly undertaken on 11, 14 & 16 August 2022.
- 13.2. On its face, that deadline was 17 November 2022.
- 13.3. The time limit was not paused by the period of ACAS Early Conciliation, because Early Conciliation did not commence until after the time limit had already expired.
14. For those reasons, the claim was presented out of time.

### **Reasons for Not Extending Time**

15. As the claim was brought out of time, in order for them to proceed, the Claimant must rely upon the ET's power to extend time. That requires determination of the following:
- 15.1. Whether it was reasonably practicable for the Claimant to present the claim to the ET within the three-month time limit;
- 15.2. If it was not, whether the Claimant thereafter presented the claim within a further reasonable period of time after the expiry of the three-month time limit.

### **Reasonably practicable**

16. The Claimant was aware of the three-month time limit from at least mid-September 2022, when he was informed of it by ACAS. It was not suggested by the Claimant that, at that stage, there was anything preventing him from beginning Early Conciliation and then, if that failed, presenting his claim to the ET.

17. The Claimant explained that, on more than one occasion, he gave the Respondent an opportunity to pay what was allegedly owed. Whilst those sentiments are admirable, they do not, without more, demonstrate that it was not reasonably practicable for the Claimant to present his claim within the requisite time limit. It remained open to the Claimant to begin the ET process whilst still exploring an informal settlement of his claim with the Respondent.

18. When the Claimant first approached ACAS in September 2022, he did not want the Respondent to be aware of his home address. He was advised by ACAS that unless he could provide an alternative correspondence address, any Early Conciliation certificate would contain his home address. The Claimant arranged an alternative address to use (his friend's), returned to ACAS and began Early Conciliation on 22 November 2022.

19. Whilst there was delay caused by the Claimant seeking an alternative address, I am reminded that he was, on his own account, aware of the three-month time limit from at least mid-September 2022. He still had approximately two months in which to arrange a correspondence address, start Early Conciliation and, thereafter, present his claim. Instead, the Claimant took over two months to start Early Conciliation (despite being aware of the time limit that was running) and thereafter delayed for a further three weeks before presenting his claim to the ET.

20. In essence, the Claimant, being aware of the time limit, had a choice. He chose to delay beginning Early Conciliation and presenting his claim to the ET in the hope of settling his claim. That was his choice and he was quite entitled to make it. However, it does not demonstrate that it was not reasonably practicable for the claim to be presented in time.

21. The Claimant also chose to use a correspondence address, which he was quite entitled to do. However, he has provided no explanation for why, despite being fully aware of the time limit, he was unable to secure that address before 17 November 2022 (or if he was able to arrange the address by 17 November 2022, why he then delayed starting Early Conciliation until 22 November 2022, when the three-month time limit had elapsed).

22. Again, that was a choice the Claimant was quite entitled to make it. However, it similarly does not demonstrate that it was not reasonably practicable for the claim to be presented in time.

23. For those reasons, it was reasonably practical for the Claimant to bring this claim before the expiry of three months from the date of the alleged unauthorised deduction from wages.

### **Further Reasonable Period**

24. The fact that it was reasonably practicable to present the claim within the three-month time limit is an end to the matter.

25. However, in the alternative and for the sake of completeness, even if it was not reasonably practicable to bring the claim within three-month time limit, the claim was not thereafter brought within a further reasonable period. The claim was presented on 15 December 2022, four weeks after the expiry of the three-month time limit. The Claimant was aware of the time limit and had been aware of it from at least mid-September 2022. The Claimant explained that, after the end of Early Conciliation, he again gave the Respondent an opportunity to pay what was allegedly owed to him. When no payment was forthcoming, the Claimant finally presented his claim to the ET.

26. The Claimant was not paid what he claimed to be owed on 17 August 2022. Overtures to the Respondent in the interim had not resulted in any payment being made. The involvement of ACAS and the commencement of the Early Conciliation process had not resulted in any payment being forthcoming from the Respondent.

27. In those circumstances, and fully aware of the time limit which had run and then expired, the further four weeks that elapsed after Early Conciliation before the Claimant presented his claim to the ET was not a reasonable period of time.

## **Conclusions**

28. The deadline for bringing this claim was 17 November 2022. It was presented on 15 December 2022, four weeks out of time. It was reasonably practicable for the Claimant to present it to the ET by 17 November. In the alternative, it was not brought within a further reasonable period after the end of the three-month time limit.

29. For those reasons, time is not extended and, by operation of section 23 of the Employment Rights Act 1996, the ET cannot determine this claim, it has no reasonable prospects of success and it is struck out.

30. Two other issues require comment. First, the Respondent failed to respond to the claim in time or at all. He did not make a formal application to extend time to present his response in form ET3. Had the Claimant's claim been presented in time (or had time been extended), the Respondent would have only been permitted to defend the claim with the permission of the ET. However, before any of those events can come about, the ET must first have the power (or jurisdiction) to consider and determine the claim. For the reasons set out above, the ET does not have that power and so the Respondent's failure to respond in time to the claim becomes irrelevant.

31. Secondly, in the course of the hearing, I explained to the Claimant that the question of whether the claim was out of time was first commented upon by another judge in the early stages of these proceedings. That was at what is known as the vetting stage, when under the ET's Rules of Procedure, a decision is made as to whether certain preliminary information is contained within a claim form. In the Claimant's case, the requisite preliminary information was provided, and the claim was permitted to proceed. It would not be appropriate at that stage to refuse to allow a claim to proceed on the grounds that it appeared to have been brought out of time. The vetting process is a largely administrative task. It is not designed to engage with any potential weaknesses or shortcomings in a claim. That, ultimately, is a matter of evidence to be determined at a substantive hearing.

32. As such, it was right and proper for the claim to proceed at that stage. That is all the more so where, as here, the Claimant should be afforded an opportunity to explain why the claim was presented out of time and armed with that information, the judge must decide whether or not to exercise the power contained within section 23 of the Employment Rights Act 1996 to extend time and permit the claim to proceed.

33. However, for the reasons detailed above, there is no power to extend time.

**Employment Judge S Povey**  
**Date: 31 July 2023**