



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Anne Burton

**Respondent:** Network Rail Infrastructure Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** by CVP at Croydon **On:** 11 March 2024

**Before:** Employment Judge Sekhon

### Appearances

For Ms Burton: In person  
For the respondent: Ms Crew, Counsel

## RESERVED JUDGMENT

1. Ms Burton's claims for Breach of Contract and Unlawful Deduction from Wages are out of time.
2. It was reasonably practicable for Ms Burton to have filed these claims within the statutory time limits.
3. The Tribunal has no jurisdiction to hear these claims and they are struck out.

## REASONS

### Introduction

1. Pursuant to Employment Judge Cawthray's Order dated 1 December 2023, the matter was listed before me as a preliminary hearing to determine,  
"6.1 *Whether it was reasonably practicable to present the claim, which includes the complaints of breach of contract and unlawful deduction from wages within the time limit?*  
6.2 *If not, was it presented within a reasonable period?*"
2. At the outset of the hearing, I advised Ms Burton that I would not be deciding on the merits of her claim at this hearing and if I found that it was reasonably practicable for her to bring her claims within the statutory time limit and that her claim was not presented within a reasonable period of time, that her claims would be dismissed.

### Background

3. Ms Burton was employed by the respondent, Network Rail Infrastructure Limited, as an HR Business Partner Support from 6 January 2020 until she resigned on 9 September 2022.
4. Ms Burton contacted ACAS and commenced early conciliation on 12 June 2023 and was provided with a Certificate on 14 June 2023.
5. Ms Burton presented a claim form on 19 June 2023 alleging the respondent breached her contract of employment and / or unlawfully deducted sums from her wages. She alleges that she is entitled to back pay following the pay deal agreed on 20 March 2023 between the respondent and the Trade Unions, which related to despites in the rates of pay for a period when Ms Burton worked for the respondent.
6. By ET1 dated 31 July 2023, the respondent submits that Ms Burton had left the respondent's employment by the date that the pay deal was agreed (20 March 2023) between the respondent and the Trade Unions and accordingly she was not entitled to any pay award agreed. Further Ms Burton's claims are out of time and the Tribunal therefore does not have jurisdiction to hear the claims.
7. A case management hearing took place on 1 December 2023 before Employment Judge Cawthray and the Order listed a preliminary hearing to decide whether Ms Burton has brought her claims on time and if not, whether it was reasonably practicable for Ms Burton to have filed the claim in time and if not, whether it was presented within a reasonable period.
8. This Order also set out a draft List of Issues that may be determined at the final hearing and the liability issues are as set out below. Ms Burton is bringing claims for breach of contract and unlawful deduction of wages.

**"1. Breach of contract**

1.1 *Did the Respondent breach any express or implied terms of the Claimant's contract of employment by not paying her the pay award that it communicated to relevant employees on 20 March 2023, specifically that an increase in pay and/or back pay and/or Sunday pay had been agreed with the Trade Union for bands 5-8 and general grades and would be paid from March 2023 (the 'Pay Award')? Ms Burton says that it is custom and practice for pay awards that have been negotiated collectively to be paid to ex-employees. The respondent says there is no express entitlement to a pay award after employment has ended.*

**2. Unlawful deductions from wages**

2.1 *Was the Pay Award "wages" which was properly payable to Ms Burton as defined by section 27 of the ERA?*

2.2 *If the answer to 3.1 is yes, did the Respondent make unauthorised deductions from Ms Burton's wages by failing to pay her the Pay Award? If so, how much was unlawfully deducted?*

2.3 *If the answer to 3.1 is yes, if there was a series of deductions, was the series broken by Ms Burton receiving the correct wages? If so, when?"*

**The Hearing**

9. The respondent provided a bundle totalling 119 pages in advance of the hearing and references in square brackets in this Judgment are to pages in that bundle. The respondent

served no witness statements, and Ms Burton served a witness statement totalling 3 pages dated 19 February 2023 [116-118]. I read the witness statement and heard evidence from Ms Burton under oath.

10. Ms Burton attended without legal representation and represented herself. Ms Crew, Counsel, attended on behalf of the respondent. Each party made submissions which I have considered and are discussed further below.
11. The Hearing was listed for a 3-hour hearing and a short break was taken during the hearing. After hearing the evidence and submissions, I reserved my decision due to time constraints.

### **Facts**

12. From the evidence I received in the bundle and heard at the hearing, I made the following Findings of Fact, on the balance of probabilities.
13. Ms Burton was employed by the respondent, Network Rail Infrastructure Limited, as an HR Business Partner Support from 6 January 2020. Her duties included supporting an HR Business Partner and providing routine HR advice to line managers. I was not referred to this, but I note a copy of Ms Burton's contract of employment is in the bundle [47-51]. Ms Burton had previously worked in an HR capacity since 2015. She was aware of the short time limits in which to bring claims in employment cases.
14. Ms Burton was aware that when she worked at the respondent, it was a unionised workplace and she had dealings with the Union representatives in her role in HR. Ms Burton was a member of the union, the National Union of Rail, Maritime and Transport Workers ("RMT"), for the period she was employed by the respondent, but she cancelled her subscription shortly after resigning from her position with the respondent. Ms Burton was a member of union, UNITE, for many years including whilst she was employed by the respondent and for a period after she left the respondent's employment.
15. On or about January 2022, the respondent, and the Trade Unions, led by the RMT, entered into pay negotiations with the respondent for the appropriate rate of pay for Grades 5-8 and for general grades. The negotiations included Ms Burton's pay. Ms Burton was aware of this and left this issue for the RMT to resolve on her behalf.
16. On 9 September 2022, Ms Burton resigned by email [54] from her position at the respondent's offices. She was aware that pay negotiations with the RMT were ongoing at the time that she resigned and that these included disputed rates of pay for the time she worked for the respondent.
17. The respondent acknowledged receipt of Ms Burton's resignation by email and subsequently wrote a detailed letter on 15 September 2022 [56-57] setting out that the last date of Ms Burton's employment was 8 November 2022, her ePay access would be open for two years allowing for Ms Burton, *"to access payslips and letters after leaving and receive notifications with updates or new information associated to your time within Network Rail"* and confirming details of annual leave, return of company property and pension.
18. This letter does not refer to any outstanding or ongoing pay negotiations with the trade union, RMT, that were taking place at the time on Ms Burton's behalf and / or that this issue was yet to be determined and may result in further payments to be made to Ms Burton in the future. Ms Burton accepted that she did not respond to this letter to raise this omission or raise this omission in writing with the respondent at any time thereafter. Ms Burton could

not recall discussing this issue with the respondent before she left. However it was Ms Burton's evidence that she was aware that the pay negotiations were ongoing. Ms Burton did not provide evidence that she sought advice from her Unions or legal advice from other resources prior to her resignation or in the months that followed and that she only did so sometime between 16 May 2023 and 12 June 2023.

19. Prior to leaving the respondent's employment, Ms Burton used to receive updates about the ongoing pay negotiations between the respondent and RMT through "all employee" emails. Ms Burton accepted that she did not arrange / put in place any arrangements with the respondent to be kept informed and updated about the ongoing pay negotiations and accordingly did not receive any communication about the status of the negotiations from the respondent or the RMT after she left the respondent's employment. Ms Burton did not know of or vote in the referendum on the "pay offer" that the RMT was considering in March 2023. Ms Burton planned to keep abreast of the status of the negotiations by talking to colleagues and paying close attention to the media.
20. Ms Burton received her final payment of outstanding wages from the respondent on 9 December 2022 and accepted that she was no longer employed by the respondent from her effective date of termination on 8 November 2022 and that she no longer had a contract of employment with the respondent from this date.
21. On 20 March 2023 [65-66], a letter was sent out to employees of Network Rail through the employee relations communications confirming that a pay offer between Network Rail and the RMT had been agreed and the letter set out the details of this. Ms Burton did not receive this email/ letter. However Ms Burton became aware that a pay offer had been agreed through the media on 20 or 21 March 2023.
22. On 21 March 2023 [92], Ms Burton contacted the respondent's NRSS Payroll Enquiries stating,  
*"As you are aware a deal has now been agreed by the RMT. I have now left Network Rail but the offer covers the period when I was working at Network Rail as I left in early November. Please would you kindly advise when the payment will be made".*
23. The respondent's HR support manager responded on 22 March 2023,  
*"As a leaver, you may be entitled to a payment for the Pay Award from 2022 and 2023. This may depend on your personal circumstances. Any employees who had a salary of below £24,000 on 1st January 2021, would also be due the uplift of £250. All leavers' arrears will be calculated after active employees have been reviewed and processed in full. This means if you are entitled to a payment, this will take place later in the year. An FAQ document will be available at some point this week on ePay. As a leaver, you will have access to ePay for 2 years after leaving. This means that once a payment is made to you, a notification will be sent to your email address to confirm a payslip is available. If you need your email address amending, please let us know."*
24. Ms Burton did not hear from the respondent further from 22 March 2023 to 16 May 2023 and accepted that she had not received a satisfactory response from the respondent until 16 May 2023 as to whether and when she would be paid any outstanding sums from the respondent following the pay deal agreed between the respondent and the RMT on 20 March 2023.
25. At some point between 22 March 2023 and 31 March 2023, Ms Burton spoke to a colleague who was still working for the respondent and he /she provided her with a document setting out phases of the pay deal [58] between the respondent and RMT. It is Ms Burton's

evidence that it was her understanding from this document was that she would be paid backdated outstanding sums from the pay offer deal on 31 March 2023. Ms Burton's colleagues who were still employed by the respondent received payment of sums on 31 March 2023, but she did not receive any money.

26. Ms Burton received further documentation from a colleague which she states in her witness statement, *"made it clear that I was entitled to the payment as it had been backdated to a time when I was employed by the respondent"*. Ms Burton referred the Tribunal to page 86 of the bundle as supporting her view which is a document entitled, "Band Salary Review Rules" and is dated January 2022.
27. Ms Burton texted Mr Russell Knott, Trade Union representative, on 6 April 2023 [93-94] and he responded by text stating that Ms Burton was entitled to a payment as she was employed at the time. The Tribunal do not place reliance on this text as it is difficult to decipher who was being texted and only an extract of the texts were supplied with no context of the conversation.
28. Ms Burton emailed Ian Turner (Reward and Benefits manager) on 14 April 2023 [68-69] at the respondent requesting a definitive answer on when a payment would be made to her and setting out her view that she was eligible for the payment as the offer was backdated to January 2022 and her employment terminated on 8 November 2022.
29. Ms Burton was advised on 16 May 2023 by the respondent [66] that they had made the decision that as Ms Burton had left Network Rail prior to the pay award being agreed, she would not be entitled to arrears of pay.
30. Ms Burton wrote on 1 June 2023 [67] expressing her dissatisfaction at the decision that had been made and stating that she wished to make a formal grievance. Ms Burton's request for a grievance was not acknowledged by the respondent. Ms Burton accepted that she did not expect a grievance to be carried out and for her to receive an outcome within one month of requesting her grievance on 1 June 2023, which was when she believed she needed to file a claim.
31. Ms Burton's evidence was that putting in a grievance was not the reason and did not contribute to her delay for filing a claim form in the Tribunal. Ms Burton could not explain what caused the delay from 16 May 2023 to 1 June 2023 in requesting a grievance.
32. Between June to August 2023 there are internal emails from the respondent in the bundle discussing the position with payment requests and requests for grievances from employees [70-77]. An email was sent from Lisa Belsham (position unknown) at the respondent [77] on 4 August 2023 but it is unclear to whom this was sent, asking that a consistent message be given to ex-employees and union representatives on the matter of back pay following a meeting with the three trade unions in which it had been decided that:-
  - *Back Pay will be processed for any person covered by the General Grades uplift who was employed in the organisation on / after 01 January 2023. It will be normal arrears from 1 January 2022 to date of leaving.*
  - *Leavers during 2022 will not get back pay, as the dispute was still in play by all three unions.*
  - *Back Pay will only be paid to 'good leavers' – so we will exclude any employee who was dismissed or those who resigned prior to a disciplinary."*
33. Ms Burton's evidence was that between 16 May 2023 (when the respondent told her that she was not entitled to arrears of pay) until she put her ACAS form in on 12 June 2023, she

sought legal advice. She was unable to provide dates advice was sought but she stated that she spoke to a firm of solicitors, her Union and to the Citizens Advice Bureau. She did not seek advice from UNITE earlier as she had outstanding subscriptions to pay.

### The Law

34. The Equal Treatment Bench Book reminds the Tribunal as to the disadvantages a litigant in person may face in litigation and that litigants in person may make basis errors in the preparation of their cases and may fail to identify salient points in their statement of case.
35. To assist Ms Burton, who is a litigant in person, I have set out the relevant extracts of the law in full and paragraphs from cases that are relevant to this case.
36. Article 7 of the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 sets out the time limits within which breach of contract claims must be brought for the Employment Tribunal to have jurisdiction. This requires that:

*“Subject to [any adjustment effected by reason of compliance with Early Conciliation requirements], an employment tribunal shall not entertain a complaint in respect of an employee’s contract claim unless it is presented-*

*(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or...*

*(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.”*

37. No adjustment for Early Conciliation applies where the primary time limit for bringing the claim has expired before the start of Early Conciliation (Article 8B of the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994).

38. The time limits within which unauthorised deduction from wages claims must be brought in order for the Employment Tribunal to have jurisdiction are set out in Section 23 of the 1996 Act:

*“(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.*

*(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.*

*(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint...”*

39. No adjustment for Early Conciliation applies where the primary time limit for bringing the claim has expired before the start of Early Conciliation (section 207B of the 1996 Act).
40. Whether it was reasonably practicable for the claimant to bring their claim within the time limit is a question of fact. Even where a Tribunal is satisfied that presentation in time was not reasonably practicable it still must decide whether the claim was presented within such further period as it considers reasonable.
41. The burden of proof is on the claimant to show the reason or reasons which rendered it not reasonably practicable to meet the limitation period (*Porter v Bandridge Ltd* [1978] IRLR 271). There is a strong public interest in claims being brought promptly. *King v Gemalto UK Ltd* [2022] EAT 29, emphasises the importance of time limits and of adherence to these.
42. Where a claimant is aware of their rights they are under an obligation to seek information and advice about how to enforce that right (*Trevelyan's (Birmingham) Ltd v Norton* 1991 ICR 488, EAT). While there are cases where a claimant has been successful in an application to extend time where they have waited for an internal process to end before filing a claim, those cases turn on their particular facts, and waiting to exhaust the employer's internal appeal process on its own is not enough (*Palmer and anor v Southend-on-Sea Borough Council* [1984] ICR 372).
43. The test of whether it was "not reasonably practicable" is an objective test, examining not what the claimant in fact knew of the applicable time limit, but whether the claimant should reasonably have known about it (*Porter v Bandridge Ltd* [1978] IRLR 271). The Tribunal will take into account all the facts of the case.
44. The case of *Palmer and Sanders v Southend on Sea* [1984] IRLR 119 provides further instruction on how to construe the "reasonably practicable" test:  
*"To this end the Tribunal should consider: (1) the substantial cause of the claimant's failure to comply with the time limit; (2) whether there was any physical impediment preventing compliance, such as illness, or a postal strike; (3) whether, and if so when, the claimant knew of his rights; (4) whether the employer had misrepresented any relevant matter to the employee; and (5) whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time."*
45. Ms Crew referred me to the passage of Lord Justice Scarman in *Dedman v British Building and Engineering Appliances Ltd* [1974] 1 All ER 520 which explained that where a claimant says that they did not know of their rights, the relevant questions would be:  
*"What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? Should there prove to be an acceptable explanation of his continuing ignorance of the existence of his rights, it would be inappropriate to disregard it, relying on the maxim "ignorance of the law is no excuse". The word "practicable" is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance"*.
46. From the authority of *Wall's Meat v Khan* [1978] IRLR 499,  
*"The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike. The impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either*

*state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him.....*

*“Thus, where a person is reasonably ignorant of the existence of the right at all, he can hardly be found to have been acting unreasonably in not making inquiries as to how, and within what period, he should exercise it. By contrast, if he does know of the existence of the right, it may in many cases at least, though not necessarily all, be difficult for him to satisfy an [employment] tribunal that he behaved reasonably in not making such inquiries.”*

47. The general rule set out in *Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53, CA provides that if a solicitor mistakes the time limit then the claimant’s action is against them for professional negligence, but it will not mean that it was not reasonably practicable to file the claim in time. Lord Phillips MR in *Marks & Spencer Plc v Williams-Ryan* [2005] ICR1293 at paragraph 24 of that Judgment affirmed the principle this was a binding proposition of law, namely that: *“if an employee takes advice about his or her rights and is given incorrect or inadequate advice, the employee cannot rely upon that fact to excuse a failure to make a complaint to the Employment Tribunal in due time. The fault on the part of the adviser is attributed to the employee.”*

### Discussion

48. The starting point is whether Ms Burton has, in fact, bought her claims within the times set out by the law and set out in detail above. Ms Burton accepted that her contract of employment concluded on 8 November 2022 and that there was no contract of employment in place between herself and the respondent on 20 March 2023 when the pay deal was agreed with the respondent and the RMT. She told me she was aware of the three months’ time limit that applies in cases. She would therefore have to accept that her claim for breach of contract should have been made within 3 months starting from 8 November 2022, namely by 7 February 2023. She did not bring her claim in time.
49. In respect of Ms Burton’s claim for unlawful deduction of wages, Ms Burton argues that her belief is that the claim was bought in time as the date of payment that the wages from which the deduction was made was on 31 March 2023, when her colleagues were paid the outstanding back pay, and she was not. She submitted that she therefore had 3 months from 31 March 2023 in which to file a claim. She contacted ACAS and presented her claim from within this period. Ms Burton admitted that this was her own reading of the law and the advice she obtained confirmed her view, but she accepted that ignorance of the law was not an excuse to not bring a claim in time.
50. Ms Crew does not accept Ms Burton’s submission as the respondent was not making a payment of wages on 31 March 2023 as defined by Section 27 of the Employment Rights Act 1996 and Ms Burton’s contract of employment had terminated by 8 November 2023. The respondent’s case is that the 3-month time limit should commence from when Ms Burton last received her payment of wages on 9 December 2022. Having considered the facts of the case, I agree with the respondent’s submissions, and I find that Ms Burton is out of time to bring a claim for unlawful deduction of wages, which should have been filed within 3 months from 9 December 2022, namely by 8 March 2023.
51. Ms Burton has not referred to her belief that her time began to run on 31 March 2023 or the reasons for this in her witness statement dated 19 February 2023 which she prepared to address issues of the time of her filing her claim for this hearing. I am also unclear why Ms Burton became, as she described “fixated “on the date of 31 March 2023 as the date the 3-month time limit began to run. She was not advised as such by the respondent who in their



email of 22 March 2023 told her that if she were eligible for a payment that, “*All leavers’ arrears will be calculated after active employees have been reviewed and processed in full. This means if you are entitled to a payment, this will take place later in the year.*” The respondent therefore did not provide Ms Burton a date when to expect a payment and the document at page 58 which Ms Burton referred me to does not set out a distinction between current employees and leavers and when payments would be made for leavers. Further Ms Burton told the Tribunal that she received this document from a colleague who was still working for the respondent and as such it was reasonable to assume that this applied to current employees.

### **Reasonably practicable**

52. In respect of both claims, I therefore now turn my mind as to whether I am satisfied that it was not reasonably practicable for Ms Burton to file both complaints before the end of the relevant period of three months, namely by 7 February 2023 for the breach of contract claim and by 8 March 2023 for the unlawful deduction from wages claim.
53. The issue in this case is not in the circumstances, whether it would be just and reasonable for the claims to be treated as time barred but instead the issue before me is whether it was not reasonably practicable for Ms Burton to submit the claim in time which is a different question and requires close consideration of the facts. Ms Crew reminded me of the limited discretion that the Tribunal have in reaching such a decision and the factors that need to be considered and I refer to the relevant case law above.
54. Ms Burton bears the burden of showing that it was not reasonably practicable to bring her claim within the statutory time limits. This is an objective test. I do not find that Ms Burton has discharged this burden for the following reasons: -
55. Ms Burton was articulate in evidence and agreed with Ms Crew that she had knowledge of the short deadlines to bring claims in employment cases. Ms Burton offered the Tribunal no explanation of why she did not preserve her position by filing a claim at the time of her resignation or within 3 months thereafter to ensure that she complied with any statutory time limit save for stating that with the benefit of hindsight she could have done so.
56. Ms Burton provided no evidence that the delay in her bringing her claim was caused or contributed by some mental or physical impediment which reasonably prevented her from bringing her claim earlier. She stated she would not have known what claims to bring at the time, but I find that she could have obtained legal advice if she was unsure as she would have known where to go if she had any legal questions with her background in HR.
57. When Ms Burton resigned, she had approximately 8 years’ experience of working in an HR capacity and 2.5 years of working in a unionised workplace. She was herself a union member of the RMT for a limited time and UNITE for a number of years. She volunteered at the Citizen’s Advice Bureau. She therefore would have had access to advice from both Unions and the Citizen’s Advice Bureau. She contacted a Trade Union representative on 8 April 2023 which was an option available to her at any time earlier than 8 April 2023. She could also have made enquiries of her own by contacting ACAS, searching online, or contacting other legal advice providers. Ms Burton has provided no evidence that she attempted to obtain advice from these various sources prior to resigning or within 9 months of doing so despite accepting that at the time of her resignation she knew that there was an ongoing pay dispute with the respondent which the RMT were bringing on her behalf.
58. Ms Burton’s evidence was that she sought legal advice between 16 May 2023 and 14 June 2023 advice, some 9 months after she resigned. Ms Burton admits that she had in her mind mistakenly believed that the three-month time limit began to run from 31 March 2023 and

that her advisers agreed with this. There has been no evidence that Ms Burton received substandard union / legal advice at this time, other than Ms Burton's oral evidence which was vague about the timing she sought advice and what information she told her advisers. I find that even if there had been this would not provide an automatic route for Ms Burton to successfully show that it was not reasonably practicable for her to bring her claim earlier based on the case law referred to above.

59. I find that when Ms Burton resigned, she did not raise or attempt to clarify with the respondent the issue of the potential outstanding backpay which was subject to an agreement being reached between the respondent and the RMT, despite accepting that she was aware that this issue was alive and outstanding. She made no efforts to ensure that she was kept abreast of the events of the negotiations that were taking place on her behalf, leaving no forwarding email address with the respondent, or contacting the respondent or the RMT for an update and in fact ended her membership with the RMT. Instead, Ms Burton relied mainly on the media to update her on the events of her ongoing pay dispute.
60. I find that Ms Burton knew of the existence of her rights at the time of her resignation but in all the circumstances did not behave reasonably in not making any inquiries at the time of her legal position including the deadlines for bringing a claim. She did not raise / clarify this as an issue with the respondent or ensure that she stayed abreast of the developments in relation to the ongoing pay dispute being negotiated on her behalf by the RMT with the respondent so that she could any steps as needed.
61. Further when Ms Burton was informed of the RMT's decision on 20 March 2023, and she was not paid any sum of money as she expected on 31 March 2023, she did not seek to file a claim immediately at that point or seek legal advice promptly to ensure that she protected her position.
62. Ms Burton's explanation was that she was under the mistaken belief that the 3-month time limit commenced on 31 March 2023, and she was fixated on this. I accept her evidence that this mistake was in good faith, but for the reasons given above I do not find that Ms Burton acted reasonably in not taking steps earlier. Further even when Mr Knott advised Ms Burton that she was entitled to a payment on 6 April 2023, and she knew that she had not received this, she did not take any steps save for emailing the respondent a week later asking for a response of when she would be paid. For the reasons given above, it would have been reasonably practicable for Ms Burton to bring a claim at any of these stages.
63. Further when the respondent informed Ms Burton on 16 May 2023, that she would not receive the backpay under the pay deal, Ms Burton still delayed contacting ACAS until 12 June 2023 and filing a claim until 19 June 2023. I accept Ms Crew's submission that Ms Burton made a deliberate choice from 16 May 2023 until 19 June 2023 not to file a claim to see whether this could be resolved with the respondent. Ms Burton's explanation that she was hoping this could be resolved the respondent is as set out in the case law is not of itself a sufficient explanation to delay filing a claim and I find for the reasons given above, in all the circumstances of the case, it was reasonably practicable to file a claim within this period.
64. As I have concluded that it was reasonably practicable to file the claims of breach of contract and unlawful deduction from wages within time, I do not then need to go on to consider whether the further delay from 7 February 2023 and 8 March 2023 respectively until 19 June 2023 was reasonable. As the claim is out of time and I have decided that it was reasonably practicable for the claim to be filed in time, the Tribunal does not have jurisdiction to hear these claims and accordingly they are struck out.

**Case Number: 2302885/2023**

Employment Judge Sekhon

Dated: 15 March 2024