



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000081/2023**

**Employment Judge: M A Macleod**

5 **Ms Heather Hiram**

**Claimant  
In Person**

10 **Obaseki Solicitors**

**Respondent  
Represented by  
Ms J Obaseki -  
Solicitor**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

15 The Judgment of the Employment Tribunal is that all claims made by the claimant  
are dismissed for want of jurisdiction, being time-barred.

**REASONS**

1. In this case, the claimant presented a claim to the Employment Tribunal on  
27 February 2023, in which she complained that she had been unfairly  
20 dismissed, discriminated against on the grounds of disability and unlawfully  
deprived of a redundancy payment.
2. A Preliminary Hearing took place on 24 January 2024 in order to determine  
the preliminary issue of "Time Bar". The claimant appeared at that Hearing  
and represented herself. Ms Obaseki appeared for the respondent.
- 25 3. The Tribunal issued a Judgment dated 6 March 2024, which was sent to the  
parties on 7 March 2024, dismissing the claimant's claim of disability  
discrimination on the basis that the Tribunal lacked jurisdiction to hear the  
claim as it was time-barred. The terms of that Judgment are referred to.
4. At the conclusion of that Judgment, paragraphs 62 and 63 set out points in  
30 relation to two matters: firstly, that the claimant lacked the necessary  
qualifying service upon which to base a claim for unfair dismissal, and

therefore no such claim arose; and secondly, that the claimant had referred in her claim form to other claims, but that it was unclear as to whether or not she had provided the necessary further particulars following an Order by the Tribunal on 26 April 2023. The claimant was therefore required to provide in writing to the Tribunal confirmation as to whether or not she wished to pursue any other claims to these proceedings, and the precise basis upon which she sought to do so, by 20 March 2024.

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5. The claimant did email the Tribunal on 20 March 2024, and noted that the Tribunal had dismissed her unfair dismissal claim for “wont of time” and requiring confirmation as to whether or not any further claims should proceed. Leaving aside the misunderstanding apparent as to the terms of the Judgment, she went on to refer to loss of earnings (below minimum wage); accrued but unpaid holiday pay; and loss of employer pension benefits/contributions. She said “To the extent that they are not also time-barred, I should like the opportunity to pursue these other claims.”

6. The respondent, given the opportunity to respond to this, replied by setting out their responses, objecting to any claims being permitted to proceed on the claimant’s behalf.

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7. With regard to the loss of earnings (below minimum wage) claim, they submitted that the claim was time-barred and that the Tribunal lacked jurisdiction to hear it. They referred to the terms of the Tribunal’s Judgment. In any event, they denied that there was any failure to pay earnings at or above minimum wage.

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8. With regard to the holiday pay claim, the respondent submitted that the claim was time barred, that the claimant failed to take her accrued holiday when employed by the respondent and that in any event the claimant lost the right to take annual leave on termination if she had not indicated her intention to use her allocation.

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9. With regard to the claimant’s claim relating to loss of pension benefits and contributions, again the respondent relied upon the dismissal of the earlier

claim owing to time bar. They denied that there was any loss on the claimant's part in this regard.

10. In reply, the claimant wrote on 11 April 2024 to say that she did not have any further comments other than to observe that if the Tribunal did not allow her claims to proceed, she would pursue a Sheriff Court claim.

### Discussion and Decision

11. The claimant's claims having now been clarified, it is necessary for the Tribunal to address the preliminary issue of jurisdiction in relation to them.
12. I proceed on the basis that the findings in fact made in the Tribunal's Judgment of 6 March 2024 are the findings upon which it is appropriate to rely in applying the legal tests to the different claims now pursued by the claimant.
13. It is important to note that I do not address the merits of any of the claims at this stage. The respondent sought to advance arguments about the holiday pay claim in particular, and the claimant's right to pursue them, but I am only concerned with the jurisdictional aspects of these claims arising out of time bar.
14. The claimant's claim in respect of unlawful deductions from wages shall not be considered by the Tribunal, in terms of section 23 of the Employment Rights Act 1996 (ERA), "unless it is presented before the end of the period of three months beginning with" a number of possible dates.
15. Those dates are, in relation to a deduction by the employer, the date of payment of the wages from which the deduction was made (section 23(2)(a) ERA); in the case of payment received by an employer, the date when the payment was received (section 23(2)(b), ERA); and where the complaint relates to a series of deductions or payments, the last of the deductions or payments in the series (section 23(3), ERA).
16. Where, under section 23(4) ERA the Tribunal 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 Tribunal may consider the complaint if it is presented within such further time as it considers reasonable.

17. As has been established in the Tribunal's earlier Judgment, the claimant's employment terminated on 27 August 2022 following a period of notice, and therefore the claim should have been presented, taking three months from that date, by no later than 26 November 2022. No extension of the relevant period is obtained through the ACAS Early Conciliation Scheme.
18. The claimant's claim was presented on 27 February 2023.
19. The first question, then, is whether the payments claims were presented in time. Even if the claimant's final payment were made to her at the end of September 2022, her claim would still be at least 8 weeks out of time. Accordingly, the claim has been presented beyond the statutory time limit in respect of the payments claims sought.
20. The next question to determine is whether it was not reasonably practicable for the claim to have been presented in time.
21. What is reasonably practicable is essentially a question of fact and the onus of proving that presentation in time was not reasonably practicable rests on the claimant. "That imposes a duty upon him to show precisely why it was that he did not present his complaint." (**Porter v Bandridge Ltd [1978] ICR 943**).
22. The best-known authority in this area is that of **Palmer & Saunders v Southend-on-Sea Borough Council 1984 IRLR 119**. The Court of Appeal concluded that "reasonably practicable" did not mean reasonable but "reasonably feasible". On the question of ignorance of the law, of the right to make a complaint to an Employment Tribunal and of the time limits in place for doing so, the case of **Porter (supra)** ruled, by a majority, that the correct test is not "whether the claimant knew of his or her rights, but whether he or she ought to have known of them." On ignorance of time limits, the case of **Trevelyan (Birmingham) Ltd v Norton EAT 175/90** states that when a claimant is aware of their right to make a claim to an employment tribunal, they should then seek advice as to how they should go about advancing that claim, and should therefore be aware of the time limits having sought that advice.

23. The reason why the claimant did not present the claim in time has been analysed in the earlier Judgment by the Tribunal, but in my judgment, it is clear that it was reasonably practicable for the claimant to have presented this claim in time. The claimant is herself legally qualified, and plainly understood that she could make a complaint to an Employment Tribunal well before she submitted this claim, by communicating with ACAS in July 2022. She gave evidence to the effect that she had been unwell during the limitation period, and at times unable to leave her house, but I found that evidence not to be wholly reliable. Her assertions in this regard were contradicted by admissions she had to make under cross-examination.
24. In my judgment the conclusions which are set out in the Judgment of 6 March 2024 relate to a less stringent legal test, namely whether it was just and equitable to allow the claim to proceed though late, and on that occasion I found that it was not just and equitable in the circumstances to do so. Here, the question is whether or not it was reasonable practicable, or reasonably feasible, for the claimant to have presented her claim in time. In my judgment, it was entirely practicable for her to have done so. She is a capable, intelligent, legally qualified individual who, if she did not understand the time limits of the Tribunal, could readily have carried out the simple research needed to find out about them.
25. Although the claimant did suffer some illness during the relevant period, I was and am not persuaded that the difficulties she experienced were such as to make it not reasonably feasible for her to have presented a claim about the unlawful deductions from wages about which she now seeks to complain.
26. Accordingly, it is my Judgment that the claimant's claims must fail for want of jurisdiction, and that no further claims remain live before the Tribunal.

**Employment Judge: M Macleod**  
**Date of Judgment: 14 May 2024**  
**Entered in register: 14 May 2024**  
**and copied to parties**

*I confirm that this is my Judgment in Hiram v Obaseki Solicitors and that I have signed it by electronic means.*