



EMPLOYMENT TRIBUNALS

Claimant: Ms S Banda
Respondent: Government Legal Department
Heard at: East London Hearing Centre (by CVP)
On: 10 June 2024
Before: Employment Judge Isabel Manley

Representation

For the Claimant: In person
For the Respondent: Ms L Robinson, counsel

JUDGMENT

1. The claim for unlawful deduction of wages/breach of contract was presented outside the time limit of three months.
2. The claimant has not shown that it was not reasonably practicable to present the claim in time and the tribunal has no jurisdiction to hear it. The claim is dismissed.

REASONS

Introduction and issues

- 1 The claimant presented this claim for a sum of money she alleges was due to her as an interim payment for a pay award. Her final payslip and payment was on 31 October 2023. She notified ACAS on 1 February 2024 with the certificate being dated 2 February 2024 and presented her claim on form ET1 on that same date.
- 2 In her claim she acknowledged that it might be out of time. That was also raised as an issue in the respondent's response presented on 25 April 2024. The matter had been listed today as a one hour final hearing but various requests had been made to extend time and to consider how to deal with the out of time point.
- 3 The claimant consented to the hearing today determining the issue of whether it could proceed, if it was presented out of time. It was agreed, that

if I decided in the claimant's favour, a one-day listing would be sufficient to deal with the claim.

- 4 I therefore heard evidence from the claimant, looked at documents contained in the bundle which was sent to me, heard short oral submissions and reserved my judgment as I had another matter to deal with.
- 5 The first issue is whether, looking at the agreed dates, the claim was presented within the three month time limit under Employment Rights Act 1996 (ERA) applicable to the alleged unlawful deduction of wages (and the same applies if it a breach of contract claim). If it was presented outside that time limit, I must determine whether the claimant can show that it was not reasonably practicable to present the claim in time and, if not, what further period is reasonable.

Facts

- 6 The claimant had over 3 years' service with the respondent. She is a solicitor with 15 years post qualification experience although she is not an employment lawyer. She was appointed at Grade 7 and was on a temporary promotion to Grade 6 from February 2023.
- 7 During 2023 pay negotiations were taking place. This was known as the pay and reward modernization programme (PARM). In summary there was to be pay rise for those still in employment in January 2024 but an interim payment was going to be made in October 2023. The claimant was told in August she would not be entitled to the interim payments for two main reasons, one connected to capability assessments and also because she was not going to be employed at 1 January 2024. The respondent was aware in July 2023 the claimant was to leave the respondent to go to another government department in a few months.
- 8 There were several communications between the claimant and people at the respondent about this issue and some information was circulated in a Frequently Asked Questions document. It was stated that eligibility depended upon being in post in January 2024.
- 9 The claimant left the respondent on 3 October 2023 and joined her new department on 4 October 2023. She did not see her October payslip, which was dated 31 October, until 2 November 2023 when she asked for it. Her October pay did not include the interim payment. She queried this and was told on 6 November that she was not entitled to it. She took matters further and was told again, in detail, on 25 January 2024 that she was not entitled, not having been in employment on 30 October or 1 January 2024.
- 10 As stated above, the claimant approached ACAS a week later on 1 February and presented her claim on 2 February. In evidence she said that she had looked into what the respondent had said and carried out some research before she approached ACAS.

The law and submissions

- 11 Section 23 () Employment Rights Act 1996 (ERA) provides a tribunal shall not consider a complaint of unlawful deduction of wages unless it is presented to the tribunal -

“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...”

And at section 23 (4) – “where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under the 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”.

- 12 An identical provision applies to claims of breach of contract. The time can be extended through ACAS early conciliation where a potential claimant refers the matter to ACAS before the time limit expires.
- 13 The words “reasonably practicable” in section 23 ERA mean that the tribunal must ask if it was reasonably feasible to present the complaint to the tribunal within the relevant three-month period.
- 14 It is for the claimant to prove that it was not reasonably practicable to present the claim in time. I was referred to several cases including the recent case of Cygnnet Behavioural Health Ltd v Britton [2022] EAT 108 where tribunals are reminded that this is a stricter test than for discrimination. The respondent’s representative submitted that the claimant, who is an experienced lawyer and had known for many months that she was not going to receive the payment, has not shown it was not reasonably practicable to present the claim in time.
- 15 The claimant submitted that she didn’t know, for sure, that she would not receive the payment until 2 November when she saw the payslip and that she asked further and did not receive a definite answer until 25 January. She submitted there was no prejudice to the respondent as the delay was only 3 days and reminded me that lawyers can make mistakes. She submitted her claim should be allowed to proceed as it was in the interests of justice.

Conclusions

- 16 The last date for the claim to have been presented, in this case, more accurately for the claimant to go to ACAS which she had to do and to gain the benefit of any extension to the time limit, was 30 January 2024. She went to ACAS on 1 February and presented her claim on 2 February. The claim is out of time.

- 17 The claimant has not shown that it was not reasonably practicable for her to present her claim within three months.
- 18 The claimant was well aware, for many months, that the respondent's position was that she was not entitled to this payment. She disputes she knew in August but the documents I have seen make it clear that a person had to still be in employment on 1 January 2024 to be entitled. Even if the claimant was not entirely convinced in August 2023, she knew she had not received the payment on 31 October and saw the payslip on 2 November. The reason was non-payment was repeated in detail on 25 January 2024. It was feasible for the claim to have been presented in time.
- 19 The time limitation rules are strict and this is not one of those exceptional cases where time can be extended.
- 20 The tribunal has no jurisdiction to hear this claim and it is dismissed.

**Employment Judge Isabel Manley
Dated: 10 June 2024**