



# EMPLOYMENT TRIBUNALS

**Claimant:** AB

**Respondent:** (1) Dhimitraq Beanj (2) Wickham Foods Ltd

## JUDGMENT

The claimant's application dated 8 July 2024 ("the Application") for reconsideration of the judgment sent to the parties on 25 June 2024<sup>1</sup> ("the Judgment") is refused.

## REASONS

1. The Application concerns the dismissal of the unlawful deductions from wages complaint, which the Tribunal found it had no jurisdiction to hear (Judgment paragraph 1). More specifically, it concerns that part of the unlawful deductions complaint that is concerned with furlough monies which the claimant says were not paid to her, at all, between June and November 2020<sup>2</sup>.
2. Such a complaint does not appear in EJ Krepski's List of Issues; however, for present purposes, I assume in the claimant's favour that on a fair reading of paragraph 46 of the Amended Particulars of Claim, it is a pleaded complaint. On any basis, it is a complaint that was first pleaded in the claimant's application to amend dated 6 June 2023, so that is the relevant date for the consideration of time limits. Whilst the ET1 claim form ticks the "arrears of pay" box, there is no particularisation of a complaint in respect of furlough pay.
3. The basis of the Application is that the claimant did not know that furlough monies had been claimed on her behalf until she received the second respondent's defence to her claim. It is argued that it was therefore not reasonably practicable for her to bring her claim in respect of these payments within the primary 3 month time period (i.e. by around March 2021).
4. In my judgement, there is no reasonable prospect of the original decision being varied or revoked. This is because the second respondent filed its ET3

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<sup>1</sup> Although the Judgment states on its face that it was sent to the parties on 17 June 2024, it appears that it was in fact sent to the parties only on 25 June 2024.

<sup>2</sup> The Application refers to 2021, but this must be an error since it is not suggested in the Amended Particulars of Claim nor in the ET3 that the claimant was on furlough between June and November 2021. Indeed the furlough scheme ended in September 2021.

on 23 May 2022 and a copy was sent to the claimant on 8 June 2022. The claimant's application to amend was filed almost exactly 1 year later. For the Tribunal to have jurisdiction, it must be satisfied that (a) it was not reasonably practicable for the complaint to be presented within the primary three month period and (b) that the complaint was presented within such further period as the tribunal considers reasonable (section 23(4) ERA 1996). I can see no reasonable prospect of the claimant succeeding in an argument that taking a further year from receipt of the second respondent's ET3 to raise this complaint is a reasonable further period.

5. The *Afolabi* case cited in the Application does not assist the claimant. Putting aside the fact it is concerned the different time limit provisions in the Equality Act, in that case the claimant reacted within three months of discovering the fact of potential race-related reasons for his failure to be promoted. By contrast, here the claimant has taken a year from discovering the relevant facts to bring her complaint by way of an amendment application.

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Employment Judge Abbott  
Date: 11 July 2024

Sent to the parties on  
Date: 12 July 2024