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EMPLOYMENT TRIBUNALS (SCOTLAND)
Case number: 8000722/2024

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**Preliminary Hearing on the
Cloud Video Platform on 14 October 2024**

Employment Judge A Jones

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Ms A Jasken

**Claimant
In person**

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Countrywide Estate Agents Ltd

**Respondent
Represented by
Mr A Ismail, counsel**

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JUDGMENT

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The Tribunal does not have jurisdiction to determine the claimant's claim of unlawful deduction of wages as it was lodged outwith the necessary statutory period and it would have been reasonably practicable for it to have been lodged timeously.

Introduction

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1. The claimant lodged a claim on 27 May 2024, her employment with the respondent having terminated on 21 November 2023. ACAS issued an early conciliation certificate on 2 May 2024 having received notification of the claimant's intention to raise a claim on 28 April 2024.
2. The claimant accepted that on the face of it, her claim was lodged out of time. A preliminary hearing was listed to determine whether the Tribunal should exercise

its discretion to allow the claim to proceed nonetheless. The respondent produced a joint bundle of documents for use at this hearing and the claimant gave evidence and was cross examined. The respondent had provided a written submission shortly before commencement of the hearing. Having listened to the evidence and submissions and considered the documents to which reference was made, I found the following material facts to have been established.

Findings in fact

- 10 3. The claimant was employed by the respondent as a sales consultant in real estate from 7 November 2022, until the termination of her employment, following her resignation on 21 November 2023.
4. The claimant had received a payslip around 31 October 2023, and was concerned that it did not reflect what she ought to have been paid that month.
- 15 5. The claimant then raised a grievance on 6 November 2023 regarding this matter. The claimant's complaint related to the respondent having taken into account commission payments when ensuring that she was paid the statutory minimum hourly rate of pay.
6. The claimant subsequently complained that further deductions were made from her final pay both in relation to a claw back provision she indicated that in her view the respondent was not entitled to utilise.
- 20 7. The claimant contacted ACAS at the beginning of November 2023 for advice. She was advised to write to the respondent which she did. She spoke to ACAS again around December 2023.
- 25 8. The claimant had understood from information provided to her by ACAS that if she were going to pursue a claim in relation to the wages she said were due to her, it would be helpful to engage the services of a lawyer. She could not afford to instruct professional representation and decided not to pursue the matter further. She was aware that there was a statutory time limit applicable to the lodging of a claim of 3 months as ACAS had provided this information to her.
- 30 9. In March 2024 the claimant was contacted by the respondent in relation to what was said to be an overpayment which had been made to her. A letter dated 11 March 2024 was sent to her although she did not receive this letter. A further

email was sent to her by the respondent in this regard. In the event the respondent waived the repayment which had initially been requested.

10. The claimant engaged in a series of emails with the respondent from 21 March until 24 April 2024 regarding the alleged over payment.

5 11. The claimant spoke to ACAS on three separate occasions during March 2024 regarding her concerns. On one occasion she raised with the person to whom she spoke the issue of whether she needed a lawyer to pursue a claim in the Employment Tribunal. She was informed categorically that she did not. She also explained to the ACAS officer that she was aware she was outwith the time limit
10 for bringing a claim but was informed that sometimes Tribunals can exercise their discretion to allow claims to proceed even though they are out of time.

12. The claimant decided that she would pursue a claim because she was being asked to repay money to the respondent.

15 **Relevant law**

13. Section 23 Employment Rights Act 1996 ('ERA') provides that a complaint of unlawful deduction from wages must be made within a period of three months from the date of the relevant deduction or where there have been a series of
20 deductions within three months of the last deduction

14. Section 23 goes on to state that a Tribunal can consider a complaint lodged outwith the statutory time limit if it is lodged "within such a period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the of that period of three
25 months."

15. The burden of proof is on a claimant to demonstrate that it was not reasonably practicable to lodge a claim within the relevant period.

16. There is therefore a two stage process which the Tribunal should adopt. First the Tribunal should consider whether it was reasonably practicable for a claimant to
30 have lodged a claim timeously and if it is satisfied that it was not reasonably practicable, then it should go on to consider whether the claimant had lodged the claim within a reasonable period thereafter.

Discussion and decision

17. The claimant's position was that she had not lodged a claim in November or December 2023 because she had not been able to afford to instruct a lawyer and had understood the advice from ACAS to be that it would be helpful if she did instruct a lawyer. The claimant did not suggest that she had been informed that she could only pursue a claim if she instructed a lawyer. She also accepted that it was only after the respondent had sought to recover a sum from her in March 2024 that she decided she would bring a claim. She said that during one of her discussions with ACAS she had been informed that she did not have to instruct a lawyer.
18. The claimant was therefore aware of her rights and the time limits applicable and also aware that she did not have to instruct a lawyer in order to pursue a claim.
19. While no doubt it would be helpful for a claimant to have the benefit of professional legal advice, many, many claimants appear in front of the Tribunal without that benefit. Indeed the claimant did so today and came across as an intelligent and thoughtful individual who was quite capable of putting her arguments across.
20. A claimant is required to demonstrate that it was not reasonably practicable for them to have lodged a claim in time. What is reasonably practicable will depend on the particular facts of any given case. However, it is a high burden to satisfy. For instance, ignorance of the right to bring a claim has been found not to have satisfied that burden, particularly where claimants will generally have access to the internet to allow them to carry out research into any possible claim and applicable time limits.
21. The claimant's belief that it would be helpful to involve a lawyer prior to bringing a claim did not render it not reasonably practicable to lodge a claim in time in the particular circumstances of this case.
22. In addition, the claimant was quite clear that a lawyer was not required from towards the end of March and did not lodge her claim until the end of May. That did not appear to the Tribunal to be a reasonable period given that the claimant was already aware that the time limit had expired some time previously. One would expect someone, acting with reasonable diligence, who was aware that there might be a possibility that a Tribunal could deal with her claim even though

it had not been lodged in time to take urgent action. The claimant's position was she wanted to take time to think about matters. The Tribunal concluded that was not a reasonable approach to take given that the claimant was aware that her claim was already out of time.

- 5 23. In all of these circumstances, the Tribunal determined that it does not have jurisdiction to consider the claimant's claim.

A Jones _____

Employment Judge

15 October 2024

Dated

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Date sent to parties

17 October 2024

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