



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001243/2024

5

Held in Glasgow by Cloud Video Platform (CVP) on 22 January 2025

Employment Judge S MacLean

10 **Mr A Arshad**

**Claimant
In Person**

15 **Boddice Accounting Limited**

**Respondent
Represented by:
Ms V Boddice -
Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The judgment of the Employment Tribunal is that the Tribunal does not have jurisdiction under section 23 of the Employment Rights Act 1996 to hear the complaint of unauthorised deduction from wages.

REASONS

Background

25 1. In the claim form sent to the Tribunal on 16 August 2024, the claimant complains that the respondent made unauthorised deductions from his wages. The claimant's employment terminated on 27 April 2024.

30 2. The respondent resists the claim. The respondent says that wages were not paid on time. The claimant was absent from work which impacted on the level of work that could be undertaken. Due to financial difficulties the respondent ceased trading. The respondent is insolvent. Any bonus was dependent on results which the respondent did not achieve due to the claimant's absences.

3. At initial consideration an Employment Judge ordered that the case be listed for a preliminary hearing on time bar.

4. The preliminary hearing was conducted remotely. No documents were produced. However, the parties agreed that the claimant would send a spreadsheet setting out when payments were due, what was paid, and any shortfall. Ms Boddice, who had not seen the spreadsheet, said that she had
5 no issue with this. I have now seen that document.
5. Before hearing evidence, I explained that the claim before the Tribunal is under section 23 of the Employment Rights Act 1996 (ERA) as the claimant is complaining about deductions from wages, that are not permitted under the ERA, and seeks reimbursement of the sums involved.
- 10 6. I also explained that there is a three month time limit for presenting claims under section 23 to an Employment Tribunal. From the claim form, the complaint relates to a series of deductions from salary paid monthly the last of which was when his employment was terminated. The statutory provisions governing time limits require me to consider the “not reasonably practicable”
15 formula.
7. The claim was presented on 16 August 2024. Section 23 requires the claim to be made within three months plus early conciliation extension (if appropriate) of the date of the payment of wages from which the (last) deduction was made.
- 20 8. The claimant gave evidence and I made the following findings about the issue to be determined.

Finding in fact

9. The respondent employed the claimant as an assistant accountant. The claimant was issued with a contract of employment. The respondent was due
25 to pay the claimant wages monthly on the last day of the month, by bank transfer.
10. Around July/August 2023 there were shortfalls in the claimant’s salary. The claimant was absent from work due to ill health. He did not receive statutory sick pay. The respondent advised the claimant of the financial difficulties and
30 suggested that the claimant did not work until the respondent could afford to

pay him. The claimant continued to work. The respondent hoped that the financial position would improve in January 2024.

11. The financial position did not improve. The respondent paid the claimant sporadically when funds were available.

5 12. The claimant worked in an office with access to the internet, and a personal computer. He was 24 years old professional familiar with government websites. He contacted ACAS for advice.

13. On 27 April 2024, the respondent ceased trading. The claimant's contract was terminated. On 30 April 2024, the claimant was due all sums payable on
10 termination of his employment. He received a payment of £300 into his bank account.

14. Following the termination of his employment there were discussion between the claimant and Ms Boddice. The claimant understood that his employer was the respondent. The claimant was aware that there were no funds to
15 liquidate the respondent. Any funds had been used to pay employees. They discussed how the claimant might be reimbursed for the shortfall. Ms Boddice said that she would try to make payments from personal benefits income to which the claimant agreed.

15. Initially payments were made by Ms Boddice to the claimant. However, due
20 to her personal circumstances, which she disclosed at the hearing, and of which the claimant was aware, she was unable to sustain the payments after 26 July 2024.

16. The claimant contacted ACAS on 12 August 2024. ACAS advised that his
25 claim to the Employment Tribunal was time barred. An early conciliation certificate was issued on 16 August 2024 when he presented the claim form.

Deliberations

17. I started by asking if the complaint related to one deduction or a series of deductions. I was satisfied on the evidence before me that over a period the

claimant was paid less than he was contractually due so there was a series of deductions.

18. Next I considered the date of the last deduction. The claimant's employment terminated on 27 April 2024. While payment could be due on that date, he was contractually due to be paid on 30 April 2024 when he did receive a payment which was less than he was due on termination of his employment.
19. I then asked if the relevant deduction was within a period of three months before the claim was presented. The claim should have been presented by 29 July 2024. Early conciliation started on 12 August 2024 after the three month period. The claim was presented on 16 August 2024. Accordingly, I concluded that the claim was not presented in time.
20. I then asked if it was reasonably practicable for the claimant to have presented the complaint of unauthorised deductions from wages within the required period.
21. In assessing what was reasonably practicable, it was not simply a matter at looking what was possible but to ask whether, on the facts of the case found, it was reasonable to expect that which was possible to have been done.
22. It is not just an issue of physical impracticability but whether it was reasonably feasible for the employee to present his claim in time. Where the employee missed the time limit because he is ignorant about the existence of a time limit, or is mistaken about when it expires, or is ignorant about crucial facts, the question is whether that ignorance is reasonable. If it is not, then it may have been reasonably practicable for the employee to bring the claim in time.
23. I considered that before his employment was terminated the claimant must have been familiar with the existence of Employment Tribunals and the types of claims that he could bring. He had contacted ACAS to discuss his situation before April 2024. In my view from that experience, the claimant had been put on enquiry as to the time limits that would apply in the Employment Tribunal. In any event he would have been able to make online enquiries.

24. There was no evidence to suggest that the claimant was unable to present his claim on time. His position was that he did not do so because he was receiving payments under the arrangement he had agreed with Ms Boddice. My impression was that had that arrangement continued, he would not have presented a claim when he did. The claimant knew that the respondent was his employer, it had no funds, and any payments were being made by Ms Boddice personally.
25. The claimant suggested that Ms Boddice deliberately stopped payments when she did so that any claim he brought was out of time. I was unconvinced by this argument as there was no evidence to support it. To the contrary, Ms Boddice had no personal liability, nonetheless she made payments to the claimant while she was financially able to do so. The timing of the payments coming to an end had nothing to do with the claimant. She did not raise the issue time bar in the response because it was not in her mind. It was raised by an Employment Judge.
26. Once the claimant decided to raise proceedings, he understood what he required to do. He contacted ACAS, obtained an early conciliation certificate, and sent his claim form to the Tribunal.
27. I was satisfied that it was reasonably practicable for the claimant to have presented the claim within the time limit. He had all the information that he need to present the claim, he was aware of the Tribunal process, and the respondent's financial situation. Having reached this decision, I did not need to go onto consider if the claimant submitted the claim within such further period as was reasonable.
28. I concluded that the Tribunal did not have jurisdiction to hear the complaint.

Employment Judge S MacLean

Date sent to parties

28 January 2025