



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Dreher

Respondent: Mr H Rusin

Heard at: Nottingham (by CVP)

On: 4 April 2025

Before: Employment Judge B Chapman

REPRESENTATION:

Claimant: In person

Respondent: Mr A Rhodes (Counsel)

PRELIMINARY HEARING IN PUBLIC

JUDGMENT

The judgment of the Tribunal is as follows:

1. The claim for **unlawful deductions from wages** was not presented within the applicable time limit:
 - a. It was reasonably practicable to present it within the applicable time limit.
 - b. It was not presented within a further reasonable period.
 - c. It was presented more than 2 years after the relevant date(s) of payment.
2. The claim is therefore dismissed.

REASONS

Introductions

3. This was a preliminary hearing listed for 3 hours to determine whether the Claimant's claim for unlawful deductions from wages was presented in time.
4. The Claimant had the assistance of a Court appointed Polish interpreter, Mr Wojszwillo, and I am grateful to him for his assistance. The Claimant was also being supported by her daughter, Matylda Dreher.
5. The parties agreed at the outset that the following were the issues I had to determine:
 - a. Whether the claim was presented within 2 years of the dates of the payment of the wages from which the alleged deductions were made.
 - b. Whether it was reasonably practicable to present the claim within 3 months of the date of payment of the wages from which the alleged deductions were made.
 - c. Whether it was presented within such further period as I considered reasonable.
6. Ahead of the hearing, I had the benefit of a bundle running to 226 pages. Bundle references in these Reasons shall take the following format: *(electronic page number) [paragraph number as applicable]*.
7. I heard sworn oral evidence from the Claimant, and closing submissions from the Claimant and Mr Rhodes.
8. The bundle contained witness statements from Matylda Dreher (referred to above) and Blazej Reczko, the Claimant's nephew. Having reviewed those statements, it was apparent that Matylda Dreher's evidence was concerned with the Claimant's main claim rather than question of time limits and, whilst Blazej Reczko did speak about a meeting in January 2022 which may have been relevant to the issue, he was not in attendance and gave evidence that the Claimant was able to give herself. Neither of those witnesses were therefore called to give oral evidence.
9. I was asked by the Claimant for a copy of my written reasons at the conclusion of the hearing.

Findings

10. The Claimant was employed by the Respondent as a live in carer for the Respondent's mother. Her employment commenced on 16.2.2018. It ended on

30.11.2021, which was also the Claimant's last pay date as per her November 2021 payslip (126).

11. The Claimant first communicated with ACAS on 30.11.2023. Her claim was received by the Employment Tribunal on 28.12.2023.
12. There was therefore 2 years and 28 days between the last alleged deduction from her wages and the date the Employment Tribunal received her claim.
13. The Claimant's case was that her claim was presented late as the Respondent had agreed to repay her, but he and his solicitor had dragged matters out (54). She asserted that in January 2022 there had been an initial oral agreement about repayment, which had developed into negotiations that finalised with a written agreement on 21.6.2022. That agreement involved the Respondent repaying her in instalments. When the agreement broke down, there was ongoing correspondence about the issue between February 2022 – November 2023. The Claimant then spoke to ACAS and presented her claim to the Employment Tribunal.
14. Whilst I have seen the witness statement of Mr Reczko which also speaks about a meeting taking place in January 2022, and have heard from the Claimant who speaks of the same meeting, I have not heard from Mr Rusin about this. I accept that a meeting probably did take place, but I did not need to make any findings about what may or may not have been agreed at that meeting for the purposes of this Preliminary Hearing.
15. What was important was that this meeting took place in January 2022 which was within 3 months of the end of the Claimant's employment. The Claimant accepted in her oral evidence:
 - a. She could have made a claim immediately following her employment ending on 30.11.2021, but did not do so.
 - b. She had undertaken some research online about potentially bringing an employment claim.
 - c. She was aware by February 2022 of ACAS.
 - d. She knew by February 2022 that there was a 3-month deadline to bring a claim to the Employment Tribunal.
16. On that last point, the Claimant asserted in her closing submissions that she thought the 3 month time-limit ran from her last communication with the Respondent. That qualification was not evidence she gave when responding to questions under cross-examination about this very important issue. There was no basis for that misunderstanding offered (such as where the information came from). I do not accept that closing submission.
17. I accept that the reason the Claimant did not bring her claim on time was because payments were being made to her (albeit towards loan repayments

according to her letter dated 1.2.2024 (78) and Mr Reczko's witness statement (225)) and negotiation was ongoing. This is supported by the email evidence attached to her letter to the Employment Tribunal dated 5.11.2024 which attached what she said was the entirety of the email correspondence between the parties, and latterly the Claimant and Respondent's solicitor (59). The emails are at (64-76).

18. The following chronology is apparent from those emails. Where the Claimant has referred to 'the court', I take this to mean the Employment Tribunal:

- a. 21.6.2022: The Claimant explained she accepted the changes the Respondent had proposed to an agreement. She outlined the terms as she understood them with the Respondent agreeing to pay £11,000 in total with monthly payments of £1000. The agreement would have to be signed by the parties (64).
- b. 8.12.2022: There was a dispute between the parties as the Respondent had stopped making payments to the Claimant. He asserted there had never been an agreement reached, and that the payments he had been making were as a gesture of goodwill (65).
- c. 3.1.2023: The Claimant was chasing payments to avoid legal proceedings.
- d. 26.4.2023: The Claimant asserted she was seeking legal advice, and that she would raise a formal grievance with ACAS and the Employment Tribunal. The Respondent responded the same day to threaten counter-proceedings against her (66).
- e. 1.5.2023: The Claimant reiterated that ACAS and the Employment Tribunal would decide who was right (67).
- f. 11.5.2023: The Respondent's solicitors took over the Respondent's communication (68).
- g. 25.5.2023: The Claimant set out her position in an email to the Respondent's solicitor (69), but received an out of office response.
- h. 27.7.2023: The Claimant chased the Respondent's solicitor, seeking a response within 2 weeks or she would otherwise contact ACAS and the Court, but she received a further out of office response confirming the solicitor was away until 10.8.2023 (72).
- i. 18.9.2023: The Respondent's solicitor wrote to explain they were seeking instructions within 7 days. The Claimant responded the same day to assert she would not wait and would be presenting her claim to ACAS and the Court (74).
- j. 22.9.2023 and 28.9.2023: The Respondent's solicitor explained they were finalising their response and sought clarity on the claim (75).
- k. 4.10.2023: The Claimant outlined her complaint, explained she would report matters to ACAS and other institutions, and again asserted she would let the Court decide what Mr Rusin owed (76).

Law

19. Section 23 of Employment Rights Act 1996 addresses the time limits relating to claims for unlawful deductions from wages:

- (2) *Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented 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, or*
 - (b) *in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*
- (3) *Where a complaint is brought under this section in respect of—*
- (a) *a series of deductions or payments, or*
 - (b) *a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,*
- the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*
- (3A) *Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).*
- (4) *Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this 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.*
- (4A) *An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.*
- (4B) *Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).*

20. Section 207B of Employment Rights Act 1996 addresses how a referral to ACAS will affect the time limits for bringing a claim:

- (2) *In this section—*
 - (a) *Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*
 - (b) *Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*
- (3) *In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*
- (4) *If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

This Case

21. The possible extension to the time limits provided by the ACAS Early Conciliation process did not apply here. ACAS were not contacted until well over a year after the time limit had expired.

22. It was reasonably practicable to bring the claim within 3 months of the last deduction. Reasonably practicable means 'reasonably feasible', or whether it was reasonable to expect that which was possible to have been done (**Asda Stores Ltd v Kauser EAT 0165/07**). The Claimant was aware of the 3-month time limit and was aware of ACAS. She had done some research into bringing an employment claim. She accepted she could have brought the claim immediately after the last asserted deduction. Whilst I appreciate negotiations were ongoing, that did not prevent the claim from being presented, and in fact would have been a sensible thing to do given final agreement had not been reached by the deadline. It would have preserved the Claimant's claim and it was reasonable to expect that to be done.

23. Even if it had not been reasonably practicable to bring the claim in time, it was not presented within a further reasonable period. The Claimant repeatedly

asserted that she was going to engage ACAS and bring a claim to the Employment Tribunal. Her first assertion was on 26.4.2023, some 8 months before she actually brought her claim. Further examples were her assertions on 27.7.2023 and 10.10.2023. It took a further 2 months after that final assertion for the Claimant to present her claim.

24. The claim was not in any event brought within 2 years of the last date for payment from which the deductions were allegedly made.
25. I did not need to consider whether the deductions amounted to a series of deductions or not because my conclusions apply whether or not this was the case.
26. The Employment Tribunal has no jurisdiction to hear the claim. It is therefore dismissed.

Approved by:
Employment Judge B Chapman
7 April 2025

Judgment sent to the parties on:

.....07 April 2025.....

For the Tribunal:

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