



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002073/2024

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**Held in Glasgow on 4 March 2025
Deliberations on 5 March 2025**

Employment Judge D Hoey

10 **Ms G Cassels**

**Claimant
In Person**

15 **Envirosan Limited**

**Respondent
Represented by:
Mr M O'Carroll -
Advocate
[Instructed by
Messrs Radar]**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claim of unlawful deduction from wages was brought outwith the time period required by section 23 of the Employment Rights Act 1996 and it was reasonably practicable for the claim to have been lodged within the time limit. The claim is accordingly dismissed.

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REASONS

1. The claimant raised claims for unlawful deduction of wages on 9 December 2024. This hearing had been fixed to deal with the preliminary issue of time bar. In order to determine time bar, however, the parties agreed it was necessary to determine when the claimant's employment (if it existed) ended. This was because the claimant had argued that her employment had not ended (in which case the claim was accepted not to be out of time). The claimant's principal position was that her contractual relationship with the respondent had not lawfully been ended and so her claim was not out of time.

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2. The respondent's principal position was that there was no ongoing contractual relationship between the parties. If there had been any contractual relationship between the claimant and respondent, it was asserted that any obligation to pay the claimant ceased when no work was offered in March 2022 (and the claim was time barred, it having been reasonably practicable to have raised a claim in time).
3. The Hearing began by a reminder of the overriding objective and the need for both parties to work together to assist the Tribunal in ensuring that everything that was done was fair and just with due regard to cost and proportionality. A discussion took place as to how evidence was taken and the importance of ensuring relevant questions were put to each witness to ensure both parties cases were fairly put to each other's witnesses and that relevant evidence was led. The parties were reminded that the Tribunal would only consider evidence that had been agreed or that was led before it and it was important parties led evidence relevant to the issues it was agreed the Tribunal determine.

Evidence

4. The parties had produced a joint bundle of 78 pages to which an additional 9 pages was added of consent. The Tribunal heard evidence from the claimant and Mr Logan (General Manager and then Director of the respondent). Relevant questions were put to each witness to ensure the parties' respective cases were tested.

Facts

5. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it, both orally and in writing. The Tribunal only makes findings that are strictly necessary to determine the issues before it (and not in relation to all disputes that arose nor in relation to all the evidence led before the Tribunal). The Tribunal only records facts it found as necessary to determine the issues in this case. Where there was a conflict in evidence, the conflict was resolved by considering the entire evidence and making a

decision as to what was more likely than not to be the case with regard to what was written and said at the time (when viewed in context).

Background

6. The respondent is a company which treats and disposes of waste. The respondent is owned by 2 directors, Mr Logan (appointed 6 May 2021) and Mr Sherry (appointed 16 August 2024). The respondent had previously been owned by Mr D and Mrs I Cassels who sold the business to the 2 current directors on 16 August 2024 at which dates Mr and Mrs Cassels divested themselves of their shares and Mr Cassel ceased being a director. Prior to becoming director, Mr Logan had been general manager and had been general manager since March 2020. Mr Logan had a sound detailed knowledge of the operations of the respondent and its staff.
7. Mr D Cassels' son, Mr M Cassels, was previously a director of the respondent and ceased being so on 1 January 2020. The claimant is the (separated) wife of Mr M Cassels. The claimant has never been a director or shareholder of the respondent.

Lack of formality around the contractual relationship

8. The claimant had not been issued with any written documentation in connection with the commencement of her carrying out tasks for the respondent which had been arrived at following discussions between the claimant, her husband and his father with nothing in writing. She was paid the sum of £975 each month from November 2019 to February 2022. This resulted in £11,000 being paid to the claimant per year. This arose solely as a result of discussions between the claimant's husband and his dad (a director). No paperwork was issued and no details discussed as to what the specific nature of the relationship was, other than the claimant to be paid £11,000 a year from the respondent.
9. The claimant was provided with 2 payslips in total during the entire period. The first was in January 2020 and the second in February 2020. These had

been generated by the respondent's electronic payroll provider. No other payslips had been generated.

The claimant's role

- 5 10. The claimant understood she was to provide "consultancy services", the precise terms of which were never clear and not set out in writing. She had assisted her husband with grant and loan applications and had carried out some social media activities for the respondent on a very ad hoc basis.
- 10 11. Mr Logan had started work as general manager in March 2020. He was responsible for managing of the respondent's activities. He knew the staff that worked for the respondent. He had no knowledge of the claimant (other than as the wife of the owner's son). Her role had not been disclosed to him and he had not been aware of any activities she had undertaken for the respondent. Mr Logan had no knowledge of the claimant providing any services to the respondent and he had not seen any evidence of her working
15 for the respondent.
12. Mr Logan had engaged an employee to provide the services that the claimant believed she had been engaged to consult about, such as social media work for the respondent, Such activities were not activities in which Mr D Cassels had previously been involved.

20 General manager finds payment made to claimant

- 25 13. In March 2022 when Mr Logan became a director, he studied the financial position of the respondent and considered the books. He wished to ensure the company was in good financial shape. He took his responsibilities seriously and wanted to protect the 25 staff engaged by the business for whom Mr Logan considered himself responsible. He was also able to rely upon a part time book keeper who worked 2 days a week for the respondent. At that stage Mr Logan went through who the respondent employed and what the outgoings were. He discovered a number of concerns as a result of his analysis. One issue that arose was that the claimant's husband had been
30 taking money from the business (to which Mr Logan did not believe he was

entitled). He also noticed that the claimant (as his husband) had also been included on the company payroll (despite knowing she was not an employee) and had been paid sums to which he did not consider the respondent required to pay her (as she was not engaged by the respondent to provide services).

- 5 14. Mr Logan had known from business meetings from 2021 that the claimant's husband had created the arrangement for the claimant and her husband to maximise the tax position. Mr Logan had met the claimant's husband at business meetings and had been advised that he and the claimant had been paid money via the business to maximise their tax position. As general
10 manager Mr Logan knew the claimant was not providing services to the business. He believed that the claimant had never been an employee or worker of the respondent. The relationship that existed had been to maximise the tax position.

Claimant ceases to be paid (and provide any services)

- 15 15. The claimant had ceased to provide any services for the respondent in around February 2022 (and by March 2022). No further payments were made from the respondent to the claimant. This was because the respondent believed she was receiving sums to which she was not entitled, no longer having any connection with the respondent (the claimant's husband and his father having
20 left the business). No further work was offered to the claimant from March 2022.

Claimant knows her rights and chooses not to raise a claim

16. When the payments to the claimant from the respondent stopped, the claimant consulted with her husband about next steps. At that point there were
25 disputes within the family and within the company. The claimant's husband and Mr D and Mrs I Cassels had fallen out and personal and business disputes were ongoing.
17. The claimant is an articulate, intelligent and capable person. On or around March 2022 the claimant researched the position on the internet to check her
30 rights. She understood that she had the right to challenge the failure to pay

her wages (and any dismissal) at an Employment Tribunal in respect of which a 3 month time limit applied.

18. At the time there were familial and business disputes ongoing and the claimant's husband had suggested she not raise matters formally. The claimant perceived that raising a dispute would cause friction and that the impact upon her emotions would be great such that she chose not to proceed with any formal action, such as a grievance or Employment Tribunal claim. She understood any claim would become time barred (once the 3 month period had passed). She felt that her mental health would be affected if she raised matters. She wished to prioritise her husband and her family over a work related dispute.

19. The claimant tried to speak with Mr and Mrs Cassels about the fact the money had stopped being paid into her account but she did not pursue the matter further and did not raise matters formally or in writing.

15 **Claimant is able to set up her own business following cessation of payment**

20. While the claimant had felt unable to enforce her rights at an Employment Tribunal following her payments ceasing, she decided to set up a new business. This was a decision the claimant took independently of the respondent and she did not raise the fact she was doing so with the respondent. The claimant commenced trading as "Roof Box Hire Scotland" in March 2022 which was to provide roof box, roof bar and bike carrier hire services. She was able to increase sales by 10% in the first year by improving the revenue model, enhancing the customer experience and expanding the business's online presence. In her social media profile about this job she stated that her key responsibility were to "manage daily operations including customer services".

21. The claimant had not included any reference in her job history for that company to working for the respondent in any way.

Claimant asks about employment status in January 2023

22. Around 9 months following no payments being made, on 12 January 2023, the claimant sent an email to Mr Logan, Mr Hamilton, Mr Cassels and "David". She It was headed "P45" and said: "To whom it may concern As per discussion with your bookkeeper David Roseweir I was advised to contact
5 Brian regarding the P45 for myself and my husband since there is still uncertainty whether our employment relationship as ended or not. I am most certain you are aware the company is required by law to provide their employees with such documentation and/or information whether they are still employed or not. Therefore I look forward to hearing from you." It was around
10 this time the claimant had been told a P45 or dismissal letter would be needed to end a contract which resulted in the claimant asking about the "uncertainty" as to her relationship with the respondent. Prior to that date, no uncertainty had existed.
23. Mr Logan received the email and spoke with his directors and bookkeeper.
15 Mr Logan had been present at business meetings at which the claimant's husband had indicated that for tax reasons it had been necessary to arrange for him and the claimant to be placed on the system as employees and paid a sum under the annual tax threshold (which was then £12,000). Mr Logan had been told that this was a tax efficient arrangement. Mr Logan did not
20 consider that the claimant had ever been an employee or worker of the respondent (as she had not carried out any work for the respondent) and the sums paid to her had been a consequence of the arrangement her husband had detailed at the business meetings.

P60

- 25 24. Upon receiving the email from the claimant and speaking with his colleagues, it was agreed to send the claimant a P60 which they understood they required to do for tax reasons. Mr Logan had regular discussions with Mr D Cassels who had never told Mr Logan that the claimant was in any way working for the respondent which supported his belief that the claimant had no relationship
30 with the respondent (other than it paying a sum of money into her account to increase her and her husband's income for tax purposes). Payment was paid as a result of a private agreement amongst the claimant, her husband and his

father and not because the claimant had any contract with the respondent. The claimant was provided with a P60 for the year ended 5 April 2022. That disclosed that the claimant had received £11,000 for the tax year to 5 April 2022.

5 **Claimant gets advice and asks about the position around her employment**

25. In February 2024 the claimant contacted ACAS. By this stage, the disputes had settled and she felt stronger. She obtained advice as to her options. On 13 February 2024 the claimant was communicating with a solicitor about the ongoing family and business dispute. She noted that a car that had been bought by the respondent had been used as a family car for her and her husband. She also noted that her “employment commenced in November 2019 with a salary paid monthly which ceased in February 2022 with no formal communication received to terminate the employment”. She noted that HMRC confirmed “employment is still valid as no termination nor P45 had been issued” and ACAS had confirmed that understanding. No reply was given.
26. On 21 March 2024 in relation to ongoing disputes with the family and business the claimant sent an email to a solicitor and said “In the meantime I would be grateful to know your clients position on the points mentioned in my email of 13 February in particular employment/salary and P45).” No response was received.

Car owned by respondent (used by claimant and her husband to be returned)

27. A car that belonged to the respondent had been used by the claimant (and her husband) for family use. That car had to be returned to the respondent in April 2024 (as part of a resolution of ongoing business and family disputes). The only person who was entitled to a company car as part of their employment with the respondent was the general manager. The claimant’s use of the company car was not related to any contractual arrangement between her and the respondent but due to the family connection.

Health insurance benefit ended

28. On around 9 August 2024 the claimant received a letter from the respondent's health insurer stating that her private medical insurance cover provided by the respondent had ended on 22 June 2024. She was told she was no longer covered under the policy the respondent had previously provided (but she could continue on a personal individual basis to purchase insurance).
29. This had arisen because Mr Logan had discovered when renewing the policy that a number of individuals had been included on the renewal that were not entitled to the policy benefit (which had people who were not employees of the company, such as the claimant and other spouses and family members of employees). Around February 2024 Mr Logan advised the healthcare provider that the claimant and her husband were not working for the respondent and should not be included in the renewal quotation. That led to the claimant being told that she was no longer covered by the insurance company. The healthcare entitlement had not arisen by virtue of any contractual relationship between the claimant and the respondent but due to the family connection.
30. The claimant had raised concerns with the healthcare provider and received correspondence on 15 October 2024 which made it clear that the respondent considered the claimant to have left the company prior to February 2024.
31. The health insurance the claimant had benefited from (as a result of her connection with the respondent, via her husband) ended on 22 June 2024

Claimant commences early conciliation and Tribunal claim

32. On 14 November 2024 the claimant approached a solicitor who gave her advice. On the same day the claimant commenced early conciliation.
33. On 9 December 2024 the claimant presented an ET1. In her claim form she stated that her employment started on 4 November 2022 and she said that her employment had ended. She said it ended on 22 June 2024.
34. She ticked the box saying she was due "arrears of pay" and said that "the salary stopped getting paid from March 2022 without any notice or prior communication". Her form noted that she had suffered post traumatic stress

disorder because of the behaviour of “emotional assaults” from the former business owners. She said “due to such a heavy load of emotional abuse I was not in [a] position to raise this with an Employment Tribunal within 3 months”. In her claim she noted that it was “rather overdue”.

- 5 35. The respondent defended the claim on the basis that the claimant was never employed by the respondent and was in any event significantly out of time.

Observations on the evidence

36. The Tribunal considered the evidence carefully and in context of all the evidence.
- 10 37. **The claimant** was passionate about the issue in question. Her position was that she had been told that without a P45 or clear confirmation in writing that her employment had ended, her employment was ongoing. She had been told this by HMRC and ACAS around 9 months following the ending of the parties’ relationship which led the claimant to assert that her employment had not ended. While that was the claimant’s position, she was asked in examination in chief why she had stated in her ET1 that her employment had in fact ended when asked that question. She was unable to say why she said it had ended when her position at the Hearing appeared to be that it had not ended. There was, however, a 9 month period during which the claimant understood she had the right to raise a claim and knew any contractual relationship had ceased given what had occurred (the ending of work, pay, the departure of her husband and father from the business and ongoing disputes).
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- 25 38. The respondent’s position was that the claimant had never in fact lawfully been engaged by the respondent. The respondent believed that the claimant’s engagement had been a private matter with Mr D Cassels, his son (the claimant’s wife) and the claimant, and not a matter that had properly involved the respondent. The respondent’s position was that no relationship had existed between the claimant and respondent and as such the claim could not proceed.

39. With regard to the claimant's argument her employment could not end without a clear letter from the respondent, the claimant had, however, accepted that her arrangement with the respondent had arisen without any written documentation and a great deal of uncertainty (and it was possible the arrangement could equally have ended with the same lack of formality as it had been created). The information the claimant had been given was incorrect since it is possible to end a relationship otherwise than by a P45 or dismissal letter but in any event there was a 9 month period when the claimant had not been misadvised during which period her claim could (and should) have been raised.
40. The Tribunal did not consider on the balance of probabilities that the claimant had been a worker of the respondent. While the claimant asserted she had been engaged by Mr D Cassels she was singularly unclear as to what the basis of her alleged appointment was. She indicated she did some social media work and assisted her husband and yet appeared not to have worked at the respondent nor had any dealings whatsoever with the general manager of the respondent (who was in charge of staff). Despite telling the Tribunal she believed herself to be an employee of the business (and thereby entitled to wages) she made no reference whatsoever to her alleged engagement with the respondent in her job history on her social media platform.
41. The claimant was also asked why she did not seek consent of her alleged employer when she decided to set up business on her own account (following upon her not receiving payment from the respondent) at a time she said she was still employed by the respondent. The claimant said that this was a "good question" (and one she could not answer). In her written submissions she later submitted that there was no contractual prohibition upon working for others, but that had not been said in evidence. It was clear that there was no clarity as to the terms of the agreement the claimant said existed between her and the respondent.
42. If the claimant genuinely believed that she was under a contract of employment with the respondent, it would have been likely that she would have understood the need to have sought their consent to work for a third

party, particularly where she said she managed daily operations of the new venture.

43. The claimant's actions at the time and the contemporaneous documents are inconsistent with the claimant being engaged by the respondent as a worker in the sense advanced by her. At the time the payment ceased, the claimant did not raise matters formally with the respondent (whom she alleges was her employer). While there were family issues and business disputes, the claimant is articulate and intelligent and capable of protecting her position. While she may have chosen to put her husband and family first, there was no evidence of any attempt by the claimant to raise the issue following upon the cessation of the sums paid to her, which coincided with when she said she ceased to provide services. That suggested the claimant understood that any relationship she had with the respondent (or perhaps with Mr D Cassels) had ceased.

44. At the very least, the claimant's actions were consistent with her believing the relationship had ceased. The fact she stated in her claim form that her employment had ended was a good example of this. While she said in evidence she relied upon a date provided by the insurer, it was clear that she knew the respondent did not consider there to be a relationship in existence. She acknowledged that in the ET1.

45. While the claimant had sought to clarify matters by her emails of January 2023 and later, this had arisen because she had had been told without a P45 an employment relationship may still continue, that did not align with the reality of the situation particularly when the claimant learned that the respondent considered the relationship to have ceased.

46. The Tribunal found **Mr Logan** to be clear, cogent and credible. He had learnt of the arrangement the claimant had reached with her husband and his father. He knew the claimant had not provided services for the respondent. While she had done ad hoc work, that was not in the sense of being an employee or worker of the respondent. He was also clear in his evidence that there was no ongoing relationship between the claimant and respondent and in any

event any relationship had clearly ceased from March 2022. That was consistent with the actions of both parties at the time.

47. The Tribunal carefully considered the grounds in which the claimant challenged Mr Logan's evidence and her detailed submissions. The claimant accepted her discussions had been with Mr D Cassels and had not worked with Mr Logan. She also raised matters that she had not in fairness put to Mr Logan during her cross examination of him. It is clear that there were ongoing challenges in the business but the Tribunal found Mr Logan's evidence to be clear and consistent and preferred it to that of the claimant where there were conflicts. Mr Logan appeared able to assess matters objectively from the standpoint of an outsider to the disputes and from the perspective of the business, rather than as a family member or person involved in the disputes that affected the claimant, her husband, his father and the business.

Law

48. This is a claim for payment of wages based upon the claimant's assertion that she had an ongoing contract of employment with the respondent. A contract is a bilateral agreement, which can be formed by actions (whether or not in writing) whereby both parties enter into an agreement. There requires to be consensus on the key terms for a contract to exist.
49. In determining whether or not a contract has been brought to an end, it is important to view what has happened objectively. Sometimes there may be no direct words but the actions of the parties show that the contract was ended. There are a number of examples in the case law demonstrating when a contract has been found to have been terminated otherwise than by issuing a P45 or dismissal letter.
50. In **Kirklees Metropolitan Council v Radecki** 2009 ICR 1244, for example, the Court of Appeal held that removing an employee from the payroll while he was suspended and negotiating a settlement agreement was a sufficiently unequivocal statement of the employer's intention to terminate employment.

51. In **Hogg v Dover College** 1990 ICR 39, the Employment Appeal Tribunal held that the College's letter to a teacher removing him as head of history and offering him new terms amounted to an express dismissal. The new terms were so different from the old terms that the situation could only be described as the termination of one contract and the formation of a new one.
52. In **Sandle v Adecco UK Ltd** 2016 IRLR 941, the Employment Appeal Tribunal made the point that communication is key: dismissal can be inferred from an employer's actions only if the employee was made aware of the conduct in question. The claimant was employed by a recruitment agency that provided temporary agency workers to its clients. A client she had been assigned to for two years decided to terminate her assignment because of concerns over her performance: it instructed the respondent to that effect on 30 October 2013 and gave the claimant one month's notice. The respondent completed a P45 for payroll purposes, but it did not send that on to the claimant; apart from one voicemail left on her mobile, it did not contact her at all. The Tribunal found that there had been no dismissal because the respondent had done nothing to communicate a dismissal to the claimant. Upholding that decision on appeal, the Court rejected the argument that the respondent's failure to provide her with work — in the form of an assignment with a new client — was sufficient to amount to a communication of dismissal. The court stressed the importance of context: agency workers may well experience gaps between assignments that will not fit the standard direct employment model.
53. In **Avuru v Favernmead Ltd** EAT 0312/19 the respondent by their conduct had clearly communicated their intention to terminate the employee's employment. The claimant was employed as a live-in carer for the second respondent's mother, E. When E died in March 2017, the first respondent ceased to pay the claimant's wages who did no further work for the first respondent apart from two ad hoc cleaning jobs. The Employment Appeal Tribunal held it was clear from *Sandle* (above) that the tribunal had been required to decide whether the termination of the claimant's employment was clearly communicated to her by the respondents' conduct, and the only

conclusion on the evidence was that this had happened shortly after E's death. The person the claimant had cared for over the past ten years had died, the respondents had engaged her to provide those services to E on a personal basis, the respondents were not part of an organisation or business that provided services to the elderly, and there was no evidence of any other person in the family requiring similar care. There was therefore no evidence that the respondents had any other role that the claimant could have performed instead. Although the respondents had failed to communicate with the claimant directly, the cessation of her salary had made it clear that her services were no longer required. In other words, the respondents' termination of the claimant's employment was communicated to her at the end of April 2017 when she realised that she was no longer being paid.

54. Section 13 of the Employment Rights Act 1996 introduced the right not to suffer an unlawful deduction of wage (which is where the sum paid by the employer is less than the sum properly payable). Section 23 gives a worker the right to pursue a claim for unlawful deductions in an Employment Tribunal which shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the date the payment was received in respect of which the deduction was made or within 3 months of the date the last in a series of deductions was made or within such further 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 end of that period of three months.

55. In **Lowri Beck Services v Brophy** 2019 EWCA Civ 2490 (and at paragraph 12) the Court set out some useful key principles to consider when dealing with time bar cases. These are summarised as follows:

1. The test should be given "a liberal interpretation in favour of the employee (**Marks and Spencer plc v Williams-Ryan** [2005] EWCA Civ 470, [2005] ICR 1293.
2. The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether

it was "reasonably feasible" for the claimant to present his or her claim in time: see **Palmer and Saunders v Southend-on-Sea Borough Council** [1984] IRLR 119 but is not limited to physical impracticability.

- 5 3. If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will not have been reasonably practicable for them to bring the claim in time (see **Wall's Meat Co Ltd v Khan** [1979] ICR 52); but it is important to note that in assessing whether ignorance
10 or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made.
4. If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee.
5. The test of reasonable practicability is one of fact and not of law.
- 15 56. In assessing whether ignorance of a right is reasonable, as Lord Scarman commented in **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53, the Tribunal must ask further questions: 'What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?' The Court of Appeal in **Porter v Bandridge**
20 **Ltd** 1978 ICR 943, having referred to Lord Scarman's comments ruled that the correct test is not whether the claimant knew of his or her rights but whether he or she ought to have known of them. The Court upheld a tribunal decision that a claimant who took 11 months to present an unfair dismissal claim ought to have known of his rights earlier, even if in fact he did not.
- 25 57. Where a claimant is generally aware of her rights, ignorance of the time limit is rarely acceptable as a reason for delay because a claimant who is aware of her rights will generally be taken to have been put on inquiry as to the time limit. In **Trevelyan's (Birmingham) Ltd v Norton** 1991 ICR 488, the Employment Appeal Tribunal held that when a claimant knows of her right to
30 complain of unfair dismissal, she is under an obligation to seek information

and advice about how to enforce that right. Failure to do so will usually lead the Tribunal to reject the claim.

58. The Tribunal should assess on the facts what the claimant knew or did not know and whether it was reasonable not to make further enquiries.

5 59. Even if it was not reasonably practicable to have lodged the claim in time, the claimant must still show that the claim was raised within such further period as was reasonable.

Submissions

10 60. At the Hearing both parties had been able to make submissions. The respondent had provided the claimant with detailed written submission which she was able to consider and set out her position. The parties were given a further opportunity to make written submissions in relation to the case law around termination of the contract given this had not been an issue the parties had fully considered.

15 61. The respondent's submission detailed and set out their belief that there was no contract in place and even if there were the claim was years out of time, it having been reasonably practicable for the claimant to have raised the claim in time.

20 62. The claimant submitted a similarly very detailed submission covering each of the points raised by the respondent's agent and making detailed assertions. She included some new material that had not been raised in the course of the hearing which the Tribunal has taken into account. The claimant asserted that her relationship had not been terminated given the facts and that she either remained in a contractual relationship with the respondent (and was entitled to the monthly sum) or that it was not reasonably practicable to have raised
25 the claim in time and the claim was raised within such period as was reasonable.

Decision and discussion

63. The Tribunal carefully considered the detailed submissions of both parties and although they are not repeated in full they have been carefully considered in light of the evidence led and applicable law. The claimant's additional submissions contained a number of new facts which were not placed by her in evidence nor raised with the relevant witnesses. The submission was considered carefully in light of that taking account of the fact that the claimant is not legally qualified and she did her best to present her position at the Hearing.

Nature of the relationship between claimant and respondent

64. The Tribunal considered the first issue which was whether the claimant had been engaged by the respondent in the manner advanced by the claimant. The claimant believed she was engaged as an employee but was unclear what the legal position in relation to her employment was. She had been told that without a P45 or formal dismissal letter her employment had not been lawfully terminated. She believed that she was entitled to be paid the monthly sum on an ongoing basis. The respondent argued there was no relationship in place between the claimant and the respondent and there was no entitlement to be paid for work that was not offered or done.

65. Having carefully reviewed the parties' relationship, the Tribunal found the claimant's relationship with the respondent to have been informal and ad hoc. The claimant had been engaged by Mr D Cassels to maximise the tax position of her husband (Mr D Cassel's son) and herself (given the sums involved and relevant tax thresholds). She had not been engaged in the usual fashion, whether via any recruitment process, subject to any offer letter, written contract or written statement of particulars. The claimant had been prepared to accept an informal and unwritten arrangement. There was literally no paperwork at all creating any contractual relationship between the claimant and respondent. The claimant did not understand what her duties were nor what hours she was to work (nor the other material terms required for a contract of employment to exist). The relationship had been entirely informal and ensured that the sum received by the claimant did not exceed the threshold for tax purposes each year.

66. While there had been 2 payslips and an P60 issued, these had been automatically generated. The reality of the relationship was that it was a vehicle for tax purposes. No employment paperwork had been presented which suggested the relationship was in any sense that of employer and employee/worker. The relationship was entirely informal and irregular and inconsistent with that of the claimant being an employee or worker. The respondent had paid the claimant a monthly sum and issued 2 payslips but that was because Mr D Cassels had decided to do so, pursuant to the arrangement his son had devised to maximise his (and the claimant's) position rather than because the claimant provided services to the respondent. The fact the claimant was wholly unclear as to what her duties were supported the position that the sums paid were solely in respect of the agreement reached between the claimant's husband and his father.
67. The fact that no work was issued following the ending of the payment was important. The claimant did nothing to challenge that at the time, which supports the assertion that the relationship was entirely ad hoc and not that of employer or worker status. The claimant did not raise the failure to make any payments or offer work at the time suggesting her acceptance of the informal and ad hoc nature of the relationship.

20 **Actions inconsistent with ongoing relationship**

68. The failure to pay the claimant the monthly amount together with an absence of any work was a clear indicator the respondent did not consider the relationship to be continuing. The difficulty was that there was no written communication to the claimant setting the position out, thereby putting the position beyond any doubt. The respondent simply stopped making the payments, as the respondent believed the claimant (and her husband) had no legal right to the payments. At the time this arose, there were clearly a large number of issues arising and disputes ongoing. The surrounding circumstances provide the context given the familial and commercial disputes and Mr Logan's belief (that there was no relationship in place and therefore no reason to continue paying the sums).

69. Upon receiving no payment or further work, the claimant, almost immediately, set up in business in her own account. She did not contact the respondent and managed the daily operations of that business. Such actions are entirely inconsistent with there being an ongoing relationship between her and the respondent following the failure to offer work or make payment. While the claimant contends in her written submissions there was no contractual prohibition upon her doing so, this was not the position presented in evidence. When viewed objectively, the claimant considered the relationship to have ended and acted as such. It was only when she was (later) told that the relationship could only be ended by the issuing of a P45 or letter of dismissal that she began to ask about the matter.
70. Mr Logan did not consider the claimant to have ever been in a contractual relationship with the respondent and given the ongoing disputes no formal communication was made with the claimant. At best, the engagement was between the claimant and Mr D Cassels pursuant to an arrangement her husband had asked his dad (Mr D Cassels) to procure to maximise income to the family. Had the claimant been a worker of the respondent on the balance of probabilities Mr Logan would have known about it, either from his detailed knowledge of the business or from his discussions with Mr Cassels. The absence of a clear response to the claimant's request about the uncertainty of her employment status (which was only sent 9 months after the relationship ceased) was unhelpful and created doubt (and in part led to the claimant raising her claim given her uncertainty created). It is unsurprising that there is a lack of clarity in the claimant's mind around the ending of the relationship given the lack of detail around the creation of the relationship at the outset and given the claimant having been told that a relationship can only be terminated by a P45 or dismissal letter.
71. The relationship was ad hoc in nature and conditional upon the respondent offering work and making payment, there being no evidence of any binding obligation to do so and the relationship being one entirely at the discretion of both parties. In other words, there was no evidence that the claimant was under any obligation to carry out any specific work as much as there was no

obligation requiring the respondent to offer work or make payment. The relationship was genuinely ad hoc and informal. It was the antithesis to an employment or worker relationship which required there to be ongoing obligations binding both parties. There is no evidence of this in this case.

- 5 72. The claimant did no work from March 2022 and did not formally challenge the issue or situation. She was clearly capable of doing so but chose not to do so. While there were ongoing disputes, if the claimant genuinely believed there to have been a breach of contract in some way she would have marked that important fact in a formal or even informal way. The claimant raised no formal challenge nothing despite now asserting that she believed there to be an ongoing relationship. Objectively viewed the claimant's actions do not support the assertion that there were any ongoing mutual obligations or a contract in place and instead support the analysis that there was no ongoing contractual relationship from March 2022. The claimant's and respondent's actions are entirely consistent with the relationship being an entirely ad hoc arrangement with there being no ongoing obligations on either party.

When claimant is told relationship can only end with P45/dismissal letter she argues her employment status is "uncertain"

- 20 73. Some 9 months following the ending of pay and the offer of work, in January 2023, the claimant said there was "uncertainty" as to her employment status. By that she means she had not received a P45 nor a formal dismissal letter. Regrettably the respondent chose not to confirm the position in writing to put the matter beyond doubt. That did not mean, however, that a relationship subsisted between the claimant and the respondent. Further, the claimant's suggestion that there was "uncertainty" was only because she had been told that without a P45 the relationship had not been terminated. Had she not been told that, there is no evidence to suggest that she would have believed there was any ongoing relationship. It was only because of the advice she had received, that a relationship could not end without a P45 or formal letter, that she suggested there was uncertainty.

74. In reality there was no uncertainty as the claimant's and respondent's actions at the time were consistent with there being no contractual relationship. The "uncertainty" was only because by this stage someone had told the claimant the relationship she had with the respondent, which she had objectively considered to have ended in March 2022, could not be terminated without a P45 or dismissal letter which resulted in the claiming believing from that date there was an argument that her relationship had not in fact ended (despite that being her view prior to that point).
75. Again in March 2024 the claimant wrote to a solicitor about the "uncertainty" and again no response was provided. However, neither party was acting in a way consistent with the relationship continuing. The point the claimant was making was that she believed formally the relationship could only be ended by a P45 or dismissal letter. In truth there was no suggestion from the claimant that she was continuing to work or event that she believed the relationship in fact continued to endure. The point she was making was that she believed the relationship could only lawfully be terminated by issuing a P45 which she had not received.
76. The claimant raising that matter (as to the absence of a P45) is not consistent with her believing there was an ongoing relationship or a contract in place. There was no evidence to which even the claimant could point in her communications as to the relationship that supported the suggestion that there was any ongoing contract in place between the claimant and the respondent. The claimant had not been asked to do any work. She had not been paid. The claimant had not suggested she was entitled to be paid for doing no work. There was no evidence of any agreement reached that could support the claimant's assertion a contract had been agreed between her and the respondent that entitled her to assert that the relationship continued despite there being no work offered or that she was entitled to be paid for doing no work for an indefinite period.

No evidence of any ongoing contractual relationship

77. There was no evidence before this Tribunal that could result in there being an ongoing contract between the claimant and the respondent. At best the claimant had reached agreement with Mr Cassels that she be paid a sum each month and carry out ad hoc consultancy work and be paid a sum through the respondent's systems which ended in Marh 2022. There is no evidence the claimant presented which suggested agreement had been reached (and thereby a contract created) that entitled her to assert there were ongoing mutual obligations, an ongoing contract between the claimant and respondent. Viewed objectively at the time in question, the claimant's and respondent's actions were entirely consistent with the absence of such an agreement. In any event, the actions of both the respondent and claimant objectively viewed supported the conclusion that any relationship – contractual or otherwise - had ceased to exist by March 2022.
78. The claimant had acted in a way consistent with the legal relationship having ended, even if the matter had not been formally communicated to her. Failing to offer work and consequently making no payments was a clear signal that the relationship was at an end. The claimant setting up her own business upon that knowledge and not formally challenging the matter at the time supported that conclusion.
79. The claimant explicitly learned that the respondent did not consider there to be any contractual relationship between them when she was told that her health insurance had not been renewed. The claimant considered her entitlement to that benefit to arise directly as a result of her contract with the respondent. That was the only connection that continued to exist that suggested there was an ongoing relationship. On 9 August 2024 the claimant had been told she was no longer covered by the policy. If there was any doubt as to the respondent's position, the claimant understood from 9 August 2024 the relationship between the respondent and claimant was at an end. That was the claimant's position she set out in her ET1 – that her employment had ended and that it had ended on 22 June 2024 (when the claimant's entitlement under the policy had ended). That was why she said in her ET1 that she

understood her claim was late, her relationship with the respondent having ended over 3 months prior to commencing early conciliation.

5 80. The claimant received the communications from the insurer which stated that the respondent believed the claimant no longer worked for them (and had not done so since prior to February 2024) on 15 October 2024. This had therefore confirmed what the claimant believed had occurred when told in August, namely that there was no ongoing contractual relationship between the claimant and respondent. This confirmed that the respondent did not consider there to be any relationship in existence since prior to February 2024.

10 81. There were no factors supporting the claimant's assertion that the relationship was ongoing or that she did not know what the respondent's position as to there being an ongoing relationship. When asked about this at the submissions stage, the claimant reiterated that she had not been given a P45 and there had been no dismissal letter. Nevertheless there can be no doubt
15 that the claimant knew the respondent's position (which was that there was extant contractual relationship). Her actions from the time the payment stopped up to what she said in her ET1 are consistent with the absence of a contractual relationship.

20 82. The claimant referred to a suggestion that the position stated by the respondent as to the purpose of her and her then husband's payment was unlawful. Technically the respondent's position was that the scheme was tax avoidance (as opposed to tax evasion). There were no submissions on the legality of the arrangement and the impact upon the issues the Tribunal had to determine.

25 **No ongoing contractual relationship in place between claimant and respondent**

30 83. The Tribunal finds that there was no contractual relationship in place between the claimant and respondent that entitled the claimant to be paid any sum from the respondent when no work was offered. The agreement the claimant had reached was with Mr Cassel's personally. There was no agreement the claimant was contractually bound to the respondent in any way just as much

as there was no contractual obligations binding the respondent to the claimant.

84. In reaching this decision the Tribunal carefully took the context into account and the facts. The relationship was not one of employment or worker status. It was a vehicle used by the parties to maximise their tax position. The claimant was uncertain as to the terms of her asserted contractual relationship. While she did some work for Ms Cassels, this was on an ad hoc basis and for Mr Cassels (and at his request) but not result in the claimant being part and parcel of the respondent or working within the business. Upon ceasing to offer work (and do such work) and in not paying the claimant, there was no ongoing obligation.

85. Even if there was a contractual relationship in place between the respondent and the claimant, any contractual relationship ceased when the respondent failed to offer any work and failed to make payment to the claimant. By that stage, March 2022, it was objectively clear that the relationship had been brought to an end, with the actions of both parties consistent with that analysis.

Claim out of time

86. Objectively viewed it was clear the relationship had been ended in March 2022. There was no reasonable basis to assert the relationship continued in any way in light of the authorities set out above. The claimant's suggestion there was "uncertainty" did not support her assertion she believed the relationship had in fact continued. She only raised that concern because she had been told there needed to be a P45 or formal termination letter. That was raised by the claimant, however, around 9 months after the point the relationship had been terminated and could not retrospectively result in the relationship being recreated. In March 2022 the claimant knew she required to raise a claim within 3 months of the relationship ending but chose not to do so.

87. The continued use of the company vehicle did not support the relationship continuing given the vehicle was owned by the respondent. There was no

evidence supporting the argument her entitlement to the car was linked to a contract of employment or other binding obligation. She had use of the car which was owned by the respondent. She could point to no contractual nexus supporting any suggestion she had a contract of employment and therein a contractual entitlement to a company car. Her retention and use of the company vehicle was neutral in that regard. It was a consequence of the familial relationship and connections with the respondent that led the claimant to use of the car. The fact the claimant continued to use the vehicle was not evidence any contractual relationship continued between the claimant and respondent.

88. Similarly, with regard to private health care, that benefit had been given to spouses and others who were not employees of the respondent and so the fact the claimant had access to the benefit did not suggest the respondent believed there to be any contractual relationship in place between the claimant and respondent or that such a relationship was continuing to endure. Again there was no evidence to which the claimant could point which supported the assertion entitlement to such health care was part of her *contractual* entitlement. There was no evidence of any contractual entitlement and she had simply been given the benefit – which could have been irrespective of her worker status (or the absence of such status).

89. The relationship ended by March 2022 when the payments made to the claimant ceased and the claimant knew she was not being offered any work and was not being paid. The claim was raised on 9 December 2024. The claim was 2 years and 9 months late.

It was reasonably practicable to have lodged claim in time

90. From the evidence before this Tribunal, it was reasonably practicable to have raised a claim in time. The claimant knew and understood that she had 3 months to raise a claim when her payments stopped and no work was offered. The claimant also had the benefit of (and access to) legal advice. She was articulate and intelligent. She understood how to raise a claim and the time limits pertaining to such a claim. Had there been a contract in place, the

contract was terminated when the claimant was offered no work and given no pay.

- 5 91. The claimant chose to put the wishes of her husband and family ahead of her own. She did not wish to pursue a claim at that time because she was concerned how that could impact upon the ongoing disputes. The claimant's health was a barrier to her progressing, given the stress she encountered, but her health did not mean it was not reasonably practicable to her to have raised her claim. There was no impediment to raising a claim as such but rather the claimant had made a choice not to do so given the issues in her life at that time.
- 10 92. As part of the claimant's consideration, she naturally took account of the impact matters had upon her mental health. The claimant had naturally been emotionally affected by the ongoing disputes. The claimant did not wish to risk further adverse impact upon her mental health and accordingly decided not to pursue a claim. Again, however, that was a choice the claimant made. The claimant could have raised a claim in time, and she knew the time limits, but instead balanced the issues in her life at the time and chose not to do so.
- 15 93. It was reasonably practicable for the claimant to have raised her claim in time. As she had not done so, it is now out of time.
- 20 94. Having taken a step back and considered the claimant's submissions in detail, from the evidence before this Tribunal, the claim was raised late and it was reasonably practicable for the claimant to have raised her claim in time.

In summary

- 25 95. The issue for this preliminary hearing was whether or not the claim was time barred or not. Having carefully assessed the evidence and considered the applicable law, the Tribunal found that any contractual relationship that existed between the claimant and respondent ended by March 2022. It ended when the claimant did no work, was not offered any work and was no longer paid the monthly sum which had been paid to her continually since November 30 2019. From the evidence, both the respondent and the claimant acted in a

way that supported the conclusion that any relationship between the claimant and respondent had ended by March 2022.

- 5 96. The Tribunal considered that it was reasonably practicable for the claimant to have lodged her claim in time. She knew of the time limits and of the Tribunal system and was capable of lodging a claim if she wished. She chose not to do so. While there were issues ongoing in her life at the time in question, on the facts of this case it was reasonably practicable for her to have raised her claim within the time limit about which she knew. The claimant made a choice.
- 10 97. Even although the claimant had subsequently been told that her employment status was uncertain, (because she had been told a contract could not be ended without a P45 or dismissal letter), which she learned 9 months following the ending of her employment, she knew prior to that date that her contract had ended and chose not to do take action. She chose not to raise proceedings for 9 months following the ending of the relationship and then
- 15 asked about the “uncertainty” as to the relationship without taking formal action until December 2024. It was reasonably practicable for the claimant to have lodged her claim within 3 months of March 2022, when any contractual relationship ceased and the claimant knew she had 3 months to lodge a claim.
- 20 98. Regrettably the respondent chose not to make the position clear by confirming matters in writing, which could have avoided this situation arising and could have clarified matters for the claimant but that did not alter the fact that it was reasonably practicable for the claimant to have raised her claim within 3 months following the ending of the parties relationship and the claim is accordingly dismissed.

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Date sent to parties

08 April 2025