



# EMPLOYMENT TRIBUNALS

**Claimant:** Ramy Elhaw

**Respondent:** The Dental Imaging Company

**Heard at:** Southampton (By CVP)

**On:** 21 February 2025

**Before:** Employment Judge Scott

**Representation**

Claimant: In person

Respondent: Mr Phillips Counsel.

## JUDGMENT

1. This claim is struck out, as out of time.

## REASONS

1. By a claim form presented on 19 May 2024, the Claimant, Mr. Elhaw, complained of an unlawful deduction of wages.
2. The Respondent filed a response refuting the claim and requesting the claim be struck out as it is significantly out of time.

**Findings of Fact**

3. The Claimant, an Egyptian national, had moved to the UK in July 2020. The Claimant had previously studied English in Egypt. The Claimant has previously held several different technical jobs, and had been working in Riyadh in Saudi Arabia immediately prior to moving to the UK.
4. It is not disputed that the Claimant began employment with the Respondent on 15 February 2021 and that he was employed as a Field Services Engineer.

5. It is also agreed that a requirement of the Claimant's contract was that he could travel throughout the UK and Ireland.
6. It is not disputed that the Claimant initially held an international driving licence which expired, after which the Claimant was not able to drive. Following a meeting on 4 August 2021, his salary was reduced to half pay. It is the Claimant's case that this change was instituted by the Respondent. This is denied by the Respondent, who say that it was Mr Elhaw who proposed a reduction in his salary, as the Respondent had originally intended to terminate his contract as he was not able to fulfil the requirements of the post.
7. On 1 March 2022 the Respondent reinstated the Claimant's original full pay, as demonstrated by the payslip at p50 of the hearing bundle, and the Claimant received this payment on 22 March 2022.
8. The Claimant resigned by email on 9 April 2022 and did not work his notice period. He received his full contractual pay for April 2022 as per the payslip on p51 of the bundle.
9. There is no dispute that the claimants ordinary limitation period for bringing a claim expired on 27 May 2022.
10. The Claimant contacted ACAS on 3 April 2024, and a certificate was produced on 9 May 2024. As the Claim was already out of time, this did not extend the time for filing his claim. The Claimant sought to file his claim on 19 May 2024, however, due to some potential defects in the claim, the claim was not accepted until 27 August 2024.
11. Directions were issued to the parties by order dated 4 February 2025, including for the Claimant to provide a witness statement addressing:
  - a. When he knew of his right to bring the claims now presented
  - b. When he learnt of the time limits which apply to those rights
  - c. What steps he took to discover the matters above, including the date on which legal advice was sought or obtained.
  - d. What the reason for the delay in presenting the claims was.

- e. Any documents in their possession or control relating to these matters.

12. The Claimant provided a witness statement, claiming that he first became aware of his potential claims in March 2024, from a colleague, and provided whatsapp messages as evidence of this. The Claimant asserted that following that notification, he contacted the Citizen's Advice Bureau (CAB) and ACAS. The Claimant indicated he received advice from the CAB in March that he needed to contact ACAS prior to making an Employment Tribunal claim. The Claimant also provides an email from the CAB dated 14 May 2024, including details regarding making an Employment Tribunal claim.

13. I accept that the Claimant first contacted ACAS in March 2024, following his colleague advising him of his rights to make a claim to the Employment Tribunal.

14. The Claimant provided with his witness statement a further ACAS certificate. This ACAS certificate provided his own details (Ramy Elhaw) as the prospective Claimant, but the Respondent is listed as A I Healthcare, who the Claimant confirmed had employed him after he left the Respondent.

15. That second certificate shows the Claimant contacted ACAS on 16 March 2024, and received his certificate on 26 March 2024.

## **Late Evidence**

## **Relevant Law**

16. A claim for unlawful deductions of wages must be presented within 3 months of the last deduction of wages, subject to any extension resulting from the ACAS early conciliation process. The Employment Rights Act 1996 sets out s23(2)(a) in respect of unlawful deductions of wages, that:

*(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....*

*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.*

*....*

*(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.*

17. If a claim is not filed within that time, then time may be extended for such further time as it reasonable, but only if it was not reasonably practicable for the claim to have been filed in time. The Tribunal has reminded itself of the general principles that have been set out to guide the Tribunal when considering whether it was not reasonably practicable for a claimant to present their claim within the time limit.
18. The test in s23(4) should be given a '*liberal construction in favour of the employee*' *Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA.*
19. What is reasonably practicable is a question of fact for the tribunal to decide. In *Wall's Meat Co Ltd v Khan 1979 ICR 52, CA*, this was expressed as follows;

*'The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive'*

20. The duty is on the Claimant to show that it was not reasonably practicable for them to meet the time limit. *'That imposes a duty upon him to show precisely why it was that he did not present his complaint'* (*Porter v Bandridge Ltd 1978 ICR 943, CA*).

21. A claimant's ignorance may make it not reasonably practicable to present a claim in time, but the Tribunal should ask whether the Claimant ought to have known. *Porter v Bandridge Ltd 1978 ICR 943, CA*.

22. In *Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA*, the following questions were considered in order to reach a conclusion.

- a. What were his opportunities for finding out that he had rights?
- b. Did he take them?
- c. If not, why not? Was he misled or deceived?

23. In *Avon County Council v Haywood-Hicks 1978 ICR 646 EAT* the EAT set out that the broad common sense of the matter, and that Tribunals should not consider *'ignorance however abysmal and however unreasonable is a universal excuse.'*

24. If the Tribunal is persuaded that it was not reasonably practicable for the Claimant to submit the claim form in time, the tribunal must also be satisfied that the claim was presented *'within such further period as the tribunal considers reasonable'*.

**The Claimant's case.**

25. The Claimant says that it was not reasonably practicable for him to file his claim within three months of the last deduction to his wages for the following reasons:

- a. As a recent arrival to the UK in July 2020, he was not aware of labour laws and policies and did not realise he had the right to challenge wage cuts imposed on him by the Respondent.
- b. The Claimant was focused on adjusting to a new environment and other work.
- c. The Claimant did not fully understand the legal framework regarding such matters.
- d. He first became aware of a claim to the Employment Tribunal from a colleague in March 2024.
- e. The Claimant stated that he made his claim against his subsequent employers, AI Healthcare first, who had failed to pay him holiday pay. Once that claim had resolved, he decided to bring a claim against the Respondent (his earlier employer).

26. The Claimant confirmed in oral evidence that he took no steps between August 2021 and March 2024 to attempt to address the unfairness he felt he had experienced during his employment with the Respondent. Instead, he confirmed that he had focused on his new work, and driving everywhere.

### **The Respondent's submissions.**

27. The Respondent submitted that it was reasonably practicable for the Claimant, a well educated man with access to the internet, to inform himself of his rights within the relevant time limit, and therefore, that time should not be extended to bring this claim. The Respondent highlighted in particular that ignorance, however abysmal, is not a universal excuse for failing to meet a time limit.

### **Analysis and Conclusions**

28. The claim form in this case has been submitted significantly out of time. As

detailed above, the time limit to file the claim was 27 May 2022, and the Claimant presented his claim form on 19 May 2024, which was then rejected. Following a request for reconsideration, the errors in the form were corrected such that the claim form was accepted on 27 August 2024, 27 months out of time.

29. I must first determine whether it was reasonably practicable for the Claimant to present his claim within the time limit, i.e. by 27 May 2022. If I am satisfied that it was not reasonably practicable for him to do so, I must determine whether he submitted his claim within such other time period as I deem reasonable.

30. It is the Claimant's case that his employers made him accept a lower salary because he was unable to fulfil his contract as he could not drive. The Claimant was aware from the 4 August 2021 that he would be receiving half pay, and this continued until 1 March 2022, with him receiving his full pay on 22 March 2022.

31. The burden is on the Claimant to show that it was not reasonably practicable for him to bring his claim within the time limit. He says that he was wholly ignorant of the UK labour laws and policies and that he did not realise he had the right to challenge wage cuts imposed on him.

32. In his witness statement he states '*As a new comer to the country in July 2020, I was unfamiliar with local labor laws and policies*' and '*I didn't realise that I had the right to challenge the wage cuts imposed on me by the company.*' The Claimant confirms that he arrived in the UK in July 2020, which is confirmed by the stamp in his passport dated 8 July 2020. The Claimant commenced work for the Respondent in February 2021. Therefore, at the time that the deductions were first applied, on 4 August 2021, the Claimant had already been in the UK for over a year, and had been successful in establishing himself in employment in the UK.

33. The Claimant's Curriculum Vitae at p36 of the bundle demonstrates that the Claimant had experience with international work, and travel, having previously worked in Riyadh, and studied in Finland. The Claimant

confirmed in cross examination that he had studied English in Egypt. The Claimant is clearly a well educated and resourceful man, and it is therefore difficult to accept that he could be so ignorant of the possibility of such rights in the UK.

34. However, notwithstanding the difficulties I have in accepting that the Claimant was ignorant of his rights, having heard the Claimant's evidence, I found him to be a credible witness and accept that he was, in fact, ignorant of his right to bring such a claim at this time.

35. I have therefore considered the questions set out in the case of *Dedman*, at paragraph 29 above, to determine whether the Claimant ought to have taken available opportunities to enable him to make a claim within time.

36. First, I consider what were the opportunities the Claimant had for finding out about his rights. It is the Claimant's case that he took no steps to investigate his legal rights in the UK, between his salary being reduced in August 2021, and his friend notifying him of his employment rights, in March 2024. He states *I was focused on adjusting to a new environment and other work and did not fully understand the legal framework regarding such matters.*

37. The Claimant arrived in the UK in July 2020 with the intention of working in a technical role. The Claimant accepts that he is a qualified and intelligent person. The Claimant accepts that he had a laptop, mobile phone, and internet connection throughout the time he was in the UK and had access to the internet on a daily basis. The Claimant confirmed he was able to access and use search engines.

38. The Claimant has failed to adequately explain why he did not undertake any research into his legal rights, because he was focusing on adjusting to his new environment, 22 months after moving to the UK. The Claimant indicates his focus was also on work, but it is difficult to understand why this would have reasonably prevented him from investigating his rights in the UK over an extended period of time, given the deductions in his salary were taken over an 11 month period. I do not accept that the Claimant did not have enough time to undertake such research during that time.



39. The Claimant stated that his English 'wasn't that great' when he started at the Respondent. However, the Claimant had been able to secure employment in English, he then subsequently worked for over a year at the company before resigning, having received another job offer. In his email of resignation, dated 9 April 2022 (which was within the time limit to file his claim at the Tribunal) the Claimant demonstrates a degree of competency when communicating in written English.

40. The second question to consider is whether the Claimant took the opportunities available to him, and the Claimant appears to acknowledge that he did not. The Claimant claims he did not undertake any investigation into his rights prior to March 2024, either using the internet available to himself, or making enquiries with his family, colleagues or friends.

41. Thirdly, I must consider why the Claimant did not take those opportunities. The Claimant's own explanation is that his focus lay elsewhere. The evidence before me indicates that any feelings that the Claimant may have had that he was treated unfairly, were not a priority to him. I do not accept, even if the Claimant's focus was on establishing his life in the UK and finding other work, that he could not have taken some steps to identify his avenues of legal redress.

42. Indeed, the Claimant appears to confirm this with his subsequent actions. The Claimant stated in oral evidence that his subsequent employer Al Healthcare did not properly pay him holiday pay. He therefore spoke with a colleague and found out about the possibility of a claim. He then undertook research online, and contacted both the CAB and ACAS. The Claimant confirmed in evidence, that once his claim against Al Healthcare had resolved in his favour, he decided to bring these current proceedings. I therefore conclude that the Claimant was equally well able to find out about his employment rights in 2021/2022, as in 2024.

43. I therefore conclude that whilst the Claimant was ignorant of his ability to bring a claim within the relevant time limit, this ignorance was not reasonable in all the circumstances. I therefore find that the Claimant has

not shown, on the balance of probabilities, that it was not reasonably practicable for him to file his claim within the limitation period of three months. This claim must therefore be struck out.

44. My findings regarding the reasonable practicability of filing this claim are determinative of this application, however, if the Claimant had been successful in showing that it was not reasonably practicable to file this claim within the limitation period, then the Claimant would still be required to show that the claim was filed within a further reasonable period.

45. It is not possible, in my view, for the Claimant to be successful in this second stage. As detailed above, after the Claimant had been notified of his rights, and received advice from the CAB, he did not advance his claim. Instead, he waited until he resolved his claim against his subsequent employer, Al Healthcare, before starting these proceedings.

46. The Claimant stated that he delayed because he did not know he could submit two claims at the same time. However, by this stage, he had availed himself of advice from the CAB and had undertaken research online. It is not his evidence that he was misled by either the CAB or ACAS. It appears therefore that the Claimant simply decided not to commence this claim for a further two months.

47. The Claimant has not discharged his burden of proof in demonstrating that this further delay was reasonable, and that his claim was therefore presented within a reasonable further period. Therefore this claim would also fail on the second limb of the test set out in s23(4) ERA.

#### **Other considerations.**

48. The Respondent highlighted that the claim form submitted on 19 May 2024 was subsequently rejected by the Tribunal for want of jurisdiction. Following an application for reconsideration, the claim was reinstated. However, as set out in the letter from the Tribunal dated 13 November 2024 (p24 bundle) the original decision to reject the claim was correct, but the defect was subsequently rectified, such that the claim form should be treated as having

been received on 27 August 2024.

49. When considering whether to extend time in this matter, I have disregarded this further period of delay, caused by the error in the claim form, as it was clear during the hearing that the Claimant had not fully understood the process of rejection and reinstatement, and the possible impact on his claim.

50. For the avoidance of any doubt, I accept that the claim was not validly made until 27 August 2024, however, this further period of delay, between the 19 May 2024 and the 27 August 2024 was not a determinative factor in my decision not to extend time in these circumstances.

Approved by:

**Employment Judge Scott**  
**20 May 2025**

JUDGMENT SENT TO THE  
PARTIES ON  
05 June 2025 By Mr J McCormick

FOR THE TRIBUNAL OFFICE

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)