



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106564/2024

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Held in Glasgow on 26, 27, 28 & 29 May 2025

Employment Judge L Doherty

10 **Mrs O Karunwi**

**Claimant
Represented by:
Ms A Bowman -
Solicitor**

15 **Nacor Healthcare Services Ltd**

**Respondent
Represented by:
Ms S Chiuri -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

25 (1) the Tribunal does not have jurisdiction to consider the claims of unfair dismissal under Section 152 (1) (a) of TULCRA ; unfair dismissal Section 94 of the Employment Rights Act 1996 (the ERA); breach of contract; unauthorised deductions of wages; and failure to pay holiday pay basis that they are lodged out with the statutory time limit;

30 (2) The Tribunal has jurisdiction to consider the detriment claims under Section 146 of TULCRA and section 12 (1) of the Employment Relations Act 1999.

REASONS

1. The claimant presented a claim on 19 August 2024 under a number of jurisdictions. On 27 November 2024, Ms Bowman lodged further the specification of which identified the claims made.

2. The claims are:

- two separate claims of unfair dismissal under both Section 152 (1) (a) of TULCRA and section 94 of the ERA;
- a claim of unauthorised deductions of wages;
- 5 • a claim if and failure to pay holiday pay;
- a claim of wrongful dismissal (breach of contract);
- a claim of breach of contract in respect to failure to pay wages and sick pay;
- a claim of detriment under section 146 of TULCRA; and
- 10 • and a claim of victimisation under section 27 of the EQA.

3. There is an issue of time bar in respect of all of the claims with the exception of the victimisation claim.

4. The purpose of this preliminary hearing was to consider this issue. Evidence was given by the claimant and by Ms Alma Ngario, the director of Nacor Health Care.

5. The evidence which the Tribunal heard from time to time strayed into evidence relevant to the merits of the claim, however the Tribunal made findings in fact only is so far as they were relevant to the issue of time bar.

Findings in Fact

20 6. The claimant came to the UK from Nigeria in 2022 to study. She was accompanied by her two teenage children. The claimant began working with the respondents as a home care worker on 19 June 2023. The claimant was issued with a contract of employment by the respondents. Her contractual hours were 37.5 per week. She was entitled to statutory sick pay during periods of sickness absence. The claimant was paid at the end of each month.

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7. The claimant was employed subject to a Certificate of Sponsorship, (COS) which is a type of visa issued by an employer. Both the claimant and the

respondents have obligations to the Home Office under the COS visa scheme. The respondent understood they were under an obligation to report to the Home Office if an employee to whom they issued a COS had an unauthorised absence for 10 continuous days. They understood that an employee is also under an obligation to report this to the Home Office.

8. The claimant understood that her COS conferred an entitlement to work and remain in the UK. She understood that if it was revoked by the respondents, then she had a period of 60 days to find a new job with an employer who would sponsor her with the issue of a COS, and if she did not do so she would have to leave the UK.

9. The Home Office contacted an employee whose COS has been revoked to advise them of the consequences of this. Both the claimant and respondents understood this to be the case.

10. The claimant worked in the Falkirk/Denny area. She had to travel between clients' homes to undertake her duties. The claimant sometimes found this demanding. On occasion, she did not consider that she had sufficient time to travel between clients, however when she told the respondents this they disagreed with her time estimates. The claimant was unable to access the App on which the respondents communicated her shifts.

11. The claimant was paid at the end of each month.

12. The claimant was absent from 24 July to 7 August. She was also absent in October 2023. She was not paid statutory sick pay during her period of absence.

13. The claimant was absent from 7 October. The claimant submitted a fit note to cover the period from 13 October 2023 to 17 November 2023. This was issued by her GP on 10 October 2023. The respondents received it on or around the 10 November 2023.

14. The claimant was asked to attend a meeting on 19 October 2023 with her manager. She attended this meeting with a TU representative. The meeting did not go ahead and no further meetings were arranged. The respondent did

not contact the claimant further to this meeting. No further work was offered to her.

15. The claimant did not attend work with the respondents after that meeting. She did not contact the respondents to ask for work or to enquire why work was not being provided to her upon the expiry of her fit note.
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16. The respondents revoked the claimant's COS on 28 October 2023. They did not advise the claimant that they had done this. It was their understanding that the Home office would contact the claimant advising that her COS had been revoked. The Home contacted the claimant on 6 November 2024 advising that her COS had been revoked.
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17. On 15 December 2023, the claimant received an email from the respondents asking her to sign a new contract. She responded on 18 December 2023 to say that she wanted to bring to their notice that that she had already signed a contract and asking for an explanation as to why she had to sign another one. She asked for a for a copy of her original contract so she could compare both before she signed the new contract. The claimant received a response from the respondents indicating that the email had been sent to her in error.
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18. The claimant applied for a new position with the NHS in November or December 2023. She received a conditional offer of employment with COS sponsorship on 15 January 2024. She was told that she required to provide a reference from her last COS sponsor. The claimant provided the NHS with the respondent's details.
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19. The NHS contacted the respondents asking for a reference. The respondents provided this on 12 February 2024. The reference was not favourable. It stated that the respondents would not employ the claimant again and that she was highly unreliable, not turning up for shifts and that she put the service at risk. It stated that she had been employed from June to November 2023. The offer of employment was withdrawn.
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20. The claimant had a telephone call at some point in March/April 2024 with someone from the NHS where there was a discussion about why the offer
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was withdrawn. She asked why offer was withdrawn. She was told her there had been an unfavourable reference and she understood from what was said in that telephone call that the unfavourable reference had been given by the respondents.

- 5 21. The claimant made a subject access request on or around the 10 June 2024. She sent an email to the respondents requesting the reference on 12 June 2024. The reference was not provided as the respondent did not consent to its release. The claimant enlisted the help of her trade union. On 12 July 2024, her TU representative, Mr Adebayo, wrote to the NH ,and he wrote to the
10 respondents on 22 July 2024 regarding release of the reference.
22. The reference was released subsequent to this, and the claimant saw it at some point after this.
23. On 19 June 2024, the claimants trade union representative, Mr Kelbie, wrote to the respondents seeking clarification of her employment status. The
15 respondent's responded on the same day advising that the claimant's COS had been revoked on 29 October 2023 and that her employment had stopped when her COS was revoked. This was communicated by to the claimant in an email from Mr Kelpie on the 20 of June 2024
24. The claimant received a P45 and a P60 both dated 12 July 2024. Her leaving
20 date on both was recorded as 23 April 2024
25. Mr Adebayo lodged a grievance with the respondents on behalf of the claimant on 17 July 2024.
26. In October 2023, the claimant was a member of Unison and had access to the TU for support and advise with work issues. The claimant was aware of a
25 three month time limit for presenting a claim to the Tribunal from discussions with her trade union in or around June 2024.
27. The claimant contacted ACAS on 17 August 2024 and an ACAS certificate was issued on 19 August 2024. The claim was presented on 19 August 2024.

Note on Evidence

28. There were differences between the parties as to the interpretation of events, and about some of the evidence which strayed into the merits of the claim, however there was not a great deal in contention between them on the facts relevant to the Tribunal's determination on time bar. Although both parties had different versions of what occurred on 19 October 2023, both parties accepted that the meeting on that date did not go ahead. The respondents accepted that they did not contact the claimant to rearrange the meeting or to offer her work and the claimant accepted that she did not contact the respondents to ask for work. Both sides accepted that the only contact thereafter until June/July 2024 was the respondent's email to the claimant with a contract on 15 December 2023, which she responded to on 18 December 2023. Ms Ngario said this had been sent in error, and the respondents replied to the claimant's email explaining this. This was supported by the claimant's evidence in that she confirmed she got an email from the respondents saying it was an error.

29. The Tribunal formed the impression that while the claimant did not deliberate set out to mislead, that on occasion her evidence lacked credibility . This was the case in relation to her evidence about her employment status with the respondents. While arguments about the Effective Date of Termination (EDT) are dealt with below, it lacked credibility in the Tribunal's view that the claimant did not approach the respondents after the meeting on 19 October 2023 because she considered the work environment was toxic and she was regularly threatened with the revocation of her COS, as she suggested. Ms Bowman suggested that the claimant did not want to approach the respondents as she did not wish to 'poke the bear', however the Tribunal did find this to be plausible. The claimant contacted the respondent almost immediately she received their email on 15 December 2023, responding to them in a robust manner, which did not suggest she was afraid of further engagement with them. In addition, the claimant's evidence in chief suggested quite strongly that she was unhappy with operational aspects of her job saying she could not access the app on which her shifts were intimated

and saying that work could be hectic and she considered she had insufficient time between client visits, and that the respondents disagreed with her about this. Furthermore, the claimant applied for other full time work in November/December. While as Ms Bowman pointed out it is clearly open to an employee to apply for a different job while in full time employment with another employer, the fact that the claimant did this, taken alongside her unhappiness at work and her willingness to engage with the respondents in December 2023, did not suggest that the reason she did not contact the respondents after the meeting on 19 October 2023 was because she was too afraid to do so, but rather supported the conclusion that she considered that her employment with the respondents had come to an end and to move on.

30. The Tribunal formed the impression that Ms Ngario's evidence was generally credible and reliable in so far as it was relevant to the time bar issue. There was a conflict as to what occurred at the meeting of 19 October 2023 and the reason why the respondents did not contact the claimant after it, however this was a matter which went to the merits of the claim and the Tribunal did not consider it necessary to resolve that at this stage. What was relevant was that the respondents did not contact the claimant and did not inform her she was dismissed at any stage, and Ms Ngario accepted both of these matters.

20 **Submissions**

31. Both parties made oral submissions which in the interests of brevity are not set out here in full but are dealt with below where required.

Consideration

32. There are a number of claims before the Tribunal, brought under different statutory provisions.

33. The claims are as follows:

Breach of contract

34. The alleged breaches are:

- Wrongful dismissal of the claimant;

- Failing to pay the claimant in respect of four shadow shifts at the commencement of her employment -breach of contract in respect of wages;
- 5 • Failing to provide work for the Claimant between the dates of 7 August 2023 and 4 September 2023, despite the claimant being available to work, in breach of contract in terms to provide the claimant with 37.5 hours a week of work; and
- Failing to provide the claimant with 37.5 hours a week of work between the dates of 19 June 2023 and the date of termination of employment.

10 Unlawful deduction of wages

- Failing to pay the claimant statutory sick pay - contrary to s.13 of the ERA;
- Failing to pay the Claimant her accrued but untaken holiday pay upon termination of her employment- pled as an unlawfully deducted the Claimant's wages contrary to s.13 ERA
- 15 • Failing to pay the Claimant between the dates 7 August 2023 and 4 September 2023, and the expiry of her sick line on 17 November 2023 and the date of her dismissal on 20 June 2023, - unlawfully deduction of her wages contrary to s.13 of the ERA

20 Automatic unfair dismissal

35. The claims are:

- The Respondent, in dismissing the Claimant for the sole or principal reason for her being a member of an independent trade union, breached her right under s.94 ERA in terms of s.152(1)(a) TULRCA.
- 25 • *Esto*, The Respondent, in dismissing the Claimant for the sole or principal reason of preventing or deterring her from taking part in the activities of an independent trade union, breached her right under s.94 ERA in terms of s.152(1)(b) TULRCA.

- *Esto*, the Respondent in dismissing the Claimant for the sole or principal reason for her making use trade union services at an appropriate time breached her right under the ERA in terms of s152(1)(ba) TULRCA.
- 5 • *Esto*, in dismissing the Claimant for the principal reason of exercising her right to be accompanied in terms of s.10 (2A) of the Employment Relations Act 1999 the respondent has unfairly dismissed her contrary to her right under s.94 ERA in terms of s.12 (3) Employment Relations Act 1999.

10 *Detriment*

36. The claims are that the respondent subjected the claimant to the following detriments for the sole or main purpose of preventing or deterring her from being a member of a trade union or penalising her for doing so in terms of s.146 (1) (a) TULRCA, or preventing or deterring her from making use of trade union activities at an appropriate time or penalising her for doing so in terms of s.146 (1) (b) TULRCA, or preventing or deterring her from making use of trade union services at an appropriate time in terms of s.146(1) (ba) TULRCA.

37. *Esto*, the respondent subjected the claimant to the detriments on the ground that she exercised her right to be accompanied in terms of s.10 (2A) Employment Relations Act 1999 has acted contrary to s.12 (1) Employment Relations Act 1999.

38. The detriments alleged are:

- Failing to give the claimant a letter of dismissal.
- Revoking her Certificate of Sponsorship without informing the claimant that it had done so.
- Providing an unfavourable and untrue reference to NHS Lanarkshire in respect of the claimant.
- Failing to pay the claimant sick pay.

- Failing to rearrange the meeting initially scheduled for 19 October 2023.
- Failing to make any attempt to facilitate the claimant's return to work.
- Sending the claimant threatening text messages and making threats over the telephone in Summer 2024, at some point post July 2024.

Statutory provisions – time bar

39. The time limit provision are as follows.

40. Automatically Unfair Dismissal- section 111 of the ERA which provides:

10 “(1) *A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*

(2) *Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—*

15 (a) *before the end of the period of three months beginning with the effective date of termination, or*

(b) *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.”*

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41. Breach of contract claim - time limit provision Article 8 B of the Employment Tribunal's Extension of Jurisdiction Order which provides:

(1) *Subject to article 8B an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—*

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(a) *within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or*

(b) *where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or*

(ba) *where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b) ,*

(c) *where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.*

42. Unlawful deduction from wages claim - time limit provision section 23 of the ERA, which states:

(1) *A worker may present a complaint to an employment tribunal —*

(a) *that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),*

.....

(3) *Where a complaint is brought under this section in respect of—*

(a) *a series of deductions or payments,*

.....

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.*

43. Claims of detriment under section 146 (1) (b) of TLUCRA The Trade Union and Labour Relations Consolidation Act, (TULCRA) - time limit provision section 147 of TULCRA which provides:

(1) *An employment tribunal shall not consider a complaint under section 146 unless it is presented—*

(a) *before the end of the period of three months beginning with the date of the act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them or*

(b) *where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.*

(2) *For the purposes of subsection (1)—*

(a) *where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;*

(b) *a failure to act shall be treated as done when it was decided on.*

(3) *For the purposes of subsection (2), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—*

(a) *when he does an act inconsistent with doing the failed act, or*

(b) *if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.*

(4) *Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).*

Detriment claim under section 12 (1) of the Employment Relations Act 1999 – section 12 (2) of the Act applying section 48 (3) of the ERA

Time limit provisions- section 48 (3) of the ERA , which mirrors the provisions of Section 147 of TULCRA.

44. Broady put all the limitation provisions have in common a primary limitation period of 3 months, and provide time can be extended by the tribunal by the application of an escape clause. The application of the escape clause requires the tribunal to be satisfied that it was not reasonably practicable to present the claim within the three month primary limitation period, and if it is satisfied on that point to go on to consider if it was presented within a reasonable period thereafter. Time runs from the date of the act complained of and where a the act complained over extends over a period ,time runs from the last date of that period.

45. The approach the tribunal adopted as to consider firstly the time limits for claims on unfair dismissal , as the time limits for claims of nonpayment of wages, breach of contract and failure to pay holiday pay are all impacted by the date of dismissal . It then went on to consider the time limits for the detriment claims.

Unfair dismissal/breach of contract/unauthorised deductions from wages

46. For the unfair dismissal claims time runs from the effective date of termination (EDT) in terms of section 111 (2) (a) of the ERA:

47. The EDT is defined by section 97 of the ERA which provides:

(1) *Subject to the following provisions of this section, in this Part “the effective date of termination”—*

(a) *in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,*

(b) *in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and*

(2) *Where—*

(a) *the contract of employment is terminated by the employer, and*

(b) *the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (1)).”*

15 48. There is an issue over the EDT. The claimant contend that the EDT is 20
June 2024 , when Mr Kelpie communicated this the fact of her dismissal to
her. . the Tribunal concluded that the respondents summarily dismissed the
claimant without notice when they revoked her COS on 29 October 2023. Mr
Chihuri in submissions, which were at times difficult to follow, seemed to
20 suggest that there had been no dismissal, however such a submission was
unsustainable in light of the clear evidence from Ms Ngario, which reflected
the terms of her email of Unison on 19 June 2024, that the claimant’s
employment with the respondents came to an end when the COS was
revoked. Ms Bowman suggested that there was uncertainty on the part of the
25 respondents as to of and when the claimant was dismissed. In this regard,
she relied in the dates of issue of the P45 and P60 and the dates of dismissal
noted on them. She also referred to the dates of employment on the NHS
reference.

30 49. On balance the Tribunal concluded that the respondents summarily
dismissed the claimant without notice when they revoked her COS on 29

October 2023. The Tribunal formed view that it was likely, as Ms Bowman suggested, that the respondents had only decided to issue the P45 after they were contacted by the TU in June. That however did not detract from the Tribunal's conclusion that the respondents decided to dismiss the claimant on 5 29 October 2023. The revocation of the COS was a clear indication of their intention in that regard. The date of termination on the P45 and P60, while an adminicle of evidence was not conclusive of the date of dismissal. Nor did the Tribunal consider that too much could be attached to the statement in the any NHS reference of the claimant having worked between June and 10 November. It considered this was likely to be down to an element of carelessness or lack of accuracy on the part of Ms Ngario who said in evidence it was only days difference between the end of October and November.

50. In reaching its conclusion the Tribunal take into account that the respondents 15 did not contact the claimant or offer her work after 19 October 2023. They did not rearrange the 19 October 2023 meeting. The last date the claimant worked was 9 October 2023. She submitted a fit note covering the period up to 17 November 2023, however the respondents did not receive until 10 November 2023, after the COS had been revoked. The revocation of the COS 20 had implications for claimant and the respondents in terms of the claimants continued ability to work and remain in the UK. The Tribunal was satisfied that in revoking the COS on 29 October 2024 and it was the respondents intention to bring the contract to an end and to dismiss the claimant on that date.

51. The respondents did not however give the claimant notice or inform her that 25 she was dismissed. Ms Bowman referred to ***Brown v Southall & Knight 1980 ICR 617*** as upheld by the Supreme Court in ***Gisda Cyf v Barratt 2010 ICR 1475*** in this connection. Ms Bowman argued that the claimant did not know that she was dismissed until 20 July 2024 when she was advised by her trade union that her employment with the respondents was ended when her 30 COS was revoked by them. Ms Bowman submitted there was no reason the claimant could not be informed by a third party (her TU representative) about

her dismissal (*Robinson v Bowskill and others 2014 ICR D7*). She submitted 20 June was the EDT.

52. **Brown** and **Gisda Cyf** are authorities for the position that the dismissal will take effect however when the employee finds out about it, or has a reasonable opportunity to find out about it. What was said in **Gisda Cyf** at para 34 was:

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“Underlying both decisions (although not expressly articulated in either) is the notion that it would be unfair for time to begin to run against an employee in relation to his or her unfair dismissal complaint until the employee knows—or, at least, has a reasonable chance to find out—that he or she has been dismissed. This is as it should be. Dismissal from employment is a major event in anyone’s life. Decisions that may have a profound effect on one’s future require to be made. It is entirely reasonable that the time (already short) within which one should have the chance to make those decisions should not be further abbreviated by complications surrounding the receipt of the information that one has in fact been dismissed.

53. *These considerations provide the essential rationale for not following the conventional contract law route in the approach to an interpretation of section 97 . As Mummery LJ said, it is a statutory construct. It is designed to hold the balance between employer and employee but it does not require—nor should it—that both sides be placed on an equal footing. Employees as a class are in a more vulnerable position than employers. Protection of employees’ rights has been the theme of legislation in this field for many years. The need for the protection and safeguarding of employees’ rights provides the overarching backdrop to the proper construction of section 97 .*

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54. Unlike **Brown** and **Gisda Cyf**, the claimant was not expressly told she had been dismissed. This is not therefore a case where there has been delay in her receiving the correspondence, or where the employee has avoided opening correspondence. The Tribunal however concluded that the claimant did however avoid making any enquiry with the respondents as to her employment status until June 2024. Furthermore she did this in circumstances where she was aware that she had had no further contact from her employer,

she had not worked, and she had not provided sick lines after 17 November 2023. Instead she applied for a new full time job in December 2023 with the NHS.

55. In these circumstances, the Tribunal found that it could not be concluded in
5 that in the period from November 2023 to July 2024 the claimant did not have a reasonable opportunity to find out about the revocation of her COS and her dismissal.

56. The Tribunal concluded dismissal took effect after the claimant had a
10 reasonable opportunity to find out about it. The claimant was certified as unfit for work until 17 November 2023. She had a reasonable opportunity to made enquiry with her employer in the period thereafter without waiting until June 2024 to do so. The Tribunal therefore not conclude that the EDT was 20 June 2024, but that dismissal was effective from late November/early December after which time the claimant made no effort to return to work ,and had made
15 no enquiry with the respondents, but but could have reasonably ascertained from the respondents that she had been dismissed.

57. The Tribunal then turned to the limitations provision in section 111 of the ERA. It keeps in mind that, as submitted by Ms Bowman, that section 111 should be given a *'liberal construction in favour of the employee'* .What is reasonably
20 practicable is a question of fact and thus a matter for the tribunal to decide. The onus of proving that presentation in time was not reasonably practicable rests on the claimant. '

58. Even if a claimant satisfies a Tribunal that presentation in time was not
25 reasonably practicable, that does not automatically decide the issue in his or her favour. The Tribunal must then go on to decide whether the claim was presented *'within such further period as the tribunal considers reasonable'*.

59. The relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done.

60. Even if the claimant was ignorant of the right to bring a claim or time limits to bring claim, or ignorant of the time limit, the question is whether that ignorance or mistake is reasonable.
61. Ms Bowman submitted that the claimant as a migrant worker was unfamiliar with the rights conferred by UK employment law. However, the Tribunal formed the impression that the claimant was an able individual, and significantly she was a TU member and had the benefit of trade union assistance through the period from October 2023 to July 2024. She made no enquiry about her employment status until June 2024 and no good reason was advanced as to why she did not do so. For the reasons given above, the Tribunal did not find it plausible that the claimant did not make such enquiry as she did not want to 'poke' the respondents.
62. The claimant said she found out about time limits in June 2024 from discussions with her trade union, but no reason was advanced as to why she could not have made enquiry or had had such discussions at an earlier stage in circumstances where she had the benefit of TU assistance throughout the period from October 2023 to August 2024 . There was nothing to suggest that the claimant could not ask for advice or the TU could not have provided such advice at an earlier stage , in circumstances where the claimant was able to get advise about the time limits in June 2014 from the Trade Union.
63. The Tribunal could not conclude that in these circumstances it was not reasonably practicable to present the clam within the three month limitation period. Having reached that conclusion, it was unnecessary for the Tribunal to go on to consider the second limb of the test in Section 111 of The ERA.
64. The effect of this conclusion is that the Tribunal does not have jurisdiction to consider the claims of unfair dismissal under the ERA.
65. Applying the same reasoning the Tribunal concluded that it does not have jurisdiction to consider the stator claims of breach of contract, unauthorised deduction of wages and nonpayment of holiday pay, the limitation periods of these claims all being contingent on the date of dismissal. The claimant was paid monthly and even if that was one month in arrears the Section 13 claim

would run at the latest from a period of 1 month after the date of dismissal (the date of the last deduction made). The same applies to the claim for nonpayment of holiday pay. For the breach of contract claim, the time runs from the EDT. The accordingly all of these claims are presented well outside
5 the primary limitation period and the Tribunal does not have jurisdiction to consider them.

Detriment claims

66. The time limit provisions are set out above and the Tribunal again had to start by considering from when time runs.
- 10 67. Ms Bowman submitted that ignorance of a fact prevents time running and this was the case with regard to the issue with the NHS reference. She referred to the case of *Machine Tool Industry Research Association v Simpson 988 ICR 558* in this regard. Ms Bowman again submitted that the EDT must be the date it was communicated to the claimant. For the reason given above,
15 the Tribunal did not conclude that the EDT was 20 June 2024.
68. The detriments alleged are:
- a. Failing to give the claimant a letter of dismissal;
 - b. Revoking her COS without informing the Claimant that it had done so;
 - c. Providing an unfavourable and untrue reference to NHS Lanarkshire
20 in respect of the claimant;
 - d. Failing to pay the claimant sick pay;
 - e. Failing to rearrange the meeting originally scheduled for 19 October 2023;
 - f. Failing to make any attempt to facilitate the claimant's return to work
25 on 19 August 2023; and
 - g. Making a harassing telephone call/sending a harassing text message – on a date post lodging the grievance in July 2017.

69. The Tribunal has regard to section 147 (2) of TULCRA in this regard. It provides:

“147

(2) For the purposes of subsection (1)—

5 (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;

(b) a failure to act shall be treated as done when it was decided on.”

70. Considering the substance of the alleged detriments, Tribunal was satisfied that what is alleged here is a series of acts. The alleged detriments are all said to flow from the claimant’s involvement of her TU representative at a meeting in October 2019 and are related to alleged failures / acts flowing from her dismissal as a result of her TU involvement. The Tribunal notes that the claim of automatically unfair dismissal itself cannot amount to a detriment.

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71. The last act alleged detriment is without doubt said to have taken place within the primary limitation period. The Tribunal has not heard evidence on the merits of this case, however there is clear line of established authority to the effect that a Tribunal should not make a determination of the claim in circumstances where an act is alleged to have taken place over a period and where at least some of the alleged acts fall within the primary limitation period, until all of the relevant evidence has been heard. The effect of that conclusion is that the tribunal is satisfied a final hearing should proceed only in respect of the claims of detriment. This will remain subject to time bar if relevant.

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72. It is proposed to list this for 4 days. If either party considers that time estimate to be inaccurate, they should advise the Tribunal within 7 days.

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