



EMPLOYMENT TRIBUNALS

Claimant: Mr C Calogero

Respondent: Authentic Italian Street Food Limited

HELD AT: Liverpool (by CVP)

ON: 23 April 2025

BEFORE: Employment Judge Eeley

REPRESENTATION:

Claimant: In person

Respondent: Mr Tamlyn Matthew Stone (Director)

JUDGMENT having been sent to the parties on 30 April 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. The claimant's case was listed for a hearing today and the first issue was whether the claimant had complied with the applicable time limits for the presentation of his claims. The claimant had been notified by letter (dated 8 March 2025) that this would be addressed at the hearing and that he should prepare accordingly. I had to determine whether he presented the claims outside the applicable time limit and, if so, whether the Tribunal should exercise its discretion to extend the time limit and hear and determine the claim on its merits. In reaching this decision I had regard to the documents in a hearing bundle which contained 316 pages, together with the oral representations of the parties during the hearing. The claimant's ET1 claim form indicated that he was claiming for arrears of pay and for holiday pay.
2. The claimant submitted his ET1 claim form to the Tribunal on 23 December 2024. ACAS Early Conciliation took place between 2 December 2024 and 5 December 2024. According to the ET1 claim form the claimant was employed by the respondent from 31 August 2022 to 31 August 2024 as Operations Manager/Chef, although the claimant indicated during the hearing that his resignation took effect before 31 August 2024 (see below.)

3. The claimant claimed for unpaid wages and holiday pay. His claim is that he was not paid his wages on several occasions during 2024. The last in the series of underpayments/failures to pay was 16 August 2024. The date of termination of the claimant's employment with the respondent was either 5 August or 9 August 2024 depending on which document one considers. It was earlier than the stated termination date on the Tribunal claim form. The document at [page 66] indicated that the claimant resigned with immediate effect on 9 August 2024.

4. Section 23 Employment Rights Act 1996 sets out the provisions in relation to time limits for complaints of unauthorised deductions from wages. The relevant portions state:

(2) Subject to subsection (4) an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with-

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) ...

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

(a) a series of deductions or payments, or

(b) ...

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.

5. For the purposes of the Employment Tribunal claim for unpaid wages (unauthorised deductions from wages) the applicable time limit is 3 months. The time limit starts to run from the last in the series of deductions from wages. The latest date of the deduction/failure to pay in this case is 16 August 2024. Three months on from 16 August means that, in principle, the last date for presenting the claim to the Tribunal was 15 November 2024.

6. I am then required to consider whether there is a further extension to the time limit because of ACAS Early Conciliation. Pursuant to section 207B of the Employment Rights Act, in some circumstances there is a further extension of time to cover the Early Conciliation period. The Early Conciliation certificate in this case covers the period from 2 December to 5 December 2024. This shows that Early Conciliation only started after the primary time limit had already expired. The Early Conciliation certificate therefore has no effect on the limitation period. There is no further extension to the time limit due to the Early Conciliation process.

7. As a result of the above, the claim was presented to the Tribunal 38 days late. I then proceeded to consider whether I should extend the applicable time limit

by applying the relevant statutory test. The relevant parts of section 23 Employment Rights Act 1996 state:

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under the 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

8. The applicable test has two parts to it and the claimant must satisfy both aspects of that test. I must first decide whether it was “not reasonably practicable” for the claimant to comply with the three month time limit. Second, if the claimant satisfies me that it was not reasonably practicable for him to comply with the three month time limit, I must consider whether he nevertheless presented the claim within a reasonable time thereafter. The onus is on the claimant to establish that it was not reasonably practicable to comply with the time limit and that he submitted the claim within a reasonable time. Reasonably practicable means something akin to “reasonably feasible” (Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA.) The relevant test is not simply a matter of looking at what was possible but of asking whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done’ (Asda Stores Ltd v Kauser EAT 0165/07.)
9. In Lowri Beck Services Ltd v Brophy 2019 EWCA Civ 2490, CA. Lord Justice Underhill set out the essential points established in the case law:
 - (a) The test should be given a liberal interpretation in favour of the employee
 - (b) 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 employee to present his or her claim in time.
 - (c) 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 his or her case, the question is whether that ignorance or mistake is reasonable. If it is not, then it will have been reasonably practicable for the employee to bring the claim in time. In assessing whether ignorance or mistake are reasonable, it is necessary to take into account any enquiries which the employee or his or her adviser should have made
 - (d) If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee.
 - (e) The test of reasonable practicability is one of fact and not of law.
10. A claimant’s complete ignorance of his or her right to claim may make it not reasonably practicable to present a claim in time, but the claimant’s ignorance must itself be reasonable (Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53.) Where a claimant pleads ignorance as to his rights, 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 correct test is not whether the claimant knew of his rights but whether he *ought to have known of them* (Porter v Bandridge Ltd 1978 ICR 943, CA)

11. Where the claimant is generally aware of his rights, ignorance of the time limit will rarely be acceptable as a reason for delay because the claimant will generally be taken to have been put on inquiry as to the time limit. In the majority of cases, an adviser's incorrect advice about the time limits, or other fault leading to the late submission of a claim, will bind the claimant, and a tribunal will be unlikely to find that it was not reasonably practicable to have presented the claim in time. If a claimant engages solicitors to act for him in presenting a claim, it will normally be presumed that it was reasonably practicable to present the claim in time and no extension will be granted (Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA.) Ignorance or a mistaken belief will not be reasonable if it arises either from the fault of the complainant or from the fault of his solicitors or other professional advisers in not giving him or her such information *as they should reasonably in all the circumstances have given him* (Wall's Meat Co Ltd v Khan 1979 ICR 52, CA.).
12. During the course of the hearing I have had regard to the documents contained within the hearing bundle which contains 316 electronic pages. I considered what the claimant said during the course of the hearing to explain why the time limit was not complied with and why he submitted his claim on 23 December 2024.
13. I considered the reasons for the delay in presenting the claim to the Tribunal to see if there was any good reason why the claim was submitted late. I considered whether there were any barriers preventing the claimant from bringing the claim within the time limit. I considered whether it was reasonably feasible for him to comply with the time limit.
14. I considered the evidence that the claimant presented to me. This includes a letter at page 63 of the hearing bundle and the documents at page 50 to 62 of the hearing bundle. I also considered what the claimant said to me verbally today, with the support of an interpreter.
15. The claimant's solicitor wrote to the respondent regarding a share purchase agreement on 29 August 2024 [page 50]. The solicitor sent a further letter to the respondent on behalf of the claimant dated 19 September 2024 [page 52]. Amongst other things, this letter included a request for unpaid salary for July and August. On 13 December the solicitor sent the respondent a letter of claim [page 54] in accordance with the Practice Direction and Pre Action Protocol of the Civil Procedure Rules 1998. This letter also referred to unpaid salary (amongst other things). A response to the letter was required by 27 December 2024 [page 61].
16. A text message from the claimant dated 9 August 2024 indicated that the claimant was resigning with immediate effect [page 305-306, 315].
17. In the claimant's witness statement he indicated that he said he would resign on 8 August 2024 [page 310 paragraph 7]. The respondent's email at page 313 indicated that the claimant was suspended on 5 August 2024 and resigned with immediate effect on 9 August 2024.

18. In his evidence to the Tribunal at the hearing, the claimant indicated that he had access to solicitors for advice between August and December 2024. Those solicitors were primarily advising in relation to disputes about the company. However, the claimant accepted that he could have asked them for help and advice with his Employment Tribunal claim.
19. The evidence shows me that the claimant was aware of his right to bring a claim for underpayment of wages from August 2024 onwards and he consulted two firms of solicitors during that period, largely in relation to commercial issues (because the claimant was also a director and shareholder in the company.) However, I can see that part of his discussion with the solicitors related to payment of wages that had been withheld from him. Even if the solicitors were consulted primarily in relation to commercial law disputes or Companies Act claims, the claimant was still in a position to ask them about Employment Tribunal proceedings. This was something he could do and they could either provide the relevant advice or direct him to another lawyer who could provide such information and advice. The claimant accepted that he could have asked his solicitors questions about the claim for deduction from wages and they could have advised him about the Employment Tribunal proceedings or could have told him where to go to in order to find out more information for himself. In such circumstances there was nothing preventing him from finding out about the Employment Tribunal time limits and then complying with them. The letters contained in the hearing bundle show me that the claimant made a choice to try and resolve the issue without having to come to the Tribunal. He tried to reach an agreement with the respondent about the issue.
20. The letters from the solicitors were written in August, September and December of 2024, and they refer to payment of wages (amongst other matters.)
21. Unfortunately the claimant waited too long before bringing the Tribunal claim. He may have been incorrectly advised that he had to wait for at least 21 days after the letter was sent before he came to the Tribunal. I notice that the last letter refers to the procedures used in the Civil Courts, the Civil Procedure Rules. I note that last letter gave the respondent until 27 December to respond but the claimant actually presented his Tribunal claim on 23 December 2024, without waiting for the deadline in the letter to lapse.
22. Employment Tribunal case law indicates that, generally speaking, if a lawyer gives advice to the claimant, the claimant is bound by that advice, even if it turns out to be incorrect. If the claimant is poorly advised by a lawyer this does not generally give good grounds to extend the time limit in a claim for unpaid wages in the Employment Tribunal. The Higher Courts take the view that the employee may have a remedy against his solicitor for their advice, rather than requiring the Employment Tribunal to extend the time limit to allow the claim to proceed.
23. In summary, the evidence before me today indicates that the claimant had access to advice and he could reasonably and feasibly have complied with the applicable Employment Tribunal time limit. There is nothing in the evidence before me to suggest that he did not know that he could bring a claim to the Tribunal. The claimant made a clear choice to try and resolve things by

agreement rather than bring a Tribunal claim. There were no other barriers to him bringing the claim within the three month time limit (such as a health problem, for example.)

24. In light of the evidence presented today I conclude that it was reasonably practicable for the claimant to comply with the applicable time limit. Indeed, he presented his own claim form to the Tribunal and did not wait for his solicitors to write it for him. The claim form dated 23 December was presented outside the statutory time limit and the test for extending the time limit is not satisfied in this case.
25. Given that the claimant has failed the first part of the legal test to extend the time limit, I need not go on to consider whether he presented the claim within such further time as the Tribunal considers reasonable. He has already failed at the first part of the test. Unfortunately that means that the claim will go no further within the Tribunal and I will issue a judgment dismissing the claim because it was presented to the Tribunal too late in all the relevant circumstances.

Approved by

Employment Judge Eeley

22 July 2025

JUDGMENT SENT TO THE PARTIES ON
22 August 2025

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. 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:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>