



EMPLOYMENT TRIBUNALS

Claimant: Abdikarim Adan

Respondent: African Community Centre

RECORD OF A PRELIMINARY HEARING

Heard at: Cardiff in Public

On: 4 August 2025

Before: Employment Judge K Hunt

Representation

Claimant: in person

Respondent: Miss Jennifer Linford

RESERVED JUDGMENT

1. The claimant does not have two years' qualifying service ending with the effective date of termination. The claim of unfair dismissal is therefore dismissed because the Tribunal does not have jurisdiction to determine it.
2. The claim of unlawful deductions from wages for pay in lieu of notice and arrears of wages was not presented within the applicable time limit. It was reasonably practicable to do so. The claim of unlawful deductions from wages is therefore dismissed.
3. The claim for outstanding holiday pay under the Working Time Regulations 1998 was not presented within the applicable time limit. It was reasonably practicable to do so. The claim for holiday pay is therefore dismissed.

REASONS

Introduction

I conducted a public preliminary hearing by video on the above date. The public preliminary hearing was ordered to consider and determine the preliminary issues set out below (as agreed and set out in the CMO dated 23/5/25 paragraphs 5 to 7 of the List of Issues relating to Time Limits and Jurisdiction).

Claims and Issues

Time Limits

5. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 18 September 2024 may not have been brought in time.
 - 5.1 Were the unauthorised deductions made within the time limit in section 23 of the Employment Rights Act? The Tribunal will decide:
 - 5.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?
 - 5.1.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
 - 5.1.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 5.1.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
 - 5.2 Did the entitlement to holiday pay arise within the time limit relevant to Working Time Regulations 1998? The Tribunal will decide:
 - 5.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the entitlement arising?
 - 5.2.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 5.2.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
6. The Claimant must persuade the Judge to extend the time limit. If time is not extended the claims of unlawful deduction and holiday pay will be dismissed.

Jurisdiction to hear claim of unfair dismissal.

7. The Claimant must prove that he is eligible to bring a claim of unfair dismissal. If eligibility is not established, the Employment Tribunal has no jurisdiction to hear the claim of unfair dismissal.

Was the Claimant continuously employed by the Respondent for a period of not less than two years ending with the effective date of termination?

Procedure

Mr Adnan represented himself at the hearing and the Respondent was represented by Counsel, Miss Linford. I discussed with the parties at the outset of the hearing the matters I would be considering with reference to the issues as set out above. I had before me a bundle of documents of 191 pages and during the hearing, some additional documents were disclosed and added to the Bundle at pages 192 to 197 (emails between the parties dated 18/1/23, 20/10/23 to 24/10/23 and 3/6/24 with attachment). I had witness statements from the Claimant, Mr Adnan and for the Respondent, Mr Bashir, and heard oral evidence from both at the hearing. After hearing the evidence, there were oral submissions from Mr Adnan and Miss Linford, both of whom referred me to cases (referenced below).

Fact Findings

1. The Respondent is an incorporated charity and was set up in 2008 to break down barriers to promote community cohesion and employment of African and African Caribbean people in the UK. The Respondent is governed by a board of trustees, Taiwo Okeyene is the Chair of the board of trustees (the "Chair"). The Respondent is headquartered in Swansea, and operates in Cardiff, Newport, the Vale of Glamorgan and Wrexham.
2. The Claimant was employed by the Respondent as a Business Development Manager based in the Cardiff office under a 12-month fixed-term contract between 22 July 2022 and 22 July 2023 ("the First Contract") pages 59 to 61 of the Bundle. He was responsible to his Line Manager (the General Manager of the Cardiff office) and the Board of Trustees.
3. The First Contract stated the above dates and Fixed Term of 12 months and also contained a Notice clause stating: *"Notice of Termination of this contract of employment is one month and will be issued via email at the requisite time and will state date of termination. If the contract is to be extended, you will be informed by your Line Manager."*
4. On 2 August 2023, the Chair emailed the General Manager of the Cardiff office to instruct him that effective immediately, all new projects and activities were on hold, that there was currently an overspend and as the initial funding and staff contracts had ended, ongoing work must pause until they had a clear plan and process, stating that this was: *"...in order to align on strategy with the Board's input and make informed decisions about restarting operations in a fiscally responsible manner"* (page 114 of Bundle). The Chair instructed the General Manager to notify staff, which he did, sending an email that day to the Claimant advising that *"the funding has now ended and we currently do not have allocated funds to run the office as we are already on overspend"* and that all work and operations were to cease that day pending a decision from the Board (page 115 –116 of Bundle).
5. On 4 August 2023, the Chair also wrote to the Claimant confirming the instructions in relation to the Cardiff office and the Claimant's employment

situation, confirming his understanding that the Claimant's fixed term contract had ended and that the new HR manager was assessing all contractual matters and would inform him of any decisions.

6. On 22 August 2023 Jill Duarte, Lead Counsellor and former Director of the Respondent, emailed the Claimant at the request of the Board to remind him that his contract ended in July 2023.
7. On 23 August 2023, the Claimant wrote to the respondent challenging Ms Duarte's authority to terminate his contract and raising concerns about this. The Claimant argued that only the acting Deputy General Manager (Mr Bashir who around this time was appointed as Acting Deputy Manager of the Swansea and Cardiff offices) or the Board had the authority to do so and therefore he considered the notice of termination invalid.
8. The Chair acknowledged his email, apologising for any insensitivity and explaining that they had not intended to bypass any authorities and felt Ms Duarte was in an appropriate position to convey the message to him.
9. On 15 September 2023, the Chair wrote to the Claimant confirming the termination of his contract with effect from 15 September 2023, reiterating the current internal review and financial reasons for this. The letter stated that he would be paid one month's pay in lieu of notice and outstanding holiday. He was offered the right to appeal the decision within 7 days (page 123 of the Bundle). The Claimant's email account was disabled on 9 October 2023.
10. In his evidence at the hearing, the Claimant accepted that it was his understanding that his employment had ended on 15 September 2023, as set out in the letter and that he submitted an appeal. He said in evidence that he would say he successfully appealed.
11. The Claimant wrote to the Respondent on 22 September 2023, appealing against the decision to terminate his contract and the reasons for his appeal.
12. On 9 October 2023, the Claimant was invited to an appeal hearing on Friday 13 October 2023 in Swansea but was unable to make this due to family commitments. There was further email correspondence between the Respondent's HR Consultant, Ms Carroll and the Claimant to reschedule the appeal hearing and on 13 October 2023, the Claimant confirmed his availability for late afternoon on Tuesday 17 October 2023 and for the rest of that week, after school drop off at 11.30am.
13. On 16 October 2023, Ms Carroll emailed the Claimant to advise that the time needed to carry out the financial analysis and take stock of the Cardiff office situation was now complete and stated: *"I would like to suggest we re-instate you on a two day contract initially, if you are happy with that, then we do not need to proceed with your Appeal Hearing and I can draft up a new and proper contract. Does that sound agreeable?"*
14. The Claimant replied on 17 October 2023 that he was happy to accept

working 2 days a week and asked her to share the contract for his review.

15. Ms Carroll confirmed that she was meeting another colleague on 19 October 2023 to go through the contract in person and asked if he could also come into the Swansea office. On 19 October 2023, he confirmed he would do so, and that he was arriving by train into Swansea at 2pm.
16. The Claimant's second contract included in the Bundle at pages 75 to 83 states in clause 1:
“**1 When your employment begins** 1.1. *Your start date is 22nd October 2023 on a Fixed Term Basis of 12 months (subject to funding) expiring on 21st October 2024. This contract can be brought to an end sooner providing notice is served as per the notice provisions of section 2.* 1.2. *Your start date marks the beginning of your period of continuous employment with us.*” (“the Second Contract”)
17. The Claimant maintains that his continuous employment started on 22 July 2022 and initially in his evidence at the hearing, the Claimant stated that he did not receive a copy of the Second Contract until sent to him on 3 June 2024, by his then line Manager, Mr Bashir, who was appointed as General Manager around October 2023 and line managed the Claimant during the Term of his Second Contract.
18. After disclosure of additional emails during the hearing by the Claimant and Respondent, which were added to the Bundle, in cross examination at the hearing, the Claimant accepted that he had met with Ms Carroll on 19 October 2023 and that she shared and discussed with him a copy of the Second Contract. After which, the contract was sent to him by email on 20 October 2023 at 2.01pm by Ms Carroll ‘drafted as discussed’. Contrary to his initial evidence, the Claimant accepted that he had received the Second Contract in October 2023.
19. In a subsequent exchange of emails between Ms Carroll and the Claimant on 20 October 2023, the Claimant stated that he had “*worked under no contract of employment from 1st August 2023 to the Present time and no break of one clear week (Sunday to Saturday) of employment*” and asked if that should be classed as continuous employment. He also questioned the need for a probationary period and asked for clarification on place of work, hours of work and training and reimbursement of costs.
20. Ms Carroll replied that there were some matters to tweak, such as a fully designed job spec but some points she could clarify straight away including that she believed there had been a break in service but she would double check this and that as this was a new Fixed Term Contract, with a newly defined Job Spec and possibly job title and a different salary to the First Contract, all new roles would have a probationary period, as was consistent with the colleague who had also been given a new contract. The Claimant emailed Ms Carroll on 24 October 2023 confirming that he had started the part time 2 days’ work from 22nd October as agreed.

21. I find that there was no revision to the Second Contract after October 2023. The contract re-sent to the Claimant in June 2024 that he produced at the hearing was dated 20 October 2023 and was on the same terms with regard to the dates of commencement of the fixed term and continuity of employment, as the contract sent to him by Ms Carroll, under which he had continued to work throughout the period of the Second Contract.
22. In his evidence and at the hearing the Claimant maintained that he had continued to carry out work for the Respondent between 15/9/23 and 22/10/23 citing that he was the key holder with responsibility for the Cardiff office, that he was working with Mr Bashir continuously and that nothing had changed. He also referred specifically to: Raspberry PI Training that he organised, though conceded that he had organised this before 15/9/23 and had not attended the training that took place after that date, saying he gave the opportunity to others; to a counselling skills training certificate, though conceded the training took place before 15/9/23; and attending a local community event (Somali Tales of the Tiger) as a representative of the Respondent.
23. It was Mr Bashir's evidence that in this period the Claimant did not carry out any work and that no duties were delegated to him. He did not authorise the Claimant to act as representative of the Respondent during this period and stated that he attended the local community event in a personal capacity. He confirmed that they do not have a 'key holder' for the Cardiff office, it is an access code that was held by all staff and they had tried to change it but were unable to do so at the time; and that they would not have known if he was going into the office as he claimed, as there were no staff in the office at that time. He disagreed with the Claimant's claim that he was acting as 'Head of Cardiff Office' confirming he did not authorise the claimant to act as 'Head of Office' or as a 'Manager' and disagreed that he had authorised the Claimant to use his own email to communicate with fund-raising organisations after his work email was disabled or to continue with grant funding applications.
24. As evidence of continuity of employment, the Claimant also referred to a meeting on 12 October 2023 at the Cardiff office attended by Mr Bashir and the Chair and an external guest, which he suggested he set up as 'manager' bringing the three of them together and which took place instead of an appeal hearing, as an informal mediation between them and was followed by lunch. He referred to a photo he posted on social media of the lunch that took place on 12 October 2023 and was posted on 14 October 2023. Having first suggested the meeting took place on 14 October 2023, he clarified in evidence that it took place on 12 October 2023. He suggested that if he was not part of the team at that time, why did they not object to his presence in the office or at the meeting.
25. Mr Bashir's evidence was that this was an informal meeting prompted by the fact that the Claimant was continuing to speak externally to other partner organisations, community members and leaders, causing reputational damage and so they wanted to meet face to face. The Claimant's

suggestion that he was part of the team at the time of the meeting was never the conversation because his contract had ended. On balance, I accept Mr Bashir's evidence on the nature of this meeting, noting that at the time, the Claimant continued to pursue his appeal against the termination of the First Contract, and on 13 October (after the meeting) offered his available dates for the appeal hearing from Tuesday 17 October onwards.

26. On balance and weighing the evidence heard and read, there was little if any evidence before me of work completed or duties carried out by the Claimant between 15/9/23 and 22/10/23 and I accept Mr Bashir's evidence that there was no continuing work carried out by the Claimant nor delegated to him, nor authorisation to carry out work nor represent the Respondent in that period.
27. The Claimant put to Mr Bashir in cross examination that there was no P45 provided to him in September 2023, as was the case when the Second Contract ended in October 2024. Mr Bashir responded that he was acting manager around that time and did not have involvement as regards finances or production of the P45 or P60s in the Bundle to which he was referred, as finance work was carried out by the Finance Officer. He became General Manager around this time and managed the Claimant from October 2023. In response to the Claimant's assertion that following the first period of employment from July 2022 to July 2023 there was no gap in employment, Mr Bashir disagreed stating that there was a gap of employment clearly indicated in the contract.

Pay in lieu of notice and holiday pay – unlawful deductions

28. In his evidence and with reference to his Schedule of loss, the Claimant confirmed that he was pursuing his claims for unpaid wages in October 2023, outstanding holiday pay for the holiday year 2022 to 2023 and pay in lieu of outstanding notice pay following the termination of the First Contract on 15 September 2023. It was put to him he must accept that his employment ended if he was claiming notice pay, however he maintained that there was continuous employment and the facts were that he was told in writing (letter dated 15/9/23) that he would be given pay in lieu of notice and that did not materialise, though he was not expecting to be double paid.
29. He confirmed in his evidence that he has not brought any earlier proceedings in relation to these claims nor initiated acas early conciliation other than prior to these proceedings. He confirmed that in October 2023 he had access to the internet at home and was aware of the Citizen's Advice Bureau and Law Centres, as in his role advising members of the community, he would refer people to those services and it was part of his job to tell people where to go for employment advice.
30. He accepted that he did not take legal advice at the time because he respected his line manager, Mr Bashir. He accepted that he was aware of time limits and hoped it would not come to this and that it would be resolved and settled in an amicable way, referring to a meeting with Mr Bashir on 25

October 2024. He agreed that he chose to try and resolve the matter with the Respondent rather than taking legal action at an earlier date. He confirmed that there was no other reason why he did not decide to bring his claim earlier than he did, only reconfirming that it was very clearly stated in the letter of 15/9/23 that he was entitled to one month's pay in lieu of notice and outstanding holiday pay.

31. Mr Bashir agreed that the question of outstanding notice pay and holiday pay from September 2023 was raised with him at a meeting on 25/10/24 shortly before the Second Contract ended. At the time he asked the Claimant why he was bringing this up now and whether he had any correspondence relating to this, as Mr Bashir was not the Claimant's line manager under the First Contract and at the time of its termination. This meeting was his last communication with the Claimant, who had also raised queries over TOIL. Mr Bashir asked for more information to raise it through the proper channels because he wanted to get to the bottom of this issue as the Claimant was only raising it with him now and his employment was about to end. The Claimant did not provide any reply or evidence following that meeting. Mr Bashir confirmed that as requested by the Claimant, he forwarded the grievance policy to him but this was at the end of the Second Contract not the First Contract.

Law

Qualifying period of employment

32. Employment Rights Act 1996 (ERA) "*Section 108 (1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [two years] ending with the effective date of termination.*"

Period of continuous employment

33. ERA "*Section 210(4) Subject to sections 215 to 217, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.*
(5) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous."

Weeks counting in computing period

34. ERA "*Section 212 (1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.*

(2) ...

(3) *Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is—*

(a) incapable of work in consequence of sickness or injury,

(b) absent from work on account of a temporary cessation of work,

[or]

(c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose, ...

(d) ...
counts in computing the employee's period of employment."

Reinstatement or re-engagement of dismissed employee

35. ERA Section 219 (1) *Regulations made by the Secretary of State may make provision—*

36. (a) *for preserving the continuity of a person's period of employment for the purposes of this Chapter or for the purposes of this Chapter as applied by or under any other enactment specified in the regulations, or b)*

.....
in cases where ... a dismissed employee is reinstated [re-engaged or otherwise re-employed] by his employer or by a successor or associated employer of that employer [in any circumstances prescribed by the regulations].

37. I was referred to the following case reports by Miss Linford and to extracts of cases by the Claimant.

38. *Curr v Marks & Spencer plc [2003] I.C.R. 443 and EWCA Civ 1852: the Court of appeal held that the terms and conditions of the child break scheme emphasised the possibility that C would be reemployed at the end of the child break scheme and thus showed that C was not regarded as continuing in her employment during the break. The majority of the EAT had been wrong in finding that there was an arrangement under s.212(3)(c).*

39. *Marks & Spencer plc v Williams-Ryan (2005) EWCA Civ 470: the Court of Appeal noted that when deciding whether it was reasonably practicable for an employee to make a complaint to an employment tribunal, regard was to be had to what, if anything, the employee knew of the right to make a complaint and the time limit and what the employee should have known, had she acted reasonably in all the circumstances; that the vital question of fact was whether the employee could reasonably have been expected to be aware that there was a time limit for making a complaint to the tribunal.*

40. *Walls Meat co Ltd v Khan (1979) ICR 52: on reasonable practicable test and time limits*

41. *Rodway v New Southern Railway Ltd [2005] UKEAT 0520_05_1212: Section 212(1)(b) of the Employment Rights Act 1996 applies to preserve continuity where there is a temporary cessation of work. Even if there is a break in contractual terms, factual continuity can exist where the relationship continues in substance and where re-engagement is anticipated or linked to an appeal outcome.*

Unlawful Deduction from Wages

42. ERA s.13 (3):

"Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the

purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

43. ERA S. 23:

*"(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)).....*

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

- (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*
- (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.".....*

[(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).]

Working Time Regulations 1998 (WTR) - Holiday Entitlement

44. WTR s. 14:

- (1) [Paragraphs (1) to (4) of this regulation apply where—*
- (a) a worker's employment is terminated during the course of his leave year, and*
 - (b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under [regulations 13(1) and 13A(1)] differs from the proportion of the leave year which has expired.*

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

45. WTR s.30:

(1) A worker may present a complaint to an employment tribunal that his employer—

- (a)*
- (b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2)[, 15E, 16(1) or 16*

(2) [Subject to [[regulation] 30B], an employment tribunal] shall not consider a complaint under this regulation unless it is presented—

- (a) before the end of the period of three months (.....) beginning with the date on which it is alleged that the exercise of the right should have been permitted (.....) or, as the case may be, the payment should have been made;*

(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.

Conclusion

46. In reaching my decision, I have considered the relevant legislation and case authorities to which I was referred. I was provided with extracts of cases referenced by the Claimant and Law Reports by Miss Linford. I will address each of the agreed issues in the case separately, but each conclusion has been drawn having taken account of the whole of the evidence in the case, both written and oral and my findings above.

47. I heard oral submissions from Miss Linford for the Respondent and oral submissions from the Claimant and both referred me to case authorities mentioned and Miss Linford addressed me on the legislation.

48. I will first deal with the issue of whether the Tribunal has jurisdiction to hear the claim of unfair dismissal and consider the question set out in the list of issues above.

Was the Claimant continuously employed by the Respondent for a period of not less than two years ending with the effective date of termination?

49. In determining this question, the key issue in dispute is whether there was a break in continuity of employment in the period between 15 September 2023, when the First Contract ended and 22 October 2023 when the Second Contract commenced or whether, as the Claimant claims, there was continuous service from the commencement of the First Contract on 22 July 2022 to the effective date of termination at the end of the Second Contract in October 2024.

50. I have found that the Claimant was initially employed under a fixed-term contract of 12 months from 22 July 2022 to 22 July 2023 ("the First Contract"). Following earlier communications from the Respondent notifying the Claimant that they considered his employment had ended on expiry of the Fixed Term in July 2023, which he disputed as invalid notice lacking the authority of his line manager or the Board, a letter was sent to the Claimant by the Chair of the Board terminating his employment on 15th September 2023.

51. In my findings, and taking account of the documents before me and the Claimant's admissions in evidence that he understood that his employment was terminated on 15 September 2023, and that the Claimant exercised his right of appeal against the termination of his employment, I conclude that the First Contract was effectively terminated by the Respondent by its letter of 15 September 2023, as acknowledged by the Claimant at the time in submitting his appeal.

52. It is the Claimant's case that notwithstanding the termination of the First Contract, he had continuous service from 22 July 2022 under the First Contract and continued to work for the Respondent without a contract after

15 September 2023. I found that although the Claimant initially said in evidence that he had not been provided with the Second Contract until June 2024 by his line manager, there was evidence before me and he later conceded that he had met with the Respondent's HR Consultant, Ms Carroll, on 19 October 2023 to discuss the Second Contract and that this was shared with him at the meeting and sent to him by email on 20 October 2023.

53. Based on my findings about the email correspondence between 20 and 24 October 2023 when discussing the Second Contract with Ms Carroll, I conclude that the Claimant raised the issue of continuous service at the time, Ms Carroll expressed her position that there had been a break in service and that this was a new fixed term contract on new terms and that he confirmed to her on 24 October 2023 that he had 'started the part time 2 days work from 22nd October as agreed at the meeting'. I found that the Claimant was not provided with a revised contract after 20 October 2023 and conclude that the express terms of the Second Contract regarding the Term of 12 months and date of commencement of his continuous employment on 22 October 2023, were accepted by him at the time insofar as he worked under those terms from 22 October 2023 to the end of the fixed term in October 2024.
54. I have also considered the oral evidence from the Claimant and Mr Bashir as to the work and duties the Claimant relies on as establishing that he worked continuously for the Respondent and specifically between 15/9/23 and 22/10/23.
55. As set out in my findings above, and weighing the evidence before me, I found on balance that the Claimant was neither instructed nor authorised by the Respondent to carry out work during this period. I found that all new projects and activities and ongoing work in the Cardiff office had been stopped by the Respondent in early August 2023, for reasons explained to the staff at the time and pending further financial analysis, input from the Board on strategy and funding. Other than a general assertion of working continuously, the specific activities cited by the Claimant as evidence of his continuing to work throughout, were not supported by and barely amounted to evidence of any credible work carried out by the Claimant in that period, for example claiming that he was a 'key holder' as evidence of work being carried out by him, when the office was accessed by a code and the Cardiff office was in effect closed.
56. I conclude that the Claimant did not continue to carry out work for the Respondent after 15 September 2023, and that there was a break until he started work for the Respondent on 22 October 2023 under the Second Contract.
57. In his submissions, the Claimant argued that he had two years continuous service from July 2022 notwithstanding an 'administrative interruption and re-engagement'. He cited the absence of a P45 in September 2023 as a strong indication supporting his claim of continuity, on the basis that a P45 was issued in October 2023 as standard procedure but not in September 2023. I have considered the absence of a P45 against the weight of my findings and conclusions regarding the clear termination of the First Contract and the Claimant's understanding of this and my conclusions that the Claimant did not carry out work for the Respondent until the

commencement of the Second Contract. Given the size and resources of the Respondent, a small charity, in the circumstances, I conclude that the absence or omission in issuing a P45 within the period before his re-engagement, is not enough to support a finding of continuity of employment.

58. Notwithstanding this, I remind myself that I must also consider the legislation set out above (ERA s.212(1), s.212(3)(b) a temporary cessation of work, s.212(3)(c) an arrangement or custom, and s.219), which in some cases might preserve continuity despite a break in employment, and the case authorities where relevant to the principles in question.
59. Looking at the evidence and facts as a whole, the Respondent had paused ongoing work in the Cardiff office due to an overspend and due to the initial funding and contracts (including the Claimant's) ending. The Board paused operations to undertake a financial analysis and review, and to align on strategy before making decisions about restarting operations in a fiscally responsible manner and subject to funding. There was not a temporary cessation of the Claimant's work during the term of the First Contract, rather his fixed term contract had ended. When the financial analysis and review by the Board was completed and funding secured, the Claimant and another colleague were offered new contracts on new terms, in the Claimant's case of 2 days a week, on different pay and with a newly defined job spec. and subject to a probation period. The Claimant was not offered re-engagement on the same terms in the same role. Even if, as the Claimant submitted, an offer of some funding had been made prior to the termination of the First Contract, the Respondent had explained its decision and reasons for pausing operations in order to review finances and align its strategy before restarting operations in a responsible manner, with notable reductions in the scope of the role offered to the Claimant being an example of that fiscal prudence.
60. Looking at the evidence and facts as a whole, neither was there any evidence of any custom or arrangement in place at the time of the termination of the First Contract and/or during the break after 15/9/23, or of discussions or some agreement between the parties such that the Claimant was regarded as continuing in the Respondent's employment for any purpose during the break. To the contrary, based on my findings and conclusions, the First Contract was terminated, the Claimant had no contract in place, he was not working for the Respondent, and only after the Board's review was an offer made on 16/10/23 and discussions began regarding re-engagement under a new Fixed Term contract after that. On the facts found, I conclude that the Claimant was not regarded by the Respondent as continuing in employment for some purpose during the break.
61. I further considered the fact of the Claimant's appeal against the termination of the First Contract. I made findings that the Claimant understood from the letter dated 15 September 2023 that his employment ended on that date, and that the letter offered him a right of appeal and he suggested in evidence at the hearing that he would say his appeal was successful. I considered whether this assisted the Claimant in bridging the gap and preserving continuity due to reinstatement or re-engagement. I concluded that it did not. This was not a case where the appeal went ahead and the

Claimant was successful and was reinstated under his former contract, with the effect that his dismissal 'vanished'. I found that the appeal did not go ahead and that the Claimant accepted an offer of re-engagement under a new contract. Though not necessary in light of my findings and conclusions, I also considered that even if the appeal had gone ahead and he was successful, as his contract was for a Fixed Term that had already expired (prior to the termination of his employment), reinstatement under the First Contract would not extend the fixed term, so as to preserve continuity and bridge the gap.

62. In the circumstances, I conclude that the facts as found do not sustain a claim to preserve continuity and bridge the gap in employment according to the relevant provisions of the ERA as outlined.

63. Accordingly, taking account of my findings on the facts and application of the law, I conclude that the Claimant was not continuously employed by the Respondent for a period of not less than two years ending with the effective date of termination. As such the Tribunal does not have jurisdiction to hear the claim of unfair dismissal.

Time Limits

Unlawful deductions from wages

64. The Claimant claims unlawful deductions from wages relating to pay in lieu of notice following the termination of the First Contract on 15 September 2023 and arrears of wages for October 2023, raising the question of time limits to be determined, as set out in the list of issues.

Was the claim of unlawful deductions from wages made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?

65. The date of payment of the wages from which the alleged deductions were made was in September and October 2023. These proceedings were issued on 20 January 2025 and I conclude that the claim of unlawful deductions was not brought within three months and is out of time by approximately 12 months.

66. That being the case I must next ask myself was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

67. I conclude that it was. Based on my findings and by his own admissions in evidence, the Claimant as part of his job supported members of the community in seeking employment advice; he had knowledge of and referred them to organisations such as the CAB or law centres and confirmed that he was aware of time limits in employment claims; he had access to the internet and was sufficiently knowledgeable to research, draft and issue proceedings or seek advice and support to do so.

68. I conclude that he had the knowledge and understanding to bring his claim at the time of the alleged non-payment or unlawful deductions in and around September/October 2023. However, rather than taking legal action at the time, by his own admission he chose to try to resolve the matter with the Respondent out of respect for his line manager but did not pursue this until shortly before the end of the Second Contract, raising the matter with his

line manager at a meeting on 25 October 2024, some 12 months after he says the wages were due. He also confirmed that there was no other reason why he did not bring his claim earlier than he did.

69. As I have found that it was reasonably practicable for the claim to be made within the time limit, and the claimant failed to do so, I need go no further in my conclusions on this issue.

Holiday Pay

70. In respect of the claim of outstanding holiday pay, this claim relates to pay in lieu of outstanding holiday pay arising on the termination of the First Contract on 15/9/23.

71. I must again ask myself:

Was it reasonably practicable for the claim for pay in lieu of outstanding holiday to be made to the Tribunal within the time limit of three months (plus acas early conciliation) of the entitlement arising under the Working Time Regulations 1998?

72. For the same reasons as stated above, I find that it was. The Claimant's entitlement to pay in lieu of outstanding holiday under the First Contract arose on the termination of the Claimant's employment on 15/9/23 under regulation 14 (2) of the WTR. These proceedings were issued on 20 January 2025 and the claim was some 12 months out of time. For the reasons set out at paragraphs 65 to 67, I find that it was reasonably practicable for the Claimant to bring the claim within the time limit and the Claimant failed to do so.

Approved by:

Employment Judge K Hunt
1 September 2025

JUDGMENT SENT TO THE PARTIES
ON

04 September 2025

Kacey O'Brien

FOR THE TRIBUNAL OFFICE

Notes

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/