



EMPLOYMENT TRIBUNALS

Claimant: Mr H Tikon

Respondent: Mitie Limited

Heard at: London Central via CVP

On: 15 and 16
September 2025

Before: Employment Judge Forde

REPRESENTATION:

Claimant: In person

Respondent: Ms R Owusu-Agyei

JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.
2. The complaint of breach of contract is not well-founded and is dismissed.

Reasons

Background

3. By way of a claim form filed on 24 October 2021, following a period of ACAS conciliation from 23 October 2021 to 25 October 2021, the claimant pursued claims of detriment under section 47B Employment Rights Act 1996 (ERA), unlawful deductions from wages contrary to section 13 ERA and breach of contract as regards termination payment, unfair dismissal and automatic unfair dismissal on the basis that the claimant had made protected disclosures and they were the predominant reason for his dismissal.
4. There was a case management hearing before Employment Judge Hindmarch on 16 December 2022. Following that hearing, EJ Hindmarch issued a reserve judgment striking out the claimant claims against the then

named first respondent, Her Majesty's revenue and Customs in full, and striking out the claims of whistleblowing, unfair dismissal and, automatic unfair dismissal against the remaining respondent, Mitie Limited (hereinafter referred to as the respondent). The strike out was on the basis that the Tribunal determined that the claimant had presented his claim to the tribunal out of time.

5. At paragraph 12 of the judgment, the judge sets out a series of facts that were not in dispute. A number of them are relevant to insofar as the issues that I had to consider. The relevant ones are as follows:

19.1 The claimant commenced employment with the first respondent on 8 March 2004.

19.2 The claimant's final payslip with HMRC is dated 31 March 2021.

19.3 On 17 March 2021, the respondent wrote the claimant placing his position at risk of redundancy.

19.4 On 23 April 2021, the respondent wrote to the claimant inviting him to a consultation meeting.

19.5 On 16 May 2021 the respondent emailed the claimant with details of its voluntary redundancy exit quotation.

19.6 On 18 May 2021, the respondent emailed the claimant to acknowledge his preference to take voluntary redundancy. The decision to terminate his employment on the grounds of redundancy was effective 30 June 2021.

19.7 On 22 May 2021, the claimant replied to confirm that he had accepted redundancy.

19.8 On 12 June 2021, the claimant emailed the respondent confirming his acceptance of voluntary redundancy payment and the respondent wrote back to confirm that his employment would end with the respondent on 30 June 2021. At that time, the respondent confirmed that the claimant was entitled to receive eight weeks pay in lieu of notice. Thereafter, on 25 June 2021, the respondent confirmed that the claimant's last day of working for it would be 30 June 2021.

6. At paragraph 58 of the reserved judgment it says the following: 'this leads me to the issue of the effective date of termination. Any 'continuing detriment must have ended then. In my judgment the email sent by the second respondent (the respondent in this claim) to the claimant, recited at paragraph 12j above, is clear and unambiguous. The second respondent is giving the claimant notice of termination 'effective 30 June 2021'.' He goes on to say that, 'Any objective construction of the second respondent's correspondence makes it clear the contract is to be terminated on 30 June 2021 and not at any future date.'

7. The judge concluded that the effective date of termination was 30 June 2021 and that as a consequence, the relevant three month time limit begin to run from that date. He further observes that the time limit expired on 29 September 2021 and was not extended by any period of ACAS early conciliation as the claimant had not engaged with the early conciliation process during this period.
8. The claimant appealed that decision to the Employment Appeal Tribunal (EAT). His Honour Judge Auerbach upheld the decision that the Effective Date of Termination was 30 June 2021 as well as upholding the tribunal's decision to dismiss the claims of unfair dismissal and detriment under section 47B Employment Rights Act 1996 as being out of time.
9. It follows that the only claims before the tribunal to consider are unlawful deductions from wages and breach of contract claim. At the time the claimant's claim was presented to the tribunal he was legally represented. In the particulars of claim the following is stated:

'the claimant claims salary at the appropriate level for performance of duties at the level of Assistant Officer and later officer. His title was kept at administrative assistant, while his duties increased in scope and complexity to those of assistant officer and then officer. There were discussions with HMRC about his role, in which they accepted he was underpaid. He received emails in 2006, 2008, 2011-2012 on this point. HMRC did not turn their admissions into payment. Consequently, the claimant was underpaid for the duties he performed.'

10. The claimant goes on to say that he was underpaid between 2005 and 2010 at a net rate of £650 per month, and between 2010 and 2021 between £1000 per month net. It is noteworthy that the claimant has not provided a basis for the computation of these underpayments either in the schedule of loss or in his witness statement in which the figure claimed has risen from £124,000-£270,000 by the date of this hearing.
11. The claimant produced a lengthy witness statement running to 15 pages. A lot of the statement seeks to rehearse the arguments he put forward in relation to the claim that already been dismissed by the tribunal and subsequently confirmed by the Employment Appeal Tribunal.
12. At paragraph 2 of his statement, the claimant confirms that he was engaged by the entity that eventually became HMRC on 8 March 2004 as a revenue constable. He was on a 12 month probation period at the start of his employment and his grading was set as administrative assistant. He says in 2005 HM Customs and Excise merged with HM Inland Revenue to become HM revenue and Customs. He says at paragraph 3, 'as I had completed my probation I was expected to be given my employment contract which was also to confirm my grading as officer (O) based on the roles and responsibilities I was expected to undertake and deliver, this did not happen instead every two

years they response was they were doing reviews after reviews of my roles and responsibilities.'

13. The clear understanding that can be gleaned from this evidence is that the claimant had been allocated to the grading of administrative assistant and, despite requests to be upgraded, he remained as an administrative assistant until there was a TUPE transfer of his employment to the respondent in these proceedings on 11 January 2021.
14. Some 16 years after the commencement of his employment with HMRC, the claimant raised a grievance about his pay and conditions stating that he had been underpaid on 4 August 2020. That grievance was heard by Mark Ferguson and a formal outcome issued 21 December 2020. The content of the grievance precisely mirrors the basis upon which the claimant claims that he has been underpaid and that he has been made the subject of a breach of contract by the respondent in these proceedings.
15. One of the documents in the bundle that summarises the positions of the parties as regards the central issue of the claimant's grading is a decision notice dated 8 January 2021 which is a grievance outcome relating to concerns that the claimant had raised at that time. The first heading in respect of underpayment of salary and underpayment of AAA allowance. That document, address of the claimant having been prepared by Mark Ferguson, HMRC, estates location programme says the following:

"As agreed the first two concerns raised are interrelated and linked to your job role and grade. You consider that you were appointed in the role of revenue Constable in 2004 and that following successful completion of a one-year probationary period you would become an officer (O) grade. You believe that since 2005 you have been performing the duties of an officer, but your contract is for a revenue Constable equivalent to an AA and your payslip states you are an AA.

I have reviewed the HMRC employment contract provided which, does not indicate the successful completion of the probationary period would have resulted in promotion to an O grade. From the fact-finding discussion with Sean, I understand that the review of guarding services in 2007 resulted in no change to any grades, TNCs or pay for staff within the guarding services team and consequently it does not appear that the issuing of a warrant card to have been in 2007 is related to the outcomes of that review. Sean also noted that the job title was a side issue in the reviews, and it was more a focus on grade structure and the appropriateness of work being undertaken at each grade. Sean confirmed that the outcome of the 2013 review was that a number of staff at a low grade voluntarily downgraded to AA grade. Some individuals apply for other AO grades within HMRC and after being successful left the guarding services team.'

The document goes on to say:

'It is acknowledged that you were issued a warrant card which states the title officer, however from the fact-finding discussions it is my understanding that the title is in reference to the individual being a representative or employee of HMRC and is not a reference to a grade. This is further supported by the HMRC on my guidance regarding application and issue of HMRC ID cards (a.k.a. warrant cards). The guidance also advises that ID cards should only be issued to HMRC staff who have direct contact with the public or traders away from HMRC the guidance does not specify a particular grade that you should or should not hold an ID card.'

And lastly:

'It is not evident that your salary and AAA (shift allowance) had been underpaid commensurate to your grade and it is my decision that I am unable to uphold these two concerns.'

16. I find that the sections quoted above correlates directly to what is stated within the claimant's claim as set out under the heading 'money claims' in his particulars of claim (see above). As he reiterated in evidence before me, the claimant's case that he was an officer is in some part propelled by a belief arising from a warrant card issued to him in 2017 on which he is described as officer. In addition, the claimant says that a number of the duties he performed were performed by officers only and that not only he but others of his status also did those jobs. In evidence, the claimant confirmed that his claim of unlawful deductions arises solely from his period of employment with HMRC and is not referable to his subsequent employment with the respondent in these proceedings. This means that the period for that claim ends When his employment ended. The can be seen from page 557 of the bundle before me that the claimant's last payslip from HMRC is dated 31 March 2021.
17. In relation to the claimant's claim of breach of contract, the claimant identifies that in his view, the respondent has committed a breach of the implied duty of faith in respect of what he believes to be his underpayment of salary following his transfer. He bases this proposition on similar facts to is unlawful deductions claim, namely that he was an officer in all but name and therefore, he should have been paid at a level commensurate to what he considers officers would have been paid. Again, the claimant says here that evidence in support of his proposition that he was an officer or at all times materials with claim can be seen from the warrant card that describes him as officer that can be seen at page 1014 of the bundle. It should also be noted that it is the respondent's position and submission that HMRC's use of the description officer is one that is uniform and ubiquitous within it. The claimant does not accept this.
18. In its response, the respondent says that the tribunal does not have jurisdiction to hear the claimant's claim of unlawful deductions from wages pursuant to section 13(1) ERA and in relation to the claimant's claim of breach of contract. The respondent says that the claimant's employment transfer to

the respondent on 11 January 2021 and his employment terminated by way of voluntary redundancy on 30 June 2021, six months later. Relying on what the claimant says in his claim namely that 'continuing complaints on the claimant' were made (denied by the respondent). Respondent says that during the six months that the claimant was employed by the respondent he did not raise a grievance in relation to his wages, nor did he make a complaint despite receiving his salary every month. The claimant received a redundancy payment, pay in lieu of notice, holiday pay from the respondent and did not complain at that time that his pay was incorrect or calculated incorrectly.

19. The respondent goes on to say that when account is taken of the claimant's contact with ACAS for early conciliation on 23 October 2021, that being 10 months after the transfer date and 16 weeks off his termination of his employment and in accordance with the authority in *Bear Scotland v Fulton* [2014] UKEAT 0047/13/0411, the tribunal does not have jurisdiction to hear these claims as, on the respondent's view, there has been a gap of more than three months between the alleged deductions/breach of contract, so as to break the series of deductions. In other words, the claimant is barred from pursuing these claims.

Procedure

20. At the start of the hearing I asked the claimant to confirm that my understanding of the scope of the issues to be determined at the hearing were in relation to the claims of unlawful deductions from wages and breach of contract. Initially, the claimant agreed that the hearing was limited to determining these two issues or claims.
21. However, during the course of the hearing it became apparent that the claimant was seeking to reopen issues that had been previously struck out. I explained to the claimant that it would not be possible to do this because the claims had been struck out.
22. The claimant gave evidence first. In short, the claimant's evidence was that from time to time he was called upon to undertake the role of a revenue constable. He gave examples such as the receiving of consignments of seized goods by law enforcement agencies into warehouses that he was stationed at. It was his proposition that this was a task that could only be undertaken by someone of officer status. The claimant accepted that this assertion along with all of the others that he made of a similar nature were ones that he was unable to substantiate with any independent evidence.
23. The claimant was questioned about his signing of the terms and conditions document which the respondent asserts is his contract of employment. That document is important because it identifies the claimant as being at grade 2 within the HMRC pay scale relevant to the issues in this claim. His alignment at grade 2 identifies him as an administrative assistant. The claimant appeared to be saying that he was his expectation as a matter of right or passage of time that the direct consequence of his passing through probation

was that he would automatically or by some other means become an administrative officer or progress further through the ranking system of HMRC.

24. Mr Dean Samuels is employed by the respondent as an operations manager since 2009. He is responsible for the management of the respondent contract with HMRC among others. His duties required him to have meetings with clients, manage staff welfare and delivery of service. He identifies that his involvement in the HMRC contract occurred around October 2020 and he was involved in the consultation of staff that were transferring from HMRC's customs house and annexe site, a total of 22, to the respondent by way of TUPE. He describes attending the sites, holding individual consultation meetings and providing information.
25. He specifically recalls his interactions with the claimant and describes the claimant someone who was in scope to transfer on 11 January 2021. He says that the claimant told him that he wanted to stay with HMRC and that he did not want his employment transfer to the respondent and thereafter refused to engage with the Mr Samuels. He told the tribunal that the claimant's name was one of a number whose name appeared on a spreadsheet of names that have been provided by HMRC as in scope transfer. The spreadsheet that he completed is at page 590 of the bundle and the claimant's name can clearly be seen present within it.
26. Mr Samuels goes on to explain that the respondent held a redundancy consultation process on 30 June 2021. The claimant, having transferred to the respondent, was invited to redundancy consultation meeting on 23 April 2021. Matters progressed to a second redundancy consultation meeting on 17 May 2021 where the claimant was walked through the redundancy consultation process and provided with relevant figures for his exit. After the meeting, the Mr Samuels made an entry on his spreadsheet and noted that the claimant when prompted in relation to any questions stated 'no questions at present final figure to be confirmed'. Mr Samuels was provided with a copy of the claimant's confirmation of his voluntary redundancy on 18 May 2021 and his employment terminated with the respondent on 30 June 2021, a matter that has subsequently be confirmed by the EAT.
27. Mr Samuels says at paragraph 24 of his witness statement that at no time during his employment did the claimant allege that he had been underpaid. Specifically at paragraph 26 Mr Samuels says the following, 'I also understand that had been is claiming unlawful deductions of wages at the date of termination. However, his employment terminated on 30 June 2021 and at no point did he say to me that he had been underpaid his redundancy pay, PILON or his holidays by Mitie or previously by HMRC'. This evidence was unchallenged by the claimant.
28. In relation to time, the claimant says that he sought to explore the dispute resolution processes within HMRC before deciding to pursue his claim before the tribunal. In fact, he goes further and blames HMRC for his delay in presenting the claim. He also points to the fact that he has had difficulties with regards to his legal representation, the details of which are not in dispute

between the parties. In his witness statement, and while the claimant says that he was aware of the desirability to resolve claims by way of informal means, he was also aware of how he could approach the employment tribunal.

Law

29. Section 13 ERA provides that no deduction should be made from a worker's payments. Section 13(3) defines the jurisdiction of the employment tribunal to hear claims of unlawful deductions. Section 23 (1) defines the right to bring a claim. Section 23 (2) requires that a claim be brought before the end of the period of three months from which that the last deduction has been made. Section 23 (3) defines a series of deductions by reference to the last deduction in a series. A tribunal has a jurisdiction to extend time in circumstances where it was not reasonably practicable to have done so.
30. The breach of contract claim is brought under the Employment Tribunal's Extension of Jurisdiction (England and Wales) order 1994. Article 7 provides the claim must be brought in 'within the period of three months beginning with the effective date of termination of the contract', and an extension of time may be granted 'where the tribunal is satisfied that it was not reasonably practicable to present the claim in time provided presentation is 'within such period as the tribunal considers reasonable.'
31. In respect of both limbs of the claimant's claim, it is submitted but neither have merit in any event. As the respondent puts it, aside from the claimant's proposition with regards to his purported status of officer, the claimant has failed to identify an express term of his contract that has been breached by either HMRC or the respondent. It is said that the claimant's assertion to a breach of the implied duty of faith on the basis that he should have been paid a rate of pay that is fair is not a recognisable legal concept that than claimant can rely upon.
32. For all claims in this case, the claimant was required to engage in ACAS early conciliation within the original time limit. That is unquestionably the position here. The claimant claims unlawful deduction for the entirety of his employment with HMRC which ended on 31 March 2021. The time limit in that claim ended on 30 June 2021, three months later. The claimant contacted ACAS on 23 October 21 and brought his claim on 24 October 21. As I have said, the claim form and the claimant's witness statement confirm that the deductions claim is against HMRC only. Therefore, it is clear that this element of the claimant's claim is substantially out of time.
33. In respect of his breach of contract claim, the Effective Date of Termination is 30 June 21. This means that the claimant should have presented its claim by no later than 30 September 2021. This means that again this claim is out of time.
34. In light of the above, I have to consider whether it would be appropriate to extend the tribunal's jurisdiction on the basis that it was not reasonably practicable for the claimant presented claims in time. The law is clear that it is

for the claimant to show that it was not reasonably practicable for him to do so - see *Palmer and Saunders v Southend-on-Sea Borough Council* (1984) ILR 372.

Conclusions

35. it is my finding that in respect of both claims, the claimant is substantially out of time and has provided no justifiable reason for time to be extended on a reasonably practicable basis. The claimant does not dispute that his employment terminated with HMRC latest 31 March 2021 and I find that to be the case. It follows that the time limit for the unlawful deductions claim expired after 30 June 2021. While the claimant says that he was waiting to exhaust the internal dispute resolution procedures, it is also the case that the claimant was in receipt of advice from trade unions, his own research and thereafter, received independent legal advice. His witness statement says that he knew of his right to pursue a claim before the employment tribunal in June 2021. While he seeks to rely on various intervening acts I note that the steps he took advice from his former legal representative after the expiry of the limitation period of this limb of his claim, in July and August 2021. Consequently, it is my finding that not only has the claimant failed to demonstrate why it was not recently practicable for him to have presented this claim sooner to the tribunal but that he took appropriate steps to ensure that it was presented properly having missed the primary limitation period. Accordingly, I dismiss the unlawful deductions claim.
36. Similarly, I dismiss the breach of contract claim which is also out of time as I have identified above. While the claimant says that he was in discussions with the respondent he also identifies that he met with his solicitor in early August 2021 and therefore this would have been the earliest opportunity for him to have been made aware of the issue of limitation insofar as his claims were concerned. In respect of this claim, he has not presented any adequate grounds to justify an extension of the time limit for reasons of reasonable practicability.
37. In addition, I accept, the respondent's submission that in respect of both claims there is a significant and substantial lack of merit that underpins both of them. Despite his best efforts, the claimant was unable to identify within the bundle a single document that supported his position that he was an officer or perform the role of an officer either in part or in full at times material to the claim. In fact, the claimant confirmed to me in evidence that the basis upon which he pursues the claims is upon his interpretation or perception that he was doing work that merited more pay.
38. However, I find that submission to be at best implausible when one considers that the claimant was prepared to accept the level at which he was paid for the entirety of his employment by HMRC and only raised an issue once it became known to him at his employment with HMRC was to come to an end and that his employment was transferring to the respondent.
39. On a number of occasions whilst giving evidence the claimant made reference to documents that assisted him. When asked to show me those documents, it

was clear that the documents did not assist him. The implausibility of the claimant's submissions were, in my view, fatally undermined when the claimant made reference to information redacted from a document. The claimant asserted that the redaction of the information by the respondent obscured information that supported his submission that he was an officer. However, it was pointed out to me by Ms Owusu-Ageyi for the respondent that the document in question was the claimant's grievance and that the information therefore was information provided by the claimant. the claimant confirmed to me orally what had been redacted and it is clear that the information referred to a sensitive operational matter conducted by HMRC and did not demonstrate the issue the claimant alleged that it did.

40. In respect of the breach of contract claim, not only has the claimant failed to identify a relevant express contractual term, but it is also my finding that the claimant has not produced any evidence to support the contention that he was underpaid through failure to pay him a fair amount as claimed. In fact, there is evidence that the claimant accepted the terms of his engagement and did not raise any issues about his rates of pay until after he had ended his employment and received redundancy payments.
41. Accordingly, It is my view that the claims are misconceived as a matter of fact. It follows that had the claims been made in time that they would not have succeeded on the basis that the claimant has failed to prove them.

Approved by:
Employment Judge Forde
16 September 2025

Judgment sent to the parties on:

22 September 2025

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For the Tribunal:

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Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

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