



EMPLOYMENT TRIBUNALS

Claimant: Miss A Cameron

Respondent: Sainsbury's Supermarket Limited

Heard at: Bury St Edmunds Employment Tribunal (CVP)

On: 10 June 2025

Before: Employment Judge M Magee

Representation:

Claimant: In Person

Respondent: Mr Zolidavi (Counsel)

JUDGMENT having been given to the parties on 10 June 2025 and written reasons having been requested on 18 June 2025 in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

JUDGMENT

The Claimant's claim for Unlawful Deduction from Wages is out of time and the Tribunal does not have jurisdiction to consider it. The Claim is dismissed.

REASONS

Introduction

1. Miss Cameron ("The Claimant") brought claims for unlawful deduction from wages in respect of unpaid company sick pay against her employer Sainsbury's Supermarkets Limited ("The Respondent") as well as Mr Jindau and Mr Scott.
2. My professional commitments have delayed me producing full written reasons and I apologise to the parties for any inconvenience caused.

The Hearing

3. The hearing was heard at Bury St Edmunds Employment Tribunal via Cloud Video Platform on 10 June 2025. Miss Cameron appeared in person. The Respondent was represented by Mr Zolidavi of Counsel.
4. Both parties referred me to the bundle consisting of 158 pages. References to the bundle are made in (brackets).
5. Miss Cameron gave evidence for the Claimant. Mr Jinadu gave evidence for the Respondent. I heard submissions from the parties.
6. At the commencement of the hearing Miss Cameron withdrew her claims against Mr Jinadu and Mr Scott. The claims against the two individuals were dismissed upon withdrawal. By agreement, the name of the Respondent was amended to Sainsbury's Supermarkets Limited.

Issues

7. The issues were as follows:
 - a. Was the claim brought in time?
 - b. Was the Respondent entitled to withhold company sick pay from Miss Cameron?

Findings of Fact

8. On 5 February 2015 Miss Cameron commenced employment with the the Respondent in a customer service role. She remains employed.
9. Miss Cameron's contract of employment states (143) "*follow guidelines in the attendance policy as we will manage in line with this*" and "*whether you receive sick pay is "dependent on meeting several conditions (all of which are included in the attendance policy)"*". The Claimant was required to electronically sign a copy of the contract and to confirm that she agreed to the contract and to be bound by the other documents to which it referred.
10. The sickness absence policy is non contractual (59). It states "*There are circumstances where we may decide not to pay CSP, examples included but not limited to:*
 - a. *Failure follow notification procedures*
 - b. *You are absent immediately following a performance conversation or a request to attend a meeting or during an investigation/disciplinary process."*
11. On 26 November 2023 Miss Cameron attended a disciplinary hearing (64). She was given a First Written Warning for absence due to an unsatisfactory level of attendance. Shortly after the meeting Miss Cameron complained about her treatment to a colleague and then left work complaining of a migraine and remained absent until 17 December 2023.
12. On 27 November 2023 the Respondent sent Miss Cameron a letter withholding company sick pay stating the reason for so doing that she was (66) "*Absent immediately after attending a disciplinary hearing*".

13. On the 28 November 2023 there was a conversation between Miss Cameron and Mr Janadu as to why her sick pay hasd been withheld.
14. On 29 November 2023 Miss Cameron raised a grievance (68). In that grievance she mentioned "Unlawful Deduction from Wages". Miss Cameron stated that she had conducted a Google search and found reference to the phrase.
15. The 17 December 2023 was the last day of her absence (77).
16. On 21 December 2023 there was an appeal hearing (68) of the First Written Warning.
17. On 4 January 2024 the appeal against her warning was dismissed (92).
18. On 7 January 2024 Miss Cameron attended a fair treatment meeting in respect of her grievance. She had contacted the Union who provided advice but did not represent her as she had only just joined them. Miss Cameron did not give details of what advice was provided by the Union.
19. The last deductions from Miss Cameron's pay were made in the January payroll which was paid to her on 12 January 24(138).
20. On 21 January 2024 Miss Cameron was sent a grievance outcome letter (98). Her grievance was rejected on the basis that she had gone off sick following a performance discussion.
21. Miss Cameron appealed the grievance outcome. The appeal was heard on 11 April 2024.
22. Miss Cameron was sent the appeal outcome on 19 April 2024 (126). The appeal was dismissed on the basis that it was reasonable to withhold sick pay from someone who went off absent immediately after a disciplinary hearing.
23. On 19 Apr 2024 Miss Cameron notified ACAS of a claim against Mr Scott and Sainsbury's (6). Miss Cameron waited until this date for the conclusion of the internal process and was informed by the union of ACAS process.
24. On 30 April 2024 ACAS issued a conciliation certificate. Miss Cameron lodged an ET1 the same day.

Law

25. Section 23 of the Employment Rights Act 1996 ("the Act") states in respect o time limits for presenting an unlawful deduction from wages
 - (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.
 - (3) Where a complaint is brought under this section in respect of—
 - (a) a series of deductions or payments, or
 - (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

- (4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

26. In respect of Unlawful deduction from wages section 13 of the Act states:

S13 An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
- (2) In this section 'relevant provision', in relation to a worker's contract, means a provision of the contract comprised—
- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
 - (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

27. 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 in respect of reasonable practicability:

- 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. However, it is important to note that, 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;

28. Where the claimant is generally aware of his or her rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because the claimant will generally be taken to have been put on inquiry as to the time limit. Indeed, in *Trevelyan's (Birmingham) Ltd v Norton 1991 ICR 488, EAT*, Mr Justice Wood said that, when a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about

how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim. Three examples:

29. Trade union representatives also count as 'advisers' in this context and, if they are helping a claimant with his or her case, they are generally assumed to know the relevant time limits and to appreciate the necessity of presenting claims in time. In *Times Newspapers Ltd v O'Regan* 1977 IRLR 101, EAT, the claimant knew of her rights and knew of the three-month time limit when she was dismissed. However, a union official advised her incorrectly that the three months did not start to run while negotiations were taking place about her possible reinstatement. Overruling the employment tribunal, the EAT held that the claimant was not entitled to the benefit of the escape clause because the union official's fault was attributable to her and she could not claim that it had not been reasonably practicable to claim in time.
30. The Employment Appeal Tribunal ruled in *Bodha v Hampshire Area Health Authority* 1982 ICR 200, EAT, that the existence of an impending internal appeal was not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit, and this view was expressly approved by the Court of Appeal in *Palmer and anor v Southend-on-Sea Borough Council* 1984 ICR 372, CA.

Conclusions

Time limits

31. The date of the last deduction from Miss Cameron's wages was 12 January 2024, on the date when she was paid. Three months expired on 11 April 2024. Miss Cameron contacted ACAS on 19 April, 8 days after the time limit had expired. The claim was therefore presented out of time.
32. I therefore have to consider whether it was reasonably practicable for Miss Cameron to have presented her claim on or before 11 April.
33. Miss Cameron had conducted some research which alerted her to her legal right by 28 November 2023. She had the benefit of union advice from 7 January 2024. The Trade Union would be expected as advisers to alert Miss Cameron to the relevant time limits. Miss Cameron has not suggested that she was given wrong advice. I find that she was on notice of her rights and in the circumstances I find that it was reasonably practicable for her to have contacted ACAS prior to 11 April 2024. Accordingly Miss Cameron's claim is out of time. The tribunal does not have jurisdiction to consider it.

Lawful deduction

34. Notwithstanding my finding as to the claim being out of time, I go on to consider whether the deductions made were lawful. The contract at (143) makes it apparent that there is an obligation to pay sick pay, subject to certain policies.
35. The absence policy was accepted by Miss Cameron in accepting the contract. The contract of employment states that Miss Cameron must (143) "*follow guidelines in attendance policy as we will manage in line with this*" and "*whether you receive sick pay is dependent on meeting several conditions (all of which are included in the attendance policy)*". Miss Cameron was required to electronically sign a copy of the contract and confirmed that she agreed to the contract and to be bound by the absence policy.

36. The non-contractual Sickness absence policy states (59). *“There are circumstances where we may decide not to pay CSP, examples included but not limited to*
- a. *Failure follow notification procedures*
 - b. *You are absent immediately following a performance conversation or a request to attend a meeting or during an investigation/disciplinary process.”*
37. Miss Cameron has signed the contract thereby consented to the application of both the contract and the absence policy.
38. I have to consider what is the effect of the absence policy. It gives the Respondent a discretionary power to withhold company sick pay in certain circumstances. That would have to be a discretion that was exercised reasonably.
39. Withholding Company sick pay is within the scope of the wording of the policy.
40. The Respondent had the power to withhold sick pay for absence immediately following a performance conversation. Performance conversation is not defined. I conclude that a disciplinary warning falls within a performance conversation.
41. There was also a power to withhold sick pay during a disciplinary process. I find that the disciplinary process was still ongoing at that point when Miss Cameron went absent. The outcome letter had not been drafted and the appeal process had not concluded.
42. The Respondent was entitled to place restrictions on sickness benefits. Reading the entirety of the phrase, restriction in respect of a disciplinary process and performance discussion is directed towards deterring adverse reactions to performance management and disciplinary sanctions, where employees conduct is challenged. I find that this is within the reasonable scope of the discretion.
43. Mr Jinadu stated that Miss Cameron had made no mention of feeling unwell prior to the disciplinary and went off sick immediately after complaining to a colleague. In the circumstances the Respondent's actions were reasonable and it was entitled to withhold the Claimant's Pay in accordance with the policy.
44. In the circumstances, I find that the Respondent was entitled to withhold Miss Cameron's company sick pay in accordance with a term in her contract and the deductions from wages were therefore lawful.

Approved:

Employment Judge **M Magee**

Date. 20 October 2025

JUDGMENT SENT TO THE PARTIES ON
22 October 2025

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FOR THE TRIBUNAL OFFICE

Notes

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