



EMPLOYMENT TRIBUNALS

Claimant: AB

Respondent: CD

Heard at: Cambridge Employment Tribunal, by
video

On: 17 October 2025

Before: Employment Judge
Taft

REPRESENTATION:

Claimant: EF, the Claimant's wife

Respondent: Mr Upton, Solicitor

RESERVED JUDGMENT

1. The claim of unlawful deduction from wages was not presented within the applicable time limit. It was reasonably practicable to do so. The claim of unlawful deduction from wages is therefore dismissed.

REASONS

1. The purpose of this hearing was to determine whether the Claimant's complaint of unlawful deduction from wages was brought within the 3 month time limit, or if it was not, whether the Employment Tribunal should nevertheless consider the complaint on the basis that it was not reasonably practicable to bring the complaint within 3 months and the Claimant brought his claim within such further period as the Tribunal considers reasonable.

2. At the commencement of the hearing, I considered and granted the Claimant's application for an Anonymity order. I provided oral reasons and will not provide written reasons unless either party requests written reasons within 14 days of the sending of this written decision.
3. The Claimant was not able to take part in the hearing due to his ill health. He was ably represented by his wife, who indicated that he was present in the room but unable to take an active part in the hearing. On occasion, she was able to take instructions on matters from him. I am particularly grateful to her for her assistance during the hearing.

Issues

4. EF confirmed that the Claimant's claim is about a series of deductions ending in July 2022, when he began new role with the Respondent. She accepted on his behalf that the 3 month time limit ran from July 2022, so the claim brought in October 2023 was approximately 12 months out of time. The issues are therefore whether
 - (a) it was not reasonably practicable for the Claimant to bring the claim within 3 months; and
 - (b) if so, the Claimant brought the claim within such further period as I consider reasonable.

Evidence

5. The Claimant provided a statement but was neither sworn nor cross examined given his state of health. I had a preliminary hearing bundle containing 149 pages. I was also provided with a copy of a bundle of 2202 pages prepared for a remedy hearing in another claim between the parties that had taken place in June and July of this year. I was taken to various documents in both bundles and considered those alongside the statement prepared by the Claimant.

Submissions

6. Both EF and Mr Upton made oral submissions once I had been able to consider the documents to which they referred. The Respondent had prepared an opening note, which I also considered.
7. EF said that the Claimant was too ill to bring proceedings before he did. She said that he pursued internal proceedings to avoid the stress he knew would be associated with an Employment Tribunal claim. He knew how stressful this would be because he had already issued a claim in 2019, which was ongoing.

She said that it was only when he knew that internal proceedings were not getting anywhere that he contacted ACAS and brought proceedings after the Early Conciliation certificate was issued.

8. The Respondent accepted that the Claimant was ill at the relevant time but asserted that he was able to work, including completing some complex work, as well as engaging with complex Employment Tribunal proceedings at the same time as corresponding with the Respondent internally. The Respondent referred to the Court of Appeal's decisions in *Palmer* and *Noel*, which I detail below, as authority for the proposition that engaging with internal proceedings does not make it not reasonably practicable to bring a claim in the Employment Tribunal.

Law

9. Section 13 Employment Rights Act 1996 confirms that

- (1) 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.

10. Section 23 Employment Rights Act 1996 confirms that a worker may present a claim under Section 13 to an Employment Tribunal but subsection (2) confirms that

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.

11. Subsection (4) confirms that

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.

12. That is the same time limit and test for extending the usual time limit as applies to complaints of unfair dismissal. As a result, principles from cases regarding complaints of unfair dismissal that have been brought outside the 3 month time limit are also applicable in determining whether the Tribunal

should consider a claim for unlawful deduction from wages that has been brought outside the 3 month time limit.

13. It is for the Claimant to prove that it was not reasonably practicable to bring the claim within 3 months.
14. In *Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490, the Court of Appeal confirmed that the test should be given a liberal interpretation in favour of the employee and that the statutory language does not refer only to physical impracticability.
15. A number of cases have considered illness and disability, including mental ill health conditions such as depression, as reasons why it might not be reasonably practicable for a Claimant to bring a claim within 3 months. However, the Tribunal must look at whether the illness makes it not reasonably practicable to bring a claim; it is not enough simply to look at whether or not the Claimant was unwell during the relevant period. For example, in *Chouafi v London United Busways Ltd* [2006] EWCA Civ 689, the Court of Appeal found that an Employment Tribunal had reached a permissible conclusion when it found that it was reasonably practicable for a Claimant to have brought a claim notwithstanding medical evidence that he had severe depression because he was able to write coherent letters to third parties about his pension during the 3 month limitation period.
16. In *Palmer and anor v Southend-on-Sea Borough Council* [1984] ICR 372, the Court of Appeal held that the fact a Claimant was pursuing an internal appeal did not mean that it was not reasonably practicable to bring a claim within 3 months. This was followed in *London Underground Ltd v Noel* [2000] ICR 109.
17. EF referred to the Employment Appeal Tribunal's decision in *MTN Ltd v Ross O'Daly* [2022] EAT 130. That decision relates to an employer's failure to respond to an Employment Tribunal claim within the usual time limit. A different test applies to a consideration of whether or not to extend time in those circumstances. This decision does not therefore assist in this case.

Findings of Fact

18. I confine myself to findings that are relevant to whether or not it was
 - (a) reasonably practicable for the Claimant to bring proceedings within 3 months; and
 - (b) if not, whether by bringing proceedings in October 2023, the Claimant did so in such further period as I consider reasonable.

19. The Claimant brought a claim of disability discrimination against the Respondent in 2019. In April 2022, a preliminary hearing was held to determine case management and various orders were made for the Claimant to prepare a Schedule of Loss, provide documents and a Witness Statement, all of which were to be done before the end of September 2022. A liability hearing was listed for July 2023 but did not take place because the Respondent admitted liability. A remedy hearing was listed in April 2024. Unfortunately, that had to be adjourned because the Claimant became unwell during the hearing. It eventually took place in June and July of this year.
20. Throughout the period with which I am concerned, the Claimant has been unwell. Reports prepared by Dr Pettit for the 2019 Tribunal proceedings confirm that he has an adjustment disorder and recurrent depressive disorder. Dr Pettit does not consider that the Claimant has PTSD (post-traumatic stress disorder). Whatever the label, it is clear from the reports that the Claimant experiences significant disabling symptoms.
21. Shortly before his transfer to the Respondent's employment from Public Health England (PHE), the Claimant had received a substantial payment said to be back pay after a failure to apply salary uplifts. The Claimant was concerned that his rate of pay was not updated notwithstanding this acknowledgement of underpayment. This was first raised with the Respondent in October 2021. In March 2022, the Claimant raised it again because no one had come back to him about it.
22. The Claimant saw Occupational Health on 11 May 2022. The report following that assessment confirmed that the Claimant was fit to commence a new role as Senior Project Manager, though recommending a 4 week phased return as well as adjustments detailed in a Workplace Adjustment Passport from PHE.
23. The Claimant began the new role in July 2022. A 6 week phased return was put in place. Adjustments were agreed and documented in a new Workplace Adjustment Passport. Through July and August, the Claimant communicated with the Respondent regarding arrangements for his new role including in respect of his salary and London weighting.
24. Jayshree Gorasia of the Respondent's HR department contacted the Claimant on 17 August 2022 to ask whether there were any outstanding pay issues. He replied on 31 August 2022, to confirm that there were and asked that *"it be treated as a formal pay dispute"*.

25. On 22 August, Siobhan Taylor, the Claimant's manager, emailed HR to confirm that the Claimant's phased return had "*gone fine*" and he was "*now pretty much up to full time working*". She confirmed that he was attending regular meetings and contributing "*in a confident and valuable manner*".
26. In August and September 2022, the Claimant worked on a digital intervention plan for weight management. He drafted a 9 page report with input from 4 colleagues.
27. On 5 September 2022, Siobhan Taylor refused the Claimant's request for special leave. He replied to ask the reason for refusal and for details of the Respondent's grievance procedure.
28. The Claimant continued to correspond with HR about the pay dispute, sending further emails on 6 September 2022 and 13 September 2022. After updates and revisions, the Claimant returned his signed contract of employment associated with the new role on 15 September 2022.
29. In November 2022, the Claimant was informed that Jayshree Gorasia was moving on and that "Peter" would be handing the pay issue. On 11 January 2023, the Claimant met with Peter West alongside his manager Siobhan Taylor to discuss the issue.
30. On 7 February 2023, Ms Taylor emailed Mr West asking for an update. The Claimant replied the following day to thank her for escalating the matter. In that email, he referenced the right not to suffer unauthorised deductions in Section 13 Employment Rights Act 1996.
31. The Claimant continued to correspond with the Respondent's HR team regarding the pay dispute throughout February and March 2023, providing the Respondent with information and explanation as to why he considered that his pay rate was wrong. On 9 March, Peter West asked the Claimant to send over a copy of the outcome letter from PHE regarding the grievance heard in September 2021. He explained that he would be leaving the Respondent and that Amie Payne would work to resolve the issue. The Claimant provided further information to Ms Payne and continued to correspond with her.
32. In March 2023, the Claimant produced a further document relating to the digital weight management programme in which he was described as a member of the steering group.
33. On 28 March 2023, Amie Payne asked the Claimant to send over his grievance outcome letter by 31 March or she would mark the grievance

closed. On 26 April 2023, Sharron Hogan, who by this time had taken over from Ms Payne, wrote to the Claimant to confirm that she was marking the grievance closed as HR had not heard from him further to the email of 28 March. The Claimant replied the same day questioning the grievance process, specifically the lack of meeting and the deadline for provision of information. Ms Hogan replied on the following day extending the deadline by 2 weeks.

34. Dr Pettit reports that the Claimant's mental state deteriorated from around April/May 2023, associated with the 2019 Tribunal proceedings and a breakdown in trust and confidence in his employer.
35. The Claimant emailed Ms Hogan on 2 May 2023 to say that he wanted to take *"the formal route"*. Ms Hogan replied on 10 May 2023 to request a call to understand what the Respondent could do to resolve the matter. The Claimant agreed and provided further information the same day. Further emails that day made arrangements to speak the following day.
36. Siobhan Taylor made an Occupational Health referral on 18 May 2023, expressing concern that the Claimant was under stress both regarding an internal restructure and from the Tribunal process, which was then expected to come to hearing in July 2023.
37. On 30 May 2023, the Respondent conceded liability in respect of some of the claims made in the 2019 Tribunal proceedings.
38. Ms Hogan emailed the Claimant on 5 June 2023 in which she indicated that she was *"sourcing support in understanding your outstanding pay issue"*, promising to update the Claimant when she returned from leave. The Claimant replied on 12 June to thank her for the update.
39. In early June 2023, the Claimant and Respondent's legal representatives had significant discussions regarding the 2019 Tribunal proceedings following which the Respondent conceded liability in respect of all of the claims.
40. The Claimant saw Occupational Health on 15 June 2023. The report confirmed that the Claimant remained fit for work, albeit psychologically vulnerable.
41. Ms Taylor made a further Occupational Health referral on 19 July, requesting a further assessment because she was concerned about his overall mental health and wellbeing and that being at work may be causing additional stress. A report was prepared on 8 August, following telephone consultation with the Claimant, confirming that he remained fit for work with adjustments.

42. In August 2023, the Claimant spent time in Nigeria. On his return to work, he was not able to return to the same role. He was worried about his future because the organisation was making redundancies.
43. On 28 September, the Claimant emailed Ms Hogan to express concern that the pay matter had been left unattended and requesting that it be escalated to “a superior HR Officer”. Ms Hogan replied the following day, apologising and offering to check “where we are” and respond the following week.
44. On 6 October, the Claimant emailed to say that he would have to “*step out from this unending internal resolution process*” and notify ACAS for Early Conciliation.
45. Whilst by the time the Claimant saw Dr Petitt in December 2023 he was experiencing disabling symptoms, the evidence to which I was taken does not suggest that these were present during the period with which I am concerned. The only fit notes to which I was referred in the bundle are outside the period July 2022 – October 2023. The Claimant was able to work, with adjustments, throughout this period. There are no relevant entries in the medical records to which I was taken in this time period.

Conclusions

46. To bring proceedings within the 3 month time limit, Claimant would have had to contact ACAS to commence Early Conciliation within 3 months. Then, if unable to resolve the matter in conciliation, he would have to fill out and submit an ET1. Time would have been extended for a period depending on when Early Conciliation was commenced and ended but the ET1 would have had to have been submitted at some time before mid-January 2023: if Early Conciliation commenced in late October and lasted 6 weeks, the Claimant would have had a further month from mid-December in which to bring a claim in time.
47. The Claimant did not suggest that he was ignorant of the time limit or of the process of bringing proceedings. He was familiar with Tribunal proceedings, having brought a claim for disability discrimination in 2019. He suggests that he was too unwell to bring proceedings at that time, and that he was corresponding internally because he was aware of the impact that the existing Tribunal proceedings had on his health.
48. However, at the relevant time (July 2022 – January 2023) whilst undoubtedly unwell, the Claimant was not experiencing the disabling symptoms he does

now. He was able to work, delivering a report and contributing to *“in a confident and valuable manner”*. He was able to correspond with his employer on a variety of subjects including the contractual terms for his new role, a request for special leave and this pay dispute.

49. It was only in April/May 2023 that his mental ill health deteriorated, said to be due to the stress of the 2019 Tribunal proceedings. At the relevant time, he was able to produce complex work, correspond with his manager and HR on a variety of subjects, and deal with the complex 2019 Tribunal proceedings. I am not satisfied that his ill health was so disabling as to prevent him from completing a form to commence ACAS Early Conciliation and thereafter an ET1 to commence Tribunal proceedings.
50. I have considered carefully the possibility that *Palmer* should be distinguished on the basis that the Claimant was exhausting internal proceedings because he was concerned about the impact of Tribunal proceedings on his ill health. But again, at the relevant time, there is insufficient evidence to support this conclusion. The medical evidence is that it was only in April/May 2023 that the Claimant’s mental health deteriorated because of the 2019 proceedings. The Tribunal hearing that was unable to proceed due to his ill health took place in April 2024.
51. It was therefore reasonably practicable for the Claimant to contact ACAS to commence Early Conciliation within the period July to October 2022 and for him to complete and submit an ET1 claim form before mid-January 2023. The Tribunal does not therefore have jurisdiction to consider the complaint because it was brought more than 3 months after the end of the series of deductions and because it was reasonably practicable for the Claimant to bring the claim within that time period.

Approved by:

Employment Judge Taft

23 October 2025

Judgment sent to the parties on:

29 October 2025

For the Tribunal:

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