**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100707/2025**

**Held in Glasgow on 24 October 2025**

**Employment Judge O'Donnell**

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| **Miss H Akbar** | **Claimant**<br>**In Person** |
| **FPKglasgow1 Ltd** | **Respondent**<br>**Not present and**<br>**Not represented**<br>**[No ET3 submitted]** |

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

1. The claimant was presented out of time but the Tribunal considers that it was not reasonably practicable for it to have been presented in time and was presented within such further period as was reasonable. The Tribunal, therefore, exercises its discretion to hear the claim out of time.

2. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of **£6812 (SIX THOUSAND, EIGHT HUNDRED AND TWELVE POUNDS).**

## REASONS

### Introduction

1. The claimant has brought a complaint of deduction of wages under Part 2 of the Employment Rights Act 1996.

2. The respondent has not lodged any response to the claim and so are not permitted to participate in the proceedings. They were not present or represented at the hearing. The Tribunal considered that it was in keeping with the Overriding Objective (in particular, to avoid unnecessary delay) to proceed with the hearing in the respondent's absence given their failure to engage with the proceedings.

3. The hearing was required because there was an issue of time bar and the Tribunal had to hear evidence to deal with this and the question of whether it would exercise its power to hear the claim out of time.

**Evidence**

4. The Tribunal heard evidence from the claimant

5. The claimant prepared a file of documents. A reference to a page number below is a reference to a page in that file.

**Findings in fact**

6. The Tribunal made the following relevant findings in fact.

7. The claimant commenced employment with the respondent on 27 May 2024 and her employment terminated on 4 November 2024.

8. The claimant was employed to manage the pottery painting section at the Firepit & Kiln restaurant run by the respondent.

9. The claimant was to be paid £16 an hour. The claimant's hours fluctuated week-to-week depending on the demands of the business. Other employees were paid on a weekly basis.

10. The claimant received no wages at all during her employment. She queried this a number of times and was assured that payment would be made but no payment was ever made during her employment.

11. The claimant produced copies of the staff rota at pp49-69 which shows that the claimant worked a total of 532 hours during her employment with the respondent.

12. After the end of her employment, the claimant came to an agreement with the respondent for the sums owed to her to be paid in instalments. A total of £1700 was paid over the period 28 November 2024 to 18 January 2025. The last instalment was paid on 18 January 2025. No further payment has been made since and the sums paid do not satisfy the debt owed to the claimant by the respondent in terms of wages.

13. After she resigned, the claimant carried out research into her legal rights. She did so by searching on Google and use AI (ChatGPT). She found out about her right to bring a claim to the Employment Tribunal (including the need to engage in ACAS Early Conciliation). She also found out that there was a three month time limit for bringing such a claim which ran from the date of the last payment. The claimant understood this to be the last date when she received a payment from the respondent, that is, 18 January 2025.

14. The claimant commenced ACAS Early Conciliation on 20 November 2024 and the Certificate was issued on 19 December 2024.

15. The ET1 was lodged with the Tribunal on 14 April 2025.

**Relevant Law**

16. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.

17. In terms of s13(3) ERA, a deduction of wages arises in circumstances where the total amount of wages paid by an employer to a worker on any occasion is less than the total amount of wages properly payable on that occasion.

18. Section 27 of the ERA defines "wages" which include any fee, bonus, commission, holiday pay or other emolument referable to a worker's employment whether payable under the contract or otherwise. Section 27(2)(b) excludes the payment of expenses from the definition of "wages".

19. Section 23(2) ERA states that the Tribunal shall not consider a complaint of deduction of wages unless it is presented within 3 months of the date of payment of the wages. Where there are a series of deductions then s23(3) states that the time limit runs from the last deduction in that series.

20. The Tribunal has discretion under s23(4to hear a claim outwith the time limit set in ss23(2) and (3) where they consider that it was not reasonably practicable for the claim to be presented within the 3 month time limit and it was presented within a further period that the Tribunal considers to be reasonable.

21. Under s207B ERA, the effect of a claim entering ACAS Early Conciliation is to pause the time limit until the date on which the Early Conciliation Certificate is issued. The time limit is then extended by the period the claim was in Early Conciliation or to one month after the Certificate is issued if the Early Conciliation ends after the normal time limit.

22. The burden of proving that it was not reasonably practicable for the claim to be lodged within the normal time limit is on the claimant (*Porter v Bandridge Ltd* [1978] IRLR 271).

23. In assessing the "reasonably practicable" element of the test, the question which the Tribunal has to answer is "what was the substantial cause of the employee's failure to comply" and then assess whether, given that cause, it was not reasonably practicable for the claimant to lodge the claim in time (*London International College v Sen* [1992] IRLR 292, EAT and [1993] IRLR

333, Court of Appeal and *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119).

24. One of the most common reasons why a claimant will not lodge their claim within the normal time limit is either ignorance of, or a mistake regarding, the application of the relevant time limit. The leading case on this is *Wall's Meat Co Ltd v Khan* [1978] IRLR 49 where, at paras 60-61, Brandon LJ stated :-

    *"the impediment [to a timeous claim] may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable."*

25. The test for whether it was reasonable for the claimant to be aware of the time limit is an objective one and the Tribunal should consider whether a claimant ought to have known of the correct application of the time limit (see Porter, Khan, Avon County Council v Haywood-Hicks [1978] IRLR 118).

26. Ignorance or mistake *"will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made"* (as per Brandon LJ in *Khan*).

27. Where the Tribunal concludes that it was not reasonably practicable for the claimant to have lodged his claim in time then it must go on to consider whether it was lodged in some further period that the Tribunal considers reasonable.

28. This is a question for the Tribunal to determine in exercising its discretion (*Khan*) but it must do so reasonably and the Tribunal is not free to allow a claim to be heard no matter how late it is lodged (*Westward Circuits Ltd v Read* [1973] ICR 301).

29. In assessing the further delay, the Tribunal should take account of all relevant factors including the length of the further delay and the reason for it. It will also be relevant for the Tribunal to assess the actual knowledge which the claimant had regarding their rights (particularly the application of the time limit) and what knowledge they could reasonably be expected to have or investigations they could reasonably be expected to make about their rights (*Northumberland County Council v Thompson* UKEAT/209/07, [2007] All ER (D) 95 (Sep)).

**Decision**

30. The first question for the Tribunal is whether the claim was lodged in time. The claimant argues that the time limit should run from 18 January 2025 when

the last instalment of the sum owed to her was paid by the respondent. However, this is not a correct interpretation of the law; a deduction of wages arises when a worker is paid less than they are entitled to be paid (s13(3) ERA) under their contract of employment and the time limit runs from the date when that payment should have been made (s23 ERA).

31. In the present case, on the basis that the claimant should have been paid weekly in line with the respondent's other employees, a deduction of wages occurred each week when she was not paid. There was a series of deductions and so the last deduction occurred on the last date when the claimant should have been paid her wages. This would have been the last date of her employment, that is, 4 November 2024.

32. The fact that the respondent subsequently agrees to pay the sums owed to the claimant does not reset the time limit or start it again. The rules governing the time limit are set by an Act of Parliament (s23 ERA) and these cannot be altered, either by the parties or the Tribunal.

33. In these circumstances, the ordinary time limit expired on 3 February 2025. The case was in Early Conciliation for 29 days and so the time limit is extended (by reason of s207B ERA) to 4 March 2025. This means that the claim was out of time when the ET1 was lodged on 14 April 2025.

34. The question is then whether it was not reasonably practicable for the claim to have been lodged in time.

35. The Tribunal finds that the reason why the claim was late was due to the claimant's mistaken belief that the time limit ran from the last instalment paid by the respondent. The Tribunal also finds that this mistaken belief was reasonable; the claimant had carried out research into her rights and identified that there was a three month time limit running from the last "payment"; the Tribunal can well see how a layperson could conclude that "payment" meant the last date when they received any form of payment rather than the date when they were last due to be paid under their contract of employment.

36. In these circumstances, the Tribunal considers that it was not reasonably practicable for the claim to have been lodged in time when the claimant was operating under a reasonably held belief that the time limit ran from a later date than it did.

37. The Tribunal also considers that the claim was lodged in a further reasonable period. Based on the claimant's mistaken belief that the limit would expire in April 2025, it is understandable why she lodged the claim when she did.

38. The Tribunal, therefore, exercises its power to hear the claim out of time.

39. The claimant having worked 532 hours over her employment and having an hourly rate of £16, she had earned a total of £8512. The sum of £1700 having been paid to the claimant by the respondent, this leaves the sum of £6812 being owed in respect of wages.

40. The Tribunal finds that the respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of **£6812 (SIX THOUSAND, EIGHT HUNDRED AND TWELVE POUNDS).**

**Date sent to parties** **04 November 2025**