EMPLOYMENT TRIBUNALS

Heard at	Croydon (by video)	**On** 17 November 2025
Claimant	Ms Esther Gichanga	
Respondent	Affectionate Care Home Limited	
Before	Employment Judge Fowell	
Appearances		
Claimant	In person	
Respondent	Mr Ariz Asaria	

JUDGMENT ON A PRELIMINARY ISSUE

The claim is struck out on the basis that there is no reasonable prospect of the claimant showing that it was presented in time.

REASONS

Background

1. This hearing was listed to consider whether to strike out the claim on two alternative bases: the first because of the delay in submitting the claim form and the second because it has not been actively pursued.

2. Under rule 38 (1)(a) Employment Tribunal Rules of Procedure, the Tribunal has power to strike out a claim where it has no reasonable prospects of success.

3. An application to strike out a claim is not decided on the basis of evidence presented on each side. It is limited to submissions only. The claimant's case has to be taken at its highest. The question therefore is whether or not there is a reasonable prospect of her ultimately satisfying the Tribunal that the claim was brought in time.

4. Under rule 38 (1)(d) it can also be struck out where it has not been actively pursued. Before an order of that sort is made the Tribunal should be satisfied that a fair trial is no longer possible or that it would be a proportionate response.

Time limits

5. This is a claim for unlawful deduction from wages and for failure to pay holiday pay. Ms Gichanga was working as a bank nurse. Her last shift took place on 14 January 2024 and her last pay slip was on 28 February 2024.

6. Subsequently, she went on a long course of training or study, unrelated to the respondent, and although her position is that she remained available for work and that the contract did not come to an end, that is not relevant to a claim for unlawful deduction from wages. Time starts to run from the date on which payment was due, in this case 28 February 2024. That was the day on which she received her last payment. (Her last day of work was 14 January 2024).

7. The claimant's position has been set out in correspondence. She has provided calculations provided to her on 2 December 2024 from Age Concern, according to which she was underpaid. She then wrote to the respondent to seek payment on 20 December 2024. They then referred the matter to their payroll team to see if there had been any underpayment. They thought not and the respondent wrote back to her in the New Year to let Ms Gichanga know their position. She responded on 12 January maintaining her stance.

8. The key dates from then on are as follows

a)	Early conciliation began on	15 March 2025
b)	Early conciliation ended on	31 March 2025
c)	The claim was submitted on	1 May 2025

9. By section 23(2) Employment Rights Act 1996, claims for unlawful deduction from wages have to be brought within three months of the date on which payment was due.

10. "Within" three months means three months less one day. Extra time can be added for time spent in early conciliation through ACAS and as a general rule they have to be contacted within that three month period. Once it comes to an end, the claim should generally be brought within a further month.

11. The first difficulty for the claimant is that she did not submit her claim within one month of the end of early conciliation. Again, it ended on 31 March 2025 and the claim form was submitted on 1 May 2025. That means that only the time spent in early conciliation - which was 16 days - can be added to the normal three month time limit.

12. If we go back three months from the date of the claim form, that would take us to 1 February 2025, and if we go back a further 16 days from there, we reach **15 January 2025.** So, any failure before then is potentially out of time.

13. Ms Gichanga has provided a letter dated 27 October 2025 explaining why she had not made more progress with the claim since she brought it, in particular because, she said, she had not received a copy of the response to the claim or the Tribunal orders given on 8 May 2025 which gave directions for a final hearing on 1 October 2025. No explanation has been offered however for the delays before she submitted the claim.

14. Hence, it is not clear:
    a) why she took so long to get advice from Age Concern between her last day of work and 2 December 2024
    b) why she took 18 days from receiving that advice before she wrote to the respondent about it
    c) why she did not start early conciliation then, and instead left it until 15 March 2025
    d) why she then took over a month from the end of early conciliation before issuing the claim.

15. Under section 23(4) Employment Rights Act 1996, time can be extended where:
    a) it was not reasonably practicable for the claim to have been made in time, and
    b) it was then made within such further period as the Tribunal considers reasonable.

16. Some general points are well-established. Firstly, according to the Court of Appeal in **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53, CA, the question of what is reasonably practicable should be given a "liberal construction in favour of the employee".

17. Secondly, it is a question of fact, not some refined legal concept. As Lord Justice Shaw put it in **Wall's Meat Co Ltd v Khan** 1979 ICR 52, "Practical common sense is the keynote."

18. Thirdly, it is for the claimant to show that it was not reasonably practicable. "That imposes a duty upon [her] to show precisely why it was that [she] did not present [her] complaint': **Porter v Bandridge Ltd** 1978 ICR 943, CA.

19. Those general points are as far as things can be taken, given the lack of any explanation for the delays in question. There may be a partial explanation for the first delay, during which Ms Gichanga was not working but studying, but after that the delays mount up and are very considerable.

20. Even if it was not reasonably practicable to have obtained advice about these matters before 2 October 2024, which is doubtful, over seven months then passed before the claim was submitted. Given the normal three-month time limit that is a major delay. Overall, even if that first delay is explained, there is no reasonable prospect of Ms Gichanga showing that it was not reasonably practicable to have submitted a claim (or started early conciliation) by 20 December 2024. And even if it was not reasonably practicable to have submitted the claim by then, the claim was not submitted within a further reasonable period.

21. Hence, the claim of unlawful deduction from wages is struck out as out of time.

22. The same conclusions apply to the claim for holiday pay. In general, time off should be taken as and when holiday is accrued. It should only be paid instead when the contract comes to an end. However, Ms Gichanga's position is that the holiday payments were due much earlier on. An email on 20 December 2024 stated that she had received a holiday payment in March 2022 but none in 2023 or 2024.

23. It appears therefore to be have been a contract that allowed for rolled-up or periodic holiday payments. Ms Gichanga's position was that, reviewing the sums paid to her by 28 February 2024, there had been an underpayment in relation to holiday pay. If so, then the same time limit issues arise.

Not been actively pursued

24. As already stated, a strike out warning was given by the Tribunal on the basis that the claim had not been actively pursued.

25. Originally, this case was listed for hearing on 1 October 2025 and standard directions were given for a two-hour wages case.

26. However, further case management orders were issued on 4 July 2025. They provided for evidence to be exchanged about the issues considered above, but no evidence has been provided and so the matter has had to be dealt with on the basis of submissions only. The hearing on 1 October 2025 was vacated.

27. Some limited evidence has been produced in the form of WhatsApp messages to show that there were continuing exchanges during 2024 about further shifts. Ms Gichanga has therefore focused on the question of when the contract came to an end.

28. She has since written to say that the order dated 4 July 2025 was confusing and that she had not even been aware of the hearing on 1 October. However she has not addressed the central question which is the reason for the delay.

29. The fact that she has not attended this hearing is also relevant to the question whether or not the case has been actively pursued. The tribunal has power under rule 47 to dismiss a claim entirely where a claimant fails to attend a hearing. I have not adopted that course but it indicates the importance of attending. Instead I have gone ahead and heard from the respondent and considered the written submissions from the claimant.

30. This is a separate basis on which the claim may be struck out. Given my conclusions on the time limit issue it is now a hypothetical consideration. But if I were wrong in relation to the time limit issue, the case would be left in a very unsatisfactory state. It would be necessary to list yet another hearing with little confidence that the claimant would comply with any further directions or attend the hearing. In those circumstances a strike out order for failing to actively pursue the claim also appears proportionate.

Claimant's attendance

31. Since giving the decision to strike out the claim I was advised at just after 10.30 this morning that the claimant had attended the hearing centre in person instead of joining the hearing by CVP. She reported to the Tribunal clerk that she did not know how to access CVP to join the hearing.

32. Unfortunately by the time I saw this message, at about 1040, the decision had already been given and the hearing ended.

33. I satisfied myself that the hearing had been listed by CVP and that the same email had been sent to both parties. Further, Ms Gichanga ticked the relevant box on the claim form to say that she could take part in video hearings. There is no record of any request by her to attend in person.

34. The fact that she attempted to join the hearing does, however, affect my conclusions in relation to whether the claim has been actively pursued, but not in relation to the time limit issue, and so the claim is struck out on that basis only.

35. There is a right to apply for a reconsideration of this decision. Any such application should address the reasons for the failure to attend by video and also the reasons set out above in relation to time limits.

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Employment Judge
Date: 17 November 2025

Sent to the parties on:
Date: 6 January 2026