EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000510/2026

Held in Glasgow via Cloud Video Platform (CVP) on 30 July 2026

Employment Judge S MacLean

Mr C Khalil	**Claimant** **In Person**
Lidl Great Britain Limited	**Respondent** **Represented by:** **Ms L Kaye -** **Barrister**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the Tribunal does not have jurisdiction under section 23 of the Employment Rights Act 1996 to determine the complaint of unauthorised deduction from wages.

REASONS

Background

1. The respondent is a well-known food retailer. The claimant commenced employment with the respondent on 18 April 2019 as a warehouse operator. The claimant remains employed by the respondent.

2. Early conciliation commenced on 20 February 2026 and an Early Conciliation Certificate was issued on 26 February 2026. The claimant presented his claim form to the Tribunal on 4 March 2026. In that claim, he complained of unauthorised deductions from wages.

3. The respondent resists the claim. It contends that any claim arising before 21 November 2025 was presented out of time and that the Tribunal therefore lacks jurisdiction to consider it. The respondent further submits that there is no basis upon which the claimant could establish that it was not reasonably practicable to present the claim within the statutory time limit.

4. On 21 April 2026, the claimant provided a schedule of loss relating to eight days worked in October 2023. By email dated 29 April 2026, the respondent

maintained its position that, now that the relevant period had been identified, the claim was out of time. The respondent noted that the claimant first raised the alleged underpayment approximately seven months after the purported deduction and did not commence Tribunal proceedings until approximately one year and eight months thereafter.

5. By email dated 7 May 2026, the claimant explained that he had been subjected to physical assault and verbal abuse by his manager. He also referred to the fact that his wife had been pregnant at the relevant time, that his son required intensive care shortly after birth, and that he provided care to another adult family member. He stated that he delayed bringing proceedings until his son's condition had improved and until he felt able to pursue the matter.

6. Employment Judge Mannion directed that a half-day preliminary hearing be listed to determine the issue of time bar. Before that hearing was listed, the respondent applied to strike out the claim under rule 38(1)(a) of the Employment Tribunals Rules of Procedure 2024 on the basis that it had no reasonable prospects of success. The respondent contended that the alleged deduction occurred on 17 October 2023 and that the time limit for commencing Early Conciliation therefore expired on 16 January 2024. As the claim was not presented until 4 March 2026, it was more than two years late. The respondent submitted that there was no compelling basis upon which the claimant could argue, and indeed he had not argued in his claim form, that it had not been reasonably practicable to present the claim in time. The application was referred to Employment Judge Mannion, who directed that both the strike-out application and the issue of time bar should be determined at the preliminary hearing. The claimant was invited to provide written comments on the strike-out application within 14 days.

7. On 18 June 2026, the claimant sent an email asking the Tribunal to take account of what he described as exceptional circumstances, namely his son's serious illness and admission to intensive care, together with his lack of awareness of his Tribunal rights at the relevant time.

8. At the outset of the hearing, I confirmed with the parties that there were two issues before the Tribunal: first, whether the claim had been presented in time and, secondly, whether the claim should be struck out on the basis that it had no reasonable prospects of success. I explained that different legal tests applied to those issues and that, if the time bar issue were to be determined substantively, I would require to hear evidence.

9. I explained to the claimant that this was a complaint of unauthorised deduction from wages under section 23 of the Employment Rights Act 1996 and that such claims are ordinarily subject to a three-month limitation period. I further

explained that the relevant statutory provisions required me to consider whether it had not been reasonably practicable for the claimant to present his complaint within that period. There was no dispute that the claim form had not been presented within time. Accordingly, I required to hear evidence from the claimant as to whether it had been reasonably practicable for him to lodge his claim within the statutory period, and, if not, whether he had done so within such further period as was reasonable. The claimant confirmed that he was able to give evidence and answer questions from Ms Kaye in cross-examination.

10. I made the following findings in fact.

Findings in fact

11. The claimant is employed by the respondent as a warehouse operative. He is contracted to work 16 hours each week. From time to time, he also works additional hours which may either be banked or paid.

12. On 17 October 2023, the claimant sent a message to his manager advising that his clock-in card was not functioning properly and that his timesheets for shifts worked during the previous week required correction.

13. On 28 March 2024, the claimant contacted the payroll officer with queries regarding his payslips. He was provided with the relevant password to access the documentation online. He replied indicating that he required a meeting to clarify certain matters appearing on the payslips.

14. On 21 May 2024, the claimant submitted a grievance concerning his manager's conduct. The respondent's Employment Law Department acknowledged the grievance and a grievance meeting took place on 29 May 2024. During that meeting, the claimant expressed concern that his manager had refused to allow him to work off a negative balance of 30 banked hours. He questioned whether that figure was accurate and stated that he had not been permitted to sign working-time correction forms which would have enabled him to verify the position.

15. Around June 2024, the claimant accessed via the internet information on about Employment Tribunals. He became aware that he had a right to bring Tribunal claims, that strict time limits applied, and that extensions were available only in limited circumstances.

16. The grievance was partially upheld. It was agreed that an informal meeting would take place to investigate the claimant's banked-hours balance. The grievance outcome was issued on 1 July 2024.

17. The claimant's son was born on 30 July 2024. Shortly afterwards, the claimant's son was admitted to intensive care where he remained for several months.

18. Around August 2024, the claimant contacted Citizens Advice Bureau Motherwell and understood that he could still bring a Tribunal claim, although there might be difficulties arising from delay.

19. The claimant decided to prioritise caring for his son and for his partner's brother, who required full-time care from the claimant and other family members. The claimant's son was discharged from hospital after some three to four months but continues to receive outpatient treatment. The claimant also referred to difficulties with his mental health

20. In January 2025, the claimant was suspended on full pay pending an investigation into gross misconduct. On 14 April 2025, the claimant raised a grievance regarding this matter. A grievance meeting took place on 26 May 2025 during which the claimant referred to issues with his previous manager in regard to his clock-in card.

21. Around January 2026, the claimant's son began attending nursery.

22. The claimant contacted ACAS on 20 February 2026 with a view to commencing Early Conciliation. Having obtained an Early Conciliation Certificate on 26 February 2026, he completed and submitted his claim form online on 4 March 2026.

Deliberations

23. I first considered whether the complaint related to a single deduction or a series of deductions. On the evidence before me, I was satisfied that the claim concerned a single alleged deduction in respect of payments which the claimant believed should have been included in his November 2023 salary.

24. I next considered whether the complaint had been presented within three months of the deduction. Taking the claimant's case at its highest, the relevant payment would have fallen due no later than 30 November 2023. In those circumstances, the complaint required to be presented by 29 February 2024. It was not presented until 4 March 2026. The complaint was therefore presented substantially out of time.

25. The issue then became whether it had not been reasonably practicable for the claimant to present the complaint within the prescribed period.

26. The question of reasonable practicability is not simply whether it was physically possible for a claimant to lodge proceedings. Rather, the Tribunal

must consider whether, in all the circumstances, it was reasonable to expect the claimant to have done so within the relevant time limit.

27. The concept extends beyond physical impossibility. It encompasses circumstances in which an employee is unaware of a time limit, misunderstands when it expires, or lacks knowledge of material facts. In such cases, the Tribunal must consider whether that state of ignorance was itself reasonable. If it was not, it may nevertheless have been reasonably practicable for the claim to have been presented in time.

28. I accept that, by February 2024, the claimant had not fully understood how the hours worked in October 2023 had been treated or whether they had been banked. I also accept that his relationship with his immediate manager was difficult and that he may not readily have been able to determine from his payroll information whether an underpayment had occurred. In those circumstances, I conclude that it was not reasonably practicable for him to present a complaint within the primary limitation period.

29. I therefore turned to consider whether the complaint was presented within such further period as was reasonable.

30. The claimant had access to both a mobile telephone and the internet. By March 2024, he had obtained digital access to his payslips and had identified concerns regarding the accuracy of his pay. He requested a meeting to discuss those concerns. During the grievance process in May 2024, he specifically raised questions concerning the calculation of his banked hours and whether the figures being applied were correct.

31. I accept that the claimant may have hoped that the matter would be resolved internally. However, by June 2024 he had obtain information about Employment Tribunals and was aware both of his right to pursue proceedings and of the existence of time limits. At that stage, he had sufficient information to make enquiries of ACAS and to commence the Tribunal process if he wished to do so.

32. There was no evidence before me that the claimant was unable to present a claim at that time. Rather, his position was that he hoped the matter might be resolved informally. Whilst that may explain his decision not to commence proceedings, it does not establish that it was not reasonably practicable for him to do so.

33. I have also taken account of the claimant's personal circumstances following the birth of his son. I fully accept that his son was seriously unwell, that the claimant's attention was understandably focused on supporting his family, and that he carried significant caring responsibilities. I also accept that these

matters placed him under considerable pressure and affected his own wellbeing.

34. Nevertheless, there was no evidence before me from which I could conclude that it was not reasonably practicable for the claimant to present his complaint by June 2024. During that period he remained capable of pursuing other administrative matters, including grievances and subject access requests. I do not accept that commencing Early Conciliation or presenting an Employment Tribunal claim would have been materially more burdensome.

35. By June 2024, the claimant had the information necessary to pursue a claim. He had attempted to resolve matters internally but was aware of the time limits for bring a claim to the Employment Tribunal. Commencing proceedings would not have prevented ongoing internal discussions from continuing.

36. Taking all of the circumstances into account, I am satisfied that it was reasonably practicable for the claimant to have presented his complaint well before March 2026. Accordingly, I conclude that the complaint was not presented within such further period as was reasonable.

37. The Tribunal therefore lacks jurisdiction to determine the complaint of unauthorised deduction from wages.

Date sent to parties 18th August 2026