EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No 8000898/2026

Preliminary Hearing held in Aberdeen by Cloud Video Platform on 24 September 2026

Employment Judge A Kemp

Mr P Elbourne	**Claimant** **In person**
Caherush Enterprises	**Respondent** **No appearance or representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. **The claim for a statutory redundancy payment is within the jurisdiction of the Tribunal, and the claimant is awarded the sum of SEVEN THOUSAND FIVE HUNDRED AND FORTY NINE POUNDS FIFTY PENCE (7,549.50) payable by the respondent.**

2. **The claim is otherwise not within the jurisdiction of the Employment Tribunal under section 23 of the Employment Rights Act 1996, or has been withdrawn by the claimant, and is dismissed.**

REASONS

Introduction

1. This was a Final Hearing which required to determine the issue of jurisdiction on the basis of timebar, and then remedy if the Tribunal had jurisdiction. The claimant is a party litigant and the respondent has not defended the claim. As the Tribunal is a creature of statute it must address jurisdiction itself before making any judgment in favour of a party.

2. In the claim form the claimant made claims that included under section 103A of the Employment Rights Act 1996. He confirmed in correspondence to the Tribunal for this hearing that he did not insist on that claim, and that he only sought to recover payments for a statutory redundancy payment, outstanding wages as statutory sick pay, and for accrued holiday pay. The claims beyond those matters are therefore dismissed under Rule 52 as having been withdrawn.

The issues

3. The issues I identified with the claimant at the start of the hearing are:

   (i) Whether the claim for a statutory redundancy payment was within the jurisdiction of the Tribunal under section 164 of the Employment Rights Act 1996 (“the Act”)?

   (ii) Whether it was not reasonably practicable for the claimant to have presented his claim form timeously in relation to unauthorised deductions from wages under section 23 of the Act, and if so whether he did so within a reasonable period of time?

   (iii) If the Tribunal has jurisdiction, what remedy is the claimant entitled to in relation to his claims?.

Evidence

4. The claimant was the only person who gave evidence. A file of documents was provided by him most but not all of which was spoken to.

Facts

5. I found the following facts, material to the issues before me, established.

6. The claimant is Mr Peter Elbourne.

7. The respondent is Caherush Enterprises Limited.

8. The claimant was employed by the respondent.

9. The claimant had been employed firstly by Omega Product Development Ltd then by New Wave Foods Ltd and latterly by the respondent. His employment transferred in each case under the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006. The claimant had continuous service from 1 April 2015.

10. The claimant's terms of employment were contained in a contract of employment issued by New Wave Foods Ltd.

11. The claimant had a gross monthly salary from the respondent of £4,675. He worked full time, on a five days per week basis. His holiday entitlement was to 28 days, with the holiday year being the calendar year.

12. On 2 December 2024 the claimant was informed by the respondent in writing that his position as CEO was to be redundant, and six months notice of termination of employment was given to him which was to expire on 2 June 2025. The claimant was informed that he required to work his notice period.

13. The claimant did so initially, but from in or around January 2025 was signed as unfit by his GP, who issued fit notes. He did not return to work but remained absent. Initially he received Company Sick Pay, and latterly Statutory Sick Pay. The payments ceased from and after 1 May 2025.

14. The claimant's employment terminated on 2 June 2025 in accordance with the notice given.

15. At the point of termination the claimant had accrued but untaken annual leave of 9.7 days. The claimant had taken approximately 2 days holidays in 2025.

16. The claimant commenced Early Conciliation (EC) on 4 June 2025. A Certificate therefor was issued on 16 July 2025.

17. On 18 June 2025 the claimant wrote to the respondent with a notice requiring payment of the statutory redundancy payment, SSP, and accrued holiday pay. The respondent did not reply.

18. The claimant thought that another creditor would likely pursue the insolvency of the respondent, or that the respondent would appoint an Insolvency Practitioner to do so. Neither took place. The respondent was at risk of strike off by Companies House which the claimant was aware of when periodically checking there. The claimant wrote to oppose that strike off, and it was suspended.

19. The claimant sought legal advice, and paid around £2,000 in fees for the same.

20. The claimant contacted the Redundancy Payments Service in or around September 2025 who sent him details of the process to make a claim.

21. The present Claim was presented on 17 April 2026.

22. No redundancy payment has been paid to the claimant.

23. He has outstanding wages due to him in relation to statutory sick pay totalling £558.13 and for annual leave totalling £2,049.81.

Law

24. There is a right to a redundancy payment provided for in sections 135 and 162 of the Employment Rights Act 1996. There is a timebar provision in section 164 as follows:

> "**164 Claims for redundancy payment**
> (1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
> (a) the payment has been agreed and paid,
> (b) the employee has made a claim for the payment by notice in writing given to the employer,
> (c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or
> (d) a complaint relating to his dismissal has been presented by the employee under section 111.
> (2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—
> (a) makes a claim for the payment by notice in writing given to the employer,
> (b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or
> (c) presents a complaint relating to his dismissal under section 111, and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.
> (3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an [employment tribunal] shall have regard to—
> (a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and
> (b) all the other relevant circumstances.
> ….
> [(5) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1)(c) and (2)."

25. The Tribunal has a reasonably broad discretion: *Pfaffinger v City of Liverpool Community College* [1996] IRLR 508.

26. The provisions of section 23 that are relevant to the present case as to the claim for unauthorised deductions from wages, a claim that arises under

section 13 with wages defined in section 27. The terms of section 23 are as follows:

> "**23 Complaints to employment tribunal.**
>
> (1) A worker may present a complaint to an employment tribunal
>
> (a) that his employer has made a deduction from his 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) …….the date of payment of the wages from which the deduction was made……
>
> (3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)
>
> (4) Where the tribunal is satisfied that it was not reasonably practicable or 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."

27. The burden of proof is on the claimant to prove that it was not reasonably practicable to present the complaint in time: *Porter v Bandridge Ltd* [1978] IRLR 271.

28. The question of what is reasonably practicable is explained in a number of authorities. In *Palmer and Saunders v Southend on Sea Borough Council* [1984] IRLR 119, a decision of the Court of Appeal, the court suggested that it is appropriate: "to ask colloquially and untrammelled by too much legal logic, 'Was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months'?" That, it explained, is a question of fact for the Tribunal taking account of all the circumstances which include whether the claimant had advice and what attempts he made to ascertain the remedies he could seek.

29. If the claimant is successful in arguing that it was not reasonably practicable to have presented the claim in time, it is then necessary to consider whether the claim was presented within a reasonable period of time thereafter. In *Cullinane v Balfour Beatty Engineering Services Ltd* UKEAT/0537/10 it was stated that the question whether a further period is reasonable is not the same as asking whether the claimant acted reasonably, but requires "an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted", having regard to the 'strong public interest' in claims being brought promptly, and against a background where the primary time limit is three months.

30. In *Howlett Marine Services Ltd v Bowlam* [2001] IRLR 201 it was confirmed that the issue of reasonableness in this respect was assessed having regard to all the circumstances.

Discussion

31. I accepted the claimant's evidence as credible and reliable. It appeared to me that the claimant fell within the primary terms of section 164 as he wrote to the respondent giving notice in writing of his claim on 18 June 2025. In any event if that was not sufficient I considered it just and equitable in the circumstances set out in the finding in fact to accept jurisdiction.

32. The amount of the statutory redundancy payment I have calculated in accordance with the terms of section 162. It is a function of his age, years of service, and the maximum amount for a week's pay. In the letter to him of 2 December 2024 the employer gave a figure, but the weeks' pay maximum was increased in April 2025 to £719. The amount of the payment due I calculate to be £7,549.50.

33. So far as the claims for unauthorised deductions from wages are concerned, I regret to say that I must find that the claimant has not proved that it was not reasonably practicable to have presented the Claim Form timeously. He commenced Early Conciliation, and had a period thereafter in which to do so. Whilst there were some issues over the prospective insolvency of the respondent which the claimant was aware of, including by looking on the Companies House website, by July 2025 he was improving in his health, and starting to find consultancy work. He also explained that he had sought legal advice. In these circumstances I cannot say that the has discharged the onus on him to show that it was not reasonably practicable to have presented the claim on time in this regard. I also did not find that even if that had been established the claim had been presented within a reasonable time. It was, in simple terms, unduly late.

34. I must dismiss that part of the claim for want of jurisdiction. I might add for completeness that a claim for breach of contract could also be the label applied to these claims, but effectively the same test arises under the Employment Tribunals (Extension of Jurisdiction) (Scotland) Regulations 1994 for breach of contract, and the Working Time Regulations 1998 for holiday pay.

Conclusion

35. The Tribunal has jurisdiction for the claim for a statutory redundancy payment, and an award in the sum due is made accordingly.

36. The claim for unauthorised deduction from wages is not within the jurisdiction of the Employment Tribunal and it must be dismissed.

Date sent to parties 12 October 2026