**Case Number: 6031240/2025**

# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr Peter Gardiner**

**Respondent:** **The University of Bristol**

**Heard at:** **Exeter by CVP**

**On:** **25 June 2026**

**Before:** **Employment Judge Gibson**

**Representation**
Claimant: In person
Respondent: Adam Pincott of Counsel

# JUDGMENT

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

# FULL REASONS

**JUDGMENT** with full reasons was given at the hearing on 25 June 2026 and written full reasons were requested at the hearing in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

Introduction

1. This hearing was a preliminary hearing in respect of time limits in relation to a complaint of unauthorised deduction from wages pursuant to section 13 of the Employment Rights Act 1996 (the “ERA 1996”).

2. By claim form presented to the Employment Tribunal (the "ET") on 23 August 2025 the Claimant, Peter Gardiner, issued a complaint of unauthorised deduction from his wages by the Respondent.

3. Mr Gardiner is a specialist animal technician at the University of Bristol and had worked for the Respondent since 2011. His primary responsibility

is the operation and welfare of an aquarium housing protected fish and cephalopod species.

4. Today's hearing was to determine whether Mr Gardiner's claim had been brought within the statutory time limits set out in s23(2) ERA 1996 and therefore whether the ET had jurisdiction to hear the complaint.

The Legal Principles

5. As I set out at the outset of this hearing time limits in the ET are not procedural niceties. They are a fundamental limitation on the right to have claims determined and go to the ET's jurisdiction to hear claims.

6. What this means is that in circumstances where time limits are not satisfied (subject to the ET's discretion to grant an extension in some instances) the ET lacks jurisdiction to deal with such claims.

7. The ET is a creature of statute and where a claim for unauthorised deduction from wages cannot be brought within the relevant statutory formula then I must dismiss the claim.

8. Subsections 23(2) and (3) ERA 1996 provide:

"(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) 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 payment received by the employer, the date when the payment was received.*

*(3) Where a complaint is brought under this section in respect of -*

*(a) a series of deductions or payments, or*
*(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,*

*the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received."*

9. The proviso in subsection (4) is as follows:

"*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."*

10. The case of *Pearce v Bank of America Merrill Lynch and ors* UKEAT/0067/19/LA makes it clear that where the three-month primary time limit has expired prior to the commencement of ACAS early conciliation, time cannot be further extended. In this case HH Eady said at paragraph 23:

    "*Although time may be extended to allow for ACAS EC...this would only be possible where the reference to ACAS takes place during the primary limitation period."*

11. The case of *Bodha v Hampshire Area Health Authority* 1982 ICR 200 EAT is also relevant. It was an Employment Appeal Tribunal (the "EAT") case where the claimant sought to rely on delay caused by his employer's internal appeal processes.

12. The EAT ruled that the existence of an impending internal appeal was not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to an ET within the time limit. This view was expressly approved by the Court of Appeal in Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372 CA.

13. The decision of *Cygnet Behaviour Health Limited v Britton* [2022] EAT 108 is also relevant. In this case the EAT held that notwithstanding a claimant's mental health problem and dyslexia and his focus on his employer's internal processes:

    "*...it flies in the face of reason to conclude that the claimant was able to do all of this and yet was not able to ask somebody so as to find out the time limits for a tribunal claim.*"

    <u>The Hearing</u>

14. I had before me a bundle of 125 pages which was fleetingly referred to by the parties.

15. The Claimant produced a witness statement for today's hearing which was his evidence in chief. The Claimant was cross examined by the Respondent's counsel Mr Adam Pincott.

16. Mr Pincott had also produced a legal note setting out what he considered as the relevant law statutory and case law I should apply in coming to a decision on time limits.

17. I was clear with the Claimant that this legal note was a summary of the law and the Respondent's submission and not evidence to which I attach weight.

18. Mr Pincott reminded me the jurisdictional nature of time limits was confirmed in the case of *Rogers v Bodfari (Transport) Limited* [1973] ICR 325 and was approved by the Court of Appeal in *Dedman v British Building and Engineering Appliances* [1974] ICR 53.

19. He also submitted that the Court of Appeal in 2010 reaffirmed this position in *Radakovits v Abbey National plc* [2010] IRLR 307 where it was held that the leading authorities in the context of unfair dismissal had clearly established that time limits go to jurisdiction and that jurisdiction cannot be conferred by an ET by agreement or waiver.

The Parties' Cases and Initial Findings of Fact

20. The Claimant's case was that he was required to undertake out-of-hours call-out duties but that no formal call-out allowance was paid by his employer for a significant period. Instead he was paid overtime for individual call-outs.

21. He argued this practice was not in accordance with the Respondent's plans, policies and established practices.

22. Mr Gardiner raised a formal grievance in August 2024 primarily in respect of on-call remuneration he had not received.

23. An investigation was undertaken by the Respondent during September and October 2024. His grievance was not upheld and this was formally communicated to the Claimant on 28 November 2024.

24. Mr Gardiner appealed this decision. The appeal was not upheld and this outcome was communicated to him on 13 February 2025.

25. The Claimant's claim to the ET was presented on 23 August 2025.

26. Mr Gardiner said he had not presented his claim form earlier because he was awaiting the outcome of his appeal before commencing proceedings.

27. The Respondent's case was that Mr Gardiner's claim was out of time and it was reasonably practicable for the Claimant to have presented his claim to the ET within the statutory time limits.

28. It argued consequently the ET had no jurisdiction to hear Mr Gardiner's claim and that therefore it should be dismissed.

Further Findings of Facts

29. I find the following facts:

29.1. 26 September 2024: The Respondent made the final disputed payment to the Claimant. The Claimant agreed this was correct.

29.2. 25 December 2024: This was the primary limitation date for Mr Gardiner's ET claim.

29.3. 07 May 2025: The Claimant commenced early conciliation with ACAS.

29.4. 18 June 2025: ACAS issues the early conciliation certificate and this date was after the primary limitation period had expired.

29.5. 23 August 2025: Claimant presented his claim.

30. In his evidence the Claimant acknowledged that he had failed to meet the time limits set out in the ERA 1996. He said he had made a mistake which was unintentional.

31. He said that:

31.1. He was genuinely seeking to exhaust the Respondent's grievance process including the appeal before making a claim to the ET;

31.2. The Respondent's handling of the grievance process caused delay out of his control;

31.3. He reasonably believed the issue could be resolved without litigation; and

31.4. In any event during the process he was supporting his husband through developing health issues;

32. I accept that this was a genuine reason and that at the time he was unaware of how time limits operate in respect of unauthorised deductions from wages complaints.

33. Mr Gardiner accepted under cross examination that following the appeal outcome he carried out some research into the law but that he understood the time limit for his complaint was three months after the appeal outcome.

34. He assumed that the time would start to run from the conclusion of the Respondent's internal process and this would have been 13 February 2025 when he was notified of the outcome of his appeal in respect of the grievance process.

35. Mr Gardiner said this was why in his opinion it was not reasonably practicable to commence proceedings before 13 February 2025 and that in any event he had gone to ACAS on 07 May 2025 which was within the applicable timeframe.

36. In cross examination the Claimant acknowledged he had undertaken research into time limits for unauthorised deductions from wages claims on the search engine Google and via AI using ChatGPT.

37. He saw there were references to time limits and that in hindsight he should have paid more attention to them.

38. Mr Gardiner did not explain why he had not conducted a more thorough check but said he assumed the three-month window commenced after the date of the final appeal outcome.

39. He believed it was appropriate and necessary to await this final outcome before taking "external" action against his employer.

40. He also said because he considered there had been failings by the Respondent to meet its own time limits in its internal grievance process (although he accepted this was not done on purpose or as a means to mislead him) this meant it was not reasonably practicable for him to meet the primary limitation date of 25 December 2024.

41. Mr Gardiner confirmed he was well aware of the internal grievance process and had spent considerable time chasing the Respondent in relation to his matter.

42. The Claimant's approach in this respect is difficult to reconcile with his ignorance of the time limit requirements of the ERA 1996.

Analysis and Conclusions

43. The burden of proof was on the Claimant to show that it was not reasonably practicable to have presented his claim in time.

44. I am satisfied the balance of probabilities that it was reasonably practicable for the Claimant to have presented his complaint in time.

45. In coming to this conclusion, I have considered the evidence of Mr Gardiner, Mr Pincott's submissions and his legal note, the statutory rules and the relevant case law and in particular the cases of Dedman v British Building and Engineering Appliances ("Dedman") and Bodha v Hampshire Area Health Authority 1982 ICR 200 ("Bodha").

46. Dedman concerned a case where the Claimant pleaded ignorance of the law as Mr Gardiner had done in his evidence and submissions.

47. I asked myself what opportunities did Mr Gardiner have to find out that time limits applied in respect of his complaint?

48. I concluded he had every opportunity at any time prior to and during the grievance process to research his right to bring a claim that his employer had made unauthorised deductions from his wages and his research would most likely have highlighted the three-month time limit for such a claim.

49. Indeed Mr Gardiner acknowledged he had searched Google and ChatGPT. He also had the help of his trade union (UNITE) representative throughout the grievance process and had spoken to ACAS where he could have confirmed what the time limits were.

50. So it was plain Mr Gardiner did some research and engaged with people and organisations which had wider knowledge and could help him understand what he needed to do to bring a claim. The only conclusion I can draw is that his research was simply not sufficiently thorough.

51. The Claimant was not able to give me a reason why he was unaware of the applicable time limits and instead repeatedly pointed to his belief that he thought he had to exhaust the internal grievance process first.

52. I have considered the proposition that a person may be capable of

understanding and pursuing one process does not necessarily mean she or he is equally capable of pursuing or understanding another process but have rejected this possibility given the decision in *Cygnet Behaviour Health Limited v Britton*.

53. I do not find that Mr Gardiner was misled by the Respondent in any respect.

54. For the sake of completeness on the basis I have found that it was reasonably practicable for the Claimant to have brought his complaint within the three-month time limit, I do not need to consider whether Mr Gardiner's complaint was presented within such further period as I consider reasonable as set out in s23(4) ERA 1996.

55. To conclude I said to Mr Gardiner that in Bodha the EAT commented that a previous suggestion that Parliament might consider passing an amendment to legislation so that time would not start running until internal appeal procedures have been exhausted had not been taken up and said "...*the case for amendment remains as strong today as it was in 1973. We express hope that the matter may receive the consideration of Parliament in the near future."*

56. For all these reasons I determine that the ET does not have jurisdiction to deal with Mr Gardiner's claim and therefore his claim is dismissed.

Approved by:
**Employment Judge Gibson**
**10 October 2026**

JUDGMENT SENT TO THE PARTIES ON
29 October 2026

**Notes**

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

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www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/