

RM/MF



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Rebecca Edmonds

**Respondent:** Andrew McLean

**Heard at:** East London Hearing Centre

**On:** 30 April 2018

**Before:** Employment Judge Brown

## Representation

**Claimant:** In person

**Respondent:** Did not attend and was not represented

## JUDGMENT AT A PRELIMINARY HEARING RULE 21 JUDGMENT

The judgment of the Tribunal is that:-

1. It was not reasonably practicable for the Claimant to bring her complaints of notice pay and contractual failure to reimburse expenses in time and the Claimant did bring claims within a reasonable time thereafter. The time for presentation of the Claimant's notice pay and other contract claims is extended to 2 February 2018.
2. The Claimant did bring her complaints of failure to pay holiday pay and unlawful deductions from wages in time.
3. The Claimant is permitted to amend her claim to add the title "notice pay" to the facts already pleaded.
4. The Respondent has not presented an ET3 response to the Claimant's claims within the time required (by 12 March 2018). Pursuant to Rule 21 Employment Tribunal Rules of Procedure 2013 the Claimant's claims of breach of contract, failure to pay holiday pay, failure to pay notice pay and unlawful deductions from wages against the Respondent succeed.

5. **The Claimant does not have the requisite service to bring a complaint of unfair dismissal and her claim of unfair dismissal is dismissed.**
6. **The Claimant does not bring a claim of protected disclosure detriment.**
7. **The Respondent shall pay the Claimant the following sums in respect of each of her claims:**
  - (i) **Failure to pay notice pay: The Respondent shall pay the Claimant one week's pay in the sum of £335.63 net;**
  - (ii) **Failure to pay holiday pay: The Respondent shall pay the Claimant two weeks' unpaid holiday pay in the sum of £671.26 net;**
  - (iii) **Unlawful deductions from wages: The Respondent shall pay the Claimant three weeks' unpaid wages being £1,006.89 net;**
  - (iv) **Unlawful deductions from wages: The Respondent shall pay the Claimant unpaid overtime of 21 hours overtime at £9.00 per hour net pay = £189.00 net;**
  - (v) **Breach of contract, failure to pay expenses: The Respondent shall pay the Claimant her expenses in the sum of £11.97.**
  - (vi) **The Respondent shall therefore pay the Claimant a total of £2,232.75 net.**

## REASONS

1 By a claim form presented on 2 February 2018 the Claimant brought complaints of unfair dismissal, unlawful deductions from wages, failure to pay holiday pay and claims for other payments against the Respondent her former employer. The Claimant had undergone ACAS Early Conciliation between 31 January 2018 and 3 February 2018. In her claim form, the Claimant said that she was asked by the Respondent to leave her employment on the morning of 21 October 2017. In her claim, the Claimant also said that she was bringing complaints including claims for a failure to pay overtime and a failure to reimburse the Claimant for expenses.

2 The Employment Tribunal sent the Claimant's claim to the Respondent, sending it a Notice of Claim on 12 February 2018 and telling the Respondent that, if the Respondent wished to defend the claim, his response must be received by the Tribunal office by 12 March 2018. The Respondent has not defended the claims. Also on 12 February 2018, the Tribunal wrote to the parties, listing a hearing for today, stating that the Preliminary Hearing would decide the following issue: whether the claim should be dismissed because the Claimant was not entitled to bring it if the statutory time limit had expired.

3 The Claimant attended today's hearing. The Respondent, who had not presented an ET3 response to the Claimant's claim, did not attend today's hearing. Seeing that the Respondent had failed to present a response, a Rule 21 Judgment could be issued against the Respondent, if the Claimant's claims had been brought in time.

4 The Claimant confirmed that she did not have 2 years' service and that she was not bringing any form of protected disclosure claim. The Tribunal did not have jurisdiction to hear the Claimant's claim for unfair dismissal, *s108 Employment Rights Act 1996*.

5 The Claimant gave evidence at today's hearing. She told me that she had been summarily dismissed on 21 October 2017. She said that the Respondent had given her an hour to pack her things and leave. She said that she understood that her employment had ended that day.

6 The Claimant told me that, at the start of her employment, the Respondent had agreed to pay her monthly. She told me that he always paid her in the first or second week of the following month for the previous month's work, so that, for example, for her July work, her employer paid her on 7 August; for her August work her employer paid her on 12 September; and, for her September work, her employer paid her on 6 October. The Claimant produced her bank statements to show me that these were the dates upon which payments were made. The Claimant also said that she was paid £500 in cash in July for her work in June, although she could not remember the precise date the payment was made in July.

7 The Claimant told me, at the start of her employment, the Respondent had agreed to pay her £1,454.40 net per month. The Claimant told me that she expected to be paid after the end of her employment. With the help of her father, she sent two letters to her employer, asking to be paid, but eventually realised that the Respondent was not going to pay her.

8 The Claimant had accepted another job, on about 26 October 2017, very shortly after her employment ended with the Respondent. This job was based at Six Mile Bottom in Suffolk CB8 0UT. The Claimant was working and living at her new employer's address. There was little, or no, internet coverage in that area, nor was there any consistent or reliable telephone signal. The Claimant was therefore prevented for large periods of time from making enquiries online, or by telephone, about her employment rights, Employment Tribunal claims and the time limits for presenting claims to the Employment Tribunal.

9 The Claimant eventually organised a booster for her internet signal. She needed to travel to her parents' address in **Saffron Walden** to do so and, in order to travel from her employer's address; she needed to borrow a car from her employer. The Claimant was also eventually able to contact the Citizens Advice Bureau in about the second week of January 2018 and was able to secure appointment for 24 January, which was the only day that she had off work when the Citizens Advice Bureau was open. She acted promptly when she received advice from the Citizens Advice Bureau about Employment Tribunals and Tribunal claims and the necessity of presenting a claim. ACAS on 31 January 2018. The conciliation period ended on 2 February and the Claimant immediately submitted a claim online, because she had organised a booster for her internet signal at that time and then had internet access.

10 The time limit for bringing claims for unlawful deductions from wages is set out in *s23 Employment Rights Act 1996*.

“(s23(2)) ...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....”

11 With regard to holiday pay claims, time limits are set out in *Regulation 30 Working Time Regulations 1998*. *Regulation 30* provides:

“(1) A worker may present a complaint to an employment tribunal that his employer - .....

(b) has failed to pay him the whole or any part of any amount due to him under Regulation 14(2) or 16(1).”

(2) .... an employment tribunal shall not consider a complaint under this regulation unless it is presented –

(a) before the end of the period of three months ... beginning with the date on which it is alleged that... the payment should have been made,

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaints to be presented before the end of that period of three ... months.”

12 The “reasonable practicability” test applies also to claims for unlawful deductions from wages and breach of contract, pursuant to applicable statutory provisions.

13 By *s86 Employment Rights Act 1996*, an employee who has been employed for one month or more is entitled to be paid not less than one week’s notice if his period of continuous employment is less than two years.

14 The time for presentation of contract claims is set out in *Regulation 7 Employment Tribunal Extension of Jurisdiction Order 1994*. *Regulation 7* provides:

“... an employment tribunal shall not entertain a complaint in respect of an employee’s contract claim unless it is presented –

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim ...”

15 On the evidence I heard today, I decided that the monthly date for payment of the Claimant’s wages was on 6<sup>th</sup> day of the month following the month for which payment was due. Accordingly, the date the Claimant’s wages and holiday pay should have been paid

to her was on 6 November; November follows October, which was the last month she worked and following which she should have been paid holiday pay on termination of employment. The Claimant's claim was submitted within three months of 6 November 2017 when it was presented on 2 February 2018. The Claimant had also undergone early conciliation in that period.

16 However, the time for presenting the Claimant's contract claims, for notice pay and failure to pay expenses, ran from the effective date of termination. The date of the effective termination of the contract in this case was 21 October 2017. The Claimant told me clearly that she knew that her contract had ended on that date.

17 Regulation 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides, at Regulation 7(c), that the Employment Tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented:

"Where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within (the relevant period of three months) within such further period as the tribunal considers reasonable."

Those words have been considered in the context of unfair dismissal legislation. Where a claimant fails to present a claim in time and seeks an extension of time, the employee must show that it was not reasonably practicable to present the claim in time. The burden of proof in proving this rests on the Claimant *Porter v Bandridge Ltd* [1978] IRLR 271. If the Claimant succeeds in doing so the Tribunal must be satisfied that the time within which the claim was, in fact, presented was reasonable. The question of whether it was reasonably practicable for the complaint to be presented is one of fact for the Employment Tribunal taking into account all the relevant factors *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119.

18 The Claimant's lack of knowledge of his rights and of the time limit may assist the Claimant in establishing that it was not reasonably practicable to present a claim in time see *Marks & Spencer v Williams Ryan* [2005] ICR 1293 and *John Lewis Partnership v Charman* UKEAT/79/11.

19 In this case, I found that, almost immediately after her dismissal, the Claimant mitigated her loss by obtaining another job. Her new job required her to live in the countryside in Suffolk, where there was little or no internet signal and little or no telephone signal. I considered that this meant it was not reasonably practicable for the Claimant to make her own enquiries about Employment Tribunals and Employment Tribunal time limits.

20 The Claimant's father did assist her in writing letters to her employers, but there was no evidence that her father was, in any way, an expert in employment law. I accepted the Claimant's evidence that she was, in any event, effectively prevented from accessing information and assistance for large periods of time, by her lack of internet and telephone access. I considered that the Claimant acted appropriately to seek a booster for her internet signal, which she did in about January 2018. I also considered that, due to the Claimant's remote location, she was not able to travel to obtain information about Employment Tribunals and Employment Tribunal time limits and was only able to do so on the rare occasions when she borrowed her employer's car.

21 The Claimant discovered about Employment Tribunals and the requirement to submit claims promptly when she attend the CAB in January 2018. She sought Early Conciliation through ACAS and then made a claim to the Employment Tribunal, when she discovered her rights on attending the CAB. I found that it was not reasonably practicable for the Claimant to have presented her claim before she visited the CAB and found out about the requirement to put in a claim to the Employment Tribunal. She acted very promptly in contacting ACAS and submitting a claim thereafter and, therefore, she did so within a reasonable time after the expiry of the time limit.

22 I therefore extended time for the Claimant's claims of failure to pay expenses and a failure to pay notice pay. In so far as the Claimant was required to amend her claim to attach the label "notice pay" to it, I permitted the Claimant to amend her claim because it seemed to me that she had quite clearly pleaded that she had been dismissed without notice in the body of the claim form. Therefore, the Claimant brought all her claims in time.

23 The Respondent had not presented a response to the claims and the Claimant was entitled to a Rule 21 judgment. I decided that I would issue a Rule 21 judgment today.

24 The Claimant gave evidence about the remedy she sought.

25 The Claimant's net weekly pay was £335.63. I considered that the Respondent should pay her one week's notice.

26 The Claimant brought a claim for two weeks holiday pay for £671.26 net. I decided that the Respondent should pay her this sum for accrued but untaken holiday on termination of employment.

27 The Claimant also claimed for three weeks unpaid wages, in the sum of £1,006.89, for the work she did in October 2017, but for which she was not paid. I decided that the Respondent should pay her £1,006.89 net for unlawful deductions from wages.

28 She told me that she had worked 21 hours' overtime. Her employer had agreed to pay her overtime at £9 net per hour, but had never paid her this overtime. I decided that the Respondent should pay the Claimant £189.00 net for her unpaid overtime pay.

29 The Claimant had also spent money on groceries for her employer which the employer had promised to reimburse, but never did. Under the contract the Claimant was entitled to be paid those expenses. I decided, therefore, that she should be paid £11.97 by her employer to reimburse her for those expenses. The total the Respondent shall pay to the Claimant £2,232.75 net.

Employment Judge Brown

24 May 2018

