



# EMPLOYMENT TRIBUNALS

**Between:**

Mrs L Fullwood  
**Claimant**

**and** Mellors Catering Services Limited  
**Respondent**

**Heard at:** Leeds **on:** 15 February 2022

**Before: Employment Judge Cox**

**Representation:**

Claimant: Did not attend

Respondent: Did not attend – written submissions only

## RESERVED JUDGMENT AFTER PRELIMINARY HEARING

The claim is dismissed, having been presented out of time.

### REASONS

1. The Respondent provides catering services to schools. At the relevant time, the Claimant worked as a kitchen assistant at Meadowhead Academy School. After a period of early conciliation through ACAS from 2 to 6 July 2021, she presented a claim to the Tribunal on 12 July 2021 alleging that the Respondent had failed to pay her the correct amount of holiday pay. She said that other employees from the same school were also trying to claim. The Tribunal has taken this to be a reference to other Claimants who are also alleging underpayment of holiday pay during a period of furlough leave from March to August/September 2020. The Tribunal has to decide as a preliminary point whether it has power to deal with the claim in the light of the date on which it was presented and the time limits for such claims.
2. The time limit for presenting a claim of underpayment of holiday pay is slightly different according to how the claim is categorised. If it is viewed as a claim under the Working Time Regulations 1998 (WTR) that an employer had failed to pay a worker any part of the amount due to her for a period of leave under

Regulation 16(1) WTR, the claim must be made before the end of the period of three months beginning with the date on which it is alleged the payment should have been made (regulation 30(2)(a)). The claim can proceed, however, if the Tribunal is satisfied that it was not reasonably practicable for the worker to present the claim by that date and she has presented it within a further period that the Tribunal considers reasonable (Regulation 30(2)(b)).

3. If the claim is viewed as a claim that the employer has made an unauthorised deduction from the worker's wages (which includes holiday pay), the claim must be made before the end of the period of three months beginning with the date of payment of the underpayment or, if there is a series of underpayments, before the end of the period of three months beginning with the last underpayment in the series (Section 23(3) of the Employment Rights Act 1996 – the ERA). If the Tribunal is satisfied that it was not reasonably practicable for the worker to present the claim by that date, the claim can still proceed if the Tribunal accepts that it was made within a further period the Tribunal considers reasonable (Section 23(4) ERA).
4. In either case, the legislation extends the time limit for bringing a claim to allow for the period of early conciliation through ACAS, but only if the worker contacted ACAS to start the early conciliation process within the basic three month time limit (see Regulation 30B WTR and Section 207B ERA).
5. There is nothing in the claim form to indicate the dates of the holidays that the Claimant says were underpaid, nor the dates on which the Claimant received her alleged underpayments of holiday pay. Nevertheless, for the purposes of establishing whether the claim has been presented in time and taking into account the paydates provided by the Respondent, the Tribunal is prepared to assume in the Claimant's favour that her claim is of a series of unauthorised deductions from wages and that she did not receive the final instalment of alleged underpaid holiday pay until 18 September 2020. As she did not contact ACAS under the early conciliation procedure until 2 July 2021, the period of early conciliation cannot extend the time limit for her claim. The claim should have been presented by 17 December 2020. It was not in fact made until nearly seven months later.
6. It is for the Claimant to establish that it was not reasonably feasible for her to present her claim within the usual three-month time limit. The fact that a Claimant does not know of her right to bring a claim or the time limit for bringing it does not mean it was not reasonably feasible for her to present the claim, unless her lack of awareness of her right and the time limit was reasonable. The Tribunal takes judicial notice of the fact that information about the right to holiday pay and how to enforce it is readily available on the internet, including, for example, on Government and ACAS websites that are authoritative, free, and easy to access.

7. On 21 September 2021, the Tribunal directed the Claimant to provide a statement setting out her evidence on why her claim was not presented earlier, 14 days before the Preliminary Hearing. On 26 November 2021 that direction was varied to require the Claimant to provide her statement 28 days in advance of the Hearing. The Claimant did not submit a statement but she did write to the Tribunal on 13 December 2021 to say: *“my claim was not presented earlier as at first I didn’t realise then when I enquired about it was told to put in a claim”*. The Claimant also said that she would not be attending the Preliminary Hearing as she did not work for the Respondent any more but she would like to be paid what she was owed.
8. The Tribunal therefore had no evidence from the Claimant about when she first thought she had been underpaid nor when she first enquired about her rights and how to enforce them. Further, the Tribunal had no evidence on why, if she first made those enquiries shortly before she made her claim, she did not make them earlier. In the circumstances, the Claimant has now shown that it was not reasonably feasible for her to present her claim in time.
9. The claim is therefore dismissed.

Employment Judge Cox  
Date: 25 February 2022