



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Wragg

**Respondent:** Safetykleen UK Ltd

**HELD AT:** Sheffield

**ON:** 12 June 2020

**BEFORE:** Employment Judge

**REPRESENTATION:**

**Claimant:** In person

**Respondent:** Mr S Quantrill of Quantrill's Solicitor

## JUDGMENT AT AN OPEN PRELIMINARY HEARING conducted by telephone

My Judgment is that:-

1. The Tribunal does not have jurisdiction to determine the complaint of breach of contract.
2. The Tribunal does have jurisdiction to determine the complaint of unauthorised deduction from wages.

# REASONS

1. Although I gave full oral reasons at today's telephone hearing I consider that it would be helpful, especially for the unrepresented claimant, for me to set out my reasoning in writing.
2. This claim is about rest breaks and specifically whether those breaks should have been paid. The claimant, who was employed as an HGV driver, contends that the respondent had been "taking 45 minutes per day out of my wages for the last four years" to quote from what he says in his claim form.
3. In its grounds of resistance, the respondent, accurately in my judgment, identifies that the legal complaints being brought are those of unauthorised deduction from wages (Employment Rights Act 1996 section 13) and breach of contract under the Tribunal's contractual jurisdiction which is afforded by the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
4. In an Order made on 19 May 2020, after a preliminary consideration of the papers, Employment Judge Deeley set the claim down for a hearing which would consider whether the Tribunal had jurisdiction or power to hear those two complaints by reference to the date of presentation. The respondent was contending that the claim had been presented out of time. The parties had not been required to prepare witness statements or disclose documents.
5. Today the claimant has answered questions that I have put to him so that I could get a better understanding of the relevant issues and he has also been asked questions by the respondent's solicitor. No evidence was tendered by the respondent. It was realised during the hearing today that there was some dispute as to when the claimant received his last payment from the respondent and so I adjourned the hearing in order that, among other things, the claimant could provide a copy of his last pay slip and the respondent could provide the copy of a letter dated 13 November 2019 which the respondent wrote to the claimant confirming the claimant's resignation.
6. It is common ground that the claimant's employment with the respondent terminated on 31 October 2019 when the claimant resigned, apparently without notice, on that date. He did not present his claim to the Tribunal until 7 April 2020 but prior to that he had engaged with ACAS seeking an ACAS early conciliation process on 24 February 2020, with the ACAS early conciliation certificate being issued on 24 March 2020.
7. I find that the last payment which the claimant received from the respondent was as set out in a payslip dated 28 November 2019 and the payment was actually made on the same date. It follows that the reference in the 13 November 2019 letter to the claimant not being entitled to any further salary payments was wrong. The November 2019 payment, in respect of which I have seen the payslip, may have been in relation to overtime only but it is the claimant's contention that there

had been an unlawful deduction from that payment, as there had been throughout his employment. Whether or not that is the case can only be resolved at a final hearing.

**8. Jurisdiction in respect of the breach of contract complaint**

For this type of complaint the time limit is set out in Article 7 of the 1994 Order to which I have referred. Essentially such a claim must be brought within the period of three months beginning with the effective date of termination of the contract giving rise to the claim. However where a Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that time then there can be an extension to such further time of presentation as the Tribunal considers reasonable.

Applying those provisions to the claimant's case, as the effective date of termination was 31 October 2019, the last date for presenting the breach of contract complaint in time would have been 30 January 2020. The claimant is not entitled to any extension because of the ACAS process (that is under the provisions of Article 8B of the 1994 Order) because the ACAS process did not begin until after the primary limitation period had expired.

9. On my enquiry the claimant told me that he was aware that he had a potential claim against the respondent for the alleged deductions around Christmas 2019. That was because colleagues or former colleagues of his who were in the union had apparently got some advice to that effect. In these circumstances I consider that it would have been reasonably practicable for the claimant to have presented his breach of contract complaint in time. As it was not in fact presented until 7 April 2020 I find that the Tribunal does not have jurisdiction to entertain this part of the claim.

**10. Jurisdiction in respect of the unauthorised deduction from wages complaint**

The time provisions are set out in the Employment Rights Act 1996 at section 23. Section 23(2) provides that an Employment Tribunal shall not consider such a complaint unless it is presented before the end of the period of three months beginning with the date of the payment of wages from which the deduction was made, or in the case of a series of alleged deductions, from the last in that series. It follows that here time does not run from the date when the employment ended but rather from the date of the last relevant payment.

11. Because I have found that date to be 28 November 2019, it follows that the primary limitation period would mean that the claim had to be presented by 27 February 2020. However, I then need to consider the effect of the ACAS early conciliation period and the provisions in the Employment Rights Act 1996 equivalent to those that I have already referred to in the 1994 Order, which are in section 207B.
12. I have already given the dates of the commencement of early conciliation and the issue of the certificate. This means that I am able to calculate Day A which is a day after the process began and Day B which is the date when the certificate was issued. I am also able to calculate what are usually referred to as the non-counting days under the provisions of section 207B(3). In this case there are 29 such days. That means that the claimant is entitled to an initial extension to the 27 March 2020.

I then need to consider the provisions of section 207B(4) which provides that if a time limit set by a relevant provision would (if not extended by the subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period. In this case Day B was

24 March 2020. The extension is therefore to 24 April 2020. This means that the claim presented as it was on 7 April 2020 in respect of the deduction from wages complaint was presented in time. Accordingly the Tribunal has jurisdiction.

13. Case management orders are given in a separate document.

Employment Judge Little  
Date 16<sup>th</sup> June 2020