



# EMPLOYMENT TRIBUNALS

**Between:**

Mrs C Ibbotson  
**Claimant**

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

**Heard at:** Leeds **on:** 16 February 2022

**Before: Employment Judge Cox**

**Representation:**

Claimant: In person  
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. The Claimant works for the Respondent as a catering assistant at Meadowhead School. After a period of early conciliation through ACAS from 5 to 19 July 2021, she presented a claim to the Tribunal on 6 August 2021 alleging that the Respondent had failed to pay her the correct amount of holiday pay. At the Preliminary Hearing, she confirmed that the claim relates to holiday pay due during a period of furlough leave from March 2020 to when the school term began in the first or second week of September 2020.
2. 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.
3. 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)).

4. 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).
5. 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 three month time limit (see Regulation 30B WTR and Section 207B ERA).
6. The Claimant did not specify in her claim form or at the Preliminary Hearing the dates of the holidays that she believes 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, 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 underpaid holiday pay until the Respondent's pay date of 18 September 2020. As she did not contact ACAS under the early conciliation procedure until 5 July 2021, the period of early conciliation does not extend the time limit for her claim. The claim should have been presented by 17 December 2020. It was not in fact made until over seven months later.
7. 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 how to enforce the right to holiday pay is readily available on the internet,

including, for example, on Government and ACAS websites that are authoritative, free, and easy to access.

8. 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. She did, however, attend the Preliminary Hearing and gave oral evidence about the circumstances surrounding the presentation of her claim. On the basis of that evidence, the Tribunal makes the following findings.
9. The Claimant first formed the view that she had been underpaid her holiday pay when she returned to work in September 2020 and discussed the issue with her colleagues. At around this time, she found out that one of her colleagues who had queried her holiday pay had received a payout. The Claimant and her colleagues raised their concerns about their holiday pay with the catering manager, who said that she would look into it and speak to her manager, the area manager. The Respondent had told the employees that they should not contact Human Resources department themselves but should direct any queries through the catering manager. When the Claimant and her colleagues asked the catering manager what was happening about their concerns about their holiday pay, she repeatedly said that it was being looked into. The area manager visited the school at some time during the autumn term and also said it was being looked into.
10. The Claimant is a member of a union, UNISON. At the end of November or early December 2020, the Claimant and her colleagues each individually telephoned the union to ask if it could get anything done about their holiday pay. The union then took the matter up with the Respondent and wrote a letter to the Human Resources department on 9 December 2020 submitting the issue of its members' holiday pay to a formal dispute. The Respondent was given a deadline of 14 December 2020 to come back with its positive proposals to resolve the matter, failing which the union said that it would take any necessary litigation to protect its members' interests.
11. The Claimant cannot remember the date on which she next heard from the union, but the union told her that it could not take the matter any further because of the time limit for bringing a claim to the Tribunal and suggested that she contact ACAS for advice. The Claimant did so sometime in January 2021 and ACAS told her she had an arguable claim. She cannot remember whether ACAS mentioned time limits to her, but the Tribunal is satisfied that it would have done so.

12. The Claimant was unable to explain why she delayed until 5 July 2021 to contact ACAS again to begin the early conciliation process and 6 August 2021 to bring a claim to the Tribunal. She just said that she was discussing it with her colleagues and wondering what to do.
13. In the light of these findings, the Tribunal does not accept that it was not reasonably practicable for the Claimant to present her claim in time. She believed in September 2020 that she had been underpaid her holiday pay. She took no steps at that time to find out about her rights and how to enforce them and she could reasonably have been expected to do so. She was a member of a union and could have sought advice from the union or from ACAS, both of which would have been free, at that time. If the union did not mention time limits to her when she approached the union at around the end of November, it should have done so, as it should have been aware of the critical importance of meeting the time limit. A Claimant cannot argue that it was not reasonably practicable to present a claim in time if her ignorance about time limits was the fault of her union advisor.
14. Even if the Tribunal had been satisfied that it was not reasonably practicable for the Claimant to bring her claim by the end of December 2020, it would not have accepted that she has brought it within a further reasonable period. When she was told by the union early in 2021 that it could not take her claim further because of the time limit issue, she contacted ACAS, who would also have mentioned the time limit for a claim. In spite of this, the Claimant delayed until 6 August 2021, over six months after being alerted to the time limit, to bring her claim, and has not been able to provide any good and substantial reason for that delay.
15. The claim is therefore dismissed.

Employment Judge Cox  
Date: 25 February 2022