



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr H Davies

**Respondent:** Premier Modular Limited

**Heard:** by CVP on 31 January 2025

**Before:** Employment Judge Ayre

## Representation

**Claimant:** In person

**Respondent:** Rob Hunter, HR Manager

# JUDGMENT

The claim is out of time and the Tribunal does not have jurisdiction to hear it.

# REASONS

## Background

1. The claimant was employed by the respondent as an apprentice joiner from 31 May 2023 until 26 February 2024. On 29 June 2024 the claimant issued this claim in the Employment Tribunal following a period of ACAS early conciliation that started on 17 April 2024 and ended on 29 May 2024.
2. The claim is one of unauthorised deduction from wages. The respondent defends the claim.
3. In a letter dated 16 September 2024 the Tribunal made Case Management Orders to prepare the case for this hearing. Neither party had complied with any of the Case

Management Orders. The claimant told the Tribunal he had not received them. The respondent told the Tribunal that it had attached relevant documents to the Response form.

## The hearing

4. At the start of the hearing I asked the claimant to clarify what his claim was for. The claimant said that he was claiming wages for the period from 31 May 2023 to 22 October 2023. He says that during that period he was paid by the respondent at its apprentice rate, when he should have been paid at the National Minimum Wage for his age. He is claiming the difference between what he was paid (£7 an hour initially, rising to £7.35) and the National Minimum Wage for his age.
5. I heard evidence from the claimant and, on behalf of the respondent, from Mr Hunter.

## The issues

6. The first issue that fell to be decided in this case was whether the Tribunal had jurisdiction to hear the claim, as it was presented outside of the ordinary time limit for bringing claims of unauthorised deduction from wages.
7. In light of my conclusions on that issue, it was not necessary for the Tribunal to determine any other issues.

## Findings of fact

8. On 2 May 2023 the respondent wrote to the claimant offering him a role as an Apprentice in the respondent's Manufacturing Division, starting on 31 May 2023. The offer letter stated that "*The remuneration for this post will be £7.00 gross per hour, payable monthly in arrears.*"
9. The claimant was born on 12 January 1996. At the time he began working for the respondent he was 27 years old. The National Minimum Wage for apprentices between May 2023 and February 2024 was £5.28 an hour. The National Minimum Wage for those aged 27 during that period was £10.42 an hour.
10. The claimant began working for the respondent on 31 May 2023. His employment terminated on 26 February 2024 when he was dismissed.
11. The claimant was paid monthly on the last working Friday of every month. He was initially paid at a rate of £7 an hour, and that increased to £7.35 an hour. He worked as an apprentice joiner.
12. Due to an apparent error on the part of the college that was providing the training element of the claimant's apprenticeship, he was not provided with a copy of the apprenticeship agreement until 23 October 2023. When the agreement was provided to him the claimant saw that it contained the following provision:

*“Employer Responsibilities*

*Confirm the apprentice will be receiving a wage in line with the National Minimum Wage requirements or greater and that the apprentice rate was not used prior to a valid apprenticeship agreement being in place.”*

13. When the claimant saw this provision he went to the respondent’s HR department and spoke to a Sam Sutcliffe, HR Officer. He asked to be paid at the National Minimum Wage for his age for the period prior to 23 October. He was told that the respondent could not pay him back pay but would start paying him National Minimum Wage for his age from May 2024. In the event, the claimant’s employment terminated on 26 February 2024 so he continued to be paid at the apprentice rate throughout the period of his employment with the respondent.
14. The respondent pays apprentices on the last Friday of every month. The last Friday in October 2023 was Friday 27 October. The claimant was paid on that day for his work from 25 September 2023 to 22 October 2023. On Friday 24 November 2023 he was paid for his work from 23 October to 18 November.
15. The claimant did not contact ACAS to start early conciliation until 17 April 2024. He was unable to explain why he waited almost two months after his employment had ended to contact ACAS. He was also unable to explain why he waited a month after early conciliation ended on 29 May 2024 to issue his claim.
16. The claimant was not aware of the time limits applicable to Employment Tribunal claims but was aware of his potential claim and did have some access to trade union advice. The respondent recognises a trade union and there are local shop stewards on the shop floor where the claimant worked. The claimant took advice from them in relation to the termination of his employment.

## **The Law**

17. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unauthorised deductions from wages to the Employment Tribunal. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4) which provide as follows:

*“(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....*

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

*(a) a series of deductions or payments...*

*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.*

*(4) 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.”*

18. Time limits for presenting claims are a jurisdictional issue (***Rodgers v Bodfari (Transport) Ltd 1973 325 NIRC***) and if a claim is out of time, the Tribunal must not hear it. The parties cannot agree to waive a time limit, so even if a respondent does not seek to argue that a claim is out of time, the Tribunal still has no jurisdiction to hear the claim if it is in fact out of time. The Court of Appeal in ***Radakovits v Abbey National plc [2010] IRLR 307*** confirmed that time limits go to jurisdiction and that jurisdiction cannot be conferred on the Tribunal by agreement or waiver, so that an employer’s decision not to raise a time point will not bind the Tribunal.
19. The principle that a Tribunal cannot hear a claim that is out of time applies even where the respondent admits that the claim has merit. In ***Bewick v SGA Forecourts Ltd ET Case No.2501693/2014*** the respondent admitted that it owed holiday pay to the claimant. The claimant presented her claim nine days’ late however. The Tribunal concluded that it was reasonably practicable for her to have presented her claim in time, and that it therefore did not have jurisdiction to hear the claim.
20. In cases, such as this one, in which a question arises as to whether it was reasonably practicable for the claimant to present his claim on time, there are three general principles that fall to be considered –
1. The question of reasonable practicability should be interpreted liberally in favour of the claimant;
  2. It is a question of fact as to whether it was reasonably practicable for the claimant to present his claim on time; and
  3. It is for the claimant to prove that it was not reasonably practicable for him to present his claim on time.
21. In ***Palmer and another v Southend-on-Sea Borough Council [1984] ICR 372***, the Court of Appeal concluded that ‘reasonably practicable’ does not mean ‘reasonable’ or ‘physically possible’, but rather ‘reasonably feasible’.

## Conclusions

22. The claimant was aware of the alleged underpayment of wages from 23 October 2023. That was the date at which he had all the facts within his possession necessary to issue proceedings. He did not start early conciliation however until 17 April 2024, almost six months later. This is not a case in which new facts became apparent which caused the claimant to believe he may have a claim. He believed he had been underpaid from 23 October.

23. During the almost six months that expired between the claimant becoming aware of the alleged underpayment and starting early conciliation, the claimant was able to take steps to try and enforce his rights, by speaking repeatedly to the respondent's HR department. He knew from his conversations with Sam Sutcliffe that the respondent would not be paying the back pay he claims to be entitled to. Instead, Sam Sutcliffe indicated that the respondent agreed to increase his pay from May 2024.
24. The claimant's claim relates to the pay period from 31 May to 22 October 2023. The last pay date for work in that period was 27 October 2023. The time limit for contacting ACAS expired on 26 January 2024. The claimant did not contact ACAS until 17 April 2024. His claim is therefore almost three months out of time. This is not a short period of delay. It is a significant one.
25. The fact that the claimant believed the respondent had agreed to pay him the higher rate of National Minimum Wage from May 2024 does not excuse the delay or mean that it was not reasonably practicable for him to submit his claim on time. On the claimant's own evidence he knew from the first time he spoke to Sam Sutcliffe in late October 2023 or early November 2023 that the respondent would not agree to pay him for the period prior to 23 October 2023 at the higher rate.
26. The claimant was unable to explain why he had not put his claim in earlier following the termination of his employment, or why he waited a month after the end of early conciliation.
27. Ignorance of time limits in this case does not make it not reasonably practicable for the claimant to put his claim in on time. The claimant knew of the alleged underpayment and of his rights, and as such would have been put on notice of the need to check time limits (*Trevalyans (Birmingham) Ltd v Norton [1991] ICR 488*). The claimant was able to take steps to enforce his rights (by speaking to HR) and to take advice. He had access to trade union representatives within his workplace, and consulted them on a different issue. Time limits for presenting Employment Tribunal claims can easily be found through a simple internet search.
28. For the above reasons I find that it would have been reasonably practicable for the claimant to put his claim in on time. I also find that he did not put his claim in within a reasonable period following the expiry of the time limit.
29. The claim is therefore out of time and the Tribunal does not have jurisdiction to hear it.

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Employment Judge Ayre

Date: 31 January 2025

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