



EMPLOYMENT TRIBUNALS

Between:

Mrs C Mangham
Claimant

and Mellors Catering Services Limited
Respondent

Heard at: Leeds **on:** 21 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 general kitchen assistant at Rawmarsh Community School. After a period of early conciliation through ACAS from 9 to 15 June 2021, she presented a claim to the Tribunal on 18 June 2021 alleging that the Respondent had failed to pay her the correct amount of holiday pay during a period from March to 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 basic three month time limit (see Regulation 30B WTR and Section 207B ERA).
6. In a letter to the Tribunal received on 20 January 2022, the Claimant confirmed that the dates on which she believed she had been underpaid holiday pay were 1 and 29 May, 24 June, 24 July, 21 August and 19 September 2020. For the purposes of establishing whether the claim has been presented in time, the Tribunal views this as an alleged series of unauthorised deductions from wages ending with 19 September 2020. As the Claimant did not contact ACAS under the early conciliation procedure until 9 June 2021, the period of early conciliation does not extend the time limit for her claim. Her claim should have been presented by 18 December 2020. It was not in fact made until six 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 ignorance 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.

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 provide a statement but did write to the Tribunal on 20 January 2022 setting out what she was paid. At the Preliminary Hearing, the Claimant gave oral evidence about the circumstances surrounding her claim. On the basis of that letter and oral evidence, the Tribunal makes the following findings.
9. When the Claimant was on furlough at home over July and August 2020, she and her colleagues queried with each other through a “groupchat” whether they were being paid the right amount by the Respondent. She was not receiving wages slips, but she did not think she was getting what she was owed. When they returned to work at the beginning of the autumn term, in September 2020, the Claimant and her colleagues discussed that they felt their holiday pay had not been correctly calculated. They raised it with their manager, who raised their concerns with her own managers but got no response.
10. The Claimant did nothing further until at some time in March 2021 someone in the kitchen mentioned that an ex-colleague had contacted ACAS about a claim for pay during furlough and had been given a pay out by the Respondent. At that point, she and her colleagues discussed this between themselves and decided that they would make a claim too, as a group. They did not contact ACAS until 9 June 2021, but ACAS told them that it could not help because the claim had been made out of time. They then brought their claim on 18 June 2021.
11. The Tribunal is not satisfied that it was not reasonable feasible for the Claimant to have presented a claim within the three-month time limit. She thought during July and August 2020 that she was being paid less than what she was entitled to, and her concerns were echoed by her colleagues when she spoke to them during furlough and on their return to work in September 2020. Although the Claimant then took her concerns up with her manager, when there was no response from the Respondent she took no steps to find out about her rights and how to enforce them. As she accepted in her evidence, she let matters lie and was prepared to let it go until she found out that an ex-colleague, who had decided to bring a claim, had received a pay out. It was only at that point that she did anything to progress a claim to the Tribunal.

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12. As the Tribunal does not accept that it was not reasonably practicable for the Claimant to present her claim in time, the claim is dismissed.

Employment Judge Cox
Date: 25 February 2022