



# EMPLOYMENT TRIBUNALS

**Between:**  
Mrs T Taylor  
**Claimant**

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

**Heard at:** Leeds **on:** 24 February 2022

**Before: Employment Judge Cox**

**Representation:**

Claimant: In person  
Respondent: Did not attend – written submissions only

## RESERVED JUDGMENT AFTER PRELIMINARY HEARING

It was not reasonably practicable for the claim to have been presented within the statutory time limit and it has been presented within a further reasonable period.

### REASONS

1. The Respondent provides catering services to schools. The Claimant works for the Respondent as a general kitchen assistant at Rawmarsh Community School, although she is currently on sick leave. After a period of early conciliation through ACAS from 9 to 15 June 2021, she and a number of her colleagues presented a claim to the Tribunal on 18 June 2021 alleging that the Respondent had failed to pay 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 date of 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. At the Preliminary Hearing, 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 and 21 August 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 21 August 2020. As she 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 20 November 2020. It was not in fact made until nearly 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 it was reasonable for her not to know about her right and the time limit. The Tribunal takes judicial notice of the fact that information about the right to holiday pay and how to enforce it is available on the internet, including,

for example, on Government and ACAS websites that are 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 but she and some of her fellow Claimants did send in a letter in which they said that they were unaware of their rights “at this time”. They had discovered that an ex-colleague had put a claim in against the Respondent and been paid out, but she had been told not to disclose this to anyone else. At the Preliminary Hearing, the Claimant gave oral evidence about the circumstances surrounding her own claim. On the basis of the letter and the Claimant’s oral evidence, the Tribunal makes the following findings.
9. The Claimant returned from furlough at the beginning of the autumn term, early in September 2020. She had been paid at 80% of her normal rate for the period of furlough and had accepted that as correct at that time. The payslip for her payday on 13 November 2020, however, showed that she had been paid a 20% “top-up” for that pay period, which included the half-term break (23 October to 3 November 2020). The Respondent sends payslips to its employees by email. It was customary for Ms Batty, the Catering Manager, to print off payslips for any employee, including the Claimant, who could not manage email. It cannot, therefore, be assumed that the Claimant received this payslip on 13 November but she is more likely than not to have received it shortly thereafter. At this point, the Claimant and her colleagues queried with Ms Batty why they had received a top-up for this break but not for the summer break. Ms Batty raised this with her manager, Ms Lax, who eventually confirmed at around the end of November or beginning of December that the payments had been correct.
10. The school’s Christmas holidays began on 18 December 2020. Shortly after that, the Claimant had a mammogram, which she feared showed a recurrence of the breast cancer from which she had recovered 11 years earlier. She had four biopsies on 31 December 2020 and the cancer diagnosis was confirmed on 6 January 2021. After that, she had tests to confirm how far the cancer had spread and from January to the beginning of June 2021 she underwent chemotherapy and blood transfusions. She has not returned to work since the beginning of the Christmas holidays in 2020. No one from the Respondent’s management has contacted her during this time.
11. Somewhere around the end of May or beginning of June 2021, Ms Batty telephoned the Claimant to let her know that a former employee of the Respondent’s had brought a Tribunal claim for holiday pay during furlough and

had received a payout, and asked whether the Claimant wanted to be involved in a claim that Ms Batty was organising for herself and some of her colleagues. The Claimant said that she wanted to be involved because she too felt that she had not been paid correctly. Ms Batty contacted ACAS on 9 June 2021 and the claims were made on 18 June 2021.

12. On the basis of this evidence, the Tribunal is satisfied that it was not reasonable feasible for the Claimant to have presented a claim within the three-month time limit. On her evidence, the first point at which the Claimant had cause to believe that she might have been underpaid during the period of furlough was when she saw on her 13 November 2020 payslip that the Respondent had topped up her holiday pay for the half-term break. The Tribunal finds that it was not reasonably practicable for the Claimant to research her rights and how she might enforce them, contact ACAS and bring a claim to the Tribunal all in the one remaining week before the time limit expired.
13. The Tribunal also considers that the Claimant brought her claim within another reasonable period. She was told at the end of November or beginning of December 2020 that the Respondent considered that she had been paid correctly but within two weeks or so of that she had had the mammogram that caused her serious health concerns and she then had to deal with extended and gruelling medical treatment. In those circumstances, the Tribunal accepts that it was reasonable that she took no further action until Ms Batty took the initiative at the end of May or beginning of June 2021 to contact her about a claim and that she then left it to Ms Batty to contact ACAS under the early conciliation procedure and present the claim for her, which Ms Batty then did relatively promptly.
14. The claim will therefore continue to be heard on its merits.

Employment Judge Cox  
Date: 25 February 2022