



# EMPLOYMENT TRIBUNALS

**Between:**

Mrs J D Knight  
**Claimant**

**and** Mellors Catering Services Limited  
**Respondents**

**Heard at:** Leeds **on** 14 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. At the relevant time, the Claimant worked for the Respondent at Dinnington High School as a kitchen assistant. After a period of early conciliation through ACAS from 19 to 23 June 2021, she presented a claim to the Tribunal on 1 July 2021 alleging that the Respondent had failed to pay her the correct amount of holiday pay during a period of furlough leave from March to August 2020. The Tribunal had to decide as a preliminary point whether it had power to deal with the claim in the light of the date on which it was presented and the time limits for such claims.
2. 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)).

3. 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).
4. 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).
5. The Claimant did not give in her claim form or at the Preliminary Hearing the dates of the holidays that she says were underpaid, nor the dates on which she 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 19 June 2021, the period of early conciliation cannot 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 six months later.
6. 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 on Government and ACAS websites that are authoritative and easy and free to access.
7. 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. At the Preliminary Hearing, the Claimant gave oral evidence. On the basis of that evidence, the Tribunal makes the following findings.

8. The Claimant first raised a complaint about her holiday pay during furlough with her manager on her return to work from furlough in September 2020. He said that she was not entitled to anything more. She took no action. Then at the end of March 2021 the catering contract at the school where she worked changed hands and her new manager told her she might have a claim that she could bring to an Employment Tribunal. The Claimant could not remember when this conversation occurred. She was unable to explain why she did not approach ACAS under the early conciliation procedure until June 2021 or present her claim until 1 July 2021.
9. The Tribunal does not accept that it was not reasonably practicable for the Claimant to present her claim in time. If she felt that she had been underpaid holiday pay during furlough, she did not have to accept her manager's assertion that she had. She could have researched her rights and how to enforce them at that time. She did not do so. Even if the Tribunal had accepted that the Claimant's original manager's assertion that she was not entitled to any more money meant that it was not reasonably feasible for her to present her claim at that time, it would not have accepted that she brought her claim within a further reasonable period. The new manager took over at the end of March 2021. The Claimant did not bring her claim until three months after he started work. In the absence of any evidence that he delayed in telling the Claimant she might have a claim, the Tribunal would not have accepted that the claim was brought within a further reasonable period.
10. The claim is therefore dismissed.

Employment Judge Cox  
Date: 25 February 2022