



# EMPLOYMENT TRIBUNALS

**Between:**

Miss A Teather  
**Claimant**

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

**Heard at:** Leeds **on:** 17 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 an assistant cook at Meadowhead School. After a period of early conciliation through ACAS from 2 July to 12 August 2021, she presented a claim to the Tribunal on 16 August 2021 alleging that the Respondent had failed to pay her the correct amount of holiday pay during a period of furlough leave from April to October 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. The Claimant did not state in her claim form or at the Preliminary Hearing the exact 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 on 13 November 2020. As she did not contact ACAS under the early conciliation procedure until 2 July 2021, the period of early conciliation does not extend the time limit for her claim. The claim should have been made by 12 February 2021. It was not in fact made until over 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 lack of awareness 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 submit a statement, but she did send an email on 12 January 2021. This did not explain why she had not presented her claim earlier; it set out what she said she was owed. The Tribunal invited the Claimant to give oral evidence at the Preliminary Hearing on the circumstances surrounding the presentation of her claim. On the basis of that evidence, the Tribunal makes the following findings.
9. The Claimant first believed that she had been underpaid for her holidays when she discussed the issue with colleagues in the kitchen on her return to work after a period of furlough in September 2020. Her line manager, the catering manager, said she would raise the issue with the union that represents the Claimant and some of her colleagues, UNISON. At some point - the Claimant could not remember when but thought it was still in the autumn term 2020 - she telephoned the union herself about her holiday pay. The union told her that there was a time limit and she had run out of time to put in a claim. The union said that it had sent papers out to everyone, but the Claimant had not received anything.
10. The kitchen staff kept asking their managers to look into their holiday pay and the managers said they would, but nothing came of it.
11. Eventually, the Claimant could not remember when, the Claimant and her colleagues agreed that it would be best to bring a Tribunal claim. The Claimant had thought that her manager would sort it out, but her manager told her that she had to bring her own claim.
12. The Claimant could not remember whether the time limit for a claim was mentioned when she approached ACAS under the early conciliation procedure on 2 July 2021, but the Tribunal considers it more likely than not that ACAS did mention the time limit to her. She was unable to explain why she did not then present her claim to the Tribunal until 16 August 2021.
13. On the basis of these findings, the Tribunal does not accept that it was not reasonably practicable for the Claimant to present a claim to the Tribunal by 12 February 2021. If she spoke to her union during the autumn term, she knew by the end of 2020 that there was a time limit for bringing a Tribunal claim. The union told her that the time limit had already passed. If the conversation happened in 2020, that may not have been true, but she certainly was made aware of the time limit issue at this point. After the conversation with the union, however, the Claimant took no active steps at all to find out about how to enforce her rights. She did not ask for advice from her union on how she could

bring a claim on her own, even if the union could not help. She continued to leave it to her manager to sort out the issue.

14. It was only in August 2021, eight months after the union had alerted her to time limits, that the Claimant presented her claim. She provided no explanation for this substantial delay, other than that she left it to her manager to sort out and that the managers were fobbing her off, saying that it would get sorted. This was not a good and substantial reason for not taking steps to enforce her rights. Even if the Tribunal had accepted that it was not reasonably feasible for the Claimant to bring her claim by 17 February 2021, it would not have accepted that she brought her claim within a further reasonable period.
15. 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