EMPLOYMENT TRIBUNALS

Claimant: Ms P Ellis

Respondent: G4S Secure Solutions UK Limited

Heard at: Manchester (remotely, by CVP) **On:** 8 July 2022

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: Mr Mukhtar, Solicitor
Respondent: Mr Stenson, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant shall not be permitted to pursue any breach of contract claims where the breach complained of was more than six years before the date the ET1 was presented by the claimant to the Tribunal. Such claims which have been lodged and registered with the Employment Tribunal are therefore dismissed.

2. The claimant shall not be permitted to pursue any claims under section 13 of the Employment Rights Act 1996 if that claim is based on an alleged unlawful deduction from wages more than two years from the date on which the ET1 was presented to the Employment Tribunal. Any such claims which have been lodged and registered with the Employment Tribunal are therefore dismissed.

REASONS

1. Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") provides the following:

> "Proceedings may be brought before an Employment Tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if:

(a) The claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;

(b) The claim is not one to which Article 5 applies; and

(c) The claim arises or is outstanding on the termination of the employee's employment.

2. Section 131(2) of the Employment Protection (Consolidation) Act 1978 was the enabling legislation under which this Order was made and referred to damages for breach of an employment contract or any other contract connected with employment or sums due under such a contract. By virtue of section 44 and schedule 2, Part 1 paragraphs 1-4 of the Employment Tribunals Act 1996, the Order has effect as if it was made under section 3 of that Act which contains equivalent provisions.

3. Article 7 of the Order states:

"Subject to article 8B an Employment Tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented –

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim.

4. Section 5 of the Limitation Act 1980 – "the Limitation Act" – states:

"An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued."

5. In **Dickie v Cathay Pacific Airways Limited [2004] ICR 1733** the EAT found the ET's jurisdiction precisely shadows the jurisdiction of the ordinary courts to hear such claims (at paragraph 50). The EAT's decision in this claim was overturned by the Court of Appeal, however the dictum above was not challenged in the appeal hearing and the appeal was overturned on grounds which were quite separate to it.

6. In **Taylor v Central Manchester University Hospitals NHS Foundation Trust ET/2405066/12** the ET found that section 5 of the Limitation Act applied to breach of contract claims and therefore it only had jurisdiction to consider claims for breach of contract brought within three months beginning with the effective date of termination **and** within six years within six years of the cause of action accruing, so long as limitation was pleaded. The ET found in that case that the Order is subordinate legislation designed to extend the jurisdiction of the ET such that it could hear claims that could otherwise be heard by the Civil Courts, the ET held that it did not extend the rights of employees beyond what is otherwise recoverable in civil proceedings. The ET found no reason to depart from the presumption that the limitation period applies unless otherwise stated. It also found no conflict between the procedural limitation period in the Limitation Act and the jurisdictional limits in the Order.

7. By contrast, in **Grisanti v NBC News Worldwide Etc ET-220964/15** the ET did not follow the reasoning in Taylor. It found that the purpose of the Order was to extend the ET's jurisdiction to hear breach of contract claims beyond that of the Civil Courts,

in other words beyond the standard limitation period of six years. The ET reasoned that were the Limitation Act provisions to be read into Article 6, parties would be prevented from making redress for any contractual matters which were more than six years old on the termination of the employment contract.

8. Whilst first instance decisions of Employment Tribunals are not binding on other Employment Tribunals or Employment Tribunal Judges, it is obvious that other Judges should not depart from decisions which they have made unless they believe that there are good reasons for doing so. I believe that there are good reasons for departing from the decision in **Grisanti** and preferring the decision in **Taylor**. Whilst I accept that applying the Limitation Act provisions would indeed prevent employees from seeking redress for any contractual matters which were more than six years from termination of the employment contract, that ignores the fact that they have had every opportunity in the six years prior to termination of their employment to pursue matters as Small Claims in the County Court. They have therefore, in my opinion, had every opportunity to pursue claims which are genuine claims for breach of contract. I say "genuine claims" because some of the claims which are being presented by the claimant as breach of contract claims appear to me to be claims which the claimant could and should have pursued as claims under section 13 of the Employment Rights Act – unlawful deductions from wages – in any event. Those claims include claims for overtime and shift allowance. I cannot see any reason why the claimant ought not to have pursued those claims promptly in whatever jurisdiction she felt appropriate. I have not been referred to any authority which suggests that Parliament genuinely intended to have a different limitation period for claims for breach of contract in the Employment Tribunal by contrast to claims in the County Court for breach of contract where the relevant six year limitation period would apply. If such a significant step was intended by Parliament, then I believe that it would have been made clear in 1994 when the Extension Order was introduced. I have not been referred to any such literature or suggestion.

9. I believe that the fact that employees at all times have available to them a suitable method of redress for employment disputes, be it by way of grievance procedure or claims in the Employment Tribunal or claims in the County Court, it is reasonable, by contrast to the Tribunal in **Grisanti**, to assume that Parliament intended that the same limitation period would apply to all jurisdictions relating to employment disputes set out by the Limitation Act. Memories fade with time. Documents are not necessarily maintained for years and years and years. Employers are entitled to have some degree of certainty as to the length of time that they remain at risk of claims being brought against them by their employees. I believe that there is a significant public policy element in such reasonable expectations. If, as in this case, the claimant was genuinely aggrieved about being paid for a uniform which she was obliged to wear, and not receiving first aid enhancement payments and not receiving service increments, then I believe that it is reasonable to assume that those are matters which were made clear during the course of her employment and would either be included in a contract of employment or a statement of main terms and conditions of employment or would otherwise have been set out in various documents which were exchanged between the employee and employer at the time. If then the employer, as alleged, did not make the necessary payments to the employee then I believe that Parliament would have intended that the claimant had a reasonable period of time within which to bring those claims, if necessary, either in an Employment Tribunal or in the County Court. The limitation period allowed the employee/claimant

a period of six years in which to bring those claims from the time that the alleged breaches occurred. I do not accept that the claimant was prejudiced by not being allowed to bring claims in the Employment Tribunal because such claims can only arise on termination of employment. The Small Claims procedure in the County Court would mirror the relatively informal procedures of the Employment Tribunal. The speed with which such cases would be heard in the County Court would equally mirror the speed with which such cases would be dealt with in an Employment Tribunal. There is similarly a presumption of costs not being awarded against an unsuccessful party in the Small Claims procedure in the County Court, as there is in the Employment Tribunal.

10. I believe therefore that there was at all times a perfectly adequate and proper remedy available to the claimant at all times for her to promptly and sensibly and reasonably raise any breach of contract claims during the course of her employment. I believe that that must have been the intention of Parliament when they inserted the limitation in breach of contract claims that could only be brought on termination of employment. Of course I recognise that one of the main intentions was to prevent some types of employment dispute being removed from the jurisdiction of the Civil Courts.

11. In summary, therefore, I cannot accept that there is any or sufficient evidence to demonstrate that the limitation period imposed by the Limitation Act does not apply to breach of contract claims under the 1994 Extension Order. Indeed the fact that there was at all times a perfectly reasonable and effective remedy available to the claimant by making a Small Claim in the County Court persuades me that the limitation period of six years has at all times been relevant to, and should be applied, in connection with claims under the 1994 Extension Order.

12. For those reasons I prefer the reasoning and conclusions of the Tribunal in **Taylor** to the reasoning and conclusions of the Tribunal in **Grisanti**.

13. My judgment therefore is that any breach of contract claims which relate to breaches and amounts of money claimed beyond six years from the date that the claimant presented her claim to the Employment Tribunal should not be permitted to proceed. Any such claims are therefore dismissed by this Judgment.

14. Secondly, the Tribunal was required to consider whether the claims under section 13 of the Employment Rights Act 1996 for unlawful deductions from wages which had been presented by the claimant to the Tribunal should be permitted to proceed where those claims arose from alleged deductions which had taken place more than two years before the date on which the claimant presented her claims to the Employment Tribunal. Mr Stenson, counsel for the respondent, had helpfully set out in his skeleton argument a full extract from the Deduction from Wages (Limitation) Regulations 2014 which were inserted into section 23(4A) of the Employment Rights Act 1996. That limitation states:

> "An Employment Tribunal is not (despite sections 3 and 4) to consider so much of a complaint brought under this section as relates to a deduction where the date of the payment from wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint."

15. Put simply, Mr Stenson indicated that as a result of the very clear wording of that legislation there was no basis for the claimant to be permitted to bring claims beyond that two year period. In his skeleton argument Mr Mukhtar had not addressed the language or meaning of these regulations. When questioned about this by the Tribunal he indicated that he had nothing to offer which could or should dissuade the Tribunal from a strict application of those regulations in connection with the unlawful deduction from wages claims.

16. In those circumstances the judgment of the Tribunal is that the claimant shall not be permitted to proceed with any claims which relate to any alleged deductions which are alleged to have been made more than two years before the date on which the claimant presented her claim to the Employment Tribunal, and any such claims which have been lodged and registered with the Employment Tribunal are therefore dismissed.

Employment Judge Whittaker
Date: 23rd August 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
23 August 2022

FOR THE TRIBUNAL OFFICE