



# EMPLOYMENT TRIBUNALS

**Claimant:** Erhan Karadag

**Respondent:** Elide Venture Ltd

**Heard at:** London Central (by CVP)

**On:** 12 December 2024

**Before:** Tribunal Judge Jack, acting as an Employment Judge

## Representation

Claimant: Ms V Quinn (FRU)

Respondent: Mr R Mangon

# RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The claim was not presented within the applicable time limit. It was reasonably practicable to do so. The claim is therefore dismissed.

# REASONS

## Background

1. This is a claim for unauthorised deduction from wages.
2. It is agreed that the claimant and Mr Mangon were flatmates.
3. The claimant says that Mr Mangon offered to employ him at the respondent company. He says that he was initially offered a one-week paid internship with the respondent to be paid at the national minimum wage. He started to work on 27 June 2023 and the next day, 28 June 2023, he was offered the position of Chief Operating Officer and was to be paid £2,500 a month. He resigned on 28 July 2023 due to the non-payment of wages. In his ET1, which was presented on 1 December 2023, he claimed £1,700 based on the national minimum wage. He is now represented by FRU and seeks £2,574.94 for unauthorised deduction from wages and £287.33 holiday pay.

4. The respondent says that the claimant was never offered a job with the respondent. He was Mr Mangon's flatmate and Mr Mangon allowed the claimant to shadow him for one month so that he could gain insight into entrepreneurship.

### **Preliminary**

5. This was the first hearing, the hearing listed for 23 April 2024 having been postponed. The hearing was listed for two hours.
6. I first considered the respondent's application for an extension of time. The response was due by 12 March 2024 and was presented on 5 May 2024. The respondent did not receive the Notice of Claim sent by the tribunal on 14 February 2024 as it was sent to 7 Elide Yard. That is the registered office of the respondent but (as was accepted by Mr Mangon) there were not arrangements in place for post to be forwarded to Mr Mangon. The respondent's failure to have an effective way of managing post sent to its registered office is not a good reason to extend time. However this is a case in which there is not only a very stark divergence between the parties on the facts but a preexisting relationship, and the claimant and Mr Mangon were flatmates at all relevant times. Both the claimant and Mr Mangon were present and prepared to give evidence. Taking account of the need to deal with the case fairly and justly, including seeking flexibility in the proceedings, I extended the time limit for presenting the response to 5 May 2024.
7. I next considered the claimant's application to amend the claim to include a claim for unpaid holiday pay. This application was made on 4 December 2024, shortly after FRU took on the case. Taking account of the guidance in *Selkent* and *Vaughan v Modality Partnership*, I allowed the amendment sought.
8. There was a bundle of 80 pages. There were written statements from both the claimant and Mr Mangon, and both gave evidence. There was also a skeleton argument from Ms Quinn.
9. The bundle did not include the ACAS certificate. During the claimant's evidence, Mr Mangon asked the claimant why he had not presented his claim earlier. Having checked the ACAS certificate on the tribunal file it became clear to me, and I raised with Ms Quinn, that one issue was whether the claim was made to the Tribunal within three months (plus early conciliation extension) of the date on which it was said that the deduction of wages was made. If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one? If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit? If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
10. The oral evidence and Ms Quinn's closing submission addressed both the issue of time limits and the substantive issue of whether there were unauthorised deductions.

### **Findings**

11. The claimant was the flatmate of Mr Mangon from 3 June 2023 to 2 June 2024. The claimant, his brother, Mr Mangon and one other person lived in the same property.
12. The claimant started working with Mr Mangon on 27 June 2023. Mr Mangon' evidence is that the claimant was simply shadowing him. Mr Mangon says that he allowed the claimant to shadow him for one month so that he could gain insight into entrepreneurship. For the reasons given below, I do not accept that the claimant was merely shadowing Mr Mangon.
13. On 28 June 2023 Mr Mangon sent an email announcing that the claimant was the Chief Operating Officer of the respondent. Mr Mangon' evidence is that this email did not state the true position, and was intended to bolster the claimant's self-esteem.
14. Mr Mangon paid the claimant £201 on 30 June 2023. This was made up of a test payment of £1 and further payment of £200. The reference for these payments was "Erhan Karadag payback loan". Mr Mangon says that these payments were made in partial repayment of a loan from the claimant, who had lent him money to cover his travel and living expenses while he was on Universal Credit, and not in respect of wages. For the reasons given below, I am not satisfied on the balance of probabilities that these payments were in respect of wages.
15. On 28 July 2023 the claimant signed a Non-Disclosure Agreement with a third party, for and on behalf of the respondent. He was therefore not merely shadowing Mr Mangon.
16. The claimant stopped working for the respondent on 28 July 2023. The claimant says that he was due wages at the end of July 2023. There is no dispute that he was not paid any wages at the end of July 2023.
17. Mr Mangon messaged the claimant on 8 August 2023 to say that he was not happy that the claimant had not completed several tasks. The claimant responded that the tasks had been completed. The claimant further said that Mr Mangon had offered him a salary when he offered him the job, and that he said that "it would be minimum". The claimant further said that he had worked for Mr Mangon for five weeks but was only paid £200. The claimant's evidence is that following this exchange Mr Mangon stormed into his room at home, cursing and threatening him. For the reasons given below, I am not satisfied on the balance of probabilities that Mr Mangon stormed into his room at home, cursing and threatening him.
18. Early conciliation commenced on 20 November 2023 and ended on 22 November 2023.
19. The claim was presented on 1 December 2023. In his claim form the claimant said that he was hesitant to assert his rights due to the potential for aggression and retaliation, affecting both his own safety and that of his brother living in the same property.
20. The response was presented on 5 May 2024.
21. The claimant moved out of the shared property on 2 June 2024.

## The Law

22. In the Employment Rights Act 1996 (ERA), “worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under) (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual: s. 230(3) ERA.
23. Section 13(1) of the ERA states:  
*“An employer shall not make a deduction from wages of a worker employed by him unless—*
  - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract,*  
*or*
  - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.”*
24. Section 13(3) ERA provides:  
*“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”*
25. “Wages” are defined in section 27 ERA. Section 27(1) provides that “wages” means “any sums payable to the worker in connection with his employment”, including holiday pay.
26. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages. Where a tribunal finds a complaint under section 23 ERA well founded it shall make a declaration to that effect and shall order the employer to pay the worker the amount of any deductions made in contravention of section 13 ERA (s24(1)(a) ERA).
27. Regulation 14(2) of the Working Time Regulations 1998 SI 1998/1833 provides that where a worker’s employment is terminated during the course of his leave year, and on the date on which the termination took effect, the proportion of leave he has taken is less than the proportion of the leave year which has expired, the employer shall make him a payment in lieu of leave.
28. The normal time limit for presenting a complaint to a tribunal for unauthorised deduction from wages is set out in s. 23(2)(a) ERA.
29. Section 23(2)(a) provides that a tribunal shall not consider a complaint for unauthorised deduction from wages unless it is presented before the end

of the period of three months beginning with the date of payment of the wages from which the deduction was made.

30. Where a complaint is brought in respect of a series of deductions, the references in s. 23(2) to the deduction are to the last deduction in the series: s. 23(3).
31. The normal time limit is extended by section 270B ERA to take account of the obligation to enter into early conciliation facilitated by ACAS: s. 23(3A).
32. In order to determine how the normal time limit will be extended by early conciliation, it is necessary to identify Day A and Day B and then apply the extensions in section 207B(3) and 207B(4). Day A and Day B are defined in section 270B(2). Day A is the day on which the prospective claimant initiates the early conciliation process and Day B is the date of the EC certificate issued when the process is concluded.
33. The extension under section 207B(3) operates to "stop the clock" during the period in which the parties participate in EC as it provides that in working out when a time limit expires, the period beginning with the day after Day A and ending with Day B is not to be counted.
34. The additional extension under section 207B(4) where the limitation date, as calculated by subsection 207B(3), falls in the period between Day A and one month after Day B.
35. Section 23(4) provides an exception to the primary three month time limit. There are two limbs to this test. Accordingly, a tribunal may consider a complaint presented outside the primary time limit, if it is satisfied that:

it was not reasonably practicable for the complaint to be presented within the normal time limit; and

the claimant has presented it within such further period as the tribunal considers reasonable.

36. The burden of proof for establishing that it was not reasonably practicable to present the claim in time is on the claimant.
37. If the first limb of the test under section 23(4) is satisfied, the tribunal must then proceed to consider whether it was presented within a reasonable time thereafter. This is a matter for the tribunal (*Wall's Meat Co Ltd v Khan* [1978] IRLR 499) bearing in mind the length of and circumstances of the delay.

### **Analysis and Conclusion**

38. I heard evidence on both the preliminary issue of time limits and the substantive claim for unauthorised deduction of wages, so am in position to set out my conclusions in respect of each.
39. There are aspects of Mr Mangon's evidence which I consider cast doubt on his credibility. In particular, he accepted that on 28 June 2023 he had sent an email announcing that the claimant was the Chief Operating Officer of the respondent. Mr Mangon's evidence is that this email did not

state the true position, and was intended to bolster the claimant's self-esteem. His willingness to send an email which is on his own account untruthful inevitably undermines his credibility. Further, the claimant performed tasks which go beyond what could accurately be described as shadowing. For example, on 28 July 2023 the claimant signed a Non-Disclosure Agreement with a third party, for and on behalf of the respondent.

40. But it is for the claimant to prove his case, both in respect of time limits and in respect of authorised deductions.
41. The claimant says that he was not paid the wages that he should have been paid at the end of July 2023. Early conciliation commenced on 20 November 2023 and ended on 22 November 2023. The claim form was presented on 1 December 2023. The claim was therefore presented four months after the date on which it is said that the deduction was made. It was not suggested that there had been a series of deductions, but even if there had been, the deduction said to have been made at the end of July 2023 would have been the last deduction made. The complaint was therefore brought four months after the last event complained of. Further, the claimant contacted ACAS after the expiry of the normal three month time limit. So section 270B ERA does not operate to extend time. The complaint was therefore presented one month too late.
42. The claimant's oral evidence in respect of this delay was that at the beginning he could not pay his rent and had to work. He did not have the time and strength to bring a claim. And, he said, at this time he had safety concerns. He tried to avoid making it uncomfortable at home and after he had spoken to his landlord, his landlord advised him to put in writing if aggression reoccurred.
43. Working in a new job is not itself enough to establish that it was not reasonably practicable for the complaint to be presented within the normal time limit. The real issue is whether it was not reasonably practicable for the claimant to present a complaint due to his perception of the risk of aggression and retaliation, affecting both his own safety and that of his brother, who were at the time living in the same property as Mr Mangon. Ms Quinn noted in her closing submissions that the claimant had said in his claim form that he was hesitant to assert his rights due to the potential for aggression and retaliation, affecting both his own safety and that of his brother living in the same property. Having heard Mr Mangon's evidence and response to the questions quite properly put to him, my assessment is that Mr Mangon is a forceful personality that it is more likely than not that he responded very firmly to the messages exchanged on 8 August 2023. However on the basis of the evidence before me, the claimant has not established on the balance of probabilities that Mr Mangon stormed into the claimant's room at home, cursing and threatening him. Nor has the claimant established on the balance of probabilities that he genuinely thought that the risk of aggression and retaliation if he presented a claim was so great that it was not reasonably practicable to present a claim earlier than he did. And for the reasons given in the next paragraph I have doubts about the claimant's credibility. Further, he did subsequently present a complaint on 1 December 2023 while he and Mr Mangon were

still living in the same property. It follows that the tribunal does not have jurisdiction to hear this complaint.

44. In case I am wrong about that, and as I heard evidence and submissions regarding the complaint of unauthorised deduction of wages, I will now say briefly what my conclusions about that would have been. The claimant clearly performed tasks for the respondent which went beyond mere shadowing. However I consider the claimant's evidence that he was initially offered a one-week paid internship to be paid at the national minimum wage, that he started to work on 27 June 2023, and that the very next day, 28 June 2023, he was offered (and accepted) the position of Chief Operating Officer with a salary of £2,500 a month to be inherently implausible. Further, there is no documentation evidencing this supposed oral agreement: the email of 28 June 2023 stating that the claimant was Chief Operating Officer does not confirm the alleged agreement regarding wages. And I am not satisfied, on the balance of probabilities, that the £201 paid to the claimant by Mr Mangon on 30 June 2023 was in respect of wages owed by the respondent rather than a partial repayment of a personal loan to Mr Mangon. So I am not satisfied, on the balance of probabilities, that wages were due at the end of July 2023. So the complaint of unauthorised deduction of wages would not have succeeded, even if the tribunal had had jurisdiction.

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Employment Judge Andrew Jack

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Date 30 December 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

3 January 2025

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FOR EMPLOYMENT TRIBUNALS