



## **EMPLOYMENT TRIBUNALS**

**Claimant: Mr Richard Luckraft**

**Respondent: Chief Constable of Bedfordshire Police**

**Preliminary Hearing**

**Heard at: Watford (by video in public)**

**On: 31 May 2024**

**Before: Employment Judge Boyes (Sitting Alone)**

Representation

Claimant: In Person

Respondent: Ms. V. Von Wachter, counsel

### **RESERVED JUDGMENT on a PRELIMINARY ISSUE**

- 1. The Claimant's complaint of unauthorised deductions from wages was made outside the primary three-month time limit. It was not reasonably practicable for the complaint to be made within the primary three-month time limit. However, the complaint was not presented within such further period as the Tribunal considers reasonable. The Tribunal therefore has no jurisdiction to deal with the complaint.**
- 2. Upon withdrawal, the Claimant's whistleblowing complaint is dismissed.**

### **REASONS**

- 1. I apologise to the parties for the delay in providing this judgment and reasons and for any consequent concern and inconvenience that this has caused.**

2. The Claimant claims that he is owed pay for overtime worked but not paid. His claim is therefore one of unauthorised deductions from wages. The Respondent denies all claims
3. The purpose of the preliminary hearing was to determine whether the Tribunal has jurisdiction to determine any or all of the complaints or whether it does not have jurisdiction because the complaints were made outside the relevant time limit.
4. Early conciliation took place from 17 October 2023 to 28 November 2023. The claim form (ET1) was lodged with Tribunal on the 11 December 2023. The Respondent has filed a response to the claim (ET3).

### **The Hearing**

5. At the commencement of the hearing, by agreement, the Respondent's name was amended to Chief Constable of Bedfordshire Police.
6. I sought clarification from the Claimant regarding the whistleblowing complaints referred to at paragraphs 11, 12 and 13 of section 8.2 of the claim form. The Claimant confirmed that he did not intend to pursue those complaints and that he wished to withdraw them.
7. There was reference in the notice of hearing dated 19 March 2024 to 'charity claims'. The parties agreed that this was a typographical error and of no relevance to the matters before the Tribunal.
8. The Appellant adopted his witness statement of 10 May 2024 and gave live evidence at the hearing. He was cross examined by the Respondent and I asked him questions in order to obtain clarification as necessary.
9. There was insufficient time on the day of the hearing to give oral judgment and reasons. I therefore reserved judgment.

### **Documents**

10. The Tribunal had before it a paginated bundle of documents of 117 pages and a skeleton argument from the Respondent.

### **The Claim**

11. The Claimant asserts that he worked for 402 hours that he has not been paid for or given time off in lieu ("TOIL") for. He therefore makes a complaint of unauthorised deduction from wages pursuant to section 13 Employment Rights Act 1998 ("the ERA"). The Claimant asserts that the 402 hours claimed were for critical work signed off on his timesheets by SSU management. He states that he worked these extra hours because of various accreditation requirements, demands and pressures.
12. In his witness statement, the Claimant states that his overtime rate is £33.49 per hour (his hourly rate is £22.33 per hour and the standard overtime rate is time and a half). He asserts that, based upon 402 hours, he is owed £13,462.98. Further, he submits that the balance of hours owed was carried forward each month on his timesheet and so this means that the balance is live, active and a current one and so the complaint was made in time. Further, he asserts that

even if a two-year time limit on making a claim applies, as of December 2021 the balance of hours owed was 331.

13. The Claimant states that the last act complained of was on the 28 November 2023 which is when the compromise that he submitted to management was rejected. He also argues that it was not until the 15 December 2023 that he was aware that his appeal would not proceed and so this was the last act by the Respondent against which he complains.

### **The Respondent's Position**

14. The Respondent submits that the complaint of unauthorised deductions is out of time and that it was reasonably practicable for the Claimant to make the claim in time. Further, even if the Tribunal finds that the complaint was made in time it is limited to any act that occurred not earlier than two years ending with the date that the complaint was lodged with the Tribunal.
15. The Respondent's position in respect of the substantive complaint is that employees of the Claimant's grade are not routinely contractually entitled to overtime or Time Off in Lieu ("TOIL"). Overtime is paid only in exceptional circumstances where it is authorised. It asserts that the Claimant has been paid for any overtime that did qualify for payment: there was no contractual or legal obligation to make any further payment. Further, any alleged unauthorised deduction must be capable of qualification. The Claimant did not (in his claim form) attach a monetary value to his claim.

### **Findings of Fact**

16. Where there is no dispute between the parties as to a particular fact, my findings of fact are recorded below without any further explanation. Where the facts are not agreed by both parties, I have explained why I prefer one party's account over the other. Where the facts are not clear, I have explained why I have made the finding of fact concerned.
17. My findings of fact are as follows:

### ***Chronology of Events***

18. The Claimant is employed by the Respondent as a Fingerprint Team Leader within the Scientific Services Unit ("SSU") at Hertfordshire Police Headquarters. He is on pay grade PO1 which is supervisory grade. He commenced employment with the Respondent on the 12 March 2001. His employment continues.
19. It is uncontroversial that, over the period in issue, the Claimant has worked additional hours in excess of his basic contractual requirements. Over recent years the Scientific Services Unit had been working towards ISO accreditation. This process, which took a number of years, meant that the Claimant, and his colleagues worked many additional hours. Failure to accredit would have had serious implications for the unit and so it was essential that accreditation was obtained whilst also maintaining service delivery. Accreditation was achieved in 2019.

20. Between 2007 and 2016, the Claimant received payment for overtime of 12 hours. Between 2017 and 2020 the Claimant was paid around 1000 hours of overtime, which was authorised by his manager, John Howe.
21. On 9 May 2022, the Claimant emailed John Howe stating that he would like to talk to him about *“some hours being paid and a 3 year plan to reduce 300+ hours that the organisation owes me”*. The Claimant stated that he would like to load these on to CARM. CARM was, at that time, a recently introduced system used for recording working hours. He also stated that he would be claiming 20 hours that he had recently worked over weekends as overtime.
22. On the same date John Howe replied stating that the suggestion sounded sensible and that he would like to lessen the impact by the Claimant putting in smaller claims each month for paid overtime to reduce the overall figure to a manageable level. He continued *“Some can go onto your CARM account as time owed”*.
23. At some point during the week commencing 24 April 2023, the Claimant and Sean Doyle, Head of Scientific Services Operations, had a meeting to discuss the amount of unused TOIL that the Claimant had accumulated over the past few years. The Claimant was provided with specific options to resolve this. These were:
  - i. payment of an honorarium, not as a direct payment for the hours, but for additional efforts over the last 18 months;
  - ii. agreement of a reasonable amount of TOIL, as a percentage of the total, to be limited to approximately 150 hrs (20 days);
  - iii. to consider a Fairness at Work complaint, if he felt that he had been disadvantaged or managed unfairly in any way.
24. The honorarium offered to the Claimant was £1500.
25. On the 28 April 2023, Sean Doyle emailed the Claimant. He summarised the proposals that he had previously made at the meeting and requested a further meeting to discuss them.
26. On the 3 May 2023, Unison approached management to initiate negotiations on the Claimant’s behalf. They were told that there was no scope for further negotiation.
27. On the 15 May 2023, the Claimant submitted a Fairness at Work complaint. He stated that:

*“For the last few years, the organisation has expected and encouraged me to build up a considerable amount of additional hours recorded on my timesheets to complete critical fingerprint work. These extra 400+ hours have been necessary to allow the Fingerprint Bureau to function and save its reputation. Management are attempting to erase 300 hours for an honorarium payment of £1500. This is a frankly insulting and ridiculous offer which has completely devalued all my hard work. Management are refusing to negotiate and therefore I submit a Fairness at Work and if necessary pursue this case to an Employment Tribunal.”*

28. The Fairness at Work investigation was undertaken by Michael Flavin. His draft report was dated 17 August 2023. He met with the Claimant and his union representative on the 17 August 2023 to discuss the contents of the report. In his report, he noted that he agreed with Stuart Brennan's view that the Claimant's overtime was mostly post authorised and so that it was 'self-generated' with no management dialogue. However, he stated that he would have expected management intervention earlier, given that this had happened on a number of occasions. He therefore considered that both the Claimant and management bore responsibility for the situation that had arisen. He recommended that the Claimant should be compensated for the additional hours that he worked by with a reduction of 20% because the situation that had arisen was partly the Claimant's responsibility. Two potential options were proposed:
  - i. Recommendation 1: That the 460.30 hours claimed were reduced by 20%. The reduction equated to 93 hours which left a residual total of 367.30 hours. Those 367.30 hours would be used for TOIL over a maximum 24 month period which would equate to around 15 hours TOIL per month; or,
  - ii. Recommendation 2: That 80 of the residual 367.30 hours were given as TOIL leaving a balance of 287.30 hours which should be paid at the market rate of time and a half.
29. The Claimant subsequently indicated that he wanted to opt for recommendation 2.
30. In an email dated 5 September 2023, Stuart Brennan (Head of Scientific Services) informed the Claimant that he could not accept the Fairness at Work report recommendations. He did, however, agree that there was outstanding authorised overtime of 75 hours on the CARM system that should be paid to the Claimant.
31. On the 22 September 2023, the Appellant submitted an appeal via human resources against Stuart Brennan's decision.
32. On the 12 October 2023, the Claimant sent a further alternative proposal to Stuart Brennan. This was not accepted.
33. On the 13 October 2023, the Claimant emailed human resources to request a timescale for the appeal process. He explained that he had been informed on 9 October 2023 that the appeal chairperson, David Old, would not have the authority to overrule Stuart Brennan and so he stated that "*deadline dates and expediency of the process are important to move towards ACAS/Employment Tribunal*".
34. On 17 October 2023, the Claimant stated the following in an email to human resources, "*I have contacted ACAS to log (so its ready to go to conciliation) whilst I await the outcome just in case there is a 'future timing out' issue due to this being a pay matter. I have also spoken with ACAS regarding the on-going hours owed-FAW. They have provided advice and I will log this with ACAS for conciliation once there is a result from the formality of an appeals process (and S. Brennan over-rule).*"

35. On 17 October 2023, the Claimant received an email from ACAS. That email included links to documents called *Employment Tribunal guidance* and *Employment Tribunal time limits - Acas webpage*.
36. On the 30 October 2023, the Claimant was informed that the appeal hearing was to be held on 13 November 2023. On the 9 November 2023, the appeal hearing was postponed due the chairperson David Old (Head of Communications) being unable to deal with Stuart Brennan's decision because it was a budgetary decision. He therefore requested that Stuart Brennan's original decision be escalated to Karena Thomas (Assistant Chief Constable), for consideration.
37. On 6 November 2023, Acas contacted the Claimant to ask whether he still required conciliation or whether he had been able to resolve the matter directly with the Respondent.
38. In an email to Acas dated 17 November 2023, the Claimant asked for confirmation that he would not be "*timed out in any way with yourselves*" by Acas involvement prior to a potential tribunal.
39. On 20 November 2023, Acas responded as follows:

*"The Acas early conciliation process for this particular complaint expires on 28th November.*

*If you believe that your complaint over the missing TOIL payments is ongoing, and won't crystallise until the appeals decision is reached, you may wish to start conciliation again after that point.*

*It is vital to bear in mind that your tribunal time limits commence 3 months from the date of the legal detriment you intend to allege. In wages claims that is typically the date the payment was originally due, though may vary. Starting conciliation outside of that 3 month window would not preserve your time limit. It is therefore advised that you take further legal advice if you are able."*
40. On the 28 November 2023, the Claimant asked for an update on the review being carried out by Karena Thomas. He was informed that the review was still on-going. He was asked if he would consider taking part in further discussions with Stuart Brennan regarding reaching a compromise.
41. The Claimant emailed Stuart Brennan on the 28 November 2023 with a suggested compromise. There was an exchange of emails but no compromise was reached.
42. On the 7 December 2023, the Claimant provided the Respondent with the early conciliation certificate number and stated that he intended to make a claim to the Employment Tribunal. He then lodged his claim with the Tribunal on the 11 December 2023.
43. On the 15 December 2023, the Claimant was informed by email that, following a review of his Fairness at Work Appeal case by Deputy Chief Constable Dan Vajzovic, the appeal was closed as it was felt that it was not the appropriate process for him to progress his complaint regarding unpaid working time.

**Contract of Employment and other policies/procedures**

44. I have not been provided with the Claimant's contract of employment in its entirety. However, there is reference to the documents I mention below in the pleadings and reports before me.
45. The PO1 grade is a supervisory grade and does not routinely allow for overtime payments. Bedfordshire Police Staff handbook provides for PO1 grade staff to get overtime payments if the work is deemed 'critical'.
46. There is also guidance contained within the 'Overtime for Police Staff – Tri Force Principles & Protocols' document. That document states that a local agreement exists, for Bedfordshire staff, for pre-agreed overtime to be paid to staff of grade SO1 & above, if considered 'essential exceptional circumstances'
47. The Staff Handbook includes the following:

*"Beds Staff, Grade PO1*

*[...] Carry over - the accounting cycle for the scheme is twelve weeks, made up of three periods of four weeks. At the end of each accounting cycle a credit of up to an individual's contracted weekly hours (37 hours for full-time staff) or a debit of up to the average working day (8 hours for full-time staff) may be carried forward to the next accounting cycle.*

*At the end of a twelve-week accounting cycle staff should not have a credit of more than their contracted weekly hours (37 hours for full-time staff) and any time over this will be lost. However, there may be occasions when work demands/pressures, special projects etc, mean that an individual may build up credit in excess of their contracted weekly hours and in such cases a senior line manager may authorise the payment of overtime for staff paid at scale 6 and below. If an individual has a debit of more than the average working day, action should be taken immediately to reduce this accordingly. Overtime should be approved in advance. Time off in lieu of overtime can still be taken of course, in whatever time, core or flexible, is agreed. Staff of PO1 grade cannot claim overtime."*

48. There is also a locally agreed, Scientific Services 'Standard Operating Procedure' which has been in place dated 31 March 2022. This document states that no more than 10 hours TOIL is to be accrued on time sheets, for emergency absence or to assist with 'unusual personal circumstances'.

**Time sheets**

49. The Claimant completes a time sheet on a monthly basis. These are then forwarded to his line manager, John Howe. The time sheets record the shifts worked, any extra hours worked, overtime, TOIL, annual leave and so on. If the Claimant wished to claim payment for any of the extra hours that he has worked then, up until October 2020, he was required to complete a further document which was also sent to John Howe for him to authorise. Once authorised, that document was sent to Bedfordshire payroll for processing.
50. The process changed in October of 2020, with the inception of the CARM system. The Claimant's monthly time sheet is still completed and submitted to

John Howe as previously. However, if the Claimant wishes to claim any overtime, then he is required to use the 'CARM' system, as opposed to the previous paper system.

51. The Claimant accepts that that he was not conversant with the CARM system and found it difficult to use. He states that he did not therefore claim the overtime he had worked. He continued to declare the additional hours within the totals on his monthly duty sheets. He had hoped to resolve the issue of additional hours worked at a later date.
52. The time sheets show the hours worked and time taken off but they do not specify why any additional hours were worked. They do not specify what was intended or authorised in terms of any of the extra hours worked.
53. In his response to the Fairness at Work report, Stuart Brennan states the following:

*“Section 10 of the FAW refers to timesheets being completed. I have dip tested three time sheets during the period in question. Whilst your hours are recorded on these sheets the overtime codes have not been used so there is no indication that you considered these hours to be either overtime or exceptional. Your line manager signed these off as additional hours being worked in line with the accepted custom and practice in place.*

*Section 11 refers to the inception of CARM. The recording of hours is a very simple process. It is intuitive and I do not accept that it is 'difficult to use' to record hours or process overtime. [...]*

*Section 12 refers to timesheets submitted. Whilst timesheets did record all of the hours that you were working there were no 'absence codes' recorded on the sheets to indicate that you considered this work to be overtime that you intended to claim for.”*

## **The Relevant Law**

54. Section 13 of the Employment Rights Act 1996 (“the ERA”) specifies the circumstances in which deductions may or may not be made from a worker’s wages.
55. Section 23 of the ERA specifies the time limits for making a complaint to the Employment Tribunal about an unauthorised deduction from wages by an employer as follows:

*“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*

*(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, [...].*

- (3) Where a complaint is brought under this section in respect of -*
  - (a) a series of deductions or payments, [...]*



*the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received. [...]*

*(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*

*(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint. [...]*

56. In *Arora v Rockwell Automation Ltd* EAT 0097/06, the EAT gave guidance of when the time limit would begin to run in a case where there had been an underpayment of wages. In respect of a claimed underpayment of what was due, it decided that, on a proper construction of S.13(3) ERA, “*where the total amount of wages paid on any occasion by an employer to a worker... is less than the total amount of the wages properly payable... the amount of the deficiency shall be treated... as a deduction... on that occasion*”. The underpayment of overtime was a non-payment within the meaning of S.13(3) ERA, and so the three-month time limit began to run on the date of payment of the wages from which the deduction was made.
57. As per *Group 4 Nightspeed Ltd v Gilbert* 1997 IRLR 398, EAT, in cases where there has been complete non-payment, time begins to run when the contractual obligation to make payment arises.
58. In *Chief Constable of the Police Service of Northern Ireland and another v Agnew and others* [2023] UKSC 33, the Supreme Court held that whether a claim in respect of two or more deductions constitutes a ‘series’ of deductions is essentially a question of fact and to determine this all relevant circumstances are to be taken in to account, including the similarities and differences between the deductions, their frequency, size and impact, how they came to be applied and how they are linked. The ‘series’ is not necessarily broken by a gap of more than three months.
59. Further guidance is given in caselaw as to how the “not reasonably practicable” test should be applied in individual cases. The term, “*not reasonably practicable*” should be given a “*liberal construction in favour of the employee*” [*Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53, CA]. What is reasonably practicable is a question of fact and thus a matter for the Tribunal to decide. The onus of proving it was not reasonably practicable to lodge a claim in time rests on the claimant [*Porter v Bandridge Ltd* 1978 ICR 943, CA]. If a claimant fails to show that it was not reasonably practicable to present the claim in time, the Tribunal should find that it was reasonably practicable to do so [*Sterling v United Learning Trust* EAT 0439/14]. ‘*Reasonably practicable*’ does not mean reasonable, and does not mean physically possible, but means something like ‘reasonably feasible’ [*Palmer and anor v Southend-on-Sea*

*Borough Council* 1984 ICR 372, CA], In *Asda Stores Ltd v Kauser* EAT 0165/07 Lady Smith stated that “*the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*”.

60. Where a claimant is generally aware of the right to make a claim, ignorance of the time limit on its own will not usually be sufficient reason for the delay. If a claimant is aware of their right to complain, they are under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the Tribunal to reject the claim. As per *Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53, CA, in reaching its decision, the Tribunal is required to establish what opportunities the Claimant had to find out about his rights and whether he took those opportunities? If not, why not? Was he misled or deceived? The correct test is not whether the claimant knew of their rights but whether they ought to have known of them [*Porter v Bandridge Ltd* 1978 ICR 943, CA; *Trevelyan (Birmingham) Ltd v Norton* [1991] ICR 488].
61. In the case of *Avon County Council v Haywood-Hicks* 1978 ICR 646, EAT, the Employment Appeal Tribunal found that the Claimant, who did not find out about the possibility of bringing a claim until he read an article in a newspaper, ought to have investigated his rights within the time limit and claimed in time.
62. In *Bodha (Vishnudut) v Hampshire Area Health Authority* [1982] ICR 200, Browne-Wilkinson J said:

*"There may be cases where the special facts (additional to the bare fact that there is an internal appeal pending) may persuade an industrial tribunal, as a question of fact, that it was not reasonably practicable to complain to the industrial tribunal within the time limit. But we do not think that the mere fact of a pending internal appeal, by itself, is sufficient to justify a finding of fact that it was not "reasonably practicable" to present a complaint to the industrial tribunal."*

## **My Conclusions**

63. The sole purpose of the hearing before me was to determine whether the Tribunal has jurisdiction in view of the time limits for making a complaint of unauthorised deduction from wages.
64. In terms of time limits, the Claimant's arguments are threefold. Firstly, he argues that the hours owed were carried over each month on his time sheet. Therefore, at the point he made his claim to the Tribunal, that balance was still live/frozen. Secondly, he argues that the last failure by the Respondent was on the 15 December 2023; he was in limbo prior to that date. Thirdly, it was not reasonably practicable to make his claim in time because he was going through the Fairness at work procedure and subsequent appeal.
65. In submissions, the Claimant stated that the difference from other cases is that he is still employed. He did not want to waste the Employment Tribunal's time. He thought that the Fairness at Work recommendations were going to be accepted. He was taken by surprise when the budget holder refused to accept the Fairness at Work recommendations. He submits that his contract states that

he should be given the opportunity to have grievances dealt with. It does not make sense nor is it fair for his claim to be treated as being out of time.

66. The Claimant referred me to a decision made by Employment Judge Klimov (HMCTS reference: 1301401/2022). I explained to the Claimant that as this was an Employment Tribunal decision rather than a decision of the Employment Appeal Tribunal or higher court it does not have binding authority on this Tribunal. In any event, I have considered the Judgment and Reasons in case they assist the Claimant in putting his case. The claim concerned unauthorised deduction from wages (in essence unpaid overtime) and a consequent constructive unfair dismissal claim. However, crucially, there was no issue in that case about time limits, which is the sole issue that I must determine.
67. In closing submissions, the Respondent's position was that the Claimant was aware as of the 28 April 2023 that his overtime claim had been declined and so the claim should have been lodged with the Tribunal within three months of that date, that is by the 27 July 2023. The Respondent accepted that the fairest approach would be to treat the date on which the Claimant was informed by the Respondent that he would not be paid the sums sought as the date from which the time starts to run rather than an earlier date. It was submitted that the Claimant should have been aware that he had a cause of action by 28 April 2023, but, even if he did not actually know, he is an educated man and it was down to him to undertake the necessary investigations. Further, even if the Tribunal were to find that it was not reasonably practical to make the claim within three months, he had the benefit of union advice by August 2023 and subsequently contacted Acas in October 2023. It was submitted that it is inconceivable that that he was not made aware of time limits at that point. Despite this, he did not lodge his claim until 11 December 2023
68. The first issue that I must decide is when the act or omission occurred that triggered time to start running.
69. In a case involving unauthorised deductions from wages relating to the incorrect, or non-payment of, overtime, the time limit will begin to run from the date on which the wages should have included the correct overtime or the date on which the contractual obligation to make a payment arose, depending upon the circumstances of the case.
70. There is nothing in the evidence before me to suggest that there was any form of internal deadline, contractual or otherwise, for claiming payment for any overtime previously worked.
71. It is clear from the evidence before me, that there were ongoing discussions between the Claimant and Respondent (between May 2022 and April 2023) regarding the additional hours that he had worked. From the nature of those discussions, I find the Respondent had not, prior to 28 April 2023, refused to compensate the Claimant for the additional accrued hours. It is clear that the issue was still very much under consideration at that point.
72. On the 28 April 2023, the Respondent made a decision about the Claimant's overtime claims in which it refused to compensate him for all of the hours worked.

73. I do not consider that there is any merit in the Claimant's argument that because the balance of the hours worked was carried forward on his time sheet each month that this means that the time limit never, in effect, started running. The fact that the additional hours worked were carried forward each month on the time sheets does not mean that overtime had been approved for payment. It is a running total of hours that have been worked over the basic contractual hours. In those circumstances, applying the rationale identified in *Arora v Rockwell Automation Ltd* and *Group 4 Nightspeed Ltd v Gilbert*, I do not consider that it has any bearing at all on when time began to run for the purposes of making a claim to the Tribunal.
74. Applying the principles identified in *Arora v Rockwell Automation Ltd* and *Group 4 Nightspeed Ltd v Gilbert*, I do not consider that there is any merit in the Claimant's argument that time should run from the 28 November 2023, or alternatively 15 December 2023. Whilst what occurred on both dates may have reinforced the Claimant's view that the Respondent was not going to alter its stance, the date that the claimed 'deduction' is treated as having occurred is the date on which the wages should have included the correct overtime or the date on which the contractual obligation to make a payment arose. On the facts of this case, I find that the subsequent attempts to resolve the matter and internal procedures to challenge the original 'deduction', do not alter that date.
75. I therefore find that the decision by the Respondent of 28 April 2023, that is the refusal to give the Claimant what he sought, is the date from which the time limit starts to run. This means that the primary three-month time limit expired on the 27 July 2023. This time limit is not altered by the early conciliation period because early conciliation began after the expiry of the primary three-month limit.
76. Applying a liberal construction in favour of the Claimant, I find that it was not reasonably practicable for the Claimant to have lodged his claim by 27 July 2023. The Claimant continued to be employed by the Respondent. On the particular facts, he had a reasonable expectation until that point (and until the Fairness at Work recommendations were rejected on 5 September 2023) that the matter would be satisfactorily resolved. I formed this view in part because there were some ongoing attempts to resolve the matter after the initial decision of the 28 April 2023, albeit unsuccessful. This was not a decision that had resulted in dismissal and the nature of earlier communications that had taken place with the Claimant could reasonably have led him to believe that the matter would be resolved to his satisfaction. Whilst the bare fact that there are internal proceedings pending will not stop the clock, I am satisfied, having considered the circumstances in the round in this case, in particular the Claimant's not unrealistic expectation that the matter would be resolved, is sufficient to justify a finding of fact that it was not reasonably practicable to present a complaint within three months in this case.
77. I must therefore consider whether the complaint was presented within such further period (subsequent to 27 July 2023) as was reasonable.
78. For the same reasons that I have provided above in relation to the primary three-month time limit, I find that up until the 5 September 2023, when Stuart Brennan informed the Claimant that he could not accept the Fairness at Work report

recommendations, that it was understandable, that the Claimant did not lodge his claim.

79. However, even if the Claimant was firmly of the view that the matter would be resolved prior to the 5 September 2023, by that date the Claimant can have been in no doubt as to the Respondent's position.
80. The Claimant was clearly mindful of the possibility of making a claim to the Employment Tribunal when he made his Fairness at Work complaint on the 15 May 2023 as he made mention of it at that point. The Claimant's union had been actively involved in the process, having attended a meeting with the Claimant on the 17 August 2023. It was open to the Claimant to clarify any time limits for lodging a claim with the Tribunal with his union subsequent to the 5 September 2023. I find that it was reasonable to expect him to do so.
81. In subsequent communications with the Respondent, it is clear that the Claimant was mindful of time limits and the possibility of making a claim to the Tribunal. In an email to human resources on the 13 October 2023, he referred "*deadline dates and expediency of the process are important to move towards ACAS/Employment Tribunal*". On 17 October 2023, in an email to human resources, he said "*just in case there is a 'future timing out' issue due to this being a pay matter*". On 17 October 2023, an email from Acas included link to documents called *Employment Tribunal guidance* and *Employment Tribunal time limits -Acas webpage*.
82. In an email to Acas dated 17 November 2023, the Claimant asked for confirmation that he would not be "*timed out in any way with yourselves*" by Acas involvement prior to a potential tribunal.
83. Crucially, on 20 November 2023, Acas informed the Claimant by email that "*It is vital to bear in mind that your tribunal time limits commence 3 months from the date of the legal detriment you intend to allege. In wages claims that is typically the date the payment was originally due, though may vary. Starting conciliation outside of that 3 month window would not preserve your time limit. It is therefore advised that you take further legal advice if you are able.*"
84. At the point that the Claimant received this email from Acas, he was, at the very least, alerted to the need to check what the time limits were for lodging a complaint to the Tribunal. There was no impediment to him doing so. His union were involved. He was in communication with Acas. He could have sought legal advice and/or researched the position online. Despite this, it was not until 11 December 2023, some 22 days later, that he lodged his claim with the Tribunal.
85. It is clear on the evidence before me that, as of the 13 October 2023, the Claimant was mindful of the potential time limits for lodging a complaint with the Tribunal. This is evident from the email communication on that date and subsequent emails. The Respondent's position regarding his complaints was, by 5 September 2023, unambiguous. On the 20 November 2023, Acas informed the Claimant that the three-month time limit usually runs from the date payment was originally due and that the Claimant should take legal advice. I find that, from 13 October 2023 onwards, it was reasonable to expect that the Claimant would have taken steps to establish the time limit for lodging a complaint and, having done so, promptly lodged his claim without further delay. Against that

backdrop, I find that even though there was an ongoing appeal at the time, that was not enough, in itself, to justify any further delay in lodging a claim with the Tribunal.

86. I therefore find that the Claimant did not lodge his complaint of unauthorised deductions from wages within such further period after the 27 July 2023 as was reasonable. As he did not do so, his claim was lodged out of time and this Tribunal has no jurisdiction to determine the claim.

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**Employment Judge Boyes**

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**Date: 14 October 2024**

**Reserved Judgment and Reasons Sent to The Parties On  
16 October 2024**

**FOR EMPLOYMENT TRIBUNALS**

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