



# EMPLOYMENT TRIBUNALS

**Claimant: Mr Y Semeniuk**

**Respondent: Centaur Construction Limited**

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

**On: 12 March 2024**

**Before: Employment Judge A.M.S. Green**

## **Representation**

Claimant: In person

Respondent: Not present or represented

# RESERVED JUDGMENT

The claims of unauthorised deduction from wages and breach of contract were not presented within the applicable time limit. It was reasonably practicable to do so. The claims are therefore dismissed.

# REASONS

1. The claimant presented a claim to the Tribunal on 13 December 2023. He is claiming unauthorised deductions from wages and breach of contract in respect of a deposit that he believes the respondent is obliged to repay him.
2. There was a period of early conciliation via the offices of ACAS which started on 22 October 2023 and ended on 3 December 2023.
3. The respondent did not present a response to the claim. The respondent was notified of the final hearing which took place on 12 March 2024. Shortly before the hearing was scheduled to start, the respondent sent an email to the Tribunal stating that it would be unable to attend the hearing because of a family commitment. In view of the fact that the respondent had not filed a response, any participation by the respondent in these proceedings was a matter for the Tribunal to determine. I decided that I would hear the case in the respondent's absence and, if I was minded upholding the any or all of the claims, I would invite the respondent to submit written representations to the Tribunal on remedy (i.e. the amount of compensation that should be awarded to the claimant). At approximately 10:30 AM, my clerk emailed me to notify

me that someone called Sata was asking to be admitted into the hearing. I did not allow this given that the claimant was in the middle of giving his evidence and I had already determined that if this person was connected to the respondent, they would not be participating in this hearing in any event.

4. The claimant is Ukrainian and had the benefit of an interpreter at the hearing. I was satisfied that the interpreter and the claimant understood each other. The claimant gave oral evidence to the Tribunal. The claimant affirmed his evidence. He had not prepared a witness statement and I asked him questions pursuant to my powers under rule 41.
5. On reviewing the papers, it immediately became apparent to me that there was a time limit issue with the claims. In relation to the unauthorised deduction from wages claim, the last date upon which the claimant says he should have been paid was 27 June 2023. In relation to the non-return of the deposit, the claimant informed me that the relevant date for repayment of that was 29 October 2022.
6. I explained to the claimant that the Tribunal operates strict time limits. In respect of both of his claims, his claim form should have been presented within three months less one day (subject to any extension by ACAS early conciliation) of the last date upon which payment should have been made (for the unauthorised deduction of wages claim). In respect of the unauthorised deduction from wages claim, the last date upon which it should have been presented was 26 September 2023. The claim for unauthorised deduction from wages is 78 days out of time. The claim for breach of contract should have been presented within three months starting from the effective date of the claimant's termination of employment which, was 22 June 2023, which gives 21 September 2023 as the last date upon which the claim should have been presented. The breach of contract claim is 82 days late. Whilst I acknowledge that the claimant engaged with early conciliation via ACAS, this does not help him regarding the calculation of time as the notification to ACAS was submitted out of time in any event.
7. The starting point is that the Tribunal cannot hear a claim that is out of time. However, I explained to the claimant that the law permitted the Tribunal to extend time limits at its discretion. In this case, I would have to determine if it was not reasonably practicable for the claim to be made to the Tribunal within the time limit. If I decided that 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? The claimant must satisfy both limbs of this test if his claim is to be heard by the Tribunal. I explained that if the Tribunal was not prepared to extend time, he had an alternative route via the County Court to present his claims. Time limits in the County Court are significantly different and far longer than in the Tribunal.
8. Having heard the evidence from the claimant, I make the following findings of fact:
  - a. The claimant is Ukrainian. He has leave to remain via the partner route under the Immigration Rules and is permitted to work in the United Kingdom. The claimant's wife is also Ukrainian.

- b. Although the claimant gave his evidence via an interpreter, he does understand English. He started learning English approximately three years before coming to the United Kingdom. His wife also understands English.
- c. The claimant was employed by the respondent as a handyman. The claimant alleges that whilst the respondent paid him some money for the work that he performed, £1346 in salary remains unpaid. Furthermore, the claimant alleges that he is owed £900 by way of nonreturn of a deposit.
- d. The claimant's last date of working for the respondent was 22 June 2023.
- e. It was clear from the claimant's evidence that he was reluctant to pursue matters through the Tribunal and he hoped that the owner of the business, Mariusz Kuzma, would make good of his promise to pay the claimant the sums that were due to him.
- f. Eventually, it became apparent to the claimant and his wife that Mr Kuzma was not going to pay the money that the claimant said was due to him and in August 2023 the couple started to research on the Internet about how they could pursue matters through the Tribunal. This also included looking at the ACAS website for advice. Whilst the claimant says that he was unaware of any advice on the ACAS website about time limits, it is a matter of judicial knowledge that such information is clearly provided.
- g. All of the research on websites yielded results that were written in English. However, the claimant and his wife were able to translate that information using online translation tools and this is how they were able to understand the options that were available to them in pursuing matters through the Tribunal.
- h. All of the information that the claimant obtained concerning his rights was via the Internet. He did not seek advice from a professional such as a lawyer or someone at Citizens Advice.
- i. The claimant's wife put pressure on the claimant to pursue matters because she realised that Mr Kuzma was not going to pay the money that was due to the claimant. In his evidence, the claimant said that he believed it was at the end of August that his wife realised that Mr Kuzma was not going to pay the money that was owed to the claimant.
- j. The claimant, having come to the realisation that he was not going to be paid at the end of August 2023, delayed in presenting his claim to the Tribunal until December 2023. He explained that he was still hoping that the matter could be resolved informally thereby negating the need to institute proceedings in the Tribunal.
- k. The claimant mistakenly believed that the law in England and Wales regarding time limits was the same as that which prevails in Ukraine for such claims. He thought he had six months to make such a claim. He was mistaken in that belief.

9. The Employment Rights Act 1996 section 23 sets out the relevant time limits. The Tribunal will have to answer the following questions:
- a. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made etc
  - b. 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?
  - c. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit.
  - d. 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 law regarding time limits for repayment of the deposit is set out in the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1997, Article 7. This provides that the 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; or
  - b. Where there is no effective date of termination, within the period of three months beginning with the last date upon which the employee worked in the employment which has terminated; or
  - c. [Where the period within which the complaint must be presented has been extended by ACAS early conciliation];
  - d. Whether Tribunal is satisfied that it was not reasonably practicable for the complaint be presented within whichever of those periods, is applicable, within such further period as the Tribunal considers reasonable.
11. I am not persuaded to extend time to enable the Tribunal to hear the claimant's claims for the following reasons:
- a. The claimant was aware of his rights to pursue his claims by the end of August 2023. He clearly understood this having conducted online research using an online translation tool. He acquired this knowledge within the time limits for presenting both of his claims.
  - b. He mistakenly believed that he had six months within which to present his claim to the Tribunal. Whilst I can understand why he thought this given his knowledge of similar matters in Ukraine, on reviewing online materials such as those provided by ACAS, he would or ought to have understood from those online resources that there were strict time limits that had to be followed if he wanted to present a claim to the Tribunal. This is clearly spelt out on the ACAS website (<https://www.acas.org.uk/making-a-claim-to-an-employment-tribunal>) It

is reasonable to infer that having visited the ACAS website he would have seen the information regarding time limits.

- c. The claimant, having conducted his research in August 2023 could and should have presented his claim to the Tribunal on or before the deadline in September 2023. It was reasonably practicable for him to have done so. Consequently, he has not met the first limb of the test that must be satisfied before considering the second limb.

12. For the sake of completeness, even if I had found that it was not reasonably practicable for the claimant to have presented his claim to the Tribunal within time, I am not satisfied that he presented it within a reasonable period thereafter. He waited until 13 December 2023 to present his claim. He did so because he hoped that he could resolve the matter informally with the respondent. That is not an acceptable reason. Furthermore, as I have already commented above, he did so in the mistaken belief that he had six months in order to register his complaint at the Tribunal.

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Employment Judge Green

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Date 12 March 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

22 March 2024  
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FOR EMPLOYMENT TRIBUNALS