THE INDUSTRIAL TRIBUNALS

CASE REF: 32008/23IT

CLAIMANT: **Donnamarie Toman**

RESPONDENT: **Primark Stores Ltd**

JUDGMENT

The unanimous judgment of the tribunal is that the claimant's claims of unauthorised deduction of wages, detriment by reason of trade union activities and failure to provide itemised pay statements are dismissed.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Holder**

Member: **Mr Rosbotham**

APPEARANCES:

The claimant appeared and was self-representing, assisted by her note taker, Ms Johnson.

The respondent was represented by Ms E McIlveen BL instructed by Ms M Penney, Solicitor, Pinsent Mason Solicitors.

REASONS

BACKGROUND

1. The claimant was employed by the respondent between 23 November 2022 and 26 April 2023.

2. The claimant submitted her resignation on 19 April 2023 giving one week's notice.

3. An application for Early Conciliation was received by the Labour Relations Agency (LRA) on 20 July 2023.

4. The LRA issued the Early Conciliation Certificate to the claimant on 18 August 2023.

5. The claimant's ET1 Form was lodged in the Tribunal Office on 17 September 2023.

6. The respondent's ET3 Form and Grounds of Resistance were lodged on 31 October 2023. Further to Directions issued at the Case Management Preliminary Hearing on 12 June 2024 an addendum Grounds of Resistance was lodged on 26 June 2024 on behalf of the respondent.

7. An agreed list of issues was provided dated 22 July 2024. A notice for additional information and discovery was issued by the respondent on 9 August 2024. The claimant also issued a notice for discovery on 9 August 2024. The respondent's discovery was served by email on 6 September 2024 and the claimant's undated replies were provided to the Respondent.

8. Case Management Preliminary Hearings took place on 23 March 2024, 12 June 2024 and 9 December 2024 and a Progress Review Management Hearing took place on 24 February 2025. At the Case Management Preliminary Hearing on 12 June 2024 the issues identified to be determined were unlawful deduction of wages; detriment by reason of trade union activities; and failure to provide itemised pay statements.

9. On the morning of the second day of the hearing the tribunal was informed that one of the tribunal panel members was unable to attend. The tribunal asked the parties for their views as to how they would prefer the matter to proceed. It was explained to the parties and their legal representatives that the tribunal could replace the tribunal panel member. As the claimant's evidence had been heard the previous day this would require the new panel member to hear the claimant's evidence (either in person or via the recording of the previous day). It was also explained that it was possible under Rule 10 of the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 (as amended) for the tribunal to be constituted with two members. It was indicated to the parties that it was the member from the employer panel who would be absent if the matter proceeded in those circumstances. Both the claimant and the respondent's representative requested to continue the hearing with two panel members and the tribunal proceeded on that basis.

SOURCES OF EVIDENCE

10. The parties relied on, and the tribunal considered, the following:

    (a) ET1 Claim Form dated 17 September 2023.

    (b) ET3 Response Form and grounds of resistance dated 31 October 2023 and addendum grounds of resistance lodged on 26 June 2024.

    (c) The material provided in the agreed bundle of documents which included payslips and time clock records.

(d) The witness statements provided in the witness statement bundle.

(e) Oral evidence at Hearing from:

(i) Donna Toman
(ii) Jamielee Toman
(iii) Owen Bennett
(iv) Asleigh Maginess
(v) Anne O'Hare
(vi) Cherie McCord
(vii) Jacquie Byers

(f) Oral and written submissions on behalf of the both the claimant and respondent at the Hearing on 27 March 2024.

ISSUES

11. An agreed list of issues was provided dated 22 July 2024 which detailed the following questions to be determined:

1. What was the reason for the disparity between what the claimant alleges she should have been paid and what she actually received?

2. Whether the reason for the disparity was due to the claimant being late or absent 72 times during her employment?

3. Did the claimant receive what she was entitled to be paid for the relevant periods identified above?

4. Does contacting the Union for advice by telephone amount to the claimant participating in the activities of an independent trade union?

5. Was the relevant contact with the Union during the claimant's working hours or outside of those?

6. Did the meeting between the claimant and Ms McCord on 19 April occur as alleged by the claimant? If so, what was the reason for, and purpose, of Ms McCord's conduct?

7. Did the claimant receive payment for her notice period? If not, what was the reason for and purpose of the respondent's failure to make payment?

8. Did the respondent provide the claimant with itemised pay statements in compliance with their statutory obligation?

THE LAW

TRADE UNION DETRIMENT

12. Article 73 of the Employment Rights (Northern Ireland) Order 1996 provides:

"(1) A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of –

(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so,

(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so…

(2) In paragraph (1) "an appropriate time" means—

(a) a time outside the worker's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services;

and for this purpose "working hours", in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services),he is required to be at work.

(2A) In this Article—

(a) "trade union services" means services made available to the worker by an independent trade union by virtue of his membership of the union…"

13. Article 74 of the Order provides:

"74.—(1) A worker or former worker may present a complaint to an industrial tribunal on the ground that he has been subjected to a detriment by his employer in contravention of Article 73.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

(a)before the end of the period of three months beginning with the date of the act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them], or

(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(2A) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2)(a).

(3) For the purposes of paragraph (2)—

(a)where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;

(b)a failure to act shall be treated as done when it was decided on.

(4) For the purposes of paragraph (3), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a)when he does an act inconsistent with doing the failed act; or

(b)if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done".

14. Article 75 of the 1996 Order provides:

> *"(1) On a complaint under Article 74 it shall be for the employer to show what was the sole or main purpose for which he acted or failed to act".*

Detriment Claims

15. The leading authority on what amounts to a detriment is ***Shamoon v Chief Constable of the RUC [2003] UKHL 11.*** In this case, the House of Lords considered the term *"detriment"* in the context of a sex discrimination claim under the Sex Discrimination (NI) Order 1976 (SDO). However, the analysis and interpretation of the term detriment within this judgment has been applied in other claims. The House of Lords held that the term *"detriment"* should be interpreted considering the wording of the relevant legislation and noted that the relevant context in this case, under the SDO, was the employment field:-

> *"The word "detriment" draws this limitation on its broad and ordinary meaning from its context and from the other words within which it is associated. Res noscitur a sociis. As May LJ put it in* ***De Souza v Automobile Association [1986] ICR 514, 522G,*** *the Court or tribunal must find that by reason of the acts or acts complained of, a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work."* (para 34)

16. In summary, the worker must genuinely consider that they have suffered a detriment and, viewed objectively, the tribunal must be satisfied that a reasonable worker might do so. There is no requirement to show any physical or financial detriment.

17. For there to have been detriment it is not necessary to establish that there has been some physical or economic consequence as a result of the activity. In ***Ministry of***

Defence v Jeremiah [1979] 3 All ER 833 at 841, [1980] QB 87 at 104 Brightman LJ said that "a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment". As May LJ put it in ***De Souza's case [1986] ICR 514 at 522***, the court or Tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** Lord Hope, with whom Lord Hutton and Lord Rodger of Earlsferry agreed, articulated the test of detriment as being "Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?" Undermining the role and position of an employee, marginalising an employee, reducing the standing or demeaning an employee in the eyes of those over whom she was in a position of authority can amount to detriment, see ***Shamoon*** at paragraphs [35] and [37].

18. An unjustified sense of grievance cannot amount to 'detriment': ***Barclays Bank plc v Kapur (No 2) [1995] IRLR 87*** and ***Shamoon*** at paragraph [35].

19. Under Article 74 (cited above) where a detriment has occurred, the act or failure amounting to the detriment must have taken place for the sole or main purpose of preventing or deterring the person from taking part in the activities of an independent trade union at an appropriate time, or for penalising them for doing so, or for the sole or main purpose of preventing or deterring them from making use of trade union services at an appropriate time, or penalising them for doing so.

20. Further to Article 75 of the 1996 Order (cited above) where a complaint of a detriment has occurred, the onus is on the employer to show the sole or main purpose of the act, or failure to act, which is alleged to amount to the detriment.

UNAUTHORISED DEDUCTION OF WAGES

21. The provisions relating to unauthorised deductions of wages are contained in Article 45 of the **Employment rights (Northern Ireland) Order 1996:**

> *"45.—(1) 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.*
>
> *(2) …*
>
> *(3) 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.

(4) Paragraph (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

…"

22. The time limit for bringing a claim for unlawful deduction of wages is contained in Article 55 of the **Employment rights (Northern Ireland) Order 1996**:

> ***55.**—(1) A worker may present a complaint to an industrial tribunal—*
> *(a)that his employer has made a deduction from his wages in contravention of Article 45 (including a deduction made in contravention of that Article as it applies by virtue of Article 50(2))…*
>
> *…(2) Subject to paragraph (4), an industrial tribunal shall not consider a complaint under this Article 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, or*
>
> *(b)in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*
>
> *(2A) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2).*
>
> *(3) Where a complaint is brought under this Article in respect of — —*
>
> *(a)a series of deductions or payments, or*
>
> *(b)a number of payments falling within paragraph (1)(d) and made in pursuance of demands for payment subject to the same limit under Article 53(1) but received by the employer on different dates,*
>
> *the references in paragraph (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 industrial tribunal is satisfied that it was not reasonably practicable for a complaint under this Article 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.*

23. The Supreme Court in *Agnew* provided clarity on the definition of a 'series of deductions' as follows:

> *127.*
>
> *… [W]e agree with the Court of Appeal that the word "series" is an ordinary English word and that, broadly speaking, it means a number of things of a kind, and in this context, a number of things of a kind which follow each other in time. Hence, whether a claim in respect of two or more deductions constitutes a claim in respect of a series of deductions is essentially a question of fact, and in answering that question all relevant circumstances must be taken into account, including, in relation to the deductions in issue: their similarities and differences; their frequency, size and impact; how they came to be made and applied; what links them together, and all other relevant circumstances.*
>
> *128. Thirdly, we also agree with the Court of Appeal that a contiguous sequence of deductions of a particular kind is not a requirement of a series, though it may be a relevant factor in deciding whether the deductions constitute a series. That is not to say that deductions which do follow each other in time necessarily constitute a series; nor does it mean that a series of unlawful deductions remains intact when they are interrupted by a lawful payment. All will depend on the nature and reason for the deductions of which complaint is made, and whether and, if so, how any lawful payment has anything to do with them.*
>
> *129. Fourthly, it is helpful and important to identify the alleged series of unlawful deductions upon which reliance is placed and the fault which is said to underpin it. In these appeals, the series is a series of deductions in relation to holiday pay. Each unlawful deduction is said to be factually linked to its predecessor by the common fault or unifying vice that holiday pay was calculated by reference to basic pay rather than normal pay, and so regardless of any overtime or allowances during the reference period.*

FAILURE TO PROVIDE ITEMISED PAY STATEMENTS

24. The Employment Rights (Northern Ireland) Order 1996 Article 40 provides:

> *Itemised pay statement*
>
> *40.—(1) An employee has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.*
>
> *(2) The statement shall contain particulars of—*
>
> *(a)the gross amount of the wages or salary,*

(b)the amounts of any variable, and (subject to Article (1) any fixed, deductions from that gross amount and the purposes for which they are made,

(c)the net amount of wages or salary payable, and

(d)where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

25. The time limits for application to tribunal are contained in Article 43 of the Employment Rights (Northern Ireland) Order 1996.

"43.—(1) Where an employer does not give an employee a statement as required by Article 33, 36 or 40 (either because he gives him no statement or because the statement he gives does not comply with what is required), the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the Article concerned.

(2) Where—

(a)a statement purporting to be a statement under Article 33 or 36, or a pay statement or a standing statement of fixed deductions purporting to comply with Article 40 or 41, has been given to an employee, and

(b)a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part,

either the employer or the employee may require the question to be referred to and determined by an industrial tribunal.

(3) For the purposes of this Article—

F1(a). . . . . .

(b)a question as to the particulars which ought to have been included in a pay statement or standing statement of fixed deductions does not include a question solely as to the accuracy of an amount stated in any such particulars.

(4) An industrial tribunal shall not consider a reference under this Article in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

(a)before the end of the period of three months beginning with the date on which the employment ceased, or

(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months.

(5) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (4)(a)."

26. Article 249B of the **Employment Rights (Northern Ireland) Order 1996** provides for an extension of time to facilitate Early Conciliation before institution of proceedings:

> ***249B****—(1) This Article applies where this Order provides for it to apply for the purposes of a provision of this Order (a "relevant provision").*
> *But it does not apply to a dispute which is a relevant cross-border dispute for the purposes of Article 249A.*
> *(2) In this Article—*
>
> *(a) Day A is the day on which the complainant concerned complies with the requirement in paragraph (1) of Article 20A of the Industrial Tribunals (Northern Ireland) Order 1996 (requirement to contact Agency before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*
>
> *(b) Day B is the day on which the complainant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under paragraph (11) of that Article) the certificate issued under paragraph (4) of that Article.*
>
> *(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*
>
> *(4) If a time limit set by a relevant provision would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*
>
> *(5) Where an industrial tribunal has power under this Order to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this Article.*

Where a Claim is Presented Out of Time

27. Where a claim is presented out of time the claimant must show that it was not reasonably practicable to present the claim on time. Harvey on Industrial Relations and Employment Law Division PI 1. G (2), in relation to the *'not reasonably practicable'* formula provides:

"[187]

There are two limbs to this formula. First the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this rests firmly with the applicant. ***Porter v Bandridge Ltd [1978] IRLR 271; [1978] ICR 943, (CA).*** *Second, if he succeeds in doing so, the tribunal must be satisfied that the time within which the claim was in fact presented was reasonable."*

28. The Employment Appeal Tribunal in ***Bodha v Hampshire Area Health Authority [1982] ICR 200*** confirmed that the '*reasonably practicable*' test for an extension of time did not permit an employee to plead that it had not been '*reasonable*' for him to present his claim for unfair dismissal before an internal appeal procedure had been completed. It concluded that the correct test was a strict test of practicability, namely where the act of presenting the complaint in time was reasonably capable of being done. It held:

> *"The statutory words still require the industrial tribunal to have regard to what could be done albeit approaching what is practicable in a common-sense way. The statutory test is not satisfied just because it was reasonable not to do what could be done."*

29. In ***Palmer and Saunders v Southend-on-Sea Borough Council [1984] ICR 372***, the Court of Appeal considered the '*reasonably practicable*' test for an extension of time. The Court stated:

> *"In the end, most of the decided cases have been decisions on their own particular facts and must be regarded as such. However we think that one can say that to construe the words 'reasonably practicable' as the equivalent of 'reasonable' is to take a view too favourable to the employee. On the other hand, 'reasonably practicable' means more than merely what is reasonably capable physically of being done – different for instance, from its construction in the context of the legislation relating to factories: compare* ***Marshall v Gotham Company Ltd [1954] AC 360****. In the context in which the words are used in the Employment Protection (Consolidation) Act 1978, however ineptly as we think, they mean something between these two. Perhaps to read the word 'practicable' as the equivalent of 'feasible' as Sir John Brightman did in* ***Singh v Post Office Case [1973] ICR 437*** *and to ask colloquially and untrammelled by too much legal logic – 'was it reasonably feasible to present the complaint to the industrial tribunal within the relevant three months?' – is the best approach to the correct application of the relevant sub-section."*

30. In ***Lowri Beck Services Limited v Patrick Brophy [2019] EWCA Civ 2490*** Lord Justice Underhill summarised the legal principles relent to the test of reasonable practicability (at paragraph 12):

> *"(1) The test should be given "a liberal interpretation in favour of the employee (****Marks and Spencer plc v Williams–Ryan [2005] EWCA***

Civ 470 *which reaffirms the older case law going back to* ***Dedman v British Building and Engineering Appliances Ltd [1974] ICR 32****).*

(2) The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as to whether it was "reasonably feasible" for the claimant to present his or her claim in time: see ***Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119****.*

(3) If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will have been reasonably practicable for them to bring the claim in time (see ***Wall's Meat Co Ltd v Khan [1979] ICR 52****); but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made.*

*(4) If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (****Dedman****).*

*(5) The test of reasonable practicability is one of fact and not of law (****Palmer****)."*

31. Justice Eady QC in ***North East London NHS Foundation Trust v Ms S M Zhou (UKEAT 0066/18)*** summarised the approach to be taken on the question of reasonable practicability as follows:

"37. As for the approach to be adopted to the question of reasonable practicability, it is trite law that the question of what is or is not reasonably practicable is a question of fact for the ET, a test that was considered in ***Wall's Meat Co Ltd v Khan [1979] ICR 52 CA*** *by Brandon LJ in the following terms:*

> *"… The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstance have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they*

should reasonably in all the circumstances have given him." (Pages 60F-61A)

32. Where a claim is presented out of time, the onus of proof rests with the claimant to establish that it had not been reasonably practicable or '*reasonably feasible*' for his claim to have been presented before the end of the three-month period (as extended by early conciliation) or before the end of such further period as the tribunal considers reasonable.

THE CLAIMANT'S SUBMISSIONS

Trade Union Detriment

33. The claimant asserted that Ms McCord had raised the issue of the claimant contacting the Union at the meeting on 19 April 2023 and that the sole or main purpose of the meeting with Ms McCord on 19 April 2023 was to deter or penalise the claimant for engaging in trade union activities. The claimant asserted that she suffered a detriment due to Ms McCord asking her whether she had contacted her Union and asking about what the claimant had told them. The claimant asserted that Ms McCord also 'yelled' at her stating: "*If you want to be a Union Rep go do that I do not care*!" and that Ms McCord had stated that the claimant had "*betrayed the company*".

The claimant accepted that in relation to the time limits for lodging the claim for trade union detriment that although she was aware of the time limit, she believed the claim was lodged only a day late. The claimant also stated that she was still engaged with what she termed the 'internal process' at that time and referred to waiting for a meeting with Mr Carson. This meeting took place on 18 August 2023, which predates the claimant lodging her claim by almost a month.

Unauthorised Deduction of Wages

34. The claimant initially submitted that she had suffered an unauthorised deduction of wages of the following amounts:

£222.68 (on various dates between 1 December 2022 and 30 March 2023)
£254.72
£329.20
£293.37 (recorded as 'Hols Balance Deduction' for period 23 April 2023 to 29 April 2023)
£16.58 (recorded as 'Hols Balance deduction' on claimant's final payslip dated 20 May 2023)
£170.82 (on various between 6 April 2023 and 18 May 2023)

35. During the course of the hearing the claimant accepted that she had received the sums of £254.72, £329.20, £293.37 and £16.58 but disputed the £222.68 and £170.82 which she asserted remained as unauthorised deductions. The claimant asserted that these amounts were properly payable to her under the contract of

employment as she had not been late or absent from work on the occasions to which the deductions related.

36. The claimant claims that the clocking in evidence which was provided in support of the respondent's assertion that the deductions related to times when the claimant had been absent from, or late to, work, was inaccurate. The claimant claimed that had these records been correct that she would have been disciplined.

Failure to Provide Itemised Payslips

37. The claimant asserted that she was not provided with itemised payslips. The claimant stated that she had been unable to access the 'Workday' app shortly after she left the respondent's employment and had to request detailed payslips from the respondent.

THE RESPONDENT'S SUBMISSIONS

Trade Union Detriment

40. The respondent submitted that the claim for trade union detriment was out of time. The relevant legal test was whether it was not reasonably practicable for the claimant to lodge her claim on time. The respondent's case was that the claimant had failed to show that it was not reasonably practicable for her to have lodged her claim form within the statutory time limit and, as a result, the claim is out of time.

41. In terms of whether the claim is made out in law the respondent asserts that the meeting with Ms McCord on 19 April 2023 was not with the sole or main purpose to prevent, deter or penalise the claimant for engaging in trade union activities at an appropriate time. The respondent's case was that a number of issues regarding the management team were raised by the claimant and discussed during the meeting and that the purpose of the meeting was to resolve these issues. The respondent accepted that although Ms McCord should not have asked the claimant about contacting the Union, Ms McCord's intention was to understand the claimant's concerns, to resolve the issues raised by the claimant and offer support.

Unauthorised Deduction of Wages

42. The respondent submitted that many of these claims were out of time and that any deductions were lawful as the disputed amounts related to times when the claimant had been late or absent from work and so were not payable under the contract of employment.

43. In relation to the amounts deducted relating to £222.68 and £170.82 which remained in dispute, it was the respondent's position that these deductions relate to times when the claimant was late or absent from work. The respondent relied on clocking in reports and an audit trail report in support of this.

44. The respondent claimed that the reason the claimant had not been disciplined in relation to these late attendances was because it was a new store with a focus on upskilling staff and managing a significant intake of new employees.

Failure to Provide Itemised Payslips

45. The respondent provided employees with access to payslips online through 'Workday' a HR and payroll system. The payslips were uploaded to 'Workday' at or before the time when employees received their wages. The respondent's position is that the claimant has been provided with all itemised pay statements relating to her employment and continued to have access to her payslips for one month after the effective date of termination.

46. The respondent accepts that due to a cyber-attack on its external payroll provider in April 2023 that it was temporarily unable to issue itemised pay statements to employees, including the claimant. It is the respondent's position that this issue was clearly communicated to staff and staff were informed that normal payroll services would resume on 27 April 2023. The respondent states that payslips were provided as soon as it was able to do so, the claimant was kept informed about the issues, and she had not suffered any loss detriment or harm from the delay in receiving her payslip. The respondent submits that detailed payslips have been provided to the claimant.

RELEVANT FINDINGS OF FACT AND CONCLUSIONS

47. The tribunal has considered the submissions put forward by both sides, together with the content of the claim and response forms, the record of proceedings of the Case Management Preliminary Hearings of 23 March 2024, 12 June 2024 and 9 December 2024 and the Progress Review Management Hearing of 24 February 2025, the material provided in the agreed bundle, the oral evidence on behalf of both the claimant and respondent at the hearing and oral and written submissions on behalf of both the claimant and respondent on 27 March 2024.

48. There was no dispute between the parties as to the following facts:

    (a) The claimant's employment with the respondent ended on 26 April 2023.

    (b) The claimant received her final wage slip on 20 May 2023.

    (c) The meeting, in relation to which the claimant claims trade union detriment, occurred on 19 April 2023.

    (d) The application for Early Conciliation was received by the LRA on 20 July 2023.

    (e) The LRA issued the Early Conciliation Certificate on 18 August 2023.

    (f) The claimant's claim was lodged on 17 September 2023.

Trade Union Detriment

49. Given the above undisputed facts, it is common case that the claimant failed to lodge her tribunal claim form in relation to trade union detriment within the statutory time limit.

50. The claimant asserted that the claim was late by only one day. The claimant stated that although she was aware of the time limits, she did not believe that the delay of one day would make any difference.

51. In relation to the claim for trade union detriment the date the claimant had to lodge her claim form was 19 July 2023. The claimant therefore lodged her claim form some two months late.

52. The reason the claimant gave for failure to lodge her claim in time was that she was involved in the internal process. The tribunal rejects the claimant's assertion that involvement in the internal process prevented her from lodging her claim form. The tribunal therefore rejects the claimant's assertion that being engaged in the internal process at that time meant that it was 'not reasonably practicable' for her to lodge her claim on time.

53. The claimant has provided no further reasons as to why it was not reasonably practicable for her to lodge her claim on time, therefore, the tribunal does not accept that it was not reasonably practicable for the claimant to have lodged her claim form within the statutory time limit.

54. In any event, had the claimant's claim been presented in time, the tribunal finds as fact that the claimant contacting her Union for advice by telephone amounted to making use of trade union services at an appropriate time as defined under Article 73 (1) (ba) of the Employment Rights (Northern Ireland) Order 1996. The tribunal finds as fact that the claimant has failed to establish that there was not a proper purpose for the meeting on 19th April, nor that the sole or main purpose of the

meeting was to prevent or deter her from taking part in union activities or making use of trade union services.

55. The claimant's claims regarding Ms McCord's alleged behaviour and comments were not raised by the claimant in her contemporaneous complaint lodged on 5 May 2023. Ms McCord's evidence was clear that she was seeking to resolve issues with the claimant during the meeting. The claimant accepted in evidence that Ms McCord was seeking to address her concerns. The tribunal finds as fact that the purpose of the meeting was to seek to address the claimant's issues.

Unlawful deduction of wages

56. The tribunal has considered the alleged deductions of between 1 December 2022 and 30 March 2023 and 6 April 2023 and 18 May 2023 referred to in the pleadings and has considered whether the claimant's claim in respect of these deductions constitutes a claim in respect of a series of deductions. This is essentially a

question of fact, and in answering that question all relevant circumstances must be taken into account, including, in relation to the deductions in issue: their similarities and differences; their frequency, size and impact; how they came to be made and applied; what links them together, and all other relevant circumstances. In the claimant's case all the deductions in dispute related to the clocking in process and records. Considering the above factors as identified in *Agnew,* the tribunal finds that the deductions do amount to a series of deductions. The claimant was only aware of the final deductions on 20 May 2023 and therefore time could not begin to run until that date. In relation to this claim the claimant's claim form was submitted within the time frames as extended by Early Conciliation.

57. The claimant's contract of employment and terms and conditions of employment provide for her contractual hours and explain the clocking in process. Staff are contracted to work for a set number of hours each week and have a set number of minutes for breaks. Staff are to clock in when ready for work (i.e. after they have put their belongings away) and to clock out immediately when finishing their shift (i.e. before collecting belongings). Staff are paid for the hours worked according to the clocking in system. Abuse of the clocking in system is considered to be gross misconduct.

58. The tribunal was provided with the claimant's clocking in records. The records show that the claimant was late or absent on a number of occasions as asserted by the respondent. The deductions in the claimant's wages reflect the claimant's clocking in records and occasions when the claimant was late or absent on various dates, with the corresponding amounts of the claimant's wages having been deducted. The claimant did not provide any evidence to support her claim that these were inaccurate. The tribunal accepts the respondent's evidence that the deductions relate to times when the claimant was not at work.

59. The tribunal finds as fact that the disparity between what the claimant states she was owed and what she was paid is due to the claimant being late or absent during her employment. The amounts were therefore not properly payable under the claimant's contract of employment. The tribunal finds that the claimant has been paid what she was entitled to be paid for the relevant periods between 1 December 2022 and 30 March 2023 and 6 April 2023 and 18 May 2023.

Failure to provide itemised payslips

60. The tribunal was provided with the copies of itemised pay slips that had been provided to the claimant. It was not disputed by the claimant that these had been provided to her following her resignation. The claimant received detailed records of her wages and any deductions. The tribunal's finding of fact is that the respondent provided the claimant with itemised pay statements in compliance with their statutory obligations.

Conclusions

61. For the reasons set out above, in relation to the claim of trade union detriment, the tribunal unanimously concludes that claimant has failed to discharge the burden of showing that it was not reasonably practicable to lodge her claim form within the

primary time limit. The claim is therefore dismissed for want of jurisdiction.

62. For the reasons set out above, the tribunal unanimously concludes that the claimant has failed to discharge the burden of proving that she suffered any loss or deduction of wages during her employment with the respondent.

63. For the reasons set out above, the tribunal unanimously concludes that the claimant has failed to discharge the burden of proving that she was not provided with itemised pay statements.

Employment Judge:

Date and place of hearing: 25-27 March 2025, Belfast.

This judgment was issued to the parties on: 06 November 2025

This judgment will be entered in the register within 21 days.