



EMPLOYMENT TRIBUNALS

Claimant: Mr J A Richards

Respondent: Automotive Group (Newcastle upon Tyne) Limited

Heard at: Bristol

On: 22 May 2018

Before: Employment Judge O'Rourke

Representation

Claimant: In person

Respondent: Mr P Hind – Director

JUDGMENT AT PRELIMINARY HEARING

1. The Respondent's title is amended to Automotive Group (Newcastle upon Tyne) Limited.
2. The Tribunal finds, applying s.23(4) of the Employment Rights Act 1996 that it has jurisdiction to hear the Claimant's claim, as it was not reasonably practicable for him to present it before the relevant period of three months and that it was presented within such further period of time as the Tribunal considers reasonable.

REASONS

1. The Claimant brings claims of unlawful deductions from wages and failure to provide terms and conditions of employment (as compliant with s.1 of the Employment Rights Act 1996).
2. This is a claim to which **R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51** applies. The Claimant brought his claim following his resignation in mid-February 2016. It was however rejected for non-payment of the then-in force fees. Following the above Judgment, HMCTS wrote to the Claimant notifying him of the possibility of reinstatement and he responded confirming that he wished to so apply.

HMCTS again wrote to him on 6 February 2018, asking him to either submit a new claim, or provide a copy of the original, as they were unable to trace a copy. He did so and the Respondent was given notice of that claim by letter of 22 February 2018 and provided a response on 23 March 2018. In that Response, they asserted that the claim was out of time.

3. Accordingly, the claim was listed for this preliminary hearing, to determine the Tribunal's jurisdiction.
4. I heard submissions from both parties. The Claimant said that at the time, he simply could not afford to pay the fee, as he was behind in his rent and facing eviction, which situation was contributed to, he asserted, by the Respondent's alleged failure to pay him his full commission payments. Mr Hind said that the claim was clearly well out of time, but had no submissions to make in respect of s.23(4), leaving that matter in my hands.
5. I find that it was not reasonably practicable for the Claimant to present his claim within the initial three-month time limit and that he subsequently did so within such further time as was reasonable, for the following reasons:
 - a. The Supreme Court made clear that the then Tribunal fee regime was unlawful from the outset because it unfairly restricted access to justice to those who could not afford the requisite fee. It stated that *'Worked examples of the impact of fees on hypothetical claimants indicated that in order to meet the fees they would have to restrict expenditure that was ordinary and reasonable for maintaining living standards. The question of whether fees effectively prevent access to justice must be decided according to the likely impact of the fees on behaviour in the real world. Fees must be affordable not in a theoretical sense, but in the sense that they can reasonably be afforded. Where households on low to middle incomes can only afford fees by forgoing an acceptable standard of living, the fees cannot be regarded as affordable.'*
 - b. I accepted the Claimant's evidence that he could not afford the fee.
 - c. It cannot be 'practicable' to be expected to bring a claim within the time limit, if a prerequisite of doing so is the payment of a fee that has subsequently been found to be unlawful and could not be reasonably be afforded by the Claimant.
 - d. I had no evidence before me as to when the Claimant was first informed by HMCTS of the possibility of reinstatement of his claim, but the subsequent correspondence from the Service does not indicate any delay on his part in doing so and I therefore conclude he acted with all due haste and brought his claim within such further time as was reasonable.

6. The Tribunal does therefore have jurisdiction to hear the Claim and following this Judgment case management orders were made.

Employment Judge C H O'Rourke

Date 22 May 2018

JUDGMENT & REASONS SENT TO THE PARTIES
on
2 June 2018 by email

FOR THE TRIBUNAL OFFICE