



EMPLOYMENT TRIBUNALS

Claimant: Mr R Harrold

Respondent: Jackstar Events Limited

Heard at: Nottingham **On:** Friday 17 August 2018

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: In Person

Respondent: Mr S Joshi, Solicitor

JUDGMENT

The Employment Judge gave judgment as follows: -

1. The Tribunal does not have jurisdiction to hear the claims of unlawful deduction of wages and non-payment of holiday pay and they are dismissed.

REASONS

Background and Issues

1. The Claimant presented his claim to the Tribunal on 25 April 2018. He had been employed by the Respondent from 1 June 2016 until 6 November 2017. His claims were for non-payment of wages and holiday pay.

2. He had entered early conciliation ("EC") and the date of receipt by ACAS of the EC notification was 17 April 2018 and the date of issue by ACAS of the certificate was 25 April 2018.

3. The Claimant says that the wages and holiday pay were outstanding at the date of his dismissal. The wages are for a day worked by him on 8 October 2017 and he says that he is due holiday pay which he has calculated pro rata to the date of his dismissal.

4. I explained to the Claimant that the claims should have been made within the period of 3 months from the date of his dismissal. To gain the benefit of the extension of time afforded to the Claimant by early conciliation the date of receipt by ACAS of early conciliation notification should have been by 5 February 2018. By the time of the EC notification he was already 10 weeks late in making his claim.

5. If his claims were out of time I can only consider those complaints if it was not reasonably practicable for him to present those claims in time and that he did so present them within such further time as was reasonable in the circumstances.

Evidence

6. I heard evidence from the Claimant only. There was a bundle of documents and where I refer to page numbers it is from that bundle.

Facts

7. The Claimant was employed by the Respondents as Events Manager. He commenced his employment with the Respondents on 2 January 2016.

8. The Respondents are wedding coordinators providing wedding hosts, DJ's, photo booths, dance floors, star cloths and lighting in the Midlands area.

9. His contract of employment was terminated because of alleged misconduct by the Claimant on 6 November 2017 following a disciplinary hearing on 4 November 2017. The letter is at page 254. The Claimant was dismissed without notice.

10. On 5 December 2017 the Claimant received his final payslip and the Claimant asked for a breakdown of the payment received (page 255).

11. On 10 January 2018 the Claimant wrote to Mr and Mrs Quenby, the Directors of the Respondent. The letter set out that he felt that he was entitled to holiday pay and wages (page 256). He did not receive a reply and wrote again on 18 January 2018 (page 257). That letter showed that he was aware of his rights under the Employment Rights Act 1996 and said that if he did not receive payment within 5 working days from that letter he would issue proceedings.

12. The letter of 10 January 2018 indicated that he had taken legal advice. The Claimant had spoken to the Citizens Advice Bureau and a solicitor. It was at their suggestion that he had written those letters.

13. The Claimant received a reply to his letters on 25 January 2018 from Louise Quenby (page 258).

14. The letter explained that he will be paid a further sum in respect of holiday pay on 5 February 2018 and that he would also be made a further payment in respect of his wages for 8 October 2017.

15. This did not satisfy Mr Harrold who wrote again on 30 January 2018 (page 259) to say that he was still owed holiday pay and wages. This letter like the others were hand delivered and Ms Quenby instructed Mr Harrold that he should not enter their office buildings without an appointment in future by way of a letter of 5 February 2018 (page 260).

16. The Claimant did receive the payment promised by Ms Quenby in her letter on 5 February 2018 together with a final payslip. This was for £138.48 after deductions and the pay slip is at page 290.

17. The Claimant acknowledges that he knew from then that he would not receive any further payment.

18. The Claimant explained that the reason for his delay was that he was trying to set himself up in business as a funeral celebrant and was working hard to do this. He did though take no further steps in terms of pursuing his claim against the Respondents until he contacted ACAS on 17 April 2018. That is an online process that takes a matter of minutes. The Claimant can offer no further explanation for his delay.

The Law

19. The claim for non-payment of wages is made under Section 13 of the Employment Rights Act 1996. It is a claim for an unauthorised deduction from his wages.

20. Section 23 provides: -

“(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, or;

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3A) Section 207A (3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2).

(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.”

21. In respect of the claim for holiday pay, Regulation 30 of the Working Time Regulations 1998 provides an identical provision in respect of a complaint that there has been a non-payment of any holiday pay due to him. As I explained at the hearing time limits in the Employment Tribunal are strictly applied and the burden of proof is on the Claimant to establish jurisdiction. He must therefore satisfy me that it was not reasonably practicable to present his claims in time.

My Conclusion

22. I am satisfied that the complaints of non-payment of wages and holiday pay were not presented within a period of 3 months from the termination of his employment. The Claimant should have contacted ACAS in respect of the early conciliation notification in this case by 5 February 2018. He did not contact ACAS until 17 April 2018. His claims are therefore out of time ie they were not presented within the 3-month period.

23. The burden is on the Claimant to establish that it was not reasonably practicable to present the claim in time. Having heard evidence from him I am satisfied that it was reasonably practicable for him to present the claim in time.

24. He is an intelligent man who took advice from the Citizens Advice Bureau and from an employment lawyer during the time that he would have been in time to make his claim to the Tribunal. His explanation that he was busy setting up a new business does not satisfy me that it was not reasonably practicable to present the claims in time. As he has failed to do so I am satisfied that the Tribunal does not have jurisdiction to hear these claims and they are dismissed.

Employment Judge Hutchinson

Date 17 October 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE