

RM



EMPLOYMENT TRIBUNALS

Claimant: Mr M Tareen
Respondent: Riaz MSB Limited
Heard at: East London Hearing Centre
On: 31 January 2018
Before: Employment Judge Foxwell

Representation

Claimant: In person
Respondent: No attendance

JUDGMENT

The judgment of the Tribunal is that:-

1. The Claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of £1284
2. The Claimant presented his claims for unpaid wages, of unfair dismissal, and for breach of contract as to notice outside the primary time limits contained in sections 23 and 111(2) of the Employment Rights Act 1996 and regulation 7 of the Employment Tribunals (Extension of Jurisdiction) Regulations 1994.
3. It was not reasonably practicable for the Claimant to present those claims within the primary time limits but he did not do so within such further period as was reasonable. Accordingly, the Tribunal has no jurisdiction to hear them.

REASONS

1. The Claimant, Mr Mohammed Tareen, began working for the Respondent, Riaz MSB

Travel, on 1 April 2012. He worked at its travel agency in East Ham. It was his first job since moving to the UK from Afghanistan in 2011.

2. His employment ended on 26 January 2017 when the Respondent closed the East Ham branch. The Claimant told me, and I accept, that at the date of this closure he was owed arrears of salary of about £2,500. He did not receive any notice of the closure and was not given a redundancy payment or notice pay in lieu.
3. The Claimant presented claims of unfair dismissal, for redundancy pay, notice pay and unpaid wages to the Tribunal on 9 October 2017 having gone through early conciliation that day. Employment Judge Gilbert reviewed the claim upon receipt and drew the Claimant's attention to the fact that it may have been presented out of time. It is clear from the Claimant's grounds of claim that he was already aware of this.
4. The claim was nevertheless served on the Respondent and it has failed to enter a Response. The Respondent has not played any part in the proceedings and has not attended this hearing. I note that a company search shows that there is a proposal to strike it off the register of companies.
5. The purpose of this hearing is to decide whether the Tribunal has jurisdiction to hear the Claimant's claims. I heard evidence from the Claimant to decide this. I found him to be a frank and reliable witness.
6. I am satisfied that the Tribunal has jurisdiction in respect of the claim for a redundancy payment. This claim was presented within the time limit contained in Section 164 of the Employment Rights Act 1996. Since the Respondent has failed to enter a Response I have given judgment to the Claimant for this aspect of his claim in the sum of £1,284. This is based on the following findings:
 - a. The Claimant's gross weekly pay at the date of dismissal was £321.
 - b. The Claimant had four full years of service.
 - c. The Claimant was aged 32 when he was dismissed.
7. The Claimant's other claims have been presented outside the primary time limit contained in the Employment Rights Act 1996 and Extension of Jurisdiction Order 1994. Section 111(2) of the 1996 Act provides as follows in respect of claims of unfair dismissal and the provisions applying to claims for unpaid wages and notice pay are similar:
 - (2) *Subject to subsection (3), an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –*
 - (a) *before the end of the period of three months beginning with the effective date of termination, 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.”

8. I have power to extend time but only where I am satisfied by the Claimant on evidence of two things: the first is that it was not reasonably practicable to present the claim within the primary time limit and the second is that it was presented within a reasonable time of it having become practicable to do so. These are distinct stages which must be considered separately. Furthermore, it is well established that the test of reasonable practicability is one of what was reasonably feasible in the circumstances, it is not a broader test of justice and equity such as exists under the Equality Act 2010.
9. The Claimant told me, and I accept, that he was unaware of Employment Tribunals and their jurisdiction when he was dismissed. He also said that, as he trusted his employer, he was hopeful that they would pay him. He produced emails from the Respondent which showed that they were promising to do so. The payments did not materialise, however, and in July 2017 he got in contact with other employees of the Respondent based in Birmingham. They explained to him the procedure for claiming through the Employment Tribunal. Given that the Claimant is from Afghanistan, that he only came to this Country in 2011 and this was his first job, I find that it was reasonable for him to have been unaware of the function of Employment Tribunals until July 2017 when he spoke to former colleagues. Had he issued a claim then, I would have found that it had not been reasonably practicable to present a claim in time.
10. The Claimant did not present a claim immediately. He told me that he was due to travel to Afghanistan for a pre-planned trip in August 2017 and this was the first time he had been back in 4 years. He decided to leave matters until his return. Once back in the UK in September 2017 he gave the Respondent a further chance to pay him what it owed. It did not do so and in October 2017 he presented this claim. I do not find that it was reasonable for him to have waited between July and October 2017 to present this claim. The Claimant was aware of the process and had access to the internet so was able to research it. The most basic search would reveal the strict time limits which apply in the Employment Tribunal.
11. For these reasons I find that the Tribunal does not have jurisdiction to hear the Claimant's claims of unfair dismissal, for unpaid wages and for notice pay. I told the Claimant that he can pursue claims for unpaid wages and for notice pay in the County Court.

Employment Judge Foxwell

31 January 2018