



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Waterfall Cleaning Services Ltd v Commissioners for HM Revenue & Customs

Heard at: Watford

On: 31 January 2018

Before: Employment Judge Henry

Appearances

For the Appellant: Mr Botan Hourami, Director

For the Respondent: Mr J Tunley, Counsel

JUDGMENT

1. The appeal against a notice of underpayment issued under the National Minimum Wage Act, having been presented to the tribunal outside of the period of 28 days, beginning with the date of service of the notice of underpayment, the tribunal does not have jurisdiction to entertain the appeal.
2. The appeal is dismissed.

REASONS

3. The appellant by an appeal presented to the tribunal on 6 June 2017, appeals against a notice of underpayment issued under the National Minimum Wage Act 1998, served on the appellant on the 8 May 2017.
4. By section 19C(3) of the National Minimum Wage Act 1998, it provides that “an appeal under this section must be made before the end of the 28-day period”.
5. By section 19(8) of the National Minimum Wage Act 1998, the 28-day period is defined as “the period of 28 days beginning with the date of service of the notice of underpayment”.

6. The claimant's appeal, presented to the tribunal on 6 June 2017, was presented one day out of time.
7. The appellant accepts the date of service of the notice of underpayment, albeit, he states that he would not have received the notice on that date allowing for posting, but does acknowledge that on receipt he was aware that he had 28 days to present his appeal to the tribunal, and had had every intention to do so.
8. The appellant has not failed to present his claim within time, on there being any misunderstanding as to the date of the 5 June 2017, being the end of the 28-day period.
9. It is the claimant's evidence that, he had left matters to the last day and that when he tried to access an appeal form from the Revenue & Customs website, he could not find any links thereto, and that on his making enquiries of solicitors for the relevant form, he had been informed there would be a charge of £1,000.
10. It is the claimant's further evidence that, on his reviewing the notice and guidance thereto, he then came across the portal address, which took him to the appropriate appeal form, which he then completed and furnished to the tribunal on 6 June, one day late.
11. The appellant accepts that, he had received the guidance notes on the notice of underpayment together with the notice, although he states that he did not fully read the document, having focused on the notice and the payment requested thereby.
12. The claimant further challenges the guidance that, the information was not clear in that the portal address had not been sufficiently highlighted and that the instructions had not informed him that an appeal could not be made outside of the 28-day time period, further submitting that, it was unreasonable of the respondent not to have a link to the appeal form on their website or otherwise, failed to have enclosed an appeal form with the notice of underpayment.
13. The claimant further submits that, the tribunal should have some scope for the exercise of discretion as to the time limit, albeit, he accepts that there is no provision within the National Minimum Wage Act granting such discretion to the tribunal.
14. For completeness, it is also here noted that, the claimant has advanced before the tribunal that he had written to solicitors to obtain an appeal form some time before the 5 June, but had not received a reply from them before the end of the 28-day period. He also maintains that he had emailed HM Revenue and Customs to be furnished with an appeal form who again did not reply.
15. On the claimant being asked to produce such correspondent and afforded an opportunity to adjourn proceedings for such documents to be retrieved; the appellant not having them in the tribunal, the appellant advised that he

did not seek to further obtain the documents asking for the matter to be determined on the information then before the tribunal, informing the tribunal “he had a business to run and did not intend to spend the day in the tribunal”.

16. On the information provided to the tribunal, the appellant being aware of the period for presenting an appeal to the tribunal, and on the appellant having no impediment effecting his ability to present his appeal within the requisite time period, save for the claimant leaving the appeal to the last day of that period and failing to read the guidance notes on the notice of underpayment, which provided all the necessary information to enable the claimant to present an appeal and access to the relevant documentation, and on the appellant presenting his appeal to the tribunal one day outside of the requisite period, pursuant to section 19C(3) of the National Minimum Wage Act 1998, the tribunal does not have jurisdiction to entertain the claimant’s appeal.
17. The claimant’s appeal is accordingly dismissed.

Employment Judge Henry

Date: 15 February 2018

Sent to the parties on: 23 February 2018

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For the Tribunal Office