



EMPLOYMENT TRIBUNALS

Claimant: Mr R Bunny

Respondent: Vintage Wine Bars Limited

Heard at: Bodmin **On:** 26 September 2019

Before: Employment Judge Maxwell

Representation

Claimant: in person

Respondent: Miss Penaluna, Co-Director of the Respondent

JUDGMENT

1. The Claimant's claim for a payment with respect to accrued annual leave was presented within the time permitted under Regulation 30 of the Working Time Regulations 1998.

REASONS

Preliminary

2. The notice of this hearing in this matter did not identify the preliminary issue to be determined, as required under rule 54. Both parties confirmed, however, they had attended today expecting the issue to be determined was whether the Claimant's claim had been presented within the applicable statutory time limit and, with their express consent, I proceeded to decide this.

3. I heard evidence from the Claimant and was provided by him with copies of:
 - 3.1. an email of 26 February 2018 from the Respondent;
 - 3.2. a letter of 27 September 2018 from his counsellor.
4. I heard argument from both parties.

Law

5. The Working Time Regulations 1998 (“WTR”) provide for a payment to be made where, on the termination of employment, an employee has accrued untaken annual leave.
6. So far as material, WTR regulation 14 provides:

(1) This regulation applies where—

(a) a worker’s employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

[...]

7. The right to bring a claim before an Employment Tribunal where such a payment for accrued annual leave is not made is governed by WTR regulation 30, which provides so far as material:

(1) A worker may present a complaint to an employment tribunal that his employer—

[...]

(b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

(2) Subject to regulations 30A and 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted

to begin) or, as the case may be, the payment should have been made;

(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 or, as the case may be, six months.

[...]

8. Finally, WTR regulation 30B provides:

(1) In this regulation—

(a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS 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 worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(2) In working out when the time limit set by regulation 30(2)(a) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(3) If the time limit set by regulation 30(2)(a) 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.

(4) The power conferred on the employment tribunal by regulation 30(2)(b) to extend the time limit set by paragraph (2)(a) of that regulation is exercisable in relation to that time limit as extended by this regulation.

9. The effect of a prospective Claimant engaging in ACAS early conciliation includes, pursuant to WTR regulation 30B(2) that the period of the same is not to be counted toward the expiry of the time limit.

Conclusion

10. Although there was initially some disagreement, in the course of Miss Penaluna for the Respondent cross-examining the Claimant and referring him to pay records she had on a computer, the parties agreed that any accrued holiday pay due on the termination of his employment should have been paid on 11 January 2018.

11. Given the Claimant did not receive any accrued pay on 11 January 2018, if that had then been due this was the point within WTR regulation 30(2)(a) when time began to run.
12. In the ordinary course, the 3-month time limit would have expired on 10 April 2018. The Claimant, however, engaged in ACAS conciliation from 27 February to 10 April 2018 and (by operation of WTR regulation 30B(2)) this period (43 days) does not count.
13. Adding 43 days to what would otherwise have been the expiry period, 10 April 2018, takes us to 23 May 2018. This is the day the Claimant presented his claim. Accordingly, the claim was presented on the last day of the period permitted by ERA section 23(2) and (3A).

Employment Judge Maxwell

Date: 26 September 2019