



Case Number: 3315893/2019

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr L Brown

and

Respondent

BeNCH CRC

Held at Cambridge on 20 February 2020

Representation

Claimant:

Miss A Johns, Counsel

Respondent:

Mr G Anderson, Counsel

Employment Judge Kurrein

JUDGMENT

- 1 The Tribunal has no jurisdiction to hear the Claimant's claims and they are dismissed as having no reasonable prospect of success.

REASONS

- 1 This matter came before me at an open preliminary hearing to consider a time point.
- 2 I heard the evidence of the Claimant on his own behalf, and that of his line manager, Miss Daft, for the Respondent. I read the documents to which I was referred and the parties submissions. I make the following findings of fact.
- 3 The Claimant worked for the Respondent from 16 March 2017 as a Community Payback Supervisor. He worked and was paid for 37.5 hours a week.
- 4 His role was to supervise those sentenced to community payback carrying out their duties in the community. He was required to supervise them constantly, from about 8am to 3.45pm. When they took a morning or afternoon break, or lunch, he was expected to stay with them. He was paid for all the hours he was supervising.
- 5 He complains he was refused breaks, contrary to the Working Time Regulations 1998.
- 6 It was the Respondent's case that:-
 - 6.1 His work was covered by the exception in Regulation 21.
 - 6.2 The last day he worked all day supervising was 30 May 2018.
 - 6.3 He was absent sick from then until a phased return starting on 26 November 2018.
 - 6.4 He only worked part-time up to 22 January 2019.

6.5 From 22 January 2019 until 3 February, the last day he attended work, he was working 'doubled-up' so both he and his co-worker could take breaks.

6.6 His claim was at least 9 months out of time.

7 It was the Claimant's case:-

7.1 He had always understood that he could not take breaks until after 15:45, when the supervisees went home.

7.2 The last such day was 3 February 2019, so his claim was only 18 days out of time.

7.3 It had not been reasonably practicable to present his case in time because he was waiting for the outcome of the grievances he raised on 21 January and 14 February 2019, which had not been completed when he started early conciliation on 20 May 2019.

8 I make the following further limited findings of fact relevant to the issue before me:-

8.1 There was no evidence at all that the Claimant had been refused a break at any time. He accepted in cross examination that he had never requested a break in the period from 24 January 2019 to 3 February 2019. Carter v. Prestige Nursing Limited UKEAT 11 May 2012.

8.2 The last day on which the Claimant worked as a sole supervisor, and could not take a break, was 30 May 2018. I assume in his favour that he did request a break on that date and was refused.

8.3 The Claimant had the benefit of legal expenses insurance with his household policy. He did not seek to use that benefit, or to make any enquiries on-line or with the CAB or similar until very late in the day, probably shortly before EC was started. That was not reasonable.

8.4 The Claimant sickness absence was not such as to make it not reasonably practicable to start EC earlier. Indeed, he did not suggest so in his evidence.

8.5 The Claimant was waiting for his grievance outcome before proceeding further. That was not reasonable.

9 The chronology is therefore as follows:-

9.1 30/5/18 Last day the Claimant worked without a break/was refused

9.2 29/8/18 Last day he should have started EC

9.3 20/5/19 Date EC was started

9.4 22/5/19 Date EC ended

9.5 25/5/19 ET1 presented

10 His claim was therefore started very nearly 9 months late.

11 I am concerned with Regulation 30:-

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

- (a) has refused to permit him to exercise any right he has under—
 - (i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4) or 13(1);
 - (ii) regulation 24, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is modified or excluded; or
 - (iii) regulation 25(3) or 27(2); or
- (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) 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.

- 12 I have had regard to the following guiding principles in considering that provision:-

Wall's Meat Co Ltd v Khan [1978] IRLR 499, Lord Denning, quoting himself in *Dedman*,

'It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time?

Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, the matters to be considered include:-

The substantial cause of the claimant's failure to comply with the time limit;
Whether there was any physical impediment preventing compliance, such as illness, or a postal strike;

Whether, and if so when, the claimant knew of his rights;

Whether the employer had misrepresented any relevant matter to the employee;

Whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

- 13 In my view the substantial cause was the Claimant's inaction. That was not medical in nature. He could raise formal grievances, and attend investigation and grievance meetings in the period up to 11 April 2019.
- 14 The Claimant gave no evidence of a lack of knowledge. In this age it is rarely excusable for a Claimant not to make enquiry, at the very least on-line, as to his rights.
- 15 In my view no fault can be attributed to the Respondent. The grievances were progressing, slowly, but not at a glacial pace.

- 16 The Claimant failed to disclose when he first sought advice, and could not remember when it was.
- 17 The Claimant has failed to establish, on the balance of probabilities, that it was not reasonably practicable for him to present his claim in time. The Tribunal has no jurisdiction to hear it and it must be dismissed.
- 18 I should also indicate that even if this claim was in time I would have listed it for consideration of strike out because the Claimant falls within the Regulation 21 exception and/or because he never asked for a break.

Employment Judge Kurrein

Date: 20 February 2020

Sent to the parties and
entered in the Register on

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For the Tribunal

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