



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110139/2019

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Held in Dumfries on 27 January 2020

Employment Judge L Wiseman

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Miss C McCreadie

**Claimant
Represented by:
Ms K McCreadie -
Mother**

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The Laird Inn

**Respondent
No appearance and
No representation**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

I decided the claim had been presented in time and accordingly an Employment
25 Tribunal has jurisdiction to determine the claim.

I also decided, in terms of rule 34 of the Employment Tribunals (Constitution and
Rules of Procedure) Regulations 2013 (the Rules) to add Ms Sharon Hardman as a
respondent to these proceedings.

REASONS

- 30 1. The claimant presented a claim to the Employment Tribunal on the 14 August
2019 alleging she had not been paid the holiday pay which had accrued and
to which she was entitled to be paid.
2. The respondent did not enter a response.

E.T. Z4 (WR)

3. The Hearing today was arranged to determine the claimant's claim in respect of holiday pay which she had calculated to be £512. I raised two preliminary issues with the claimant's representative: (i) the fact I required to determine whether the claim had been presented on time. The Employment Tribunal informed the claimant, by letter of the 4 September 2019, that the claim appeared to have been presented outwith the time limit of three months from the act complained of, and (ii) whether Ms Hardman, as owner/lessor/licensee should be added as a party to these proceedings.

Timebar

10 4. I heard evidence from the claimant and I found as a matter of fact the claimant's last shift was on the 20 April 2019. The claimant's employment ended on the 29 April.

15 5. The claimant understood from ACAS that she should allow her employer a period of two weeks in which to make payment. The claimant allowed this time, and also wrote to the employer seeking payment of the holiday pay. There was no response to this letter.

6. The claimant commenced the early conciliation process on the 24 June, and the early conciliation certificate was issued, dated 24 July.

20 7. The claimant presented a claim to the Employment Tribunal on the 14 August 2019. The claim was rejected by an Employment Judge on the 20 August, because the claimant had, in the ACAS Early Conciliation certificate, named the respondent as The Lairds Inn, but in the claim form, named the respondent as Ms Sharon Hardman.

25 8. The claimant immediately, by letter of the 21 August, sought reconsideration of the decision to reject the claim and confirmed the claim should proceed against The Lairds Inn.

30 9. The claimant's letter, although addressed to the Employment Tribunals (Scotland) in Glasgow, arrived with the Employment Appeal Tribunal (the EAT) in Edinburgh. The EAT forwarded the letter to the Employment Tribunal, and it was received on the 2 September.

10. An Employment Judge allowed the application for reconsideration and the claimant was advised of this by letter of the 4 September. The claimant was also advised the claim (that is, the “second” claim presented with the application for reconsideration) appeared to have been presented out of time.
- 5 11. The claimant was not able to explain how the correspondence had arrived with the EAT in Edinburgh rather than the Employment Tribunal in Glasgow.
12. I, in considering this issue, noted there is a time limit for presentation of a claim concerning holiday pay, and the time limit is that the claim must be made within three months of the date the payment should have been made. I was
10 satisfied there was no issue of time bar in respect of the “first” claim made by the claimant. However, this claim was rejected by an Employment Judge.
13. The claimant re-presented the claim form, with the name of the respondent amended to The Lairds Inn, together with an application asking for the decision to reject the claim to be reconsidered. This was received by the
15 Employment Tribunal on the 2 September, albeit the letter sent by the claimant was dated 21 August.
14. I was satisfied that if the claimant’s letter of the 21 August had been received by the Employment Tribunal (rather than the EAT in Edinburgh), the issue of time bar would not have arisen.
- 20 15. The “second” claim form was late because the claimant’s letter went to Edinburgh instead of Glasgow.
16. The claimant could not explain how her letter had arrived with the EAT in Edinburgh, and indeed I found this curious in circumstances where the letter itself included the address of the Employment Tribunal in Glasgow.
- 25 17. I must ask whether it was reasonably practicable for the claim to have been presented on time. I balanced the fact that on the one hand it was reasonably practicable to present the claim on time because the claimant’s letter was dated 21 August, and if this had gone direct to the Employment Tribunal in Glasgow it would have been on time. On the other hand, there was nothing to
30 explain how the letter had arrived at the EAT in Edinburgh.

18. I decided, on balance, that it was not reasonably practicable to present the claim on time in circumstances where there was no explanation for the letter arriving in Edinburgh instead of Glasgow. The EAT forwarded the claimant's letter to the Employment Tribunal within days of its receipt. I was accordingly
5 satisfied the "second" claim had been presented within such further period as was reasonable.

19. I, in conclusion, decided the claim had been presented in time and an Employment Tribunal has jurisdiction to determine the claim.

Addition of a party

10 20. I understood from the claimant that she had been taken on by Ms Hardman, given instructions by Ms Hardman and paid by Ms Hardman. The claimant was unsure if Ms Hardman owned The Lairds Inn, which is located on a holiday park, or whether she leased the premises; but it appeared Ms Hardman was the licensee of the premises.

15 21. I gave the claimant time to consider whether she wished to add Ms Hardman as a party to these proceedings (and looking at the initial claim form, that may have been what the claimant intended). The claimant confirmed she did wish to do this.

20 22. I decided, in terms of rule 34 of the Rules, to add Ms Sharon Hardman, as a respondent to these proceedings.

Employment Judge : L Wiseman
Date of Judgment : 29 January 2020
Date sent to parties : 30 January 2020