Case Number: 2302553/2022

THE EMPLOYMENT TRIBUNAL

Claimant: Ms Penn

Respondent: The Estate of Carola Penruddock (Deceased)

Heard at: London South Employment Tribunal (video hearing)

On: 4 January 2023

Before: Employment Judge Robinson

Representation
Claimant: In person
Respondent: Mr McCrum, Solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant is entitled to a redundancy payment in accordance with Part XI of the Employment Rights Act 1996. The Respondent is ordered to pay the Claimant a redundancy payment of £7,344.

2. The Claimant's claims for unauthorised deduction from wages and holiday pay have been presented out of time and are dismissed.

3. The Claimant's claims in relation to pension contributions and injury to feelings are not well-founded and are dismissed.

REASONS

Introduction

1. The Claimant, Ms Penn, was employed by Ms Carola Penruddock as her full-time live-in carer from 16 October 2012 until Ms Penruddock's death on 8 January 2022. The Claimant then agreed with Ms Penruddock's family that she would stay on in a caretaker administrator role to help with various matters at the house for the period 9 January to 4 February 2022.

2. ACAS early conciliation started on 7 June 2022 and ended on 19 July 2022. The claim form was presented on 30 July 2022. The response form was

received on 21 September 2022.

Claims and issues

1. The Claimant clarified at the outset of the hearing that her claims were for:
   a. Redundancy pay
   b. Unauthorised deduction of wages in relation to her work as a carer for Ms Penruddock from 25 December 2021 to 8 January 2022
   c. Unauthorised deduction of wages in relation to her caretaker administrator role for Ms Penruddock's family from 9 January to 4 February 2022.
   d. Unpaid holiday pay
   e. Loss of earnings
   f. Employer's pension contributions.

Procedure, documents and evidence heard

2. I was provided with:
   a. an agreed bundle of 84 pages,
   b. emails from the Claimant dated 28-30 December 2022 which showed (among other things) whatsapp conversations between the Claimant and Ms Penruddock's family,
   c. a witness statement of Mr Hough (the nephew of Ms Penruddock).

3. This claim was listed for 2 hours. I agreed with the parties that the matter to be decided today was essentially whether the claims were in time.

4. However, before hearing evidence on that question, I discussed with the parties whether there was agreement as to what the correct sums were in relation to each of the claims, if I decided that such claims could proceed.

5. The parties agreed that a redundancy payment of £7,344 was due and that there were no time limit issues with that claim before the Tribunal. The amount is based on the Claimant being employed by Ms Penruddock from 16 October 2012 until 8 January 2022. At the date of termination of the employment contract the Claimant was 53 years old and received £544 gross per week. Her redundancy pay is calculated and awarded at £7,344. I therefore make an order for that payment to be made to the Claimant.

6. Mr McCrum for the Respondent accepted that, if I concluded that the other claims were in time, the Claimant was entitled to the following net amounts:
   a. £2,000 for the Claimant's work as a carer for Ms Penruddock from 25 December 2021 to 8 January 2022, and
   b. £933 in accrued but untaken holiday pay.

7. The sum claimed for the work as a caretaker administrator from 9 January to

4 February was not accepted by the Respondent. The parties agreed that a further hearing would be needed to determine the sums properly payable if I decided that that claim was in time.

8. In the 2 hour hearing today I heard oral evidence from the Claimant and from Mr Hough for the Respondent. I also heard closing submissions from the Claimant and from Mr McCrum for the Respondent.

9. I have carefully considered the documentary evidence provided, together with the parties' oral evidence and the closing submissions.

Findings of Facts

10. I have made the following findings of fact on the balance of probabilities having heard the evidence and considered the documents. These findings of fact are limited to those that are relevant to the issues listed above, and necessary to explain the decision reached.

11. Given the issue I need to determine is around time limits, it is important to set out the chronology in this case.

12. It is not in dispute that the contract of employment between the Claimant and Ms Penruddock ended on the latter's death due to the contract being frustrated. The effective date of termination is therefore 8 January 2022 and is the date on which the claimed amounts in relation to the following became due:
    a. unauthorised deductions from wages for the carer role, and
    b. Accrued but untaken holiday pay

13. I accept the Respondent's evidence that the work that the Claimant did as a caretaker administrator was a separate, ad-hoc arrangement. This involved the Claimant being able to remain living in the accommodation that she had been provided with as part of her carer role for the previous 9.5 years, and involved essentially housekeeping matters, allowing people into the property etc. in order to facilitate the winding-up of Ms Penruddock's affairs. Although the terms, hours of work etc. of this arrangement are in dispute between the parties, the dates over which it took place are not. It began on 9 January 2022 and ended on 4 February 2022. The wages in relation to the caretaker administrator role became due on 4 February 2022.

14. The Claimant gave evidence that she began a new carer job with a separate employer later in February 2022 but was not able to maintain it due to the stress of trying to recover payments from the Respondent.

15. The Claimant was given reassurances by Mr Hough (the nephew of Ms Pendruddock) via whatsapp that he was hopeful that any amounts still due to the Claimant could be made by the end of May. Mr Hough was not, and is not, one of the Executors and I accept his evidence that he was essentially trying to be helpful and reassuring to the Claimant but did not have authority to commit to payments being made nor when such payments could be made.

16. The Respondent's solicitors, Morr & Co LLP, also wrote to the Claimant on 9 April 2022. That letter confirmed the Claimant's entitlement to redundancy payment and that she was not entitled to notice pay. The letter also referred to the Claimant outstanding's wages for the final weeks of her work as a carer before Ms Penruddock's death, and her holiday pay. Reassurances were given that the amounts owed would be paid to the Claimant subject to the formal winding-up of the estate and the executors working out what the Claimant's correct tax and national insurance position should be. This letter disputed the Claimant's claims for expenses and her work as a caretaker administrator unless evidence could be provided in relation to the expenses reasonably incurred and the hours and work carried out.

17. It was the reference in that 9 April letter, to the Claimant's tax and national insurance position, plus the situation in relation to when she might be required to vacate Ms Penruddock's property (in which she was still residing) that caused the Claimant to contact the Citizen's Advice Bureau ("CAB") "*in mid-April*".

18. The Claimant was then seeking advice from CAB and considering her position between 9 April and 7 June (around 8.5 weeks) at which point she contacted ACAS. The Claimant gave evidence that she was not aware of any time limit issues in relation to her claims until she spoke to ACAS. She also stated that she was not that comfortable with technology given she was used to working with her hands rather than computers.

19. The ACAS early conciliation period ran from 7 June to 19 July 2022 and the Claim Form was then presented on 30 July 2022.

The Law

20. Under section 23(2) of the Employment Rights Act 1996 (the "ERA"), an Employment Tribunal:

> "*shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*
> *(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*
> *(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*"

21. Section 207B of the ERA has the effect of ensuring that the period between the date the Claimant contacts ACAS and the date when the Claimant received an early conciliation certificate from ACAS does not count towards the 3 month time limit.

22. Section 23(4) of ERA provides that:
"*Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*"

23. Mr McCrum referred to the recent Employment Appeal Tribunal ("EAT") decision of Cygnet Behavioural Health Ltd v Britton [2022] EAT 108 in which the EAT emphasised, at paragraph 19, the strictness of the time limit test and referred to the view of Judge LJ in London Underground Ltd v Noel [1999] IRLR 621 who said:
"*By section 111(2)(b) this period may be extended when the tribunal is satisfied 'that it was not reasonably practicable for the complaint to be presented before the end of that period. The power to disapply the statutory period is therefore very restricted. In particular it is not available to be exercised, for example, 'in all the circumstances', nor when it is 'just and reasonable', nor even where the tribunal, 'considers that there is good reason' for doing so.*"

24. The EAT in Cygnet Behavioural Health Ltd v Britton also said, at para 27:
"*The [section 111(2)] test is a strict one and, perhaps in contrast to the "just and equitable" extension in other statutory contexts, there is no valid basis for approaching the case on the basis that the ET [Employment Tribunal] should attempt to give the "not reasonably practicable" test a liberal construction in favour of the Claimant*."

The Tribunal's conclusions

25. Having found the facts as set out above, heard the closing submissions of the parties, and considered the relevant law, I have come to the following conclusions.

26. I acknowledge, firstly, that the Claimant is unrepresented and is not expected to have pre-existing knowledge of the time limits in relation to Employment Tribunal claims.

27. Having said that, the Claimant appeared in the way she presented her claim, and her evidence, to be a bright and competent person. I must consider whether it was not reasonably practicable for her to have presented her claim in time. I have taken account of the decision of the EAT in Cygnet

Behavioural Health Ltd v Britton by not giving a liberal interpretation to the statutory wording in favour of the Claimant. I do recognise that that case, unlike the Claimant's case, related to an unfair dismissal claim. However, the time limit wording for unfair dismissal claims in section 111(2)(b) is essentially the same as the time limit wording in section 23(4) in relation to the claims made by the Claimant.

28. Other than her evidence that she does not usually work with computers, and that she was reassured by the family of Ms Penruddock (and the Respondent's solicitors) that payment would likely be made to her once the estate was wound-up and the tax position sorted out, the Claimant presented no compelling reason as to why her claims were not presented in time. The Claimant conceded that she had been speaking to CAB "*and others*" about her legal position from 9 April onwards.

29. I do not consider the fact that the Claimant does not use computers in her day job, or that she was given caveated reassurances of payment in due course to mean that it was not reasonably practicable for the Claimant to have presented her claims in time. I therefore conclude that it *was* reasonably practicable for the Claimant to have presented her claims within the time limits required by the ERA.

30. I must then consider whether the claims were presented within a further period that I consider reasonable.

31. Regarding the claims arising out of the carer job, the date on which the contract ended is 8 January. The date for submitting her claims to the Tribunal would have been 7 April. However, the Claimant did not submit her claim form until 30 July (notwithstanding a 6 week early conciliation period). In accordance with section 207B of ERA I have not counted the early conciliation period, but these are claims are nevertheless still around 10 weeks out of time. I do not consider that to be a further reasonable period.

32. The claim in relation to the caretaker administrator role ought to have been made within 3 months of that role ending on 4 February; which would have been 3 May. There was a 5 week gap between that date and the date ACAS was contacted, plus a further 1.5 week gap after the early conciliation period. This claim is therefore around 6.5 weeks out of time which, again, I do not consider to be a further reasonable period.

33. Finally, the Claimant has not provided any evidence in relation to her claims related to pension contributions and/or injury to feelings. Even had I decided that the Claimant's unauthorised deduction from wages and holiday pay claims were in time, it is not clear that the Tribunal would have had jurisdiction

to consider claims for pension contributions and injury to feelings. In any event, these claims have not been well-founded and are dismissed.

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Employment Judge Robinson
Date: 11 January 2023

Sent to the parties on
Date: 16 January 2023