



EMPLOYMENT TRIBUNALS

Claimant

Mr Eddie Schlaen

v

Respondent

A1 Taxis Ilford Limited

Heard at: Huntingdon (by CVP)

On: 14 April 2023

Before: Employment Judge M Ord

Appearances

For the Claimants: In person

For the Respondent: Mr K Chehal, Senior Litigation Consultant

JUDGMENT on STRIKE OUT

1. The correct title of the Respondent is A1 Taxis Ilford Limited and the Tribunal Record is amended accordingly.
2. The Claimant's claims are struck out. They were presented out of time and the Claimant has not satisfied me that it was not reasonably practicable for them to be presented in time.

REASONS

Background

1. The Claimant was employed by the Respondent as Office Manager from 26 June 2006 until either 14 September 2021, according to the Claimant's claim form, or 30 September 2021 according to the Respondent's reply. For the purpose of today's Hearing I was not required to determine that issue.
2. The Claimant began Early Conciliation on 3 October 2022 and the Certificate is dated 14 November 2022. That Certificate identifies the potential Respondent as A1 Taxis.
3. On 30 November 2022, the Claimant presented his claim form to the Tribunal. In that form the Respondent was named as Howard Kovler and gave the address as A1 Taxis. The naming of an individual Manager or

owner of a business is a common error made by unrepresented Claimants. Perhaps encouraged by the wording on the form ET1 asking them to,

“2.1 give the name of your employer or the person or organisation you are claiming against”

4. The Respondent and Claimant accept that the employing entity was “A1 Taxis Ilford Limited” and I am content that the name of the Respondent should be amended to A1 Taxis Ilford Limited pursuant to my powers under Rule 12 to correct an error.
5. In his claim form, the Claimant makes the following complaints:
 - 5.1 That he was unfairly dismissed;
 - 5.2 That he was dismissed in breach of his contract of employment (a claim for notice pay);
 - 5.3 That he was at the time of his dismissal due accrued annual leave for which he was not paid; and
 - 5.4 That he was entitled to a redundancy payment.

The Law

6. The Law sets out clear time limits for bringing such complaints to the Tribunal, subject to extensions granted for engagement in conciliation through ACAS, they are as follows:
 - 6.1 In the case of unfair dismissal, s.112(2)(a) of the Employment Rights Act 1996, states that a claim must be presented within three months of the effective date of termination of employment unless it was not reasonably practicable to do so and the claim was presented within a reasonable time thereafter;
 - 6.2 In the case of a complaint of a breach of contract, the claim must be presented within three months beginning with the effective date of termination as set out in Article 7 of the Employment Tribunal Extension of Jurisdiction Order 1994;
 - 6.3 Under Regulation 30 of the Working Time Regulations, a claim for unpaid holiday pay must be made within three months of the effective date of termination of employment; and
 - 6.4 Under s.164(1) of the Employment Rights Act 1996, a claim for a redundancy payment must be presented before the end of six months beginning with the relevant date; in this case the relevant date is the effective date of termination.
7. The claims are therefore all presented significantly out of time.

8. The Respondent made an Application to Strike Out the claims on the basis that they had not been presented within the relevant time limits and that matter came before me today.
9. I have heard today from the Claimant, his wife, Mr Kovler Director of the Respondent and his Representative Mr Chehal. I have had sight of a Bundle of documents and I have also been sent a copy of a P45 in the Claimant's name dated 21 February 2022, showing a termination date of 30 September 2021.
10. Based on the information given to me, I have made the following findings of fact.

Findings of Fact

11. The Claimant worked for a number of years for the Respondent as Office Manager and he enjoyed the work. The Respondent's business was greatly impacted by the Covid-19 pandemic and lockdown restrictions and during a period of time when the Covid-19 pandemic was at its height, the Claimant was furloughed.
12. During the furlough period and for a period thereafter the Claimant, who did not wish to be at home and idle, worked for a few hours per week each Friday for Deliphone an organisation in which his wife also worked delivering food to elderly people in the area.
13. In mid 2021, the Respondent was able to recommence work and spoke to various employees regarding a return to work, including the Claimant. At that time the Claimant asked to reduce his working hours. He asked to work part time and told me today this was mainly due to his age and not wanting to engage in full time work. He said, however, that if no part time work was available he would consider returning full time. According to both the Claimant and Mr Kovler, the position was left that if there was any part time work available Mr Kovler would contact the Claimant, but that his role as Office Manager was a full time role and could not be carried out on a part time basis.
14. There was no formal written confirmation of this. The Claimant says he had not resigned, the Respondent says he was not dismissed. But there the position rested for some months after September 2021.
15. The Claimant, as far as I have been told or shown, took no further steps to clarify the position for approximately one year. He was not being paid, he was not attending work and he did not make any contact with the Respondent. The Claimant says he did not receive his P45. But that document is of itself not determinative of anything and a further copy has been sent to him electronically today.
16. Based on the information I have been given, I am satisfied that the events as detailed above amount to an agreed mutual termination of the

Claimant's employment as Office Manager, with a promise from the Respondent that the Claimant would be contacted if there was any part time work available in the future.

17. In those circumstances I am satisfied that the Claimant's employment ended on 30 September 2021 by mutual consent.
18. If the Claimant believed that he was dismissed or was uncertain of his position, then he has not identified to me any impediment to his contacting ACAS, or commencing Tribunal proceedings. It was reasonably practicable for him to do so, as he later did. He could have made enquiry of ACAS, or of the Respondent, at any time and he has not satisfied me that it was not reasonably practicable for him to present his claim in time, or that it was presented within a reasonable time thereafter.
19. In truth what the Claimant has done is to leave matters for a year. If he had any doubts he could have taken steps to clarify them.
20. Therefore the Claimant's claims are out of time and he has not satisfied me that it was not reasonably practicable to present the claims in time. For those reasons the complaints are dismissed.
21. I should conclude by saying this: it is sad that a long standing and happy working relationship has ended as it has and that the matter has eventually become litigious. The parties had worked harmoniously for many years and if the opportunity arises for that relationship to be repaired in any way, then both parties should take that opportunity.
22. However, in the circumstances of this case, the Claimant's complaint is dismissed.

23 May 2023

Employment Judge M Ord

02/06/2023

Sent to the parties on:

J Moossavi

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For the Tribunal Office.