



# EMPLOYMENT TRIBUNALS

**Claimant**  
L Thomas

v

**Respondent**  
Imhotep Plaster Mouldings Limited

**Heard at:** Watford by CVP  
**Before:** Employment Judge Anderson

**On:** 24 October 2024

## Appearances

**For the claimant:** In person

**For the respondent:** Did not attend

## JUDGMENT

1. The claimant's claim for notice pay and unpaid holiday is dismissed as it was not filed within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the claim to be presented before the end of a period of three months beginning with the date that payment was due. (*S23 Employment Rights Act 1996 and Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994/1623 Article 7*)
2. The claimant's claim for redundancy payment is dismissed as it was not filed within six months of the effective date of termination nor in the following six month period. (*S164 Employment Rights Act 1996*)

## REASONS

### Background

1. The claimant was employed by the respondent from 27 July 2010 until 27 August 2021. The business ceased trading on 27 August 2021. Early conciliation commenced on 22 June 2023 and ended on 26 June 2023. The claim was filed on 26 June 2023. The respondent company has not responded to the claim.

### The Hearing

2. The matter was listed for a three hour final hearing today. I explained to the claimant that the tribunal first had to consider whether the claim had been filed in time, as if it had not then the tribunal had no jurisdiction to hear the claim. The claimant attended the hearing and gave evidence on oath about

the circumstances in which the claim was filed. I had a handwritten statement from the claimant and some documents surrounding the circumstances that led to this claim. These included an email chain from February 2022 between the claimant and the government redundancy scheme.

**Law**

3. S23 Employment Rights Act 1996- Complaints to employment tribunals.
  - (1) A worker may present a complaint to an employment tribunal —
    - (a) that his employer has made a deduction from his wages in contravention of section 13 [Right not to suffer unauthorised deductions]...
    - ...
    - (2) Subject to subsection (4), 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,
      - ...
      - (4) 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.
      - ...
4. S164 Employment Rights Act 1996- Claims for redundancy payment.
  - (1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
    - (a) the payment has been agreed and paid,
    - (b) the employee has made a claim for the payment by notice in writing given to the employer,
    - (c) a question as to the employee's right to, or the amount of, the payment has been referred to an [employment tribunal]<sup>1</sup>, or
    - (d) a complaint relating to his dismissal has been presented by the employee under section 111.
  - (2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—
    - (a) makes a claim for the payment by notice in writing given to the employer,
    - (b) refers to an [employment tribunal]<sup>1</sup> a question as to his right to, or the amount of, the payment, or
    - (c) presents a complaint relating to his dismissal under section 111, and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

5. Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994/1623 Article 7

Subject to article 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented-

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

...

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

### **The claimant's evidence**

6. The claimant was the wife of the director of the respondent and worked as a secretary in the business. There were no other employees. The claimant's husband took his own life on 27 August 2021 and the business effectively stopped trading at that point. The business has not yet been subject to compulsory strike off from the companies register. This is because HMRC and a bank have objected where they are owed money by the respondent.
7. The claimant explained that she had now been diagnosed with complex PTSD and that she had been mentally unwell from before the business ceased trading. She has also been diagnosed with physical health issues that were affecting her during the relevant period. She said that she had little or no help during that time and had turned her executor duties over to Co-op legal services. She had received inappropriate counselling services when she required therapy over the relevant period which had made her mental health worse. She had a friend who lives some distance away who sometimes helped her with things but no other support. The claimant said that she had lived independently throughout the relevant period and had not been hospitalised. She said she could not remember why she had decided to proceed with issuing a claim in the tribunal in June 2023 but may have been encouraged to do so by her friend.

### **Decision and Reasons**

#### Notice Pay and Holiday Pay

8. A claim for notice pay or holiday pay must be brought within three months of the date the payment became due (holiday pay) or three months from the date of termination (notice pay). A tribunal can only extend time for filing if it finds that it was not reasonably practicable to file the claim within the three month period. Even where it finds that it was not reasonably practicable, it must go on to consider whether the claim was then filed within such further time as the tribunal considers reasonable.
9. The claimant has explained the circumstances leading up to her husband's death and the reasons for her mental ill health at that time. I accept the claimant's evidence that it was not reasonably practicable to file the claim by 26 November 2021 (plus any extension for early conciliation).

10. The claimant did not then file a claim until 26 June 2023, some 19 months later. I have noted that the claimant continued in poor mental health and developed physical health problems, but also that she continued to live independently, and that there was no evidence of her being unable to file a claim at any time from November 2021 to June 2023, or that there was an improvement in her health or other circumstances which mean that it only became practicable to file in June 2023. Additionally, I had before me an email chain between the claimant and the government redundancy scheme dated from 28 January 2022 to 2 February 2022. In the claimant's email she sets out that she is the executor of her husband's will and is trying to close down the respondent company. She asks for advice on how to obtain holiday and redundancy pay. The response is that she should seek legal advice, contact a debt charity and/or contact ACAS about employment matters. The claimant did not take any of these steps until a year and a half later and it is my decision based on this evidence, that it would have been reasonably practicable for the claimant to file a claim on or around February 2022.
11. For these reasons the claims for holiday and notice pay are out of time and the tribunal has no jurisdiction to hear them.

Redundancy Pay

12. The tribunal's jurisdiction in extending time for late filing of a redundancy pay claim is set out in s164 Employment Rights Act 1996. A claim must be made within six months of the date of termination either in writing to the employer, where it has not been paid, or to the tribunal. Time can be extended for a further six months on a just and equitable basis if either of those acts is done in the second six month period following on from the first.
13. The claimant confirmed that she had not made a written request for payment from the company, noting that there was no-one for her to write to as Mr Thomas, the director, had died, but also that she had not filed a claim with the tribunal in that period. The tribunal has no jurisdiction to consider an extension of time for a claim for redundancy payment which is not made within twelve months of the date of termination.
14. For this reason, the claim for redundancy pay is out of time and the tribunal has no jurisdiction to hear it.

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Employment Judge W Anderson

Date: 27 October 2024

Sent to the parties on: 7 December 2024

T Cadman  
For the Tribunal Office

