



EMPLOYMENT TRIBUNALS

Claimant: Mr D Longworth

Respondent: Midway Engineering NW Ltd

HELD AT: Manchester

ON: 30 October 2017

BEFORE: Employment Judge Rostant

REPRESENTATION:

Claimant: In person

Respondent: Not in attendance

JUDGMENT having been sent to the parties on 26 October 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant resigned his employment giving one week's notice and the effective date of termination was 12 May 2017. That was the last date on which payment ought to have been made to him under his contract.
2. The claimant sought early conciliation on 16 August 2017 and his early conciliation certificate was granted on 17 August. The claim was presented on 22 August 2017.
3. The claim before the Tribunal is of an unauthorised deduction from wages pursuant to section 23 Employment Rights Act 1996. Pursuant to section 23(2)(a) the Tribunal is prohibited from hearing the claim unless presented before the end of a three month period, beginning on the date of the unauthorised deduction.
4. The extension of the time limits provided for by the early conciliation provisions does not apply unless early conciliation is sought within the initial time period.
5. The time limit may also be extended, however, if it was not reasonably practicable to present the claim within the initial time period and it was presented within such further time as was reasonable (see section 23(4)).

6. I am not satisfied that it was not reasonably practicable to present the claim in time. The claimant knew that he had been underpaid by 8 May 2016. He was due payment on that day, in accordance with his contract. He was advised that there had been a unilateral change to his contract so that pay would now be paid at the end of May (26th). As a matter of law that variation had no effect and the date of the unauthorised deduction was, at the latest 12 May.

7. The claimant received no pay on 26 May. By this stage he had resigned in response to earlier events.

8. The claimant was advised by ACAS that the respondent had applied for voluntary liquidation. At the same time he was advised that he had three months, less a day, from the payment day to bring any claim against the respondent.

9. The claimant initially decided to wait for the liquidation process to produce funds from the insolvency fund.

10. Operating on a gut feeling, he went to ACAS for a certificate on 16 August, that is, after the expiry of the initial time limit.

11. In fact, the respondent did not pay the liquidation fee and has never become technically insolvent.

12. There was no barrier to the claimant pursuing his claim against the respondent within the time period. The claim was not brought because the claimant, at least initially, felt that there was little point in pursuing an insolvent company. Nevertheless, the claimant knew of his right to bring the claim and of the time limits for bringing it. His decision not to pursue the claim within time, although understandable, does not amount to a circumstance whereby it was not reasonably practicable to bring the claim.

13. Further, when the claimant did present the claim, it was a further five days after the granting of the certificate. I do not consider that, in the circumstances, even that delay was reasonable.

Employment Judge Rostant

Date: 17 November 2017

REASONS SENT TO THE PARTIES ON

14 December 2017

FOR THE TRIBUNAL OFFICE

[AF]