EMPLOYMENT TRIBUNALS

Claimant: Mr F Armosh

Respondent: Axis Group Integrated Services Limited

Heard at: Manchester **On:** 30 November 2018

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: In person
Respondent: Mr Antill, HR Manager

JUDGMENT
AND
CASE MANAGEMENT ORDERS

It is the judgment and order of the Tribunal that:

1. The final hearing of these claims listed for 30 November 2018 be converted into a preliminary hearing to consider the claims and make Case Management Orders.

2. The name of the respondent be amended to Axis Group Integrated Services Limited unless objection is received within seven days.

3. There be a public preliminary hearing listed for three hours on **9 April 2019** at **Manchester Employment Tribunal, Alexandra House, 14-22 The Parsonage, Manchester, M3 2JA** to determine whether any of the claimant's claims of an unlawful deduction from wages were presented out of time, and if so whether it was not reasonably practicable for him to have presented them within time and, if so, to determine to what date, if any, it would reasonable to grant an extension of time for their presentation.

4. The Tribunal makes the following orders:

   (1) The claimant do, by **4 January 2019**, serve upon the respondent and the Tribunal full particulars of his claims of unlawful deduction from wages,

setting out in particular by list or in other tabular form full details of what sums he claims he was not paid, and when he says such payments were due.

(2) The respondent has permission to amend its response by **25 January 2019**.

(3) The claimant do, by **25 January 2019**, serve upon the respondent a witness statement setting out the full circumstances of why he did not present the claims until 4 September 2018 and, in particular, why it was not reasonably practicable to have presented them, or any of them, within the relevant three month time limit applicable to them.

(4) The claimant is also to serve upon the respondent along with any witness statement so served copies of any documents that he intends to rely upon at the next preliminary.

(5) The respondent has permission to prepare and serve any witness statements in reply to the claimant's evidence for the preliminary hearing by **22 February 2019**.

(6) The respondent do, regardless of whether any witness statement is served, serve upon the claimant any documents that it intends to rely upon at the preliminary hearing by **22 February 2019**.

(7) The respondent agrees to be responsible for the preparation of the hearing bundle for the next preliminary hearing, which is to be provided by **15 March 2019**.

REASONS

1. By a claim form presented on 4 September 2018 the claimant brings claims of unlawful deduction from wages arising out of his employment by the respondent between April 2016 and 24 February 2018. The details of his claims are set out in somewhat narrative form in a document attached to the claim form from which it appeared that the claimant was seeking to recover underpayments of wages going back to March 2016. His particulars provided in his claim form relate efforts he made to pursue underpayments with wages with emails to his former employers, but the document attached to the claim form is unclear in terms of the precise sums claimed, and dates upon which the wages fell due, and the dates upon which the claimant alleges he was underpaid.

2. The respondent responded. That response is in the name of Axis Group Integrated Services and was prepared by Mr Antill, its HR Manager who appears today. Whilst not mentioned in the course of the hearing, the Employment Judge does note from Mr Antill’s email correspondence and indeed a Companies House search that the respondent is indeed a Limited Company and does propose to amend the name of the respondent to add the word “Limited” unless objection is received within seven days.

3. The response is relatively brief, and states that the claimant had contacted the respondent with what are described as “historic” claims about his pay, and how the claimant had raised similar issues upon his dismissal on 24 February 2018. The contention was made, however, that the claims were out of time. The respondent, by email of 9 November 2018, did seek a strike out of the claims on the basis they considered that they had no merits or prospects of success and were out of time, and also that the claimant had not complied with the Case Management Order which was contained in the notice of claim that he provide details within four weeks of the remedy that he was seeking.

4. The claimant attended in person and Mr Antill attended for the respondent. Each side produced bundles of documents of the Tribunal, although there was some question mark as to whether those produced by the claimant had been seen by the respondent previously. The Employment Judge opened the hearing by pointing out to the claimant that his claims did indeed seem to be out of time. Given that his employment ended on 24 February 2018, it seemed likely that the last date from which the relevant three month time limit could run in relation to any claims that the claimant could make was that date, in which case the presentation of his claim form on 4 September 2018 was significantly out of time. Further, the Employment Judge noted, and the claimant confirmed, in his claim form the claimant appeared to be seeking to recover underpayments of wages going back to early 2016 when his employment commenced. The claimant confirmed that this was so.

5. The Employment Judge explored with the claimant whether he was seeking to recover underpayments of wages which he alleged continued throughout his employment. Whilst initially this appeared to be the case, upon clarification, and indeed examination of a document particularly a spreadsheet that the claimant had prepared, it then emerged that there were periods during which the claimant accepted that he was properly paid. Consequently there is no series of deductions going all the way back , unbroken , to the beginning of his employment in 2016, and the Employment Judge therefore explained to him that the relevant three month time limit in which such claims have to be made would run from the relevant dates of the deductions in question.

6. This consequently meant, potentially, that the claims in respect of deductions which were last made in November 2016 were considerably out of time. In relation to those made more recently, prior to the termination of the claimant's employment in February 2018, these were less out of time, but these too would also have to be considered.

7. Consequently the Employment Judge considered that there would have to be a preliminary hearing to determine the time limit issues. Mr Antill, for the respondent, was concerned that the respondent was being put to expense in defending these claims and attending the Tribunal, he being based in London. The Employment Judge sympathised with him, and did explore whether these issues could be dealt with by the Tribunal in this hearing. From further discussions with the claimant, it would appear that he will be seeking to allege that it was not reasonably practicable (which term was explained to him) for him to have presented his claims earlier. He will contend that he was in email correspondence with the respondent in 2016 and indeed perhaps later in which he tried to resolve these matters but was met with no adequate response. Further, in relation to the more recent claims that he seeks to

make, he will be making reference to his personal circumstances as a PhD student, his own health in the form of depression, and the health of his wife. The Employment Judge explained to him that the Tribunal that determines the time limit issues will have to decide whether it was not reasonably practicable to have presented any of the claims within the relevant three month time limit, and that might involve different considerations in relation to the 2016 claims than it did in relation to the 2018 claims. Either way, in respect of each set of claims, the claimant will have to establish firstly that it was not reasonably practicable i.e. what it was that stopped him from bringing the claims within the relevant time limit, and thereafter the Tribunal will have to determine to what date it would be reasonable to grant him an extension of time for the presentation of those claims. It may be the case, the Employment Judge explained, that a different view is taken in relation to the older claims than the more recent, or vice versa, or both may be treated the same. That would be a matter for the Employment Judge dealing with the preliminary hearing on the next occasion.

8. In the meantime, the Employment Judge was reinforced in his view that these are not matters that could be dealt with before him today, and that the claimant would need to set out his case fully in a witness statement with supporting documentation of any matters relied upon. Further, further particulars are clearly required of the breakdown of the claims and in particular for dates upon which they arose. This was discussed with the claimant and he will provide such particulars.

9. Going through an email from the claimant, however, in relation to some of his claims now they were broken down, it was noted that there was a claim for "compensation" for a ruined holiday. This as when the claimant was informed that he was suspended in early 2018 whilst he was on holiday. He claims he was not paid for that suspension, and that this news ruined his holiday. The Employment Judge pointed out to him that the Tribunal could not award any form of "compensation" in these circumstances and that this claim could not proceed. The claimant understood this.

10. Accordingly, the Employment Judge directed that a half day public preliminary hearing be held to determine whether the claimant's claims were presented out of time and, more probably, whether he should be granted any extension of time on the basis that it was not reasonably practicable for him to have presented the claims within the relevant time limit. The respondent is entitled to, and were given permission to, file any evidence and documents in reply to the claimant's application, although it was appreciated that this was often a matter upon which a respondent can give very little relevant evidence. A hearing bundle will be required and the respondent agreed to be responsible for this. Dates were accordingly set for exchange of witness statements, documents and preparation of the hearing, and date obtained for a preliminary hearing to determine these issues.

11. Accordingly, the Employment Judge lists the public preliminary hearing set out above to determine the time limit issues. Mr Antill did invite the Employment Judge to explain to the claimant the nature of "without prejudice" discussions, which the Employment Judge gladly did. Mr Antill did raise the possibility also of a costs warning, deposit order or other form of order being made by the Tribunal. The Employment Judge did point out to him that the "costs" in the true sense of the word could only be recovered by a party who was legally represented, and that a party who was not could only seek a preparation time order, which was limited to the

present rate of £38 per hour, and can only be made in relation to time and not in relation to other costs such as travel. Further, in any event, the Tribunal would have to be satisfied that the threshold criteria for making an order for costs was satisfied, which at this stage would be premature. There was, of course, nothing to stop any party giving the opposite party any form of “costs” warning if they pursued the claims that the party in question considered lacked merit. It may well be, however, given the relatively modest sums involved, that the parties are able to resolve their differences by means of “without prejudice” discussions, or through the good offices of ACAS. If, however, this proves not to be possible, the parties are to prepare for the preliminary hearing listed above at which the time limit issues will be determined by the Tribunal.

Employment Judge Holmes

Dated : 7 December 2018

JUDGMENT, ORDERS AND REASONS
SENT TO THE PARTIES ON

12 December 2018

FOR THE TRIBUNAL OFFICE

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(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party’s participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.