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EMPLOYMENT TRIBUNALS

Claimant: Mr J Oleary
Respondent: Paul Graves
Heard at: East London Hearing Centre
On: 5 November 2018
Before: Employment Judge Brown

Representation

Claimant: In person
Respondent: No attendance

JUDGMENT

The judgment of the Tribunal is that:-

1. It was not reasonably practicable for the Claimant to present his claim in time. The Claimant presented his claim within a reasonable time thereafter and therefore the Tribunal has jurisdiction to hear his claim.
2. A final hearing will be listed for two hours.

REASONS

1 By a claim form presented on 9 August 2018, the Claimant brought complaints of unlawful deductions from wages, unfair dismissal and failure to pay holiday pay against the Respondent. The Claimant had contacted ACAS on 22 May 2018 and ACAS had issued an EC certificate on 22 June 2018. In his claim form, the Claimant said that he had been employed from 16 May 2017 to 17 March 2018 as a trainee renovator for the Respondent.

2 The Claimant's claim for unfair dismissal was struck out in a judgment sent to the parties on 2 October 2018 because the Claimant did not have two years' service in order

to bring a claim.

3 The Respondent defended the claim in a response saying that the Claimant had been a self-employed independent contractor and had been paid all the money that was due to him.

4 On 30 October 2018 the Tribunal wrote to the Claimant, copied to the Respondent, saying that the Claimant's claim had been presented outside the time limit and that, in the circumstances, there would be a Preliminary Hearing to consider whether it could proceed. The Tribunal said that, at the start of the Preliminary Hearing on 5 November 2018, the Claimant would have to show the Tribunal why it had not been reasonably practicable for the Claimant to present his claim in time and, if he succeeded in doing this, that he had presented his claim within a reasonable time thereafter. The hearing was listed for two hours at 11.00am on 5 November 2018. That letter was sent to both the Claimant and the Respondent. The Claimant attended the hearing on 5 November, the Respondent did not.

5 I heard evidence from the Claimant at the hearing. He told me that he was last paid on 15 March 2018. He said that, on that day, the Respondent paid him for one week, but failed to pay the Claimant for another week that he was owed. The Claimant said that he had contacted the Citizens Advice Bureau after he was dismissed. The Citizens Advice Bureau told the Claimant to contact ACAS and that ACAS would mediate. He said that the Citizens Advice Bureau did not advise the Claimant of Employment Tribunal proceedings, but that he found out about Employment Tribunals when he contacted ACAS.

6 The Claimant told me that, during the early conciliation period, he had asked ACAS what would happen if the matter was not resolved through ACAS. ACAS advised the Claimant that he could take the Respondent to Employment Tribunal. ACAS did not tell the Claimant that there was any time limit in which to do so. The Claimant tried undertaking his own internet researches into Employment Tribunals, but the web pages that he located were mostly about what to wear and how to present a case at the Employment Tribunal and he did not find anything, despite his online searches, about time limits. The Claimant told me that he had found out that he had presented his claim outside the time limit, only when he received the letter of 30 October 2018 from the Tribunal. He told me that he, when he was completing the claim form for the Employment Tribunal, it did not mention anything about time limits either. The Claimant said that he had sought advice from the Citizens Bureau, from ACAS and through his own online searches, but had never, despite all his efforts, been made aware that there was a three month time limit for bringing a complaint to the Tribunal.

7 I accepted the Claimant's evidence and considered that he had made extensive efforts to inform himself of the procedure for claiming money owed from the Respondent, through research, contacting a free legal advice service, and engaging with Acas during the conciliation period.

8 The relevant time limit provisions for unlawful deductions from wages and holiday pay claims are contained in *s23 Employment Rights Act 1996*. Where an employment tribunal is satisfied that it was not reasonably practicable for a complaint under *s23 ERA 1996* to be brought within 3 months, the tribunal may consider the complaint if it is

presented within such further period as it considers reasonable.

9 The question of whether it was reasonably practicable for the complaint to be presented is one of fact for the Employment Tribunal, taking into account all the relevant factors *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119, [1984] ICR 372, CA. Relevant factors can include the manner of, and reason for, the dismissal; whether the employer's conciliation machinery had been used; the substantial cause of the claimant's failure to comply with the time limit; whether there was any physical impediment preventing compliance, such as illness, or a postal strike; whether, and if so when, the claimant knew of his rights; whether the employer had misrepresented any relevant matter to the employee; whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

10 Applying the facts that I found to the law, I concluded that, despite his efforts, which I considered to be reasonable and honest, the Claimant was not aware of the existence of time limits for bringing complaints to Employment Tribunals. I therefore considered that he was reasonably ignorant of the time limit for bringing complaints. I considered that the delay after the expiry of the time limit was reasonably short and that the presented his claim within a reasonable time after the time limit expired. The Claimant made consistent and persistent efforts to pursue his claim and I did not find that he delayed unreasonably in bringing the claim, at any point.

11 Accordingly, under s23(4) *ERA 1996* and I extended the time for the presentation of his claim and ordered that a final hearing be listed for two hours.

Employment Judge Brown

18 December 2018