



EMPLOYMENT TRIBUNALS

Claimant: Mr. I Gurgurov

Respondent: Maxy Construction Limited

Heard at: London South Croydon **On:** 28 January 2019

Before: Employment Judge Sage

Representation

Claimant: In person

Respondent: Mr. Babickas Accountant

JUDGMENT having been sent to the parties on **16 March 2019** and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Requested by the Claimant.

1. By a claim form presented on the 6 November 2018, after entering into early conciliation from the 8 July to the 8 August 2018, the Claimant claimed that there had been an unauthorised deduction from his wages. He claimed that he should have been paid his daily rate to attend two training courses held prior to starting work for the Respondent. The courses were for First Aid training and Confined Spaces training.
2. The Respondent stated that it was a precondition of employing the Claimant that he had completed this training. They stated that the Claimant attended the courses prior to starting work with them and no offer was made to pay him a daily rate for attending. They denied offering to pay the Claimant his wages for the days he attended training, but they agreed to pay for the cost of the two courses.

The Issues

3. Is the claim in time?
4. What wages were properly due to the Claimant?
5. Has the Respondent made an unauthorised deduction from his wages?

Preliminary matters

6. The Tribunal checked with the Claimant at the commencement of the hearing whether he was content to proceed as it was noted that English was not his first language. The Claimant confirmed that he was content to proceed without an interpreter. The tribunal therefore continued to consider the issues that were agreed above.

Findings of Fact

7. The first issue before the Tribunal is whether the claim is in time. It was noted that the Claimant began working for the Respondent as a contractor on the 7 May 2018, his engagement ended on the 1 July 2018. Prior to starting work for the Respondent, the Claimant attended two training courses. As this was a precondition to him being able to work on this contract, the Respondent agreed to pay for the cost of these two courses. They denied however that they agreed to pay the Claimant his daily rate for attending. The dates of the courses were the 28 April and the 1 May 2018. The Claimant was paid weekly on invoice.
8. After the termination of the Claimant's contract, he entered early conciliation via ACAS which began on the 8 July and ended on the 8 August 2018. The limitation period ended on the 31 October 2018. The Claimant presented his claim on the 6 November 2018, six days after the expiry of the time limit.
9. The Claimant was asked by the Tribunal what he knew of time limits and he stated that he had acted on advice from ACAS and in his view, his claim was in time. The Claimant confirmed that his last date of service was the 1 July 2018.
10. The Tribunal saw in the bundle an email from the Claimant to the Respondent dated the 9 July 2018 which stated "*I just want to inform you that I was not payed (sic) for 4 days training course and will look for help and accictance (sic) from ACAS, employment tribunal and other organizations etc*". This appeared to be the first time that the Claimant had asked for payment of his daily rate to attend the two courses.
11. The Claimant then followed this up by an email dated the 20 September 2018 (within the primary time limitation period) where he stated, "*I just tell you in advance before Employment Rights Tribunal or small claim tribunal*". It appeared from these emails that the Claimant was aware of the role of ACAS, the Employment Tribunal and of the Small Claim's Courts. It was also apparent that he had access to email and to the internet at the relevant time.
12. The Claimant provided no evidence that suggested that it was not reasonably practicable or feasible to present his claim by the 31 October 2018. From the above emails the Claimant appeared to be aware of his right to pursue his claim for unpaid wages to either the Employment Tribunal or the Small Claims Court by the early July. By the 20 September

the Claimant had warned the Respondent he intended to pursue his claim but then failed to present his claim until the 6 November, which was six days after the time limit expired. The Claimant gave no reason why he failed to present his claim by the 31 October and he provided no evidence to suggest that it was not feasible to do so.

The Law

Section 23 Employment Rights Act 1996

- (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 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
 - (b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),
 - (c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or
 - (d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).
- (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, or
 - (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.
- (3) Where a complaint is brought under this section in respect of—
 - (a) a series of deductions or payments, or
 - (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same

limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(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.

Decision

13. The law relating to the time limits to present a claim of unauthorised deduction from wages is set out in the Employment Rights Act and the section is set out above at paragraph 23 (2) and (4). It states that an Employment Tribunal shall not consider a complaint under this section unless it is presented within three months of the deduction or the last in a series of deductions. The Claimant complained that the Respondent failed to pay him to attend courses that he attended prior to commencing work for them. The respondent accepted in their ET3 that they agreed to pay for the courses but denied that they offered, at any stage, to pay the Claimant his daily rate of pay to attend as at that time he was not working for them.
14. The Tribunal found as a fact that the Claimant commenced work for the Respondent on the 7 May 2018 and his final working day was the 1 July 2018. The Claimant claimed wages for attending two courses prior to commencing work for the Respondent. The tribunal has to consider the date of the deduction and as this was weekly paid on production of an invoice, any sums due to the Claimant should have been included in the first invoice (dated the pay period 7-13 May 2018). Although the Claimant did not refer to his claim at the time, it was reasonable to presume from the facts that this was a one off deduction and not a series of deductions. As the wages were paid on the 14 May 2018, time would start to run on that date making the claim issued on the 6 November 2018 out of time.
15. The Tribunal then considered whether this was a case that could be considered to be a series of deductions. Although there was no evidence to suggest that it was, the tribunal erred on the side of caution to consider whether this claim could be considered to be in time by assuming that this was a sum that became due and payable on the last payment date. It was assumed the last pay period ended on the 1 July 2018 when the contract ended, even if this date were taken to be the date of the deduction, the time ran out on the 31 October 2018 but the claim was not put in until the 6 November 2018.
16. Employment Tribunals are obliged to consider time limits. We do not have jurisdiction to consider a complaint unless it is presented within the time limits referred to in the statute. The time limit is set out above at in the

section headed 'The Law', Section 23 of the Employment Rights Act 1996 states that a Tribunal "shall not" consider a complaint unless it is presented within 3 months of the date of the deduction, the last possible date of the deduction was concluded to be the 1 July 2018. The Tribunal have considered the primary time limit and the extension provided by ACAS early conciliation and this expired on the 31 October 2018.

17. The tribunal have found as a fact that the Claimant appeared to have a good understanding of the work of the Employment Tribunals and of the Small Claims Courts and was also aware of the role of ACAS. He complied with the early conciliation process in good time but then failed to present his claim in time. He was asked why he did not present his claim in time and his response was that he believed that he had and that he had received advice from ACAS.
18. There was no evidence to suggest that it was not reasonably practicable or feasible for him to present his claim by the 31 October 2018. He had access to the internet and had by the 8 August completed all the necessary early conciliation procedures necessary to pursue his claim. He then delayed for a further three months before presenting his claim. There was no evidence to suggest that he had been misled by ACAS and there was no evidence that there was some other barrier that prevented him from presenting his claim in time.
19. I conclude therefore that it was feasible for the Claimant to present his claim in time and by the 31 October 2018. This claim is therefore out of time and is dismissed.

Employment Judge **Sage**

Date: 21 May 2019