



EMPLOYMENT TRIBUNALS

Claimant: Ms B Skarbek-Cielecka

Respondents: (1) Green Cross Recruitment
(2) Alpha Medical Support

Heard at: London South Employment Tribunal **On:** 23 May 2019

Before: Employment Judge Ferguson (sitting alone)

Representation

Claimant: In person

Respondents: Ms M Dogaru (Director of both Respondents)

JUDGMENT

It is the judgment of the Tribunal that:

The Claimant's claim is dismissed because the Tribunal has no jurisdiction to hear it.

REASONS

1. This case has a complicated procedural history. By a claim form presented on 16 March 2018, following a period of early conciliation from 10 January to 7 February 2018, the Claimant brought complaints against both Respondents of unauthorised deductions from wages, failure to pay holiday pay and unauthorised payments to an employer. The dates of employment were given as "08/17" to "end of November". By letter dated 14 March 2018, received by the Tribunal on 16 March 2018, the Claimant said she was concerned her claim was out of time and requested an extension due to "constant efforts to seek clarification and any confirmation of my working hours... need to attend interviews for other jobs... need to apply eventually for Universal Credit... general stress of the situation, causing me problems with decision making... being in danger, as followed by Free Masons Organisation/ working for 'Everycare'...".
2. It appears from the Tribunal file that the proceedings were served on Green Cross Recruitment only, not on Alpha Medical Support, by letter dated 4 May

2018. The letter was also a Notice of Hearing for a one-hour final hearing listed on 25 June 2018. The letter stated that the Respondents were required to submit a response by 1 June 2018. No response was received.

3. On 15 June 2018 a FRU representative, Mr Holman, who was by then acting for the Claimant, wrote to the Tribunal to clarify and quantify the Claimant's claims. He also enclosed schedule of the remedies requested and a signed witness statement from the Claimant. She said that she was employed by the Respondents from 18 August to 2 November 2017. She claimed £70.00 in respect of an unauthorised payment to her employers, £269.94 in unauthorised deductions from wages and £34.54 in unpaid holiday pay.
4. On 22 June 2018 the hearing was postponed because no response had been received from the Respondents and the file was referred for a Rule 21 judgment. On the same day Mr Holman wrote to the Tribunal requesting a Rule 21 judgment. That letter was sent by email and copied to generic email addresses for both Respondents. He also attached the Claimant's witness statement and the schedule of remedies requested.
5. On 23 June 2018 Stephen Rimmer LLP emailed the Tribunal saying that it was instructed by both Respondents. The email claimed that Mr Holman's email of the previous day was the first the Respondents knew of the matter and requested copies of all correspondence and pleadings. Ms Dogaru, Managing Director of the First Respondent, also emailed the Tribunal on the same day saying that the first knowledge they had of the proceedings was when they received an email from Mr Holman on 14 June. She had only managed to speak to her solicitor about it on 22 June.
6. On 13 September 2018 the Tribunal wrote to the Claimant, copied to the Respondents' solicitors, saying that a judge had declined to issue a Rule 21 judgment because it was not clear who the Claimant's employer was. The Claimant was asked to clarify.
7. By letter dated 27 September 2018 Mr Holman wrote to the Tribunal asking for judgment to be issued against the First Respondent, Green Cross, and to be dismissed against the Second Respondent, Alpha Medical Support.
8. On 13 November 2018 the Tribunal sent a Notice of Hearing to all parties for today's hearing. It said the hearing was to determine who is the proper respondent and what the issues are in this case. It said that as the claims were undefended, if it were possible, the hearing would go on to consider the remedy that it is appropriate to award.
9. On 7 January 2019 Stephen Rimmer LLP wrote to the Tribunal saying that they did not represent the Respondents.
10. On 7 May 2019 Mr Holman wrote to the Tribunal saying he was no longer instructed by the Claimant.
11. On 14 May 2019 the Tribunal wrote to all three parties directly, in response to a number of emails the Claimant had sent to the Tribunal. The letter confirmed that a hearing was due to take place on 23 May 2019 and its purpose. It was also noted again that the claim was undefended.

12. On 20 May 2019 Ms Dogaru wrote to the Tribunal asking if there was still a chance to defend the claim.
13. I confirmed the above procedural history at the start of the hearing, and that there was still no response to the claim from either Respondent. There was a question about whether the Second Respondent had been served, but the Claimant had since confirmed that she only wished to proceed against the First Respondent. I explained the effect of Rule 21 of the Employment Tribunal Rules of Procedure, and that the First Respondent could only seek to defend the proceedings if it submitted a response form with an application to extend the time limit. Ms Dogaru requested an adjournment of the hearing to enable her to do so. She said that the solicitors were never acting for the Respondents; they only forwarded the documents that were sent by Mr Holman. She had sent all the evidence to Mr Holman.
14. I refused the application on the basis that the First Respondent had known of the proceedings since at least June 2018 and was either legally represented or had access to legal advice. The First Respondent should have been aware of the need to present a response and, despite being reminded on more than one occasion that the proceedings were not defended, took no steps to present a response. Even if the claim form had not been received, which was doubtful given the letter on the Tribunal file saying that it was enclosed, the First Respondent could have made further efforts to obtain a copy from Mr Holman, the Claimant or the Tribunal.
15. The consequence of this was that the First Respondent would only be allowed to participate in the proceedings to the extent that I permitted. Before addressing that issue, however, I noted that there was a potential issue as to the Tribunal's jurisdiction to consider the claim.
16. Although the Claimant had raised the issue of time limits when she presented her claim form, the dates of employment were not specified until 15 June 2018 and the issue does not appear to have been picked up by the Tribunal before today. I considered whether it was fair to the Claimant to determine it today, given the terms of the Notice of Hearing, and concluded that it was because she had originally raised the issue herself and today's hearing was effectively listed as a final hearing, notwithstanding the Notice of Hearing referring to the issue of the identity of the Claimant's employer. It was necessary to determine the issue before taking any further steps in the case.
17. The Claimant's employment having ended on 2 November 2017, and the last of the alleged deductions having taken place on that day, the primary time limit for submitting her complaints under s.23 of the Employment Rights Act 1996 ("ERA") and Regulation 30 of the Working Time Regulations 1998 ("WTR") expired on 1 February 2018. That was during the period of early conciliation, so the effect of s.207B ERA and s.30B WTR was to extend the time limit to one month after the end of the early conciliation period. The ACAS certificates were issued on 7 February 2018, so the extended time limit expired on 7 March 2018. The claim form was presented on 16 March 2018, nine days out of time.
18. Pursuant to s.23 ERA and s.30 WTR the Tribunal only has jurisdiction to consider the complaints if I am satisfied that it was not reasonably practicable

for the Claimant to present her claim in time and she presented it within a further reasonable period.

19. The Claimant argued that it was not reasonably practicable because she is not a lawyer and she was unable to get any legal advice until 15 March 2018, after the deadline had passed. She said, however, that she knew about the primary three-month time limit. She was not sure what effect the early conciliation process had on the time limits, but she knew there was a deadline after she received the certificate on 7 February 2018. She said she contacted the Citizen's Advice Bureau quickly after that, but they could not give her an appointment until 15 March. She knew that that would be after the time limit had expired. She did not take any other steps to either discover the date by which the claim had to be submitted or to submit her claim. She said this was because she was under stress due to another Tribunal claim she had brought against another employer, and both that employer and the Respondents in this case "stealing her money". She was also looking for other jobs. She said she had gone to her doctor about the stress, but she did not have any medical evidence. She was also dealing with the police because she believed she was being followed by cars connected with another employer. She said she relied on the CAB and they would not allow her to meet an advisor until 15 March. She completed the claim form that day and sent it by post.

20. I was not satisfied that it was not reasonably practicable for the Claimant to present the claim in time, i.e. by 7 March 2018. I accept of course that she is not legally trained and was not represented at the time. She did, however, have some familiarity with Tribunal proceedings and I note that she had recently brought another claim. Although she did not know the exact date on which the time limit expired, she knew that it was before her appointment with the CAB on 15 March. She took no steps to present her claim before the appointment. I do not accept that there was anything preventing her from doing so. Even if she was suffering from stress, for which she had attended her GP, she had managed to take all steps up to that point, including contacting ACAS and presenting another Tribunal claim. She was also applying for jobs. She could have attempted to discover the Tribunal deadline, and she could have presented her claim form before the meeting with the CAB.

21. The Tribunal therefore has no jurisdiction to consider the claim and it is dismissed.

Employment Judge **Ferguson**

Date: 23 May 2019