



EMPLOYMENT TRIBUNALS

Claimant: Mr H Hassan
Respondent: Asda Stores Ltd
Heard at: Leicester
On: 21 June 2019
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In person
Respondent: Mr Hand of Counsel

JUDGMENT having been sent to the parties on 29 June 2019 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:

JUDGMENT

The judgment of the Tribunal is that the Claimant's complaint of an unlawful deduction of wages is dismissed.

REASONS

1. This is a claim for an unlawful deduction of wages. It is a claim for unpaid wages for 60.5 hours in respect of time in lieu that the Claimant says he worked but has not been paid.
2. Asda employees accrue time off in lieu if they work on a Bank Holiday. Prior to 2011, employees were allowed to carry over accrued time off in lieu for an unlimited period .
3. In November 2011, Asda came to an agreement with the local union, GMB, (of which the Claimant is a member) that any time off in lieu accrued must be used within a 52 week period otherwise it would be lost.

4. In September 2012, letters were sent to colleagues explaining the position. I am satisfied Mr Hassan received the relevant letter.

5. Between 2012 and 2017, an informal practice developed where Asda employees were allowed to continue to roll over accrued time off in lieu without limit despite the agreement. However, in late 2015 it was made clear that this practice would need to stop. Mr Hassan received a letter informing him that he had until 31 March 2017 to use 'aged' time accrued in lieu. This deadline was later extended to March 2018.

6. In July 2018, Mr Hassan raised a grievance when he was told that he had lost his aged accrued time off in lieu because of the changes. His grievance was not upheld. The subsequent appeal against the grievance decision was dismissed.

The issues

7. The issues in this case are very simple – was (1) the claim made within the necessary time limit and if so (2) was the amount claimed “properly payable”.

8. S.23 of the Employment Rights Act 1996 deals with time limits and insofar as it is material, states:

(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)),

(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

(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.”

The out of time issue

9. Mr Hassan’s Claim Form was presented on 15 February 2019 following a notional one day period of ACAS early conciliation, which began a day earlier and ended on the same day that he presented his claim to the tribunal. There is therefore no real extension by virtue of any ACAS conciliation.

10. It is not clear precisely when the cause of action arose but the time off in lieu claimed of 60 hours accrued in part before 2017 and in part afterwards. My conclusion from the documentation is that 15.5 hours of what is claimed is pre-2017. The rest, at its very latest, would be no later than March 2018. The ET1 claim, being presented on 15 February 2019 has therefore been presented well outside the time limit under section 23 of the 1996 Act.

11. I am satisfied that it was reasonably practicable to present the claim in time. The Claimant chose to proceed with the internal grievance procedures instead rather than bring a claim to the tribunal. If he had made reasonable enquiries he would have come to know that there was a time limit in bringing such claims.

12. Even if he did not know or could not reasonably know from his own enquiries, he was being advised at all material times by his union. The Claimant was a member of the GMB and was accompanied at the grievance meeting by a GMB steward. Mr Hassan was also accompanied by a GMB steward at the grievance appeal hearing. I have no doubt that he would have been advised by his trade union officers of time limits or should have been. No explanation has been given as to the delay in bringing this claim. I would therefore dismiss the claim as being out of time.

Whether any sums are properly payable

13. Even if the claim was not out of time, I would have dismissed it on the grounds that the deduction was properly made. There was a valid collective agreement between Asda and GMB which was incorporated into the Claimant's contract of employment. The Respondent has contractual authority to make the appropriate deduction or to put it another way, not to pay. I am satisfied that the Claimant was made aware of the changes both directly and via company notices of the change. There has been plenty of lead-in time for the employees to get used to the changes.

14. The wording of the changes could not be clearer nor could the way in which these were drawn to everyone's attention. Mr Hassan was given a letter by hand on 21 September 2012 which set out the varied terms and conditions of his employment and which incorporated the relevant agreement with the GMB.

15. For those reasons this claim is dismissed.

Employment Judge Ahmed

Date: 1 August 2019

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE