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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4102484/2019

Held in Glasgow on 23 May 2019

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Employment Judge: Robert Gall

Mr A Mallaby

**Claimant
In Person**

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Jolly Harvester Public House

**Respondent
Not Present and
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1 The Judgment of the Tribunal is as follows: –

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(1) The claim was presented out of time. It was, however, not reasonably practicable for the claimant to present the claim within time. Time is extended such that the claim is accepted and is permitted to proceed.

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(2) At time of termination of employment of the claimant he had accrued holidays which had not been taken. He is due to be paid by the respondents in respect of this accrued but untaken holiday leave. This

E.T. Z4 (WR)

is in terms of the Working Time Regulations 1998. The sum due to him is £198.63. That sum is awarded to him and the respondents are ordered to make payment of that amount to him.

5 As stated at the Hearing, in terms of Rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at
10 the Hearing. The following sets out what was said, after adjournment, at conclusion of the hearing. It is provided for convenience of parties.

REASONS

1. This was a claim for holiday pay. The claimant confirmed at the outset that
15 that was the sole element of claim.
- 2 The claimant was employed between 2 January 2018 and 18 September 2018. He was employed on a zero hours basis, working as and when required and agreed with the respondents. He was not self-employed. He is entitled to holiday leave in terms of the Working Time Regulations 1998.
- 20 3 At the time when the claimant's employment terminated he had not taken any holidays. He was not paid in respect of holidays accrued but untaken. He raised this with the respondents, however was told by them on 22 September that as he was paid cash in hand he had no entitlement to accrued holidays. During his employment the claimant was initially paid in cash and
25 subsequently paid through his bank account after some 3 weeks of employment. The claimant spoke with Citizens Advice Bureau ("CAB") and

was informed that he was due payment in respect of holiday leave accrued but untaken. He wrote to the respondents on 3 October 2018 so stating and setting out what he regarded as being due.

4 The claimant knew at this point that he had a right to make a claim to the
5 Employment Tribunal in relation to the sum which he had been informed was due to him. He also knew that prior to making such a claim it was necessary for him to obtain and ACAS Early Conciliation Certificate.

5 The ACAS Early Conciliation Certificate was sought by the claimant on 12
10 October 2018. It was issued by ACAS on 12 November 2018. The claimant received it shortly thereafter.

6 There had been no mention to the claimant by anyone of there being a time
limit for presentation of claims to an Employment Tribunal. He remained
unaware of there being such a time limit. He had no previous experience of
interaction with Employment Tribunals. He was young and inexperienced in
15 the workplace, being 18 years at time of cessation of his employment with the respondents. He was also at this point a full-time student at college. He had taken the job and possibility of hours working with the respondents in order to earn some money. He also had another job in the hospitality sector. When his hours with the respondents ceased he increased his hours with his other
20 employer. He worked many such hours in the lead up to Christmas and over Christmas and New Year. He was also at that time working hard at college in light of exam and assignment requirements. The claimant at no point took advice from a solicitor.

7 Having received no money from the respondents by way of holiday pay the
25 claimant completed the claim form, Form ET1, in order to be able to present it to an Employment Tribunal. He printed it and had it ready to be sent. He remained unaware of there being any time limit for presentation of a claim to the Employment Tribunal.

8 In late January or early February 2019 the claimant sent the claim form to the
address for the Employment Tribunal in Leicester. He had obtained that
address online as being the appropriate destination for Tribunal claims
submitted. The claim form was sent back to him with an explanation that it
5 should be presented to the Employment Tribunal office in Glasgow as this
was a Scottish claim. The claimant sent the claim form on to the Employment
Tribunal in Glasgow. It was received by the Employment Tribunal in Glasgow
on 7 February 2019.

9 Allowing therefore for the time taken between intimation of the claim to ACAS
10 and issue of the Early Conciliation Certificate by ACAS, the claim was some
3 weeks late in being presented.

10 The first time the claimant was aware of there being any issue with time-bar
and of there being a requirement that presentation of an Employment Tribunal
take place within a certain time, was after presentation of his claim.

15 11 Where a claim is presented to an Employment Tribunal beyond the time
permitted for presentation of such a claim, there remains the possibility of the
claim being accepted by time being extended in order that that can occur.
The Tribunal requires to consider the facts and circumstances and to apply
the statutory test to those. The test which the Tribunal has to apply in a claim
20 of the type brought by this claimant is whether it is satisfied that it was not
reasonably practicable for the claim to be presented in time. The onus is on
a claimant to persuade the Tribunal that the test is been met.

12 Ignorance of there being a time limit can be a circumstance in which it
accepted that it was not reasonably practicable for the claim to be presented
25 in time. That is only so however if the Tribunal is persuaded that being
unaware of the time limit is in itself reasonable.

13 I am satisfied in this case that it was reasonable that the claimant was
unaware of the 3 month time limit. I believed his evidence that he was

unaware of there being a time limit. I also believed his evidence that he had had no previous involvement with tribunals and that he had not been informed by CAB that there was a time limit for presentation of claims. The claimant was inexperienced in the workplace. He had studying pressures with his college course involving preparation for and attendance at exams and preparation and submission of assignments. He was working many hours around this time when not studying. I believed his evidence when he said that had he been aware of there being a time limit he would have presented the claim in time. I was satisfied that he was not simply being dilatory or ignoring a time limit which he was aware.

14 It is certainly the case that he could have presented the claim in time. The factors mentioned however persuaded me that it was not reasonably practicable for him to present a claim form in time. The delay of one month whilst the ACAS Early Conciliation Certificate was issued contributed to his view that passing of time was not a particular issue.

15 I am therefore persuaded that it is appropriate to extend time to permit the claim to proceed. I do so.

16 The claimant has an entitlement to payment in respect of holidays accrued but untaken at time of termination of his employment. I accepted his evidence that he had worked 279 hours for the respondents. He was able to point to the dates and times of his working. I also accepted that he had not received or taken holidays and that he had not received payment in respect of holidays accrued but untaken.

17 The standard calculation of entitlement to holidays proceeds on the basis of that being 12.07% of time worked. Applying that to the claimant's working hours results in an entitlement for payment of 33.66 hours. The claimant's hourly rate of pay was £5.90. Applying that to the hours in respect of which he is entitled paid results in a sum due to him of £198.63. That is the sum awarded to him. The respondents are ordered to pay that amount to him.

5 **Employment Judge: Robert Gall**
Date of Judgment: 23 May 2019
Entered in register: 28 May 2019
and copied to parties

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