



EMPLOYMENT TRIBUNALS

Claimant

Mr M Mak

v

Respondents

(1) The Secretary of State For Business,
Energy And Industrial Strategy
(2) Globalforce Paint & Body Shop
Limited (In Liquidation)

Heard at: Bury St Edmunds

On: 14 August 2019 (written submissions only - no parties in attendance)

Before: Employment Judge Laidler

JUDGMENT

1. The tribunal does not have jurisdiction to consider the claims of unauthorised deduction from wages and breach of contract as they have been received out of time. Those claims are dismissed
2. The claim for a redundancy payment is also out of time. This is however academic as the first named respondent has paid the statutory redundancy payment to the claimant.
3. No further sums are awarded to the claimant.

REASONS

1. This is a claim received on 16 April 2019 in which the claimant claimed outstanding wages for the month of May 2018, notice pay and a redundancy payment. The total amount of compensation sought was £5,348.24. The claimant had engaged in Early Conciliation with the second named respondent between 28 February – 6 March 2019, and then with the first named respondent between 6 March – 12 March 2019.

2. The second named respondent went into a creditor's voluntary liquidation. By letter of 20 June 2019 Cranfield Business Recovery advised that it did not intend to defend the proceedings.
3. The first named respondent submitted a response on 28 June 2019 and asked for that to be treated as written representations for the hearing. In the response, the first named respondent confirmed the following payments had been made: -
 - 3.1 Statutory redundancy payment - £1,868.72.
 - 3.2 Wages from 1 June 2018 to 12 June 2018, for 10 working days - £586.28 nett.
4. It is the first named respondent's contention that the second respondent went into voluntary liquidation on 25 June 2018 and that is confirmed by the letter from Cranfield Business Recovery.
5. In the ET1 the claimant stated he continued to work for Mrs Caroline Dyson until 31 July 2018. The first named respondent was unable to confirm whether there had been a TUPE transfer to her. It was stated that on the information provided by the liquidator the claimant's employment ended on 12 June 2018.
6. In the information provided by the claimant in his written representations he produces pay slips for Globalforce CS Limited for June 2018 and July 2018. He also produced a pay slip with the second respondent's name on it dated 31 May 2018 showing a nett pay due of £1,816.24. The claimant acknowledges that he was paid £500 towards that pay slip claiming the balance due of £1,316.24 net.
7. The claimant also seeks four weeks' notice pay. He claims this at his average weekly earnings of £469, claiming a total for four years' service of £1,876.
8. The claimant claims the same amount in respect of redundancy pay.
9. The claimant clearly did claim notice pay in his ET1, and it is not understood why the first named respondent in his response states at paragraph 11 that he did not wish to claim his notice pay on his claim form.

Relevant law

10. The claims brought are of breach of contract, unauthorised deduction from wages and redundancy payment.

11. S.164 of the Employment Rights Act 1996 provides that claims in respect of redundancy payments can be brought before the end of the period of 6 months beginning with the relevant date but only where: -
 - “a) the payment has been agreed and paid;
 - b) the employee has made a claim for payment by notice in writing given to the employer;
 - c) a question as to the employee’s right to the amount has been referred to the Employment Tribunal.
 - d) a complaint relating to his dismissal has been presented under s.111.”
12. The tribunal can only accept a claim outside that period if it appears just and equitable that the employee should receive a redundancy payment.
13. The claims however of unauthorised deduction from wages and breach of contract should have been brought within 3 months of the effective date of termination.

Conclusions

14. The claims of unauthorised deduction from wages and breach of contract have been received significantly out of time. The claimant’s employment with the second named respondent ended on 12 June 2018 and therefore any claim should have been brought by 11 September 2018. The claim was not issued until 16 April 2019 and the claimant did not invoke Early Conciliation until the end of February 2019. This does not give him any extension of time. No explanation has been advanced as to why it was not reasonably practicable to bring the claims in time. The tribunal does not therefore have jurisdiction and cannot award further sums in respect of unauthorised deduction from wages or breach of contract.
15. Further, any claim in relation to wages in June 2018 after the 12 July and up to the 31 July 2018, appears to be for when the claimant was working for Globalforce CS Limited. That entity is not a respondent to these proceedings. In any event a search of Companies House has revealed that that company was dissolved on 28 May 2019. A claim cannot be pursued against a company that no longer exists.
16. Regarding the redundancy payment claim, the claimant’s employment with the second named respondent from which he was made redundant ended on 12 June 2018. There is no indication that he made a claim in writing to the employer within 6 months of that date. Again, he did not invoke Early Conciliation till February 2019. That claim is also out of time. This is however academic as the first named respondent has paid the statutory redundancy payment to the claimant.

17. It follows from these conclusions that no further sums are awarded to the claimant.

Employment Judge Laidler

Date:21.08.19.....

Sent to the parties on:02.09.19.....

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For the Tribunal Office