



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Liddle

**Respondent:** Jay Decorators Ltd

**Heard at:** Manchester

**On:** 22 August 2019

**Before:** Employment Judge Franey  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr R Taylor, Solicitor

# JUDGMENT

The claim was presented within the time limit prescribed by section 23(2)(a) Employment Rights Act 1996 and/or regulation 30(2)(a) Working Time Regulations 1998 and can proceed.

# REASONS

1. Following a period of early conciliation between 16 May and 30 May 2019, the claim form was presented on 30 May 2019 and claimed holiday pay between March 2015 and the date the claimant said his employment had terminated, 15 February 2019.

2. The response form of 9 July 2019 resisted the claim on the basis that the claimant was genuinely self-employed and not entitled to holiday pay, but also argued that he had received payment of “rolled up” holiday pay in any event. It also pointed out that if his employment terminated on 15 February 2019 he appeared to have gone to ACAS to initiate early conciliation outside the three month period and therefore that his claim was out of time. This preliminary hearing was listed to determine the time limit point.

3. I heard evidence on affirmation from the claimant. He was questioned by me and by Mr Taylor. I also had the benefit of a bundle of documents prepared by Mr Taylor which included at page one a summary of the payments made to the claimant.

4. There was a factual dispute about the day on which the claimant was informed that he would not be allocated any more work. The respondent says that it was 15 February 2019. The claimant disputes this and said that he was told there might be work forthcoming but it was a further week or so before he realised that would not be the case and went to the Jobcentre. He gave an account of how he went to the Citizens Advice Bureau and was advised to contact ACAS, and how ACAS eventually advised him to fill in the form online to initiate early conciliation.

5. The key point, however, was that the last payment to the claimant was made on 20 February 2019. This was agreed by the parties and evidenced by the schedule of payments produced by the respondent. The claimant's case is that this payment should have included the holiday pay to which he argues he was entitled.

6. Insofar as this is a complaint of an unlawful deduction from pay under Part II Employment Rights Act 1996, under section 23(2)(a) the three month time limit starts to run on the date of the alleged deduction, not the effective date of termination of the employment.

7. The same is true for a complaint under the Working Time Regulations. Where the complaint is that payment should have been made for holidays, under regulation 30(2)(a) the three month time limit runs from the date the payment should have been made.

8. Accordingly the claimant went to ACAS and "stopped the clock" through early conciliation within three months of the date upon which he says he should have been paid in this case, and his claim is therefore brought within time.

Employment Judge Franey

23 August 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
10 September 2019

Miss E Heeks  
FOR THE TRIBUNAL OFFICE

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