



EMPLOYMENT TRIBUNALS

Claimant:
Mr J Metcalfe

v

Respondent:
Nelsons Diner Newbury
Limited

Heard at: Reading

On: 3 September 2019

Before: Employment Judge Hawksworth (sitting alone)

Appearances

For the Claimant: No attendance

For the Respondent: No response or attendance

JUDGMENT

The tribunal does not have jurisdiction to hear the claimant's complaints as they were presented after the time limit had expired.

REASONS

1. The claimant worked as a chef for the respondent from 19 June 2017 to 31 July 2017.

The claimant's claims

2. The claimant brought a claim for arrears of pay, pay for work during his notice period and holiday pay. His claim was presented on 11 February 2018.
3. The claimant did not notify Acas for early conciliation; in his ET1 claim form he ticked the box indicating that his employer had already been in touch with Acas.
4. The respondent did not present any response to the claim.
5. In his ET1 claim form the claimant says that his employment terminated on 31 July 2017. He says that the employer's pay day that month was 31 July 2017.

Hearings

6. The hearing of the claim was listed for 5 December 2018 at 12.00pm. The parties were informed of the date of this hearing in a notice dated 12 March 2018.
7. On 1 July 2018 the parties were informed that the hearing was converted to a preliminary hearing to consider whether the tribunal has jurisdiction to consider the claims in view of the 3 month time limit for presenting the claims. The letter confirmed that the date of the hearing was 5 December 2018; the time had been changed to 10.00am.
8. The claimant did not attend the hearing on 5 December 2018. He sent an email at 11.15am saying that he was unable to attend due to illness.
9. The hearing was postponed and re-listed for 3 September 2019 at 10.00am. The claimant was notified of the re-listed hearing date by email on 18 December 2018.
10. The claimant did not attend the hearing on 3 September 2019. On 2 September 2019 the tribunal administration called the claimant on the mobile number he had given to check whether he would be attending, but the mobile number did not connect. A further attempt to call the claimant was made on 3 September 2019, but the call did not connect. No email was received from the claimant.
11. I considered whether the hearing should be postponed again. Despite making the enquiries set out above, there is no information available as to why the claimant has not attended. The claim relates to employment which terminated over 2 years ago. In the circumstances, I conclude that it is not in accordance with the overriding objective and in particular with avoiding delay, for there to be a further postponement.

The law on the time limits for bringing complaints

12. A claim for arrears of pay and pay for work during the notice period can be brought as a complaint of unauthorised deduction from wages, or as a breach of contract claim.
13. A claim for holiday pay can be brought under the Working Time Regulations 1998 or as a breach of contract claim.
14. A complaint of unauthorised deduction from wages must be presented to the tribunal before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made (section 23(2) of the Employment Rights Act 1996).
15. A complaint of breach of contract must be presented to the tribunal within the period of three months starting with the effective date of termination of

employment (Article 7(a) of the Employment Tribunals Extension of Jurisdiction Order 1994).

16. A complaint of unpaid holiday pay must be presented to the tribunal before the end of the period of three months beginning with the date on which payment should have been made (regulation 30(2)(a) of the Working Time Regulations 1998).
17. A tribunal may hear a complaint of unauthorised deduction from wages, breach of contract or unpaid holiday pay which is presented after the three month period, if it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the three month period, and that it was presented within a further period which the tribunal considers to be reasonable (section 23(4) of the Employment Rights Act 1996, article 7(c) of the Employment Tribunals Extension of Jurisdiction Order 1994 and regulation 30(2)(b) of the Working Time Regulations 1998).
18. These time limits are extended in cases where the claimant has complied with the requirement to notify Acas for early conciliation before instituting proceedings (section 207B of the Employment Rights Act 1996, Article 8B of the Employment Tribunals Extension of Jurisdiction Order 1994 and regulation 30B of the Working Time Regulations 1998).

Conclusions in the claimant's case

19. The claimant's employment terminated on 31 July 2017. The employer's pay day was 31 July 2017; the next pay day would have been 31 August 2017.
20. A complaint of unauthorised deduction from wages due to be paid on 31 August 2017 should have been presented on or before 30 November 2017.
21. A complaint of breach of contract in respect of employment which terminated on 31 July 2017 should have been presented before 31 October 2017.
22. A complaint of unpaid holiday pay which was due to be paid on 31 August 2017 should have been presented on or before 30 November 2017.
23. The claimant's claim was presented on 11 February 2018. This was more than three months after the expiry of the time limit for complaints of breach of contract, and more than two months after the expiry of the time limit for complaints of unauthorised deduction from wages and unpaid holiday pay.
24. There is no extension of time in respect of the Acas early conciliation process, as the claimant did not notify Acas for early conciliation before instituting proceedings.

25. The tribunal is only able to consider the claimant's claim if it is satisfied that it was not reasonably practicable for the complaint to be presented within the relevant three month period, and that it was presented within such further period as it considers to be reasonable.
26. In his ET1 the claimant says that he did take some steps to pursue his complaints. He tried to resolve his complaints informally with the assistance of Acas and that he has been in correspondence with the respondent. However, he does not say why his claim to the employment tribunal was presented after the relevant three month periods had expired. I am not satisfied that it was not reasonably practicable for the claimant to present his claim within the relevant three month periods as he has not given any explanation as to why it was not.
27. The tribunal therefore does not have jurisdiction to hear the claimant's complaints as they were presented after the time limit had expired.

Employment Judge Hawksworth

Date: 3 September 2019

Judgment and Reasons

Sent to the parties on:

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For the Tribunal Office

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