



EMPLOYMENT TRIBUNALS

Claimant:
Mr I Pilcher

v

Respondent:
Mr Wayne Albert Saunders t/a
Domino Menswear

Heard at: Reading

On: 19 September 2019

Before: Employment Judge Finlay (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: No attendance or representation

JUDGMENT [HEARING PART HEARD]

The claimant's complaints of (1) failure to pay notice/breach of contract; and (2) failure to pay accrued holiday pay under regulation 14(2) of the Working Time Regulations 1998 are struck out as the employment tribunal has no jurisdiction to hear them.

REASONS

1. The claimant appeared in person for what was listed as the final merits hearing of this claim. The respondent did not attend and was not represented. On the morning of the hearing, he had submitted medical evidence suggesting that he was seriously unwell.
2. The claimant brought three complaints:-
 - 2.1 A complaint that the respondent had failed to pay him his entitlement to notice on termination of employment;
 - 2.2 A complaint for accrued but unpaid holiday pay as at the termination of his employment;
 - 2.3 A complaint for a statutory redundancy payment under section 163 of the Employment Rights Act 1996.
3. It appeared that all three complaints were potentially out of time. The tribunal therefore decided to determine whether the first two complaints

should be struck out. This judgment does not relate to the complaint for a statutory redundancy payment which remains a live issue. There are different considerations applying to such a complaint in that time can be extended if the employment tribunal considers it just and equitable that the claimant should receive a statutory redundancy payment. As the claimant's entitlement is so clearly in issue and denied by the respondent, I considered that it would be appropriate to deal with the jurisdiction issue relating to the redundancy payment complaint along with the substantive issues at a later date with, hopefully, the respondent present.

4. The claimant then gave evidence on oath. He told me, and I accept, that his last day of work was 24 December 2017. Early in the new year, he went to the Citizens Advice Bureau who suggested he contact ACAS and the Insolvency Service. The claimant duly did contact ACAS and believes that he received his early conciliation certificate in February or March. It should be noted here that a copy of that certificate is not, and never has been, available to the tribunal.
5. Having received his early conciliation certificate, the claimant went back to ACAS. He believes, and I accept, that this would have been in around March 2018. The Citizens Advice Bureau told him to go forward to the employment tribunal. The claimant acknowledged that he was told about the time limits for making the application. The claimant had access to the internet between that time and August 2018.
6. The claim was presented on 3 August 2018. I asked the claimant to explain why he had waited for a further four months before doing so. He confirmed honestly that he was not focusing on the employment Tribunal time limits at that time and was hoping that he could resolve the matter either through the Insolvency Service or with the assistance of ACAS. It was only when it became absolutely clear to the claimant that this would not happen that he did institute these proceedings.
7. The legal position is that both the claims should have been brought within three months (allowing for any potential extension under the early conciliation process). Both complaints are therefore a number of months out of time. However, where I am satisfied that it was not reasonably practicable for the complaints to have been presented in time, I may nevertheless consider the complaints if presented within such further period as thought reasonable.
8. In determining whether or not it was reasonably practicable for the claimant to have presented his claim in time, I am encouraged to give a liberal interpretation of the wording in favour of the employee. However, the burden of proof for establishing that it was not reasonably practicable to present a claim in time is on the claimant.
9. Having heard the evidence and applied the relevant law to the findings made above, my conclusion is that the employment tribunal does not have jurisdiction to hear the complaints of breach of contract (failure to pay

notice) and accrued holiday pay. They are therefore struck out. I conclude that it was reasonably practicable for the claimant to have presented his complaints in time and it is therefore not appropriate to extend time to 3 August 2018. The claimant was aware of the time limits and it seems to me that there is no reason why he could not have presented the claim form once he had been told in March by the Citizens Advice Bureau that he should move forward to the employment tribunal.

Employment Judge Finlay

Date: 2 October 2019

Judgment and reasons
Sent to the parties on:

.....22.10.19.....

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For the Tribunal Office

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