



EMPLOYMENT TRIBUNALS

Claimant: Miss C. Nechita

Respondent: 123T Limited

Heard at: London South, Croydon

On: 25 November 2019

Before: Employment Judge Sage

Representation

Claimant: In person

Respondent: Ms. Omotosho Solicitor

JUDGMENT

The Claimant's claim for unauthorised deduction from wages was presented out of time and is dismissed.

REASONS

Requested by the Claimant.

1. This hearing was listed to consider whether the Tribunal had jurisdiction to hear the Claimant's claim for unauthorised deduction from wages as the Respondent maintained that it was out of time.
2. The facts of the case showed that the Claimant was employed from the 5-12 December 2018 as a warehouse picker/packer. She had worked for the Respondent the previous Christmas 2017. She expected to receive her pay for the hours worked on the 21 December 2018. Time began to run from that date.
3. The Claimant told the Tribunal that she was out of the UK for Christmas and was in contact with the Respondent in January 2019 to resolve the issue. She returned to the UK in February 2019 and went to her local Citizens Advice for advice on pursuing her claim. She was asked in cross examination when this was and she replied that it could have been at the end of February or in early March. The Claimant started Early Conciliation on the 7 March 2019, which ended on the 7 April 2019. She confirmed in cross examination that ACAS had informed her about the time limits and the Tribunal saw in her bundle of documents an email from the ACAS conciliator dated the 5 April 2019 warning her that if she wished to pursue a claim she should "do that within the month from the date of the certificate".
4. The Claimant told the Tribunal that she became depressed and saw her GP on the

26 April. The Tribunal saw the GP record in the bundle, it stated that the Claimant was having trouble sleeping and was of low mood, but it did not record that she was depressed. It also stated that the Claimant's energy levels were fine and there were no other health issues. It was noted that the Claimant told her GP that she went to the job centre to reply to emails in the morning.

5. The Claimant told the Tribunal that during April and May 2019 she was living in a squat. During this period of time she moved twice, and the second time was on the 21 April. She told the Tribunal that she did not own a smart phone but she had a laptop which could connect to the internet. She stated that during this time she had no access to the internet.
6. The Claimant presented her claim form on line on the 18 May 2019 using her laptop which she kept at home. She confirmed that she could access the internet using WiFi hot spots or by going to an internet cafe. She accepted that she knew when she submitted the claim that it was out of time.
7. When the Claimant was asked by the Tribunal why she was unable to present her claim by the 7 May 2019 she stated that she had been unable to sleep, and she was waiting to hear from the conciliator. However, it was noted that early conciliation had ended on the 7 April and ACAS had confirmed on the 8 April that the Early Conciliation Certificate had been issued. The Claimant had been informed by ACAS that conciliation had been concluded on the 9 April and this was further confirmed on the 15 April 2019. There appeared to be no further input from ACAS from this date and no evidence that the Claimant was waiting to receive further information or clarification from them.
8. Despite being told by ACAS that she had one month from the date of the Early Conciliation Certificate to present her claim (on the 5 April 2019), she failed to present the claim until the 18 May 2019.

Section 13 Employment Rights Act 1996
Right not to suffer unauthorised deductions

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

Section 23 Employment Rights Act 1996

Complaints to employment tribunals

- (1) A worker may present a complaint to an [employment tribunal]—
9. (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
- (2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
- (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
- (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.
- (3) Where a complaint is brought under this section in respect of—
- (a) a series of deductions or payments, or
- (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

Closing submissions

10. The Claimant referred to her evidence and stated that she did not have internet access and when she managed to get internet access, she filed her claim in order to show all her evidence to the Tribunal.
11. The Respondent made oral submissions and in brief it was stated that this was a money claim and early conciliation was started on the 7 March and ended on the 7 April. The rules are clear that a tribunal shall not consider a claim unless it is in time and the test is whether it was not reasonably practicable to put a claim in time and if not whether it was put in within such further period as was reasonable. Early conciliation just stops the clock. The Claimant was aware of the time limits that applied and knew her claim was out of time. Her evidence was that she was waiting for ACAS but the documents showed that she had heard back from them on the 15 April. The respondent says that it was reasonably practicable to present the claim in time.
12. Time started to run on the 21 December, and she engaged with conciliation. At the end of conciliation, she failed to put the claim in within one month. The tribunal does not have jurisdiction to hear the case. The tribunal does not have jurisdiction and there is no evidence that it was not reasonably practicable. The Claimant had a lap top, she could have gone to an internet café or a hot spot.

Decision

13. The legal test requires the Tribunal to consider the matter using two separate factors, firstly whether it was not reasonably practicable or feasible to present the claim within 3 months of the act complained of (as extended by any extension for early conciliation). If it was concluded that it was not feasible to present the claim in time, then the Tribunal can consider whether it was presented within such further period as was reasonable.
14. The time limits are applied strictly and Tribunals are expected to apply the law in this area to prevent claims proceeding if they do not comply with the time limits set down above. The Tribunal has found as a fact that the Claimant was aware that her claim was out of time when it was presented, and she had been told by ACAS the effect of the time limits. It was also noted that ACAS had informed the Claimant that conciliation had ended on the 9 April so she would have been aware that she had one month to present her claim.
15. The Claimant confirmed that she had a laptop at home which could connect with the internet and she was able to submit her claim using this laptop on the 18 May 2019.
16. The reason the Claimant gave for failing to present her claim in time was that she was waiting for ACAS to respond but the Tribunal noted that ACAS had responded to the Claimant's enquiries by the 15 April 2019 to confirm that she could not pursue a claim for unauthorised deductions from wages against an employee of the Company. There was no evidence of any issues outstanding after that date that prevented the Claimant from submitting her claim. The Claimant still had sufficient time to present her claim from the 15 April 2019 to the 7 May 2019, there appeared to be no impediment that prevented her from doing so.
17. The question for the Tribunal was whether it was feasible for the Claimant to present her claim in time and that is within the period from the 7 April to the 7 May 2019. Although the Claimant told the Tribunal that she was having trouble sleeping during this period and the Tribunal saw the GP record of a consultation on the 26 April 2019 where advice was given, there was no evidence to suggest that the Claimant's ill health prevented her from presenting her claim on line during this time period. There was no evidence to suggest that the Claimant was unable to go out and connect to a WiFi hotspot to present her claim. Even if the Claimant had been unable at times to connect to the internet there was no evidence to show that she was unable to obtain a hard copy of the form and to submit it in time. The Claimant also used the computers at the job centre to look at her emails. The Claimant confirmed that she had a mobile phone and she was therefore able to seek advice and assistance over the phone if required. The Claimant was aware of the services that support agencies could provide and had attended an appointment with Citizens Advice. The Claimant was aware of the time limits and had been reminded by ACAS of the need to present her claim in time but despite this the Claimant failed to do so.
18. Although the Tribunal accepted that moving home twice during this period would be disruptive, this would not have adversely affected the Claimant's ability to download and to submit her claim using her laptop. The last house move was on the 21 April, her GP appointment was on the 26 April but there was no evidence of any impediments to her submitting a claim after that date.
19. It is concluded on all the evidence that it was reasonably practicable for the Claimant to present her claim in time. The Claimant's claim is out of time and is dismissed.

Employment Judge **Sage**

Date: 27 November 2019

