



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs T Karolyi

v

Helping Hands Ltd

Heard at: Watford

On: 13 December 2019

Before: Employment Judge Andrew Clarke QC

Appearances

For the Claimant: In person

For the Respondent: Mrs R Gray, Director

JUDGMENT

The claims for a redundancy payment, for unpaid holiday pay and for unpaid wages are each dismissed by reason of lack of jurisdiction. None of the claims were brought within the primary limitation period and no satisfactory basis for extending time into the secondary limitation period was advanced.

REASONS

1. The claimant was a care worker employed by the respondent from 3 August 2016 to 7 December 2016. She presented her claim to the tribunal on 18 December 2018. She had gone through the Acas Early Conciliation process, having notified Acas on 25 November 2018 and received her certificate on 4 December 2018.
2. She made claims for a redundancy payment, for arrears of holiday pay and for arrears of wages. No basis for a redundancy payment claim is set out on the claim form, which suggests that the claimant resigned her employment due to non-payment of wages. She maintains that she was not paid for holidays taken in October and December 2016 and that she is owed arrears of pay from 21 November to 16 December 2016. Furthermore, when explaining her case to me she indicated that she had only been paid half pay in previous months.

3. When the claim was first considered, it appeared to the tribunal that the claim had been presented some two years after the claimant's employment was terminated. Hence, she was asked to confirm that her employment ended at the end of 2016 and to explain the lateness of her claim. She did so in an email of 20 May 2019. This preliminary hearing was then fixed to determine the claim in time issues.
4. At the commencement of the hearing the claimant told me that her grasp of English was limited. She is Hungarian and that is her primary language. I discussed the purpose of the hearing with her to see whether it would be fair and just to continue without an interpreter. In the light of what she said, I told the parties that I intended to proceed without the aid of an interpreter, that I would attempt to use simple language and speak slowly, but that if it became clear that the claimant did not understand what I was asking her and/or could not properly explain herself, then the hearing would be adjourned so that an interpreter could be obtained for its resumption.
5. Having heard from the claimant, I am satisfied that she was able to understand my questions and to answer them, albeit that from time-to-time she asked me to explain what I meant, or told me that she did not understand what I was saying, so that it was necessary for me to repeat what I said using different words.
6. Shortly after she terminated her employment, she sought advice from her local CAB as to how to proceed. She had more than one appointment with that CAB and another CAB to which her case was transferred. She discussed what she said were the outstanding sums due to her and the CAB wrote letters to the respondent on her behalf and advised her. She was made aware of the existence of the Employment Tribunal, but sought to have the sums due to her paid as a consequence of letters rather than by making a claim. As no payment had been received by March 2017 and she was now working in a different location, she moved to the second CAB. They again advised her. It is not clear to me whether they wrote additional letters.
7. The personnel at that CAB advised her to see a solicitor. She then did see a solicitor who provided advice. That solicitor was engaged in about July 2017. There was discussion of making a claim to the Employment Tribunal, but the claimant did not do so because of the costs of engaging a solicitor. I probed to see whether there was concern about paying tribunal fees, but the claimant was adamant that it was the solicitor's fees which deterred her.
8. The reason that a claim was presented in December 2018 was that a friend of her told her that she could herself make the claim to the Employment Tribunal without using a solicitor. The claimant confirmed that the contents of the email of 20 May 2019 were true and accurate. She told me that she had nothing further that she could add in respect of the reason why the claim was not presented for some two years. She began to tell me about the merits of her claim, but I explained to her that these were not relevant for present purposes.

9. I now turn to consider each of the three claims which have been brought.
10. I turn first to the claim for a redundancy payment. The claimant does not even have a single complete year of service. She could not be entitled to a redundancy payment in any circumstances (see s.162 of the Employment Rights Act 1996). In any event, there is no suggestion that she was dismissed by reason of redundancy, or that her constructive dismissal was by reason of redundancy. It is clear that the effective date of termination of her employment is 7 December and that none of the events listed in s.164 of the 1996 Act took place in the period of six months from the effective date of termination. Therefore, I have to ask myself whether it would be just and equitable to extend that six-month period. No basis is advanced for me to extend the period. The facts are as set out above and I will analyse them below in respect of the other claims. However, here the claim is so evidently hopeless that it would not be just and equitable to extend time whatever the reason for the failure to present the claim in the primary limitation period: see Paul v C & J Stone Limited (EAT 209 80). In the circumstances the claim for a redundancy payment cannot proceed and is dismissed. Even had the claim been presented in time, I would not have allowed it to proceed, but would have struck it out as having no prospect of success whatsoever.
11. I next turn to the claim for unpaid holiday pay. Here (see Regulation 30 of the Working Time Regulations 1998) a claim must be made within the primary limitation period of three months from the date when the payment ought to have been made. The last possible date upon which it could be alleged that the payment ought to have been made is 7 December 2016 and no claim was brought within the 3 month primary limitation period running from that date.
12. Regulation 30(2)(b) provides a secondary limitation period. That period is such period as the tribunal would consider reasonable provided that the tribunal is satisfied that it was not reasonably practicable to present the claim within the primary limitation period.
13. It is clear that the claimant knew of her right to bring a claim. She was being advised by the CAB and, latterly, by a firm of solicitors. Even if it could be said that it was reasonable, given the sums involved (and the claimant's limited English), to seek to deal with this by way of correspondence, that would not make it "not reasonably practicable," to make a claim in time when the written demands were not met. Even if it could, it was obvious by the time the claimant sought advice from solicitors that action short of litigation was not going to yield a positive result. Hence, even if it could be said (and I find that it could not) that it was not reasonably practicable to bring the claim before about July 2017, that would only allow the claimant a further reasonable period within which to bring the claim. The claim was actually brought nearly 18 months after she sought advice from solicitors and decided against bringing a claim having regard to their advice and the likely cost of engaging them to do so on her behalf.

14. In all of the above circumstances this claim must also be dismissed. I consider that it was reasonably practicable to bring the claim within the primary limitation period, but if it was not I consider that only a short further period could ever be justified as reasonable and such a period had long since expired by the time the claim was brought.
15. I finally turn to the failure to pay wages. That is a claim under part II of the 1996 Act. A failure to pay anything is to be treated as a deduction. The regime of primary and secondary limitation periods found in s.23 of the 1996 Act mirrors that considered above in respect of claims under the Working Time Regulations. For the same reasons, this claim cannot proceed, having been brought so far outside the primary limitation period.
16. In those circumstances and for those reasons these claims must all be dismissed. I explained this to the claimant at the end of the hearing, promising to set out my reasoning in full and in writing in due course. She told me that she understood that the claim was now “finished” and that she could not claim her unpaid monies and I confirmed that this was so.

Employment Judge Andrew Clarke QC

Date: ...23 December 2019.....

Sent to the parties on:

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For the Tribunal Office