



EMPLOYMENT TRIBUNALS

Claimant: Mr N Nwosu

Respondent: ICTS (UK) Ltd

Heard at: Croydon

On: 27/11/2019

Before: Employment Judge Wright

Representation

Claimant: Miss A Sahore – FRU representative

Respondent: Mr J Gilbert - consultant

JUDGMENT

The respondent is to pay to the claimant the (agreed) sum of £4,902, comprising of a redundancy payment of £3,135 and notice pay of £1,767.

REASONS

1. Oral Judgment was given at the hearing, however the respondent's representative requested written reasons in accordance with Rule 62(3). The reasons have therefore been provided.
2. The claim was presented under the Employment Rights Act 1996 (ERA) on 3/5/2019. It was a claim for redundancy pay under s.164 and for notice pay.
3. The Tribunal finds that the emails sent on 19/7/2018 (page 41) and 27/7/2018 (page 29) did amount to a claim for a redundancy payment and comply with s.164(1)(b) ERA.
4. In the alternative, it was just and equitable to extend the time period under s.164(3) ERA so that the written notice the claimant sent on 18/3/2019 (page 44) amounted to written notice under s. 164(2)(a) ERA.

5. In respect of the notice pay, the Tribunal finds that under s.111 ERA it was not reasonably practicable for the claimant to present his claim until 3/5/2019 and that he presented his claim within such further period as was considered reasonable.
6. The Tribunal found this to be a strange case. The respondent agreed the redundancy and notice payments were due to the claimant, yet it simply has not paid those sums to him. The respondent forced the claimant to take advice on what is a very discrete section of the ERA under which claims are rare. The caseworker at the Newham CAB is to be commended upon the ET1 pleading. Not intending any disrespect to the claimant, but it is unlikely his claim would have been successfully advanced otherwise.
7. Despite the agreements from the respondent and in circumstances where the claimant's case was quite unusual, the respondent continued to defend the claim. Such that, the claimant had to attend the hearing, with the result the Tribunal had to determine the claim. This was an employee earning just above the minimum wage who had lost his job. All he was asking for was what he was entitled to and which he had been told would be paid to him. There has been no explanation for the failure to pay, other than to say it was down to the line manager. The Tribunal's concerns at the respondent's behaviour have led to it considering making a financial penalty under s.12A Employment Tribunals Act 1996.
8. The Tribunal had before it a bundle running to approximately 60-pages. It heard evidence from the claimant on his own behalf and from Miss Louw, HR Business Partner for the respondent.

The Law

9. S.164 of the ERA, redundancy payments, provides:
 - (1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
 - (a) the payment has been agreed and paid,
 - (b) the employee has made a claim for the payment by notice in writing given to the employer,
 - (c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or
 - (d) a complaint relating to his dismissal has been presented by the employee under section 111.
 - (2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—
 - (a) makes a claim for the payment by notice in writing given to the employer,

(b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or

(c) presents a complaint relating to his dismissal under section 111,

and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

(3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to—

(a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and

(b) all the other relevant circumstances.

10.S. 179 ERA, notices, provides:

(1) Any notice which under this Part is required or authorised to be given by an employer to an employee may be given by being delivered to the employee, or left for him at his usual or last-known place of residence, or sent by post addressed to him at that place.

(2) Any notice which under this Part is required or authorised to be given by an employee to an employer may be given either by the employee himself or by a person authorised by him to act on his behalf, and (whether given by or on behalf of the employee)—

(a) may be given by being delivered to the employer, or sent by post addressed to him at the place where the employee is or was employed by him, or

(b) if arrangements have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, left for such a person at a place so designated or sent by post to such a person at an address so designated.

11.S. 111 ERA, complaints to an Employment Tribunal, provides:

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

12. The summary of the chronology is that the claimant started working for the respondent's predecessor (his employment transferred by means of a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006) from 1/10/2012. His employment terminated by reason of redundancy on 27/4/2018.
13. The claimant was invited to a redundancy consultation meeting on 29/3/2018. He attended a further meeting on 24/4/2018. In June 2019 the claimant received his wages, but not his redundancy payment or his notice pay. The claimant contacted Miss Dodds, the respondent's Payroll Supervisor on 19/7/2018 and 22/7/2018 requesting payment.
14. The claimant had not had any response from the respondent and he was subject to eviction proceedings, which resulted in him finding himself homeless in July 2018.
15. The claimant continued to attempt to contact the respondent by telephone and he was moved into temporary accommodation in November 2018. The claimant's wife gave birth in November 2018.
16. On 19/3/2019 the claimant finally received an email from Miss Louw, in response to his email of 18/3/2019, which stated that all the redundancy payments were made and were closed off at the time of the restructure.
17. The claimant then contacted Acas on 15/4/2019 to initiate early conciliation, which ended on 24/4/2019.
18. It is the claimant's case that the claimant had, in accordance with s. 164(1) ERA, written to the respondent within six months to make a claim for a redundancy payment. The claimant relies upon s. 179 ERA and said that he authorised Miss Dodds to send a communication in respect of a claim for a redundancy payment, via her email sent on 19/7/2018 (page 30).

Findings of fact

19. By reference to s.179(2) ERA the Tribunal finds that Miss Dodds was authorised by the claimant to send this communication.
20. The claimant called the respondent on numerous occasions to make enquiries about his redundancy payment and got nowhere. The Tribunal did not hear from Miss Dodds as to her interpretation of what she was asked to do. That leads the Tribunal to conclude that she would have agreed she was so 'authorised' by the claimant. That aside, the Tribunal finds the 'authorisation' is indicated by 'cc-ing' the claimant into the emails, using his personal email address. This is supported by the fact that when the claimant followed this up

in 2019, he did so by forwarding Miss Dodds' email.

21. The Tribunal also notes as submitted by Miss Sahore that these were not internal emails. Miss Sahore's submission is accepted, that to the claimant, this indicated the matter had been taken up with the respondent and he need not do anything further. He also reasonably relied upon the letter of 23/4/2018 (page 27) confirming he was entitled to a redundancy payment and a payment in lieu of notice.
22. In the alternative, under s. 164(2)(a) ERA the Tribunal finds the claimant made a claim for a redundancy payment in writing in his email of 18/3/2019 (page 44).
23. In view of the personal circumstances of the claimant at the time, the finding is that it is just and equitable to extend the first six-month period for a further six months.
24. There is clearly scope under the ERA for a redundancy payment claim to be preserved via s.164(1) during the first six months following the termination date and to be further extended for a further six months under s. 164(2). Following that, there is then no time limit for bringing a claim - Germian v Harry Taylor of Ashton Ltd ET 51738/95 when claimant was made redundant in 1974 and successfully claimed the balance of the redundancy payment in 1995.
25. In respect of notice pay, the finding is that it was not reasonably practicable for the claimant to present his claim for notice pay within the primary time limit.
26. The claimant had made attempts to contact the respondent to enquire about his redundancy payment. There were then his personal circumstances at the time. His P45 is dated 8/6/2018 and he received his final payslip on 15/6/2018, he then realised the notice pay was missing.
27. At this point, the claimant had lost his job and his wife was expecting their second child. There was the eviction situation from September until the family were rehomed on 20/11/2018. His daughter was born the same month and she and her mother remained in hospital. The claimant's wife then remained unwell and he had his son and a new-born daughter to care for. Due to his accommodation difficulties, the claimant gave evidence that he did not have internet access at home.
28. In December 2018 the claimant met a colleague who also had not been paid. His colleague however informed the claimant that he had been told the respondent was looking into the situation. The Tribunal accepted the claimant's evidence that against this background situation, he thought that he was doing the right thing by waiting to hear from the respondent. As far as he was concerned, he had been told he would receive the payments, he had chased it up via Miss Dodds and he had a colleague in the same position who had also been given the same 'holding response'.
29. When the claimant chase this up on 6/3/2019 he did so by forwarding on Miss Dodds' email (page 41). That email appears to have been resent on 10/3/2019

and then forwarded to Miss Louw on 11/3/2019 (page 40). It does not appear the respondent took any action in respect of this and the claimant forwarded another email to more personnel at the respondent on 18/3/2019 (page 44). He eventually then received a response from Miss Louw on 19/3/2019 saying the respondent would not now be making the payment.

30. Contrary to the letter of 23/4/2018, the claimant was not expressly told that the respondent would not be making a payment to him until he received this letter.
31. The claimant may well have accepted this as the position, however he then discovered two of his colleagues had subsequently received payments and so on 10/4/2019 he wrote again to Miss Louw pointing this out (page 43).
32. On the 11/4/2019 (a Thursday) Miss Louw replied that the colleagues have been paid in settlement as they had brought claims against the respondent. The claimant then promptly contacted Acas on 15/4/2019 (a Monday). Acas early conciliation concluded on 24/4/2019. The claimant then within a further reasonable period sought advice from the CAB and was given an appointment for 2/5/2019 (noting the Easter weekend over 19/4/2019-22/4/2019) and the claim was presented on 3/5/2019.
33. For those reasons, the finding is that it was not reasonably practicable for the claimant to present his notice claim in time and that it was presented within a further reasonable period.
34. The claimant's claim in respect of redundancy and notice pay therefore succeeds.

Employment Judge Wright

Date: 7 February 2020