



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss E Oyeniyi

**Respondent:** New Focus Healthcare

**Heard at:** Manchester Employment Tribunal

**On:** 4 March 2020

**Before:** Employment Judge Dunlop

## Representation

Claimant: In Person

Respondent: No attendance

# JUDGMENT

1. The Employment Tribunal has no jurisdiction to hear the Claimant's claim for unpaid wages as it was presented outside the time limit prescribed by s23(2) Employment Rights Act 1996. The claim is therefore dismissed.

# REASONS

- (1) The claimant, Miss Oyeniyi, was employed by the respondent on a casual basis in January and February 2019 when she worked various shifts as a carer. Miss Oyeniyi claims that she had difficulty in obtaining payment for the shifts worked. She was eventually paid £391 on 29 February 2019, but calculates that that payment was some £881 short. Given those problems, Miss Oyeniyi declined to work any more shifts for the respondent.
- (2) Miss Oyeniyi submitted a claim for the money she believes to be outstanding. No response was received within the 28-day time limit for responding to a claim and the matter was listed for a one-hour final hearing at 10.00am today. By email dated 6 February 2020, the respondent applied to submit a late response. By an email sent out yesterday the Tribunal directed that the respondent's application would be considered at the outset of today's hearing. The time of the hearing was also changed to 2.15pm.

- (3) This morning, Mr Marginson of the respondent emailed the tribunal to say that he was unable to attend the hearing given the change of time and to request that the hearing be postponed. Miss Oyeniyi did attend the hearing.
- (4) In these circumstances I would normally have considered the postponement application as the first matter to be determined. However, on reviewing the file it became apparent that there seemed to be another potential problem, in that the claim seemed to have been submitted outside the time limits set out in law for this type of claim. Rather than have both parties forced to attend on another date, it was appropriate to consider this matter first. As I explained to Miss Oyeniyi in the hearing, if the claim was submitted out of time (and there were no grounds to extend the time limit) then the Tribunal has no jurisdiction to consider the claim and the question of whether the late response should be accepted would become irrelevant.
- (5) Miss Oyeniyi took the oath and confirmed the relevant dates as follows:
  - 6.1 The date when she ought to have been paid was 29 February 2019. She did no work for the respondent after that date.
  - 6.2 She commenced Early Conciliation on 29 April 2019 and the Early Conciliation Certificate was issued on 24 May 2019.
  - 6.3 She submitted her claim on 27 December 2019.
- (6) On the basis of these dates, I am satisfied that the claim has not been submitted within the primary limitation period. Taking into account the extension of time available due to Early Conciliation, it should have been submitted, at the latest on 24 June 2019 and was therefore presented over six months late.
- (7) Miss Oyeniyi gave evidence, which I accept, that she was aware of her right to claim for unpaid wages in the Tribunal, but not aware of any time limit. She was reluctant to pursue the matter through the law and had instead attempted to persuade the respondent to make further payment through email correspondence. She was also busy with full time employment and her acting career, which involves significant travel. The information given in the claim form is details, and it had taken her significant time to write it up.
- (8) The Tribunal may extend the time limit for presentation of claims of this type only where it was “not reasonably practicable” for the claim to be presented in time. The higher courts have made it clear that this is a very strict test. In particular, where a claimant is aware of the ability to bring a claim, it is not enough that they are not aware of the time limit which applies. Having considered Miss Oyeniyi’s evidence, I am satisfied that it was practicable for her to present the claim in time. I am confident she would have done so had she been aware of the time limit. Although I appreciate that it is difficult for most claimants to access detailed legal advice, Miss Oyeniyi is clearly an articulate and intelligent woman who faced no particular disadvantage in completing the claim form and/or seeking information online about how to bring a claim.

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- (9) In the circumstances, I consider I have no option to dismiss the claim, although I do so with considerable sympathy for Miss Oyeniyi and I appreciate that this decision is very disappointing to her.
- (10) I gave my decision orally at the hearing on 4 March 2020. I am setting it out in writing now, with reasons, to enable both parties to understand the outcome of this claim and the reasons why.

Employment Judge Dunlop

Date: 4 March 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

10 March 2020

FOR EMPLOYMENT TRIBUNALS