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EMPLOYMENT TRIBUNALS

Claimant: Mrs Rita Rajani Zaveri
Respondent: London Borough of Redbridge
Heard at: East London Hearing Centre
On: Friday 28 February 2020
Before: Employment Judge Burgher

Representation

Claimant: In person
Respondent: Ms C Ibbotson (Counsel)

JUDGMENT

The judgment of the Tribunal is that:-

The Claimant's claims have been presented outside of the required time limits. The Tribunal therefore does not have jurisdiction to consider the Claimant's claims which are dismissed.

REASONS

1. The matter was listed before me for an Open Preliminary Hearing to consider whether the claim brought under section 40 7B of the employment rights act (ERA) has been presented within the time limit imposed by section 48 whether any claim for unlawful deduction of wages has been presented within the time limit imposed by section 23 of Employment Rights Act 1996.
2. Whether all or any part of the Claimant's claims has no reasonable prospects of success and whether it is appropriate to order striking out of the claim under rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (ET Rules) in the alternative whether all or part of the claim has little reasonable prospect of success and whether it is appropriate to make a deposit order under rule 39 of the ET rules.

3. Consequential case management orders would be considered in respect of any claims which are permitted to proceed.

4. The Claimant has brought claims for:

- (1) Unlawful deduction of wages, holiday pay and travel time.
- (2) Public interest disclosure act detriments for protected disclosures under the Employment Rights Act 1996 (ERA).
- (3) Failure to provide terms and conditions of employment within two months of starting, breach of section 1 ERA.
- (4) Right to an itemised pay statement under section 8 ERA.

5. The provisions for time limits in relation to the unlawful deduction of wages, holiday pay and travel time is provided by section 23 ERA:

“Subject to subsection (4), an [F1employment 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.

(2) 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.

(3A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2).

(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.

(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

6. Insofar as the claims are said to amount to a breach of contract or breach of the annual leave provisions under the Working Time Regulations 1998 similar time limit provisions are provided by Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and regulation 30 of the Working Time Regulations 1998.

7. The time limits in relation to the protected disclosure complaints is provided by section 48 of the ERA which states:

“(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the “date of the act” means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.”

8. The time limits in relation to providing written terms and conditions or an itemised pay statement is set out at section 11(4) of the ERA.

“(4) An employment tribunal shall not consider a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

(a) before the end of the period of three months beginning with the date on which the employment ceased, 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 application to be made before the end of that period of three months.”

Hearing

9. The Claimant’s legal advisers notified the Tribunal that they was no longer instructed by the Claimant on 14 February 2020.

10. On 21 February 2020 the Claimant made an application to adjourn the Preliminary Hearing on the basis that there was a mix up and misunderstanding with her legal representation and a bereavement in her family. On 25 February 2020 Regional Employment Judge Taylor refused the Claimant’s application to adjourn.

11. The Claimant attended the hearing before me without legal representation. She stated that her legal expenses insurers had withdrawn their support; that she did not have any knowledge of the basis for the Preliminary Hearing; and she attended under the belief that she was required to establish her employment status regarding whether she was a worker or an employee. This had not been identified as a matter to be addressed at the Open Preliminary Hearing although it was said to be relevant to the Claimant's claims under section 1 and section 8 ERA respectively. I noted that the Claimant was in attendance at the previous Preliminary Hearing before Employment Judge Crosfill on 9 December 2019 where the preliminary issues were identified.

12. I provided the Claimant with an opportunity to consider the issues that were to be addressed and adjourned the hearing for some time for her to be able to read the carefully drafted written submissions made by Ms Tillotson, counsel for the Respondent. Following adjournment, the parties made their respective submissions.

13. The Claimant's claims relate to her zero hours contract work at Woodford County High School for Girls where she worked as a Cover Supervisor and Senior Exam Invigilator from September 2014.

14. The Claimant maintains that the Respondent did not provide her with a statement of written particulars of employment and that it failed to give payslips with correct details on.

15. She maintained that the Respondent failed to make proper payments due to her for holiday pay; cancelled lessons; meetings with senior leaders; and proper amounts arising from the spinal point that she should have been was paid under.

16. The Claimant was not provided with any work by the Respondent following 13 July 2018. C Jenkins, the Deputy Headteacher of the Respondent school wrote to the Claimant stating that:

"It is a matter of regret that the nature of the role here at Woodford – the work itself and our established procedures – sit so uncomfortably with you. The above clarifies our approach. I thank you for your service, in cover and in and regulation at Woodford over the past four years."

17. The Claimant was not happy with this decision and sought to challenge it. She raised further internal complaints with the Respondent about shortfalls in payments to her in respect of her work done prior to July 2018.

18. The Claimant claims for protected disclosure detriment also related to cancelled invigilation shifts and withholding work to her from July 2018 onwards on a continuing basis.

19. The Claimant stated that she was paid in the middle of each month, in arrears, but that she had not done any invigilation work at the Respondent school since July 2018. Had her work not ended she would have expected to be involved in mock exams throughout the academic year before the exams in the final term.

20. It is clear that there was a decision by the Respondent not to use the Claimant any further from 13 July 2018. This was communicated to her and her contract ended on that date. I find that this was a single decision which cannot reasonably be said to be a 'continuing failure' to provide her with work.

21. The Claimant also claims a payment in respect of her cancellation to attend a senior staff meeting that took place on 15 September 2018, that she was disinvented to. Payment for this meeting would have crystallised by mid October 2018.

22. All of the relevant statutory provisions for the time limits require that the claim be brought within three months of the act complained of.

23. On the facts, the latest date for contact to ACAS ought to have been by 20 January 2019 if a generous interpretation is afforded to the Claimant in respect of non-payment relating to cancellation of senior staff meeting attendance on 15 September 2018.

24. The Claimant stated that she was pursuing internal resolution for the correct payments and for work but the Respondent was procrastinating and failing to provide her with the proper information. Following further toing and froing the Claimant was able to secure payment for some of the discrepancies for sums claimed (in respect of her work from September 2014 to 13 July 2018). On 14 June 2019 the Respondent informed the Claimant that it would pay these sums in the June 2019 payroll. However, the Claimant believed that there were still outstanding sums due to her.

25. The Claimant contacted ACAS in respect of her claims on 12 June 2019. An ACAS EC certificate was issued on 11 July 2019.

26. The Claimant did not bring any claim to the Tribunal until 9 August 2019. She stated that she was at pains to seek to resolve matters internally, she was sure that the Respondent's calculation of her entitlements was incorrect and that they were not following standard local authority policies and agreements in respect of payments of holiday pay and spinal increments. The Claimant stated she had access to union who advised her that she was entitled to two years back pay, and she also indicated that she had access to legal expenses insurance.

Conclusions

Time limit

27. In order to pursue a claim in respect of detriment for making protected disclosures, written statement of particulars and payslips the Claimant was required to contact ACAS by 12 October 2018, which was 3 months following the termination of her contract.

28. In respect of her claims for outstanding payments, if a generous interpretation is given to the Claimant, she was required to contact ACAS by 20 January 2019 in order to pursue these claims.

29. The Claimant did not contact ACAS until 12 June 2019 and did not subsequently present her complaints to the Tribunal until 9 August 2019. The Claimant's claims have therefore been presented well outside the relevant 3 month time period.

Reasonably practicable

30. Given the claims have been presented out of time I am required to consider whether it was reasonably practicable for the Claimant to have presented her claims in time.

31. I considered the guidance in the case of Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, CA per May LJ at paragraph 35 in respect of the test of reasonable practicability. This is construed as assessing what is reasonably feasible or what is reasonably capable of being done. I am aware that there are numerous factors that a Tribunal can properly consider when determining whether it is reasonably feasible.

32. When considering whether it was reasonably feasible for the Claimant to have presented her complaints I have regard to the fact that modern methods of obtaining information and communication mean ignorance of the law is no excuse. The ignorance itself has to be reasonable.

33. The fact that the Claimant did not make proper enquiries about what her options were to bring an Employment Tribunal complaint to pursue her entitlements was not reasonable. Further, the fact that Claimant sought to try and resolve matters internally, for such a long period, does not lead me to conclude that it was not reasonably practicable for her to present a claim within time. This was her choice and it is clear that awaiting the outcome of an internal appeal does not mean it is not reasonably practicable to bring a claim.

34. Therefore, the Claimant has not satisfied me that it was not reasonably practicable to present her complaints within three month period and as such the Tribunal does not have jurisdiction to consider her claims which are dismissed.

35. Given this conclusion, I did not consider the application to strike out or order a deposit in respect of all or any of the Claimant's claims.

Employment Judge Burgher
Date: 4 March 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE