EMPLOYMENT TRIBUNALS

Claimant: **Mr I Smith**
Respondent: **Royal Mail Group Limited**

AT A PRELIMINARY HEARING BY TELEPHONE CONFERENCE CALL

Heard at: **Leeds** **On: 24th April 2020**
Before: **Employment Judge Lancaster**

Representation
Claimant: Mr S Dambel
Respondent: Ms S Lewis, solicitor

JUDGMENT

The complaint could reasonably practicably have been presented in time and it was not. Nor was it presented within such further time as would have been reasonable. The claim is dismissed.

REASONS

1. This hearing was originally scheduled to be heard via skype. Because Mr Dambel was unable to join that call except by audio, whereas Ms Lewis and the Judge were also I visual contact, the hearing was re-arranged as a telephone conference call.

2. After hearing oral submissions, the decision was reserved and written reasons are therefore required.

3. The claim is for a series of unauthorised deductions from wages.

4. It is more properly described as a claim for back-dated compensation for receiving a 20 minute rest break instead of one of 30 minutes.

5. The rest break allowance has, however, now been increased to ½ hour, it seems that this happened sometime early in 2019.

6. The Claimant retired on 29th September 2019 and his last pay date was 27th September 2019.

7. The last in any series of unauthorised deductions in respect of the 10 minute daily rest shortfall, will therefore have been early in 2019, and that is when time began to run: section 23 (3) Employment Rights Act 1996.

8. Even if time began to run only at the date of the last payment, the ordinary 3 month time limit will have expired on 26th December 2019.

9. The Claimant entered into ACAS early conciliation only between 26th and 27th February 2020 and the claim (ET1) was issue the same day that the certificate was received from ACAS.

10. The claim is therefore out of time by at least 2 months. In the context of a 3 month time limit that is a significant delay. In reality the claim arising as it did in early 2019 is approximately 9 months late.

11. It is only if it was both not reasonably practicable to have brought the claim in time, and if it was then brought within a further reasonable time that it can proceed: section 23 (4).

12. I also observe that this claim will be limited to the 2 years immediately prior to the presentation of the ET1. That means it could only cover any "deductions" in the period 27th February 2018 to early 2019: section 23 (4A).

13. The argument as to why it was not reasonably practicable to have presented the claim in time has been advanced for the first time in submission by Mr Dambel today. No reason for the delay is given in the Claimant's witness statement of 14th April 2020, despite the fact that this is what that statement was ordered to cover.

14. It is now asserted that the Respondent had been given some form of an assurance to the trade union that former employees as well as current employees would be compensated for the "lost breaks" at the point when an agreement was finalised.

15. Mr Dambel submits that it was only in about February 2020 that he, as the union representative, was informed that the agreed scheme would not also in fact extend to ex-employees; and that is when this claim was presented.

16. The actual "10 minute grace break -Payback Agreement" concluded with the CWU with effect from 6th April 2020 was for employees to take an additional full week away from work, apart from annual leave, to be taken in the coming 2 years. No employee therefore has or is to receive monetary compensation by way of increased wages for the period up to early 2019. The description of this as a "grace-break" does not indicate any acceptance by the Respondent that there was a legal entitlement to additional pay so that it represented what was "properly payable" (section 13 (3)). The negotiated settlement for compensatory leave was not in fact one that could benefit former employees.

17. I am satisfied in all the circumstances that there is nothing by way of culpable misrepresentation on the part of the Respondent that rendered it not reasonably practicable for the Claimant to have presented his claim in time. The situation is, to my mind, analogous with the concurrent pursuit of an internal appeal; that does not usually prevent time still running against the employee.

18. The fact that there were continuing discussions with the Union, but not clearly with any acknowledgement whatsoever of any actual right to increased pay, does not mean that it was not feasible for the Claimant, with access to Union advice, to have put in a claim to preserve his position. Certainly, when the position had not been resolved at the point that he left employment it would have been practicable to present a claim even if it were then stayed to await any negotiated settlement.

19. The facts relevant to these alleged deductions were perfectly well known to the Claimant, and he had the support of his trade union at all times.

20. The claim was not in fact presented until 5 months after the end of employment and approximately one year after the last allege “deduction”. It could and should have been presented before that and is therefore out of time.

EMPLOYMENT JUDGE LANCASTER

DATE 24th April 2020

JUDGMENT SENT TO THE PARTIES ON

AND ENTERED IN THE REGISTER

FOR SECRETARY OF THE TRIBUNALS