



# EMPLOYMENT TRIBUNALS

**Claimant: Martin Clark**

**Respondent: Stagecarriage Ltd**

## JUDGMENT

### Employment Tribunals Rules of Procedure 2013 – Rule 21

The judgment of the Tribunal is that:

1. The claim in respect of a statutory redundancy payment under section 163 Employment Rights Act 1996 is well founded and succeeds. The Respondent is ordered to pay to the Claimant a redundancy payment in the sum of **£2,800**.
2. The Complaint in respect of accrued but untaken holiday pay under Regulation 30 Working Time Regulations was presented out of time and is dismissed.
3. The complaint of unlawful deductions in respect of a week's wages was presented out of time and is dismissed.
4. The claim for breach of contract in respect of the failure to give notice is was presented out of time and is dismissed.

## REASONS

5. The Claimant was employed by the Respondent from 10 January 2011 until 19 July 2019 when he and other employees were dismissed without notice by reason of redundancy. On 30 December 2019, Mr Clark presented a Claim Form to the Tribunal in which he claimed a redundancy payment, damages for wrongful dismissal (notice pay) and unlawful deduction of wages in respect of outstanding holidays and other wages (lying on). That was also the day he contacted ACAS for the purposes of Early Conciliation and received an EC Certificate.
6. The Respondent did not present a response to the claims. Accordingly, an Employment Judge was required by Rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination could be made on the claims and, if so, to issue a judgment which may determine liability

and remedy. A hearing had been convened for 10 March 2020 for that purpose. However, due to a misunderstanding on the part of the Claimant he did not attend. It was rearranged for 09 June 2020.

7. The Claimant does not obtain the benefit afforded under section 207B Employment Rights Act 1996 of an automatic extension of time for the presentation of a complaint of unlawful deduction of wages – because he commenced the Early Conciliation process after the expiry of the primary time limit (being three months from the date of dismissal or the last deduction complained of). Nor does he obtain any such extension of time for the presentation of his claim for notice pay or holiday pay. Therefore, his claims in respect of unlawful deduction of wages, outstanding holiday pay and wrongful dismissal (notice pay) were presented out of time. I should add that although he had not referred to in his original claim form, Mr Clark subsequently sought to recover a payment of £350 in respect of a week's wages (he worked a week in hand) by way of a claim of unlawful deduction of wages.
8. The Tribunal has no jurisdiction to consider such claim unless Mr Clark can satisfy it that it was not reasonably practicable to present those claims within the primary statutory time allowed (three months from the date of termination or the date when payment was due). In Mr Clark's case, time expired on 18 October 2019, which was some 6 weeks before Mr Clark commenced Early Conciliation and presented his Claim Form. If satisfied that it was not reasonably practicable to present those claims in time, then the Tribunal can consider them if they were presented within such further period as it considers reasonable.
9. At the hearing on 09 June 2020, Mr Clark very candidly gave his reason for not presenting the claims in time, which was that he did not understand that he could do so until later in the year. Unfortunately he had been advised by colleagues that as the company was still active he could not make a claim and that he had 6 months in order to seek a redundancy payment in any event. It was only when another colleague presented a claim that he was prompted to do so. In the circumstances I am unable to conclude that it was not reasonably practicable to present the claims for wrongful dismissal, unlawful deduction of wages and holiday pay within the relevant statutory time frame, much as I commend Mr Clark for his candour. Therefore, the Tribunal lacked jurisdiction to adjudicate on those claims which fell to be dismissed. Although I had no option but to dismiss the above claims, I was satisfied that the amounts claimed were due to Mr Clark.
10. I was satisfied that I had sufficient information to enable me to issue a judgment in respect of the claim for redundancy pay. The claim for a redundancy payment was made in time (in accordance with section 164 Employment Rights Act 1996). I was satisfied that the Claimant was dismissed by reason of redundancy, having regard to the statutory presumption in section 163 ERA 1996 and the information provided by the Claimant in his Claim Form and at the hearing on 09 June 2020.
11. As to the amount of redundancy, at the date of dismissal the Claimant was 34 years old and earned £350 a week gross. He had been continuously employed for 8 complete years, which equates to a statutory redundancy payment of £2,800.

**Employment Judge Sweeney**

9 June 2020