



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Broughton

v

SKRecruitmentAgency Ltd

PUBLIC PRELIMINARY HEARING

Heard: By Skype for Business On: 8 August 2020

Before: Employment Judge JM Wade

Representation:

Claimant: In person

Respondent: No attendance

JUDGMENT

- 1 By consent the title of the respondent is amended to the details as they appear above.
- 2 The claimant's claim in respect of unpaid holiday pay is dismissed having been presented outside the relevant time limits.
- 3 This judgment shall be sent for information to the registered address of the respondent company (as well as to the address given in the claim form).

REASONS

1. This has been a remote hearing to which the parties did not voice any objections. The form of remote hearing was Skype for Business. A face to face hearing was not held because of the present Covid 19 circumstances.
2. The claimant's claim was in relation to holiday pay he said was owing from working with the respondent, an agency, between 2017 and 2019. His claim was presented on 20 March 2020.
3. Judgment was delivered on an extempore basis but I provide these written reasons now in order to assist the parties.
4. The documents before me were the claimant's claim form, his witness statement various copies of CIS (construction industry scheme) pay statements; contracts he had signed with the respondent; the company's house summary of the respondent's details; and a screen shot from the respondent's "app", giving as a

contact address, the TW18 3BA address given in the claim form and to which these proceedings were posted by the Tribunal.

5. The claimant was sworn in and gave oral evidence to supplement his statement. My assessment was that he is a wholly reliable and honest witness. He was content that the companies house record of the respondent's name be adopted in these proceedings (the addition of limited etc). I also indicated that I would direct any Judgment be sent for information to the registered office, given the possibility that post may not have been accessed at the respondent's operating address in March, and it may not, in fact, have known of this hearing.
6. It was in the interests of justice to proceed with the hearing in the absence of the respondent because of the preliminary nature of the issues to be decided.
7. I made the following brief findings. The claimant had worked as a labourer in the construction sector for many years, but prior to 2017 on a PAYE basis only, taking paid holidays in the usual way. In 2017 he responded to an advert from an agency to work on a specialist (clean room) construction project very near his home. He was taken on and signed a contract both in 2017 and 2018 to work on a self employed basis; the contract being clear that there was no right to paid holiday and explaining other key self employed terms. He obtained a UTR (Unique Taxpayer Reference) number and completed a self assessed tax return in April 2019 for 2018/2019. He received a tax refund and had to pay self employed national insurance. His CIS pay statements were clear that only basic rate income tax (20%) was deducted at source for his work via the agency.
8. The claimant last worked at the site via the agency in April 2019 and was then taken on by the contractor directly from May 2019 until November 2019 when the project finished. The claimant was a salaried employee with the contractor from May 2019 to November 2019. In 2020 the claimant approached his sister (an accountant) about his tax return for that year (2019/2020), and she suggested he may have been entitled to holiday pay when working with the agency. He presented his claim.
9. The law, whether applying Regulation 30 of the Working Time Regulations 1998 or Section 23 (2) to (4) of the Employment Rights Act 1996, is that the Tribunal shall not consider complaints unless they are brought within three months (subject to ACAS conciliation extensions). In this case the last time the claimant could have sought or enjoyed paid holiday with the agency was April or early May 2019. He knew from his contract that he was, if taken at face value, not entitled to exercise that right. He had also been working under that regime during two contracts. He considered that because the terms of working were otherwise favourable to him that he would not raise the issue. He then moved on, in May 2019, to be directly employed and the issue went away, because he then received a salary and paid holiday.
10. The reasons, then, that the claim was not presented earlier (to be in time it should have been presented in late July or early August 2019), was that the claimant was generally content with the situation, and was only alerted to the possibility of holiday pay (despite the contract he had signed) in the spring of 2020 by his sister.

11. I have to decide whether it was reasonably practicable for the claimant to have presented the claim in time.
12. The taking of paid holidays (or not) is now a matter of general awareness in society, and rights in connection with that are readily discoverable for a person with connectivity (which the claimant has via his phone) and literacy. The claimant also has (and had) access to his sister's specialist knowledge.
13. For these reasons I consider it was reasonably doable for him to have presented a claim at any time during his work with the agency, if he had wished to challenge his self employed status and access paid holiday at that time, or within three months of finishing with the agency.
14. It follows that this claim must be dismissed because it was presented outside the relevant time limits. I have not therefore come to decide whether the claimant was, in all the circumstances he described, properly a worker on the one hand entitled to holiday pay between 2017 and 2019, or self employed in that period and not so entitled.

Employment Judge JM Wade

3 August 2020