



EMPLOYMENT TRIBUNALS

Claimant: Mr M Gaspar

Respondent: Eau De Vie Leisure Limited

HELD by CVP

ON: 28 October 2020

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Did not appear and was not represented

JUDGMENT

The complaint not having been presented to the Tribunal before the end of the period of three months beginning with the effective date of termination the Tribunal finds that it was reasonably practicable for the complaint to be presented before the end of that period and that therefore it was not reasonable for the Tribunal to extend the said period and that therefore the claims made by the claimant are hereby dismissed.

REASONS

1. The claims

- 1.1. No notice pay.
- 1.2. No holiday pay.
- 1.3. Unauthorised deduction of wages.
- 1.4. "Other payments".

2. The issues

The issues in this case relate to:

- 2.1. Whether it was reasonably practicable for the claimant to present the complaint in time.
- 2.2. If not, to extend time and decide the claims.

3. The law

The Tribunal has to have regard to section 111(2) Employment Rights Act 1996 (as amended in relation to early conciliation) which provides "... an Employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal –

- (a) before the end of the period of three months beginning with the effective date of termination, 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. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed as head chef at the Cargo Hold Restaurant in Sheffield, which was owned by the respondent. The date of commencement of his employment was 6 August 2018 and the effective date of termination was on 18 March 2019. Early conciliation commenced on 11 February 2020 and ended on 18 February 2020. The claimant presented a claim form on 24 March 2020 for the claims referred to above.
- 4.2. It is clear therefore that the claimant did not enter his claim within three months of the effective date of termination. The reason that the claimant gives for this is that he was in contact with the owner of the restaurant, a man called Shaun about payment. Shaun constantly said to the claimant that the claimant needed to wait for the liquidation of the respondent and that the liquidator would sort out the claimant's problem.
- 4.3. The claimant said that he did not know whether or not the respondent was in liquidation. He accepted that as a matter of record a search of Companies House showed that the company was not in liquidation.
- 4.4. After regular contact with Shaun the claimant says he made an enquiry about the liquidator of the respondent in December 2019 and even after that Shaun was in weekly or fortnightly contact with the claimant telling the claimant the same story as before.
- 4.5. The claimant has a business and HR resource management degree from Sheffield Hallam University and obtained a BA Honours. This course contained a module in employment law where he learnt of the rights of an employee. He says that he did not know then that there was a time limit required for issuing his claims. He agreed with the Tribunal that it was not reasonable to be able to claim without limited time but he

maintained that it would be reasonable to wait for a year, as in this case, even though he admitted he was short of money during this period.

- 4.6. The claimant took advice in December 2019 from his cousin, Antonio who was an accountant. Antonio advised the claimant that something was not right and told the claimant to get a solicitor. The claimant did not go to a solicitor because he said he could not afford it.
- 4.7. In January 2020 the claimant visited the Citizens Advice Bureau who told him that they could not help but that he should go and find a good employment solicitor. The claimant did nothing about it as he said he could not afford it.
- 4.8. In March 2020 the claimant spoke to a man called Hugo de Souza, a friend of Shaun who suggested that the claimant do something. By this time the claimant had formed the view that Shaun was a liar.
- 4.9. The claimant says that he never went on the internet from the effective date of termination to learn about his rights.
- 4.10. During the period from the effective date of termination until the claim was presented the claimant suffered from no illness or disability.
- 4.11. From the effective date of termination, the claimant severed all formal ties with the respondent.
- 4.12. So, summing up the facts the claimant's position was that he expected his money because Shaun promised it, that he agreed that it was not reasonable to wait a year, that Sean had led him down the garden path and now the claimant believed Shaun was a liar, that he trusted Shaun and should not have done.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the claimant):

- 5.1. The claimant is clearly an intelligent man and gave his evidence very clearly.
- 5.2. Although the claimant lost his job on 18 March 2019 it took him until 24 March 2020 to present his claim.
- 5.3. The explanation which the claimant gives is that he was in regular contact with Shaun, the owner of the respondent who, it appears, made him promise after promise about when he would receive his money.
- 5.4. These promises were related to whether or not the respondent was in liquidation or not but the claimant never took steps to find out himself.
- 5.5. The claimant did have some knowledge of employment law, although he says not the time limits, although he accepted in the end it was not reasonable for him to wait for one year to present his claim.
- 5.6. Although well down the line he indulged in three attempts to enquire about his position but declined advice twice to take advice from a solicitor.
- 5.7. He never went on the internet to consider his position.

- 5.8. Referring to section 111(2) of the Employment Rights Act 1996, it being clear that the claimant did not present his claim within three months of the effective date of termination, the Tribunal has to consider whether or not it was reasonably practicable for the claimant to present his claim before the end of the period of three months.
- 5.9. The claimant says he was short of money, yet took a whole year to pursue his claim. He has a law degree, which covered some employment law and he held a responsible job with the respondent, apart from his apparent reliance on Shan, who he now regards as a liar, the Tribunal can find no reason why he should not have issued proceedings within the three-month period. So far as the reliance on Shaun is concerned, he could easily have made his own enquiries as to the status of the respondent and in the circumstances the Tribunal finds that being out of time to present his claim, it was reasonably practicable to present his claim within the three-month period. It follows therefore that the Tribunal does not have to adjudicate on the claims of the respondent as it does not have jurisdiction to do so.

Employment Judge Shulman

Date 12 November 2020

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