



EMPLOYMENT TRIBUNALS

Claimant: Ms C Mendez Lopez

Respondent: Mr Akbar Taghiravanji

Heard: Remotely (in public by CVP video) On: 5 March 2021

This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V - video. It was not practicable to hold a face to face hearing because of the Covid19 pandemic.

Before: Employment Judge Shepherd

Appearances

For the claimant: In Person

For the respondent: In Person

An extempore Judgement having been given at the hearing on 5 March 2021 and the written judgement having been sent to the parties on 5 March 2021. It was found that claim for outstanding holiday pay was not presented to the Employment Tribunal within the time limit in the Working Time Regulations 1998 and it is struck out as the Tribunal has no jurisdiction to hear the claim. The claimant has now requested written reasons for the decision and they are provided in accordance with rule 62 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. I heard evidence from Concepcion Mendez Lopez, the claimant.
2. I had sight of the Tribunal file of documents.
3. Neither party had complied with the requirements to provide details set out in the case management orders of Employment Judge Shore following a preliminary hearing on 20 December 2020.

4. The respondent had not provided an application for an extension of time, a draft ET3 form and response.

5. Neither the claimant or the respondent had provided full records, copy payslips, copy P60s contract of employment or copy bank records as had been required.

6. The claimant was employed by the respondent from 5 March 2015 to 14 March 2019. The claimant had stated that the last payment for holiday pay was due on 14 March 2019. The claimant did not contact ACAS until 26 October 2019. This was more than six months after her employment ended.

7. In the claim presented to the Tribunal on 18 November 2019 in the form ET1 the claimant had stated:

“After leaving I confronted Mr Akbar on numerous occasions regarding my holiday pay which I was told he was going to address it. This is why this has gone on over the three-month deadline but he has made no attempt to settle the situation and when asked he told me to leave him alone.”

8. In an email dated 17 January 2021 to the Tribunal the claimant stated:

“The reason for the late claim was because I had a good respectful relationship with the respondent, and as he knew what had happened with the previous owner he knew that I wasn’t going to let that happen again. When I left I told him we needed to sort out what was owing from my holiday pay. I would constantly be asking every week for this to be resolved. To which his reply would be to leave him alone, I never wanted to reach a situation to which he left me no choice but to contact ACAS.”

9. The claimant said that she had previously approached ACAS in respect of non-payment of holiday pay by the previous owner of the business. When pressed she said that this must have been around 2016.

10. The time limit is set out in Regulation 30(2) of the Working Time Regulations 1998 in which the relevant parts are stated:

“An Employment Tribunal shall not consider a complaint under this regulation unless it is presented –

(a) Before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted or, as the case may be, the payment should have been made;

(b) within such further. As the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable the complaint to be presented before the end of the period of three months.”

11. Time limits for bringing claims are short for good reason as demonstrated in this case, memories of such details are short.

12. Time limits are not procedural niceties which can be waived at an Employment Judge's discretion. The time limit is mandatory and indicates that the Tribunal shall not hear the case unless it was presented within the time or such further time 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 the period of three months.

13. I have to determine as a question of fact whether it was not reasonably practicable for the claim to be presented within the three month time limit.

14. The claimant was aware that she had the right to bring a claim and it was made clear in the case of Trevelyan (Birmingham) Ltd 1991 ICR 488 that when a claimant knows of his or her right to complain (of unfair dismissal in that case which is subject to the same test) then he or she is under an obligation to seek information and advice about how to enforce that right. Failure to do so will normally lead to the tribunal rejecting the claim.

15. The claimant was aware of her right to claim. She had spoken to ACAS at least three years before her dismissal in respect of a similar claim that she was considering making against the previous owner of the respondent's business. She was aware that the claim was out of time when she presented it. Her reason for not presenting the claimant time was that she had allowed him for the time in which to make the she said that she got on with the respondent and respected him. She did not want it to get this.

16. The claimant provided no evidence that would lead the Tribunal to conclude that it was not practicable for the claim to be presented within the three month time limit. The claimant was concerned that the claim had been accepted by the Tribunal when it was first presented. However, this does not provide the Tribunal with jurisdiction to hear the claim.

17. It had been noted by Employment Judge Shore in his Case Management orders sent to the parties on 11 January 2021 that the claim appeared to be out of time and that the claimant needed to say when the last payment of holiday pay was due to her and why it was not reasonably practicable for her to have started ACAS early conciliation before 26 April 2019.

18. I have sympathy with the claimant and it gives me no pleasure to find that she has not established that it was not reasonably practicable for her to present a claim to the Tribunal within the time limit.

19. The claim to the Tribunal was presented a considerable time after the limitation period had expired. The approach to ACAS was over six months after her employment ended. The claimant was aware that she could claim for unpaid holiday pay. The fact that the claimant said that she respected the respondent and did not wish it to get to this stage does not show that it was not reasonably practicable for her to present a claim to the Tribunal within the time limit.

20. In those circumstances the Tribunal has no jurisdiction to hear the claim and it is dismissed.

Employment Judge Shepherd
25 March 2021