



EMPLOYMENT TRIBUNALS

Claimant: Miss L Ridpath

Respondent: Caffi Caban-Y-Pair Cyf

Heard at: Cardiff by CVP **On:** 1st March 2021

Before: Employment Judge Duncan

Representation:

Claimant: In person assisted by her partner, Mr Smith

Respondent: Ms Elen, Director

JUDGMENT having been sent to the parties on 3rd March and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant in the case is Laura Ridpath. She worked as barista at the Respondent café, Caffi Caban-Y-Pair, between the 8th August 2019 and 21st February 2020. It is agreed between the parties that the Claimant worked 16hrs per week.
2. The Claimant represents herself today and has represented herself throughout the proceedings. She has been assisted today by her partner, Mr Smith.
3. The Respondent is represented by Ms Elen, Director.

4. The Claimant, in her ET1, received by the Tribunal on 6th August 2020, states that the Respondent made deductions from her wages for the purpose of tax but that these were never repaid to her. The sum claimed for the alleged unpaid rebate for tax is £210. The Claimant states that the Respondent told her she would get the money back, if she was entitled, the following tax year. The Claimant also claims for 14hrs work for which she states that she was due on 24th February 2020.
5. The Respondent has filed an ET3 in response to the claim, received on 11th September 2020. The Respondent states that the tax money was repaid to the Claimant on 16th June 2019. The response does not specifically deal with the claim for 14 hours unpaid work for which the Claimant states that she was owed but it is clear that she disputes the claim.
6. I have considered a 60 page bundle that includes the following:
 - a) the ET1 and ET3;
 - b) Letters and emails that outline the respective parties' positions;
 - c) A number of payslips, both printed and in handwritten.

Issues

7. There were two preliminary matters that I identified at the start of the hearing.
8. The first issue related to text messages. I was provided with the papers for this case on Friday 26th February 2021. On a review of the documents, it became apparent that the Respondent had sent a number of text messages to the Tribunal, these were between Ms Elen and her accountant in the Welsh language. I am not a Welsh speaker. I directed that the Respondent translate the messages and thereafter the Claimant confirm if she agreed the translation, if she spoke Welsh. In the event that she did not speak Welsh, the matter was to be considered further at the hearing. In summary, the Claimant has been able to run the messages through Google Translate and states that she understands the same. The Respondent states she contacted the Tribunal and was told that someone would be available to assist and interpret today and that is the reason why no agreed document is before the Tribunal as hoped. I decided that this issue would be further considered following the secondary and more pressing issue, namely, time limits.
9. I had identified the following chronology from the papers:

Claimant commences employment on 8th April 2019
Tax was deducted from her wages until 9th June 2019

Respondent states that a rebate was paid on 16th June 2019 in the sum of £210. The Claimant disputes this and claims that she was told that the rebate would be considered in the next tax year, if eligible

The Claimant's employment ended on 21st February 2020

The Claimant states that she was owed 14hrs wages as of 24th Feb 2020 when the wages were supposed to be paid to her

Claimant states that she had a discussion with HMRC on 6th July 2020 and that it was confirmed that she should have received a rebate from the Respondent and that the Respondent had confirmed online that a rebate had been made

The parties engaged in ACAS conciliation on 3rd August 2020 with a certificate issued on 6th August 2020

10. I explained that, on my reading, it appeared that there were two elements of the claim. The first for a deduction on or around 16th June 2019. I expressed the initial view that it appeared this was out of time. The second for 14hrs unpaid wages on 24th February 2020. I again expressed the view that this also appeared to be out of time.
11. Having highlighted this issue, I informed both parties of the issues that I must consider, namely,
 - a) Was it reasonably practicable for the complaint to be made within the three-month period?
 - b) If it was not reasonably practicable, was the complaint nevertheless presented within a reasonable time?
12. Given that the parties were unrepresented, and that the above points may have been new to them, I invited them to consider what they wanted to say over a 30 minute adjournment. I ensured that both parties had the questions that I wanted them to address and explained that both parties should outline their positions on those issues. It was confirmed that both parties understood and the case was accordingly adjourned until around 10:50am.
13. Following the adjournment, I invited the Claimant to address me on the time limit issues. The Claimant was nervous in addressing me and so was assisted by her partner. In short, her position was that she did not know about the precise nature of the rebate until she received a rebate in her new employment that was lower than she expected. She states that she did not know of the exact value of the rebate and that it was not reasonably practicable to bring the claim within three months as she did not realistically know of it until 6th July 2020 when talking to HMRC. It was asserted that when she knew, she acted entirely reasonably in messaging the Respondent and thereafter bringing the claim. On the unpaid wages

claim, she accepts that she had attended the Respondent café at the end of her employment, an argument had occurred and that she did not proceed with the claim as she was upset and did not want to go down the path of litigation. She states that when HMRC raised the issue on 6th July 2020, she pursued the wages claim.

14. The Respondent states that the claims should have been made within three months and that they are 13 months out of time. In any event, she continued to state that the Claimant was paid the sum owed. She invites me to consider that it was strange that it was not brought to the attention of the Respondent when she left the company. She makes the point that if someone had taken £26 out of her wages for a period of eight weeks, she would want to know where and when she was going to get it back, if it had not been paid.

The Law

15. There is a three month time limit for presenting a complaint to the Tribunal. The date runs from the date of deduction or the last deduction in a series of deductions. If the Tribunal is satisfied that it was not reasonably practicable to present a complaint within three months, it may be presented within such further time as the tribunal considers reasonable. Essentially, the questions that must be asked are as follows:
- a) Was the claim made within three months?
 - b) If not, was it reasonably practicable to present the claim within the three months?
 - c) If it was not, was the complaint nevertheless presented in time?
16. This is a case in which the Claimant essentially states that she was unaware of the exact nature of the rebate, or the Respondent's failure to issue it, until 6th July 2020, some 13 months post deduction and four months post-termination.
17. In a case based upon the lack of awareness of a particular fact that may trigger a claim, I have regard to the principles in the case of **Machine Tool Industry Research Association v Simpson 1988 ICR 558, CA**. In a case where the Claimant has no knowledge of a fact that is fundamental to the right to bring a complaint, it may render it not practicable to present the complaint in time. The Court of Appeal held that three points must be established:
- i) That the Claimant's ignorance of the fact was reasonable;
 - ii) That Claimant had reasonably gained knowledge outside the time limit that she reasonably and genuinely believed to be crucial to the case and amounts to a ground to claim; and,

- iii) That the acquisition of the knowledge, in fact, was crucial to the decision to bring the claim.

18. I should be cautious in applying a rigid approach to the three factors. I have regard to the further guidance given in **Cambridge and Peterborough NHS Foundation Trust v Crouchman 2009 ICR 1306**. That case distils the principles from various cases.

Decision

19. In respect of the 14 hours unpaid work, it is accepted by the Claimant that following the dispute at the end of her employment, she effectively was upset and decided not to pursue the sums she states are due. It was candidly accepted by the Claimant that the reason the claim for the 14hrs was being made was that the conversation with HMRC on 6th July 2020 led to the claim for the rebate and thereafter she decided to include the unpaid wages as part of the claim during the discussions with ACAS. The claim for unpaid wages falls approximately 5.5 months from the date that payment was due and therefore approximately 2.5 months out of time. It is my view that the Claimant could have made the claim within the three months from the date upon which the wages were due. She knew of the unpaid wages, she simply decided not to pursue them until the unrelated discussion with HMRC. It is my finding that given the Claimant's knowledge of the unpaid wages, it was reasonably practicable to have made the claim within three months for the 14hrs of unpaid wages – the claim for the unpaid wages is therefore dismissed on the basis that it is out of time.

20. The second, and more complicated issue, is that relating to the rebate. Applying the three factors in **Machine Tool Industry Research Association v Simpson**, I can swiftly consider the last two factors in the Claimant's favour. Those reasons are as follows:

That Claimant had reasonably gained knowledge outside the time limit that she reasonably and genuinely believed to be crucial to the case and amounts to a ground to claim

Taking her case at its highest, I accept for the purpose of the time limits application that she gained knowledge that she reasonably and genuinely believed to be crucial to her case and amount to a claim. The conversation on 6th HMRC kicked the claim into life, directed a request to the Respondent and thereafter she made a claim in August 2020. It seems to me that the dates and actions demonstrate that she considered the information from HMRC to have been enough to have triggered the claim.

That the acquisition of the knowledge, in fact, was crucial to the decision to bring the claim.

I consider in the Claimant's favour for similar reasons to the second. It was crucial to the decision as it triggered the claim and the chronology demonstrates this point

21. The key question, in my judgment, is whether the ignorance of the fact was reasonable. I have had regard to the following:
- a) It was clear to the Claimant from her payslips that some deduction was made during the eight weeks – the deduction was not made from that point onwards;
 - b) During employment she took no steps to clarify the situation;
 - c) On leaving employment, she appears to have taken no steps to raise the issue with the Respondent;
 - d) Within the three months from the date of termination, she did not raise the issue with the Respondent;
 - e) Further, she did not make any enquiries with HMRC during the course of her employment;
 - f) She did not make any enquiries with HMRC on the termination of her employment – this is despite the fact that she states that wages were unpaid and the relationship had soured with the Respondent;
 - g) She did not take any steps with HMRC within three months of termination;
 - h) The Claimant states that she only knew of the issue when her rebate was lower from her new employer, and that this triggered the steps taken on 6th July 2020. As part of her reasoning for not bringing the claim earlier is that she states in her ET1 that she was told she would receive a rebate in the next tax year. Even looking as favourably as I can, and considering the next tax year starts on 6th April 2020, she did not make any enquiries with HMRC until the last date of that three month window and a claim did not follow as a result.
22. It is for the aforementioned reasons that I consider that the Claimant's ignorance of the fact does not fall into a category of reasonable in these particular circumstances. The fact is that the deduction was made in June 2019, she was aware of the deduction and did not take any steps to rectify the issue until 13 months later. I conclude that it was reasonably practicable to have made the claim within three months.

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23. If I am wrong in that respect, then it seems to me that the time to have made proper enquiries regarding the rebate was on termination itself – not five months into new employment.

24. The claims are therefore dismissed.

Employment Judge G Duncan

Dated: 12th March 2021

JUDGMENT SENT TO THE PARTIES ON 30 March 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS