



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Z Wang

**Respondent:** Golden Partners Co Ltd

**Heard at:** London South Employment Tribunal (By CVP)      **On:** 9 March 2021

**Before:** Employment Judge Keogh

## Representation

Claimant: In person

Respondent: Mr Zhengyu Gu

# JUDGMENT

1. The Tribunal does not have jurisdiction to hear the Claimant's claims and they are dismissed.

# REASONS

1. This is a claim brought by Mr Zhijan Wang for:
  - (i) Unfair dismissal
  - (ii) Redundancy payment
  - (iii) Holiday pay
  - (iv) Breach of the Working Time Regulations 1998 in respect of weekly rest period
  - (v) Failure to provide written particulars of employment
  - (vi) Discrimination
2. I started the hearing by exploring whether the Tribunal had jurisdiction to hear Mr Wang's claims.
3. Mr Wang was employed by the Respondent from 8 August 2017. He was dismissed by letter dated 6 February 2019 and was given two weeks' notice, so his employment terminated on 20 February 2019 ('the effective date of termination'). Mr Wang agreed that he was employed for less than two years.

4. Section 108(1) of the Employment Rights Act 1996 ('ERA') requires that in order to bring a claim for unfair dismissal an employee must be continuously employed for two years ending with the effective date of termination. Mr Wang was employed for less than two years and therefore does not have sufficient qualifying employment to bring a claim for unfair dismissal. There is therefore no jurisdiction to hear the claim and it is dismissed.
5. A claim for failure to provide written particulars of employment under section 38 Employment Act 2002 can only be brought where there is a successful claim for unfair dismissal. As such there is no jurisdiction to hear this claim either.
6. Section 155 ERA requires that in order to bring a claim for a redundancy payment an employee must be continuously employed ending with the relevant date. Here the relevant date is the same as the effective date of termination, 20 February 2019. Mr Wang was continuously employed for less than two years and therefore cannot bring a claim for a statutory redundancy payment. There is therefore no jurisdiction to hear the claim and it is dismissed.
7. I then considered whether the remaining claims were brought in time.
8. Mr Wang contacted ACAS on 24 April 2019. He received an ACAS certificate dated 23 May 2019. His claim was brought on 10 July 2019.
9. Section 23 ERA provides that a claim for unlawful deductions from wages must be brought within three months from the last in a series of deductions. Where the tribunal is satisfied that it was not reasonably practicable for a complaint to be brought before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the Tribunal considers reasonable.
10. Section 30 Working Time Regulations 1998 provide that claims in respect of holiday pay or in respect of a breach of the requirement to provide a weekly rest period must be brought before 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 payment should have been made, or 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 three month period.
11. Section 123(1) of the Equality Act 2010 provides that a claim for discrimination may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable.
12. Each of these time limits is subject to extension for early conciliation to take place. These provisions allow for a claim to be brought within one month

after the end of the ACAS conciliation period in circumstances where the three month time limit ends within the period of conciliation.

13. The effect of these provisions is that each of Mr Wang's remaining claims is on the face of it out of time. The latest possible start date for each claim is the date of termination, 20 February 2019. Three months from then is 19 May 2019 which was within the period of ACAS early conciliation. Mr Wang therefore had one month after the end of ACAS early conciliation to bring his claims. The claims should therefore have been brought by 23 June 2019. They were not brought until 10 July 2019.
14. Mr Wang gave evidence, via an interpreter, as to why his claims were brought late. He says that he initially brought a claim in April, but it was rejected because he had not contacted ACAS. He says that at the time he had no stable address and relied on the address of a friend for correspondence. His friend visited the address around once per week and they made an appointment for him to attend to collect letters. The address given to ACAS was his friend's address. He relied entirely on his friend to update him as to what was happening with ACAS. After a few weeks he had not heard anything so asked his friend to contact ACAS, who said that a certificate had been sent. That was towards the end of June.
15. Mr Wang had the benefit of another friend whom he paid for translation and to give him information about employment law. He consulted this friend in March 2019 and paid him £800 for his services. He found out about the time limits from this friend. However Mr Wang states that he did not know that he had a month from the end of ACAS early conciliation to bring his claim, otherwise he would have brought his claim in time.
16. I have considered carefully whether it was reasonably practicable for Mr Wang to bring his claims for holiday pay and under the Working Time Regulations 1998 within the correct time period. I find that it was. While Mr Wang had to rely on a friend to collect correspondence he was able to see him once a week. He knew that he should hear from ACAS and should have taken steps to keep himself updated in that regard. There does not seem to be a good reason why he waited until the end of June to contact ACAS and find out what was happening. Even then he could have put in a claim form promptly and without delay. He could and should have found out when the relevant time periods were. He had access to a friend who could have translated information from the internet for him and should have satisfied himself as to the correct time periods. In the circumstances I find that the claims for holiday pay and under the Working Time Regulations 1998 could have been brought within the relevant time period and are out of time. The Tribunal has no jurisdiction to hear them and they are dismissed.
17. I went on to consider whether it was just and equitable for time to be extended in relation to the discrimination claim. The nature of the claim is entirely unclear, however the claim form refers to 'discriminatory behaviours and attitudes' relating to his employer's Chinese nationality which I took to be a complaint of race discrimination. I have considered whether it would

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be just and equitable to extend time to hear that claim. I find that it would not. There is no presumption in favour of an extension of time, and it is for the Claimant to show that it is just and equitable to extend. Mr Wang had the benefit of paid advice and could also have taken steps to satisfy himself of the relevant time limits. He did not bring his claim promptly when he found out that an ACAS early conciliation certificate had been issued. He had already prepared a claim form in April so it would not have taken him a long time to prepare a fresh claim form and issue it. In the circumstances I find that it would not be just and equitable to extend time. The Tribunal therefore has no jurisdiction to hear the claim for discrimination and it is dismissed.

Employment Judge Keogh  
Date 9 March 2021