



EMPLOYMENT TRIBUNALS

Claimant: Mr T Simon

Respondent: Avance Consulting (Europe) Limited

HELD AT: Remote hearing by Cloud Video Platform **ON:** 15 June 2021

BEFORE: Employment Judge Barker

REPRESENTATION:

Claimant: In person

Respondent: Mr A Talpade, solicitor

JUDGMENT

1. The claimant was not an employee of the respondent within the definition in s230(1) Employment Rights Act 1996, nor did he have two years' service with the respondent as required by s108 Employment Rights Act 1996. His claim for unfair dismissal is therefore dismissed.
2. As the claimant has not established that he was an employee of the respondent, his claim for breach of contract is also dismissed.
3. The claimant's claim for unlawful deductions from wages was brought after the limitation period for doing so had expired and so was out of time as per s23 Employment Rights Act 1996. The Tribunal has exercised its discretion to allow the claim to continue as it was not reasonably practicable for the claim to be presented in time but was presented within such further period as was reasonable.
4. The claimant's claim for race discrimination was brought after the limitation period for doing so had expired and so was out of time. The Tribunal has exercised its discretion to allow the claim to continue as it was presented within such other period as was just and equitable in accordance with s123(1)(b) Equality Act 2010.

REASONS

1. The claimant asserts that he was employed by the respondent as a “scrum master” to provide services to Hexaware for their end client, Sita. It is the respondent’s case that the claimant was not an employee of the respondent, or Hexaware, or Sita, but that he was engaged by the respondent via his personal service company Honour IT Limited to provide services to the respondent’s client and the end-user.
2. The claimant did not provide any documents to the Tribunal in support of his assertions, nor had he provided any particulars in advance of the hearing, despite case management orders to do so set out by Employment Judge Wright following a preliminary hearing on 19 March 2021.
3. The respondent provided a number of contractual documents in support of its assertions that the claimant was engaged via his personal service company. The claimant’s case is that these were sham documents created after his dismissal and did not reflect the nature of the agreed relationship between him and the respondent. He told the Tribunal that he no longer had any record of these pre-contractual discussions with the respondent but would seek to obtain them if possible.
4. The Tribunal noted the claimant’s assertions and took into account the lack of documentation or particulars provided by him in relation to any of the issues to be decided. The Tribunal has considered the respondent’s documentation and pleadings. The claimant has failed to establish that he was an employee of the respondent and accordingly the Tribunal has no jurisdiction to consider:
 - a. His unfair dismissal claim; or
 - b. His breach of contract claim,as both of these claims can only be brought in the Employment Tribunal by an employee.
5. However, the claimant was notified that it would be possible for him to apply for a reconsideration of this decision in the event that he is able to provide the Tribunal with evidence to support his assertions that he was an employee of the respondent, in relation to his breach of contract claim. The Tribunal notes that the claimant in any event did not have the requisite two years’ service required for a claim of unfair dismissal.
6. The Tribunal declined to strike out the remaining claims on this occasion, noting that the detail of the claimant’s precise relationship with the respondent remained to be clarified, whether as worker, contract/agency worker, or self-employed contractor.

7. The claimant's claims were also all presented to the Tribunal late. He was informed of the termination of his engagement by the respondent on 21 November 2019 and engaged in ACAS Conciliation from 20 February 2020 to 11 March 2020. The limitation period would have ended ordinarily on 20 February 2020. The effect of early conciliation was to provide the claimant with an additional month in which to present his ET1 claim form from the date on which he receives the ACAS early conciliation certificate. The certificate was given at the end of conciliation, so on 11 March 2020. The claimant's deadline for sending his ET1 to the Tribunal was therefore 11 April 2020. His claim form was presented on 20 April 2020, so was 9 days late.
8. The claimant's reasons for presenting the claims late were that he was incapacitated with mental health issues caused by his dismissal and the discrimination he was subjected to. He has provided no medical evidence in support of any mental health difficulties. The claimant also told the Tribunal that he was unaware of the time limit and was not informed of this by ACAS. The Tribunal notes that the claimant appeared to be unaware of the basis of an unfair dismissal claim as opposed to a discrimination claim and so accepts that he was unaware of his rights more generally and had not familiarised himself with them.
9. Having heard his submissions about the effect of losing his role in November 2019 the Tribunal accepts that this had a significant effect on the claimant and this contributed to his ignorance as to the time limit and to his ability to investigate it such that it was not reasonably practicable (as per s23(4) Employment Rights Act 1996) for him to have presented his claim within the primary time period. In addition, the length of the delay was short and so the claim was presented within such further period as was reasonable. In terms of whether a just and equitable extension of time is to be permitted in relation to his discrimination complaint (as per s123 Equality Act 2010), a delay of nine days is not prejudicial to the respondent nor does it undermine the ability of the Tribunal to conduct a fair hearing. The Tribunal hereby exercises its discretion to allow a just and equitable extension of time for the race discrimination complaint to continue.
10. Nevertheless, the claimant is put on notice that any further failure by him to comply with time limits, including orders of the Tribunal, may result in him being subject to "unless orders" which if not complied with will result in his claims being struck out.
11. Case management orders were made which are recorded separately from this judgment and reasons.

Case No. 2301595/2020

Date 17 June 2021

JUDGMENT SENT TO THE PARTIES ON
Date 25 June 2021
FOR THE TRIBUNAL OFFICE

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