



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4102079/20 (A)

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Hearing on the 17th July 2020 by Telephone Conference Call before
Employment Judge Porter

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Mr J Stano

**Claimant
In Person**

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Northern Dredging Ltd

**Respondents
Absent**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is the judgment of the Employment Tribunal to dismiss the claimant's claim due to lack of jurisdiction (time bar)

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Introduction

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1. The claimant worked for the respondents as a Master in a dredging vessel between the 23rd of September 2019 and the 25th of October 2019. In terms of an ET1 received on the 7th April 2020 the claimant claims in respect of the respondents' failure to provide him with itemised pay statements. No ET3 was received from the respondents.
2. The case was set down for a Hearing on the Merits on the 17th July 2020. At the Hearing the claimant represented himself and the respondents were absent. The Hearing was conducted by telephone conference call, due to the continuing

repercussions of the COVID 19 pandemic. The claimant dialled in from Slovakia to participate in the Hearing.

3. The claimant had been placed under oath and had commenced his evidence when the telephone call abruptly terminated. This happened on a further two occasions. It is unclear what caused the termination of the calls – there were no technical difficulties on the part of the Tribunal, and the claimant did not refer to any technical difficulties on his end.
4. The Tribunal made the undernoted Findings in Fact from the evidence that was available to it.

10 Findings in Fact

5. The claimant worked for the respondents as a Master between the 23rd September 2019 and the 25th October 2019. The respondents paid the claimant in full for his services, but did not provide him with any payslips.
6. The respondents did not make any deductions from the claimant's salary for tax or National Insurance.
7. The claimant became aware of the right to bring proceedings to the Employment Tribunal sometime in January or February 2020 when he called HMRC to ask for their advice on the non production of his payslips. He gave evidence that at that time he carried out some research on the internet on bringing claims to the Tribunal, but said that nonetheless he was unaware of the statutory 3 month time limit.
8. The claimant did not raise proceedings until April 2020 as he was trying to resolve the matter directly with the respondents.

The Law

9. s8 of the Employment Rights Act 1996 provides:

“8 (1) A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement..

9 *Where an employer does not give- a worker a statement as required by*
 s8...*the worker may require a reference to be made to an employment tribunal*
 ..

5 11 *An Employment Tribunal shall not consider a reference under this section*
in a case where the employment to which the reference relates has ceased
unless an application requiring the reference to be made was made-

(a) before the end of the period of three months beginning with the
date on which the employment ceased, or

10 *(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
application to be made before the end of that period of three months.”

10. The onus of proving that presentation in time was not reasonably practicable lies upon the claimant. Even if a claimant satisfies a Tribunal that presentation in time was not reasonably practicable, the Tribunal must then go on to decide whether
 15 a claim was presented ‘within such further period as the Tribunal considers reasonable.’

11. A claimant’s ignorance of his rights may make it not reasonably practicable to present a claim in time, but that ignorance must be reasonable. In **Porter v Bandridge Ltd 1978 ICR 943, CA** it was held that the correct test is not whether
 20 the claimant knew of his or her rights but whether he or she ought to have known them.

Discussion and Decision

12. The Tribunal considered carefully the evidence available to them. To this end the Tribunal considered it worthy of observation that the claimant knew of the right
 25 to bring a claim to this Tribunal in respect of the respondents’ failure to provide payslips in January/ February 2020. At that time the claimant also carried out some research on the internet on the bringing of such claims.

13. In these circumstances the Tribunal concluded that in January/ February 2020 the claimant either knew or ought to have known of the three month time limit to
 30 be found in s11 of the Employment Rights Act 1996. The claimant did not in fact lodge his claim until April 2020.

14. Against that background it is the decision of the Tribunal that it was '*reasonably practicable*' for the claimant to have lodged his claim timeously.

15. Even if a contrary decision were reached, the Tribunal was of the view that, given the gap between January/February and April the claimant did not lodge his claim within "*such further period that is reasonable*".

16. The Tribunal concluded that the claimant's explanation, that he was attempting to resolve matters directly with the respondents, did not, in itself, render it '*not reasonably practicable*' to lodge his claim timeously.

10 **Conclusion**

17. These proceedings are accordingly dismissed. The claimant has the right to apply for a reconsideration of this judgment within 14 days of the date on which the judgment was sent to him under Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The claimant also has the right to appeal this judgment.

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Employment Judge: Jane Porter
Date of Judgment: 21 July 2020
Entered in register: 28 July 2020
and copied to parties

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