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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107842/2021

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Preliminary Hearing Held by CVP on 9 August 2021

Employment Judge Ronald Mackay

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Mr A Singh

**Claimant
In person**

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Paisley Car Care & Repair Centre Ltd

**Respondent
Not present
& not represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The claim having been presented to the Employment Tribunal outwith the statutory time limit, and the Tribunal having found that it was reasonably practicable for the claim to have been represented in time, the claim is dismissed.

REASONS

Introduction

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1. This is a claim for unpaid wages. The wages relate to a period when the Claimant states that he was placed on furlough leave.

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2. The case came before the Employment Tribunal for a preliminary hearing to determine whether it had been presented timeously and, if not, whether it should be allowed late in accordance with the relevant statutory provisions.
3. The Claimant gave evidence on his own behalf, with the assistance of an interpreter. The Respondent did not lodge a defence to the claim.

Findings in fact

4. The Claimant was employed by the Respondent as a Car Mechanic. He left the Respondent's employment on 31 May 2020.
5. In his claim form, the Claimant stated that he was due payment for a three month period. In the course of his evidence, he confirmed this to be the period from 5 January 2020 to 31 March 2020.
6. During this period he was placed on furlough. He understood that the Respondent was seeking furlough payments in accordance with the UK Government scheme. Despite making requests for those payments, he did not receive them.
7. The Claimant contacted ACAS in accordance with the early conciliation regime on 29 June 2020. He received a certificate from ACAS by email on the same date.
8. The claim to the Employment Tribunal was not thereafter submitted until 22 February 2021.
9. Due to his lack of fluency in the English language, the Claimant sought assistance from a friend in dealing with the ACAS process. He also indicated that he attempted to find a lawyer and that he contacted two solicitors but did not receive a call back. He did not pursue them further.
10. The Claimant was also in contact with HMRC regarding the outstanding pay. He described a series of email communications with them although they were not produced before the Tribunal.

11. On being questioned as to why he presented the claim form to the Employment Tribunal when he did, the Claimant did not give any meaningful explanation other than to state that he felt the continuing dialogue with HMRC meant that a claim to the Employment Tribunal was not required. At the time
5 he presented the claim, however, his communications with HMRC had not reached a conclusion.

Relevant Law

Unlawful Deduction from Wages Claims

12. The relevant time limit for claims for unpaid wages in accordance with Section
10 13 of the Employment Rights Act 1996 (“**ERA**”) is set out in Section 23(2), ERA.
13. This provision states that a Tribunal shall not consider a complaint unless it is presented before the end of the period of three months from the date of payment of wages from which deductions were made or, in the case of a
15 series of deductions, the date of payment of the last deduction.
14. In accordance with Section 23(4) ERA, a late claim may be allowed if the Tribunal is satisfied that it was not reasonably practicable for the complaint to have been presented in time and that it was presented within such further period of time as the Tribunal considers reasonable.
- 20 15. In considering whether there is jurisdiction to hear this claim, therefore, the Tribunal requires to consider the following questions:
- (i) Was the claim presented within the primary three month time limit?
 - (ii) If not, was it reasonably practicable for the complaint to be presented within that period?
 - 25 (iii) If not, was it presented within such further period as the Tribunal considers reasonable?

16. The question of what is reasonably practical is a question of fact for the Tribunal. The burden of proof falls on the Claimant. Whether it is reasonably practicable to submit a claim within time does not mean whether it was reasonable or physically possible to do so. Rather, it is essentially a question of whether it was 'reasonably feasible' to do so (*Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119).
17. Whether the claim was presented within a further reasonable period involves an assessment by the Tribunal of the factual circumstances to determine whether the claim was submitted within a reasonable time after the original time limit expired (*University Hospitals Bristol NHS Foundation Trust v Williams* UKEAT/0291/12).

Decision

18. The claim is one relating to a series of deductions spreading across three months. From the Claimant's evidence, the Tribunal took the date on which the last payment was due to be 31 March 2020.
19. Having contacted ACAS for early conciliation on 29 June 2020, the Claimant complied with the necessary timescale. Taking account the extension of 30 days within which to lodge his claim thereafter, however, the Claimant submitted his claim almost seven months late.
20. There is no question, therefore, that the claim was presented outwith the primary time limit.
21. The question then is whether it had been reasonably practicable for the Claimant to submit the claim on time. The Claimant's evidence was that his failure was due to his ongoing dialogue with HMRC. As noted above, he was not able to give any meaningful evidence as to why he nonetheless submitted the claim when he did in circumstances where his dialogue with HMRC had not concluded.

22. Whilst the Tribunal was sympathetic to the Claimant given his limitations in the English language, he had the benefit of a friend assisting him. He clearly had sufficient understanding to comply with the ACAS early conciliation requirements. He had also sought legal advice but chose not to pursue this.
- 5 23. The Tribunal was not, therefore, satisfied that it had not been reasonably practicable for the claim to have been presented in time. There was no impediment to the Claimant doing so and a misunderstanding of the interaction between HMRC and the Employment Tribunal is not a sufficient basis on which to extend the time limit.
- 10 24. Having reached this conclusion, it is unnecessary for the Tribunal to consider the third question outlined above. If it were to do so, it would find that to wait for around seven months after having contacted ACAS in time, would not amount to a further reasonable period on any view of the relevant circumstances.
- 15 25. Reasons were given orally at the Hearing. The Claimant requested that written reasons be provided. He also wished to note that his main concern in the case was that the furlough pay due to him was coming from the Government and if it was not being paid to him, it was wrong for the Respondent to accept the money.

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Employment Judge: Ronald Mackay
Date of Judgment: 09 September 2021
Entered in register: 09 September 2021
and copied to parties

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