



EMPLOYMENT TRIBUNALS

Claimant: Ms E Isah

Respondent: Mr R Odong t/a Delta Nursing Agency Ltd

Heard at: London South (by CVP) **On:** 6 October 2021

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: Did not attend and was not represented

Respondent: Mr Odong; Mr Madu, Solicitor, for Delta Nursing Agency Ltd

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was video by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practical because of the Covid-19 virus.

JUDGMENT

The Employment Tribunal has no jurisdiction to hear the claim, it having been presented outside the time limits set out within section 23 of the Employment Rights Act 1996 and article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994. The claim is therefore dismissed.

REASONS

1. By 10 am, neither of the parties were present in the CVP room. After making telephone enquiries, my clerk was able to contact the respondent and it was apparent that the Tribunal administration had provided the wrong PIN for the CVP room to the parties. My clerk was unable to contact either the claimant's solicitors or the claimant direct on the telephone numbers provided, although she did leave a voicemail message with the claimant solicitors. The hearing proceeded at 10.45 am with Mr Odong and Mr Madu present.
2. I should make it clear that Mr Odong was present in a personal capacity representing himself and that Mr Madu was present representing Delta Nursing Agency Ltd ("Delta") only, although he knew Mr Odong. I observed that I was aware that Mr Odong is a director of Delta and that sometimes claimants are confused as to who exactly is their employer.

3. By a claim form presented to the Employment Tribunal on 27 March 2020, following a period of Acas early conciliation between 12 January and 12 February 2020, the claimant brought a complaint in respect of arrears of pay which she alleges are owed to her for work undertaken between August and October 2018 at a number of hospitals where she was placed to work as a nurse. She has brought the claim against Mr Odong trading as Delta Nursing Agency Ltd.
4. The claim could either be taken as one of damages for breach of contract outstanding or arising on termination of employment under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 (for which the claimant would have to be an employee in law) or one of unauthorised deductions from wages under section 13 of the Employment Rights Act 1996 (for which, if not an employee, the claimant would have to be at least a worker in law).
5. In the response to the claim, which appears to have been presented on behalf of both Mr Odong and Delta, it is alleged that the claimant has sued the wrong person (she should have brought her claim against Delta), but in any event she was self-employed, that Delta was an intermediary and that any arrears of pay due to her were payable by the hospitals where she had been placed to work.
6. Having had the opportunity to consider the file in advance of this hearing, I explained to Mr Odong and Mr Madu that the claim has been presented out of time given that it relates to money that the claimant alleges were due in respect of duty cover that she worked between August and October 2018. This is by reference to the time limits set out within section 23 of the Employment Rights Act 1996 and article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) order 1994.
7. In essence, the claimant was required to notify Acas of her potential claim under the early conciliation process within three months of the date on which payment was due to her (for the unauthorised deduction from wages complaint) or her employment ended (for the damages for breach of contract complaint) before she could even gain any advantage of the extension of the time-limit under the early conciliation process. But in the event, the claim was presented approximately two and a half years out of time.
8. Whilst there is a discretion within the legislation to extend the time-limit if the claimant can show that it was not reasonably practicable for her to present her claim in time and that she presented the claim within a further reasonable period of time, she was not present to provide evidence as to why I should exercise my discretion.
9. In the circumstances, the claim is dismissed because it has been presented outside the relevant time limits and so the Tribunal has no jurisdiction to hear it.
10. I would note the following.

11. There are further difficulties for the claimant if, as the respondent alleges, she has brought her claim against the wrong person, she was self-employed and that she should look to payment of any monies owing from the hospitals where she worked. However I do not propose to comment on these matters other than to acknowledge that this is the respondent's defence.
12. The claimant should seek advice as to whether she should bring proceedings in the County Court where there is a longer limitation period and it can deal with money claims brought by self employed persons (if as the respondent alleges, that is the case). However, that is a matter for her.
13. I acknowledged that the respondent was at liberty to make a cost application, but I was not prepared to deal with this today. This needs to be made on notice to the Tribunal and to the claimant in writing, setting out the grounds on which costs are sought and the amount of costs claimed, so that the claimant has the opportunity to respond and to provide evidence as to her ability to pay a costs order if one were made.
14. I would direct the parties' attention to schedule 1, rules 74-84 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which deal with costs orders.

Employment Judge Tsamados
Date: 6 October 2021