



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Gogolos

**Respondent:** Herman-ze-German (in voluntary liquidation)

**Heard at:** London Central Employment Tribunal **On:** 4<sup>th</sup> October 2021 at 2pm

**Before:** Employment Judge Hopton

**Appearances (by video):**

**For the Claimant:** Represented himself

**For the Respondent:** Did not attend

## JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claims for notice pay, unlawful deduction from wages and holiday pay are out of time and are dismissed.
2. The claim for a statutory redundancy payment will be heard at a hearing lasting 2 hours at 10am on 3<sup>rd</sup> December 2021.
3. The Secretary of State will be treated as a party in these proceedings under Rule 96 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

## REASONS

### The claims and background

1. The claimant started work for the Respondent on 20th November 2017. He worked as the manager at the respondent's shop. About seven other employees worked in the same premises as the claimant. His employment was terminated without notice on 7th October 2020 when the respondent went into voluntary liquidation.

### Claims out of time

2. The claimant claims:

- 2.1. Unlawful deduction from wages under section 13 Employment Rights Act 1996 for salary in March, September and part of October 2020.
- 2.2. Unlawful deduction from wages for unpaid holiday pay.
- 2.3. Breach of contract for failure to pay notice pay.
3. The claimant says that the last deduction from wages and the breach of contract took place on 7<sup>th</sup> October 2020.
4. The time limit for bringing unlawful deduction from wages claims is: *three months beginning with ... the date of payment of the wages from which the deduction was made* (section 23 Employment Rights Act (ERA) 1996).
5. The time limit for bringing breach of contract claims is: *three months beginning with the effective date of termination of the contract giving rise to the claim* (s.7 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994).
6. ACAS received the claimant's Early Conciliation notification on 28<sup>th</sup> May 2021, and the claimant submitted his claim to the tribunal on 3rd June 2021.
7. The claimant therefore submitted his claim over seven months after 7<sup>th</sup> October 2020.
8. I considered whether it was reasonably practicable for the claimant to have presented his claim within the relevant time frame in accordance with s.23 (4) ERA 1996 and s.7(c) Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. The claimant told me it was the first time he had been made redundant, he had no guidance and he didn't know what steps to follow. I took his explanation into account but concluded that he ought to have taken steps to find out how to bring a claim and any time limits that might apply. The claimant believed the respondent owed him money and knew that a claim was possible. There are many sources of advice about time limits for tribunal claims on the internet which would have been straightforward and quick for the claimant to look at. I therefore concluded that it was reasonably practicable for the claimant to have brought these claims within the three-month time limit. His claims listed at paragraphs 2.1-2.3 above are therefore out of time and are dismissed.

### **Statutory redundancy payment claim and Secretary of State joined to proceedings**

The claimant claims a statutory redundancy payment under s.163 ERA 1996.

9. The Secretary of State shall be treated as a party to this claim under rule 96 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 because it is a claim that may require a payment out of the National Insurance Fund.
10. The time limit issue for the redundancy payment claim will also be decided at the final hearing because it is relevant to part of the proceedings which may require a payment out of the National Insurance Fund, so requires the Secretary of State to be treated as a party to the claim before it is determined.

**Case management orders**

11. The hearing is listed for 2 hours, beginning at **10am on Friday 3<sup>rd</sup> December 2021**. It will be heard by a judge sitting alone.
12. **On or before 22<sup>nd</sup> October 2021**, the claimant must send to the tribunal and the other parties a clear calculation which shows:
  - 12.1. How much he received as a redundancy payment from the Redundancy Payments Office (ie just the redundancy figure, not any figures for wages/notice/holiday).
  - 12.2. How much he believes the tribunal should award him for the redundancy payment and how he has calculated this.
13. **On or before 19<sup>th</sup> November 2021**, the claimant must send to the tribunal and the other parties, a copy of all the documents he wishes to refer to at the tribunal hearing. This should include payslips that show his normal pay. If other parties wish to refer to documents at the hearing, they should also send those documents to the tribunal and the other parties by this date.
14. **On or before 26<sup>th</sup> November 2021** the claimant should send to the tribunal and the other parties a note of what he intends to say at the hearing (his witness statement). If any other party wishes to give evidence at the hearing, they should do the same.

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**Employment Judge Hopton**

  4<sup>th</sup> October 2021  \_\_\_\_\_

**Date**

JUDGMENT & REASONS SENT TO THE PARTIES ON

11/10/2021.

FOR THE TRIBUNAL OFFICE

