



EMPLOYMENT TRIBUNALS

Claimant: Mr D Mannion (deceased)
By Ms K Flint, the appropriate person

Respondent: T M Mannion Limited (in creditors' voluntary liquidation)

Determined on the papers without a hearing at
Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE

On: 6 December 2021

Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: No appearance

For the respondent: No appearance

JUDGMENT

1. It was not reasonably practicable to present the claim within the 3-month time limit for presenting claims for holiday pay outstanding on termination of employment as specified by the **Working Time Regulations 1998 regulations 30 read with 30B**. The claim was however presented within a reasonable time thereafter. The Tribunal therefore has the jurisdiction to hear and determine the claim.
2. The claim that the respondent owes to the claimant holiday pay for leave to which he was entitled but had not taken at the date of termination of his employment succeeds. The respondent must pay to the claimant the sum of £2,374.42 gross.

REASONS

3. Mr D Mannion (deceased) was the director of and employee of the respondent. His personal representative and administrator of his estate is Ms K Flint. The Tribunal has appointed her as the appropriate person to represent his estate under the **Employment Rights Act 1996 section 206**. I will refer to the claimant as the claimant's estate because it is the estate that seeks the money for its benefit.

4. The claimant's estate seeks holiday pay for leave to which Mr Mannion was entitled but had not taken as at the termination of his employment. An additional claim for redundancy pay has been dismissed on withdrawal.
5. The respondent is in creditors' voluntary liquidation. It has not presented a response. Therefore it is barred from taking part in the proceedings without permission. It has not sought permission to take part in the process.
6. Ms K Flint has prepared a witness statement. It is dated 16 November 2021. I have taken it into account. I have also taken into account the documents on the Tribunal's file.
7. By order of Employment Judge Victoria Butler on 1 December 2021, and with consent of the claimant's estate, this hearing has proceeded on the basis of the written documents only. I have not heard oral submissions from either party and nor did they attend.
8. The relevant chronology is as follows:

1 May 2007	Mr Mannion starts employment with the respondent.
13 February 2021	Mr Mannion passes away. Employment thus ends. The ET1 says that employment ended on 11 February 2021. However I accept Ms Flint's evidence in paragraph 7 of her statement that this is a mistake.
3 August 2021	The respondent enters creditor's voluntary liquidation.
5 August 2021	Ms Flint is told of the 3 month time limit for bringing a holiday pay claim.
6 August 2021	Early conciliation commences. ACAS day A.
9 August 2021	Early conciliation ends. ACAS day B. Claim form presented to the Tribunal.

9. The **Working Time Regulations 1998 regulations 30 and 30B** state that claims for holiday pay for leave to which an employee is entitled but has not taken on termination of employment (see **regulation 14**) must be brought within 3 months of the payment being due. The evidence that the claimant's estate has adduced is that it was due on 13 February 2021 (paragraph 18 of Ms Flint's statement).
10. The claimant's estate therefore presented the claim approximately 2½ months late.
11. In paragraphs 24-28 of her statement Ms Flint explains that the reason for the delay was as follows:
 - 11.1. Mr Mannion's death was sudden and shocking. The family and she were deeply saddened and consumed by grief.
 - 11.2. Mr Mannion and she have 3 young children. She was seeking to comfort and support them. She had to focus on giving them emotional support.

- 11.3. She also had to apply for letters of administration and had to continue to go to work herself.
 - 11.4. She did not know how to sort out the business.
 - 11.5. She lacked mental capacity to deal with the challenge that resolving the business's affairs presented.
 - 11.6. At the time of death she had not received professional advice about time limits. I infer she was therefore unaware of them. I believe such inference is reasonable because otherwise she would have said so.
 - 11.7. She was not in a position to be able to seek professional advice sooner because the other pressures made it too much of a challenge to do.
 - 11.8. On 5 August 2021 she spoke to an accountant who advised her of the strict time limit. The chronology is then as above.
12. I must dismiss the claim unless I am satisfied that it was not reasonably practicable to bring the claim in time, and it was then brought in such time as was reasonable: **regulation 30(2)**. The claimant refers to the lack of prejudice that allowing the claim to proceed would cause to the respondent. In my view that is not relevant. The time limit is strict and goes to the heart of the Tribunal's jurisdiction. There are strict grounds on which the Tribunal can extend the time limit. Lack of prejudice to the respondent is not relevant.
13. I am nonetheless satisfied that it was not reasonably practicable to bring the claim with the initial 3 month time limit, and that it was brought within such further time that I consider reasonable. Therefore the Tribunal has jurisdiction to consider the claim. My reasons are as follows:
- 13.1. I understand the law to be as follows:
 - 13.1.1. The words should be given a "liberal construction in favour of the employee" **Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53 CA**;
 - 13.1.2. It is a factual question: **Wall's Meat Co Ltd v Khan [1979] ICR 52 CA**;
 - 13.1.3. It is for the claimant to prove it was not reasonably practicable to present the claim in time;
 - 13.1.4. The focus is on what could be done: **Schultz v Esso Petroleum Co Ltd [1999] ICR 1202 CA**; and
 - 13.1.5. The relevant test "is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done": **Asda Stores Ltd v Kauser UKEAT/0165/07**.
 - 13.2. I accept Ms Flint's evidence about events after Mr Mannion's death. It is both inherently plausible and gives me no other reason to doubt its veracity.

- 13.3. I therefore accept that the sudden death had a significant impact on Ms Flint, requiring her to focus on the young children, her own work and process her own grief. I am satisfied that it is reasonable to think that she would be focusing on letters of administration. I accept that it was reasonable she did not know of the time limit or research it. Her focus was understandably elsewhere and, importantly, it is not her claim related to her employment. Therefore it is credible she would neither know, nor have the capacity to research it. It is not reasonable to expect what was possible to have been done.
- 13.4. I am satisfied that the claim was presented in a reasonable time once she became aware of the time limit based on the chronology, which shows prompt actions on her part.
14. I now move on to consider the holiday pay claim itself.
15. Ms Flint gave evidence about this in paragraphs 12-16 of her statement.
16. I accept her evidence on the issue. It seems plausible, is well reasoned and I have no reason to doubt both its veracity and accuracy.
17. I therefore find as a fact that:
- 17.1. The holiday year ran from 1 June to 31 May each calendar year;
- 17.2. At the date of death, Mr Mannion had taken no leave; and
- 17.3. His gross week's pay was £599.60.
- 17.4. I infer from the statement, taking into account his job as director too, that his pay did not vary with the number of hours worked.
18. I disagree with the calculation that the claimant has advanced, however. I believe that the correct calculation is as follows:
- 18.1. **Regulation 14(3)** prescribes the following formula for determining leave:
(A × B) – C
where–
A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A; This is capped at 28 actual days (i.e. 5.6 weeks, ignoring weekends): **regulation 13A(3)**.
B is the proportion of the worker's leave year which expired before the termination date, and
C is the period of leave taken by the worker between the start of the leave year and the termination date. In this case it is zero.
- 18.2. 257 days elapsed between 1 June 2020 and 13 February 2021. That means that $\frac{257}{365}$ ths of the leave year had elapsed.
- 18.3. Applying that to this case:
(A × B) – C

$$(5.6 \times \frac{257}{365}) - 0$$

= 3.96 weeks of holiday pay due.

18.4. $3.96 \times \pounds 599.60 = \pounds 2,374.42$ gross

19. I realise that this is slightly less than that which the claimant's estate claimed (it sought £2,398.40). However the estate calculated it on the basis of the weekly wage divided by 5 working days to calculate a daily rate. I do not accept that the claimant's estate's calculation accords with the statutory formulation and so believe the slightly lower amount is legally correct. I can only award what the law allows me to award, even if the respondent has not objected.
20. Therefore I will order the respondent to pay to the claimant holiday pay of £2,374.42 gross.

Employment Judge Adkinson

Date: 6 December 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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