



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr D Dolce

v

Taste of Sicily Ltd

Heard at: Watford by CVP
On: 3 March and 15 November 2021

Before: Employment Judge R Lewis

Appearances

For the Claimant: In person (assisted by interpreter)
For the Respondent: Mr A and Mr C Deforti, Directors

JUDGMENT

1. The judgment given orally on 3 March 2021 is revoked.
2. The tribunal has no jurisdiction to hear the claim, and it is dismissed.

REASONS

Introduction

1. The claimant has asked for written reasons.
2. I heard this claim on 3 March 2021. By oral judgment given then, I upheld the claim in part. When I came to prepare written reasons, as the claimant requested, I noted that the claim appeared to be out of time. By letter of 3 March the tribunal notified the parties that the Judgment which I had given would not be drawn up, and that there would be reconsideration under rule 70.
3. I repeat my apologies to the parties, and to the claimant in particular, for my oversight on 3 March, which has led him to experience delay and disappointment. I repeat however that my mistake did not change the outcome of this case, and that if I had considered the limitation point in March, I would have reached the same conclusion then.

The March hearing

4. I summarise the first hearing. I do so as a matter of fairness. I stress that the effect of today's hearing is that the tribunal had no jurisdiction to hear the case, and that therefore the contents of paragraphs 4-8 inclusive of this Judgment are made without jurisdiction to amount to findings. The respondent is a company which sells and distributes Italian foodstuffs. It was agreed that the claimant joined it to work as a sales representative in January 2020. He joined on terms set out in an email in Italian, and a confidentiality agreement. The confidentiality agreement had no bearing on this case. The terms of agreement were that the claimant would have an annual sales target of £500-750,000 and be paid monthly nett £1,800 plus £200 travel expenses.
5. It was common ground that the claimant worked as a sales representative for the respondent in January. He submitted an invoice for his January work, which the respondent paid by BACS.
6. I agreed with Mr Deforti that during a telephone conversation with the claimant in early February, he told the claimant that his performance was unsatisfactory, and that the parties agreed that the claimant would continue working for the respondent during February. There was dispute about what terms were agreed to apply to the February work. I accepted the claimant's case, which was that the terms of the February work were the same as before. I did not accept the respondent's evidence, which was that in effect the parties agreed the start of an unpaid period on trial, and that the claimant agreed to work without payment for the whole of February, following which his position would be reviewed.
7. I found evidence of the claimant having worked on some days for the respondent until 18 February. The claimant submitted his February invoice, dated 28 February, by email on 21 February. Mr Deforti replied by email fifteen minutes later to say that the invoice could not be accepted. By email in Italian dated 22 February (not before me) Mr Deforti confirmed immediate termination of the work relationship.
8. I found that the claimant was a worker for the respondent, and entitled to be paid for work up to 18 February. I awarded the sum which I calculated as 60% of monthly salary.

Limitation

9. The ET1 was almost completely blank. It did not give a start or end date of employment. The ET3 said that the relationship ended on 6 February 2020. At today's hearing, I reminded the parties that they had agreed at the 3 March hearing that the relationship ended by an email of 22 February, sent and received that day.
10. The claimant contacted ACAS on 26 February, which was Day A. He said that a friend who had had an employment problem advised him to do so.

Day B was 26 March. On my calculation, the last day for presenting this claim was about 19 June 2020. The claim was presented on 14 August, and was therefore 55 days late.

11. I asked the claimant if he could explain the delay. He said that after such a long time, he did not know and could not remember the details. He had not been involved before in a tribunal claim, and the friend who had advised him to contact ACAS had settled his claim through early conciliation.
12. I asked him about the reference in the ET1 to credit recovery; he said that he thought that his accountant had advised him at the time, but he could not be sure. I asked what had led him to make a claim in August; he said that he had eventually searched online, and accepted that he may have left his search too late.
13. The claimant also referred to the quality of his English language, and the effect of the lockdown at the time.
14. As this was a claim for arrears of pay, the question for me was whether it has been shown that it was not reasonably practicable for the claim to have been brought in time; and if not, has it been brought after a further reasonable period. I do not find that the first half of that test has been made out. The difficulty for the claimant is that within four days of termination, he had been signposted to the correct path for bringing a claim. He knew by 26 March that early conciliation had failed, leaving him about 12 weeks to make further inquiries.
15. There is a great deal of information available online about the tribunal process, including the effect of early conciliation and time limits. That information was available throughout the lockdown. My note of the March hearing (which began without an interpreter, who was late that day) described the claimant's English as 'serviceable.' I do not accept that there was a language barrier which hindered him. The claimant hit the truth of the matter when he said today that he 'probably left it too late' to search online.
16. The claim has been brought out of time. Grounds have not been shown on which to extend time. The tribunal therefore has no jurisdiction to hear the claim, which is struck out.

Employment Judge R Lewis

Date: 15 November 2021

Sent to the parties on:
26 November 2021

For the Tribunal Office

