



EMPLOYMENT TRIBUNALS

Claimant: Khaled Ahmed

Respondent: Neela's Home Ltd

Heard at: London South (by cvp) **On:** 11 February 2022

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Zulfiqar Rahman, Solicitor, of Wildan Legal Solicitors

JUDGMENT

1. The claim for unfair dismissal is dismissed on withdrawal.
2. The claims for unpaid wages are dismissed as out of time.
3. The claim for holiday pay is dismissed for failure to comply with the order of Judge Siddall dated 26 August 2021.

REASONS

1. Mr Ahmed was employed by Neela's Home Ltd ("Neela's") as a delivery driver. Neela's is a wholesale food distributor. He started work for them on 10 February 2014, or 04 February 2015. Both dates are given. It matters not which.
2. Mr Ahmed did not come to work after the end of 2020. Mr Ahmed filed two claims, in almost identical terms. In his first claim form he gave his leaving date as 31 December 2020. In his second claim form he gave the date he left work as 01 January 2021.

3. He started a new job on 09 January 2021.
4. On 05 February 2021 there was a meeting between Mr Ahmed and Shekh Md Firoz, who describes himself as general manager of Neela's, about this extended absence. Mr Ahmed said that he had an issue with the company, had no respect for it, and so was not going to come to work. He did not say what the issue was. He did not say that he had another job. Mr Firoz raised an issue about £1,000 collected by Mr Ahmed from a customer but not paid to Neela's. Mr Ahmed said he had the money and did not intend to return it until his issue was resolved. That meeting ended with Mr Firoz saying that he would call a disciplinary hearing.
5. On 12 March 2021 Sheikh Firoz emailed Mr Ahmed saying that he was dismissed. Mr Ahmed had not attended a disciplinary meeting scheduled for that day.
6. Mr Ahmed's Acas Early Conciliation period was 03 March 2021 – 14 April 2021, which is exactly 6 weeks.
7. At the start of the hearing I asked Mr Ahmed what claims he was bringing. There were three.
 - 7.1. The first was holiday pay in respect of holiday not taken over six years, to the end of 2020.
 - 7.2. The second was for extra days that he said he had worked, but for which he said he had not been paid, in the sum of £4,400. He had provided a manuscript list of these.
 - 7.3. Thirdly, he claimed for what he had called in the claim form as "handyman" work. The ET3 states that Mr Ahmed was a delivery driver not a handyman. I asked Mr Ahmed about this. He said that when he journeyed outside London he should have had someone with him to help, who he described as a handyman. Mr Ahmed said that when he made these journeys and undertook the work alone, he should also have been paid the wages that would have been paid to the other person in addition to the money he was paid for his own work. I asked him how much. It was £5,100. He had not previously quantified this claim.
8. I asked Mr Ahmed if he was claiming unfair dismissal. He said that he was not claiming unfair dismissal, as he chose to leave. For this reason, I dismiss the claim for unfair dismissal upon withdrawal by the Claimant.
9. I pointed out that these three claims arose before 31 December 2020, as he had not worked since then. He had filed two claim forms, in very similar terms, one on 24 May 2021 and the other on 09 June 2021.
10. If all these claims had arisen on 31 December 2020, there would be an out of time consideration. The period is three months plus the Acas period. That would be 12 May 2021. However, if the Acas period commences within, but ends after, the three month period (as here) the limitation date is extended by one month after the end of the Acas period. The first claim was therefore filed

on the last date for any claim existing at 31 December 2020 (or 01 January 2021).

11. The claim for extra days and the claim for the “handyman” payments were all before 31 December 2020 – the last date mentioned by Mr Ahmed for either was sometime in November 2020. Accordingly, they are out of time. Mr Ahmed did not offer any reason why it was not reasonably practicable for him to file his claim earlier. Accordingly, I dismiss those two claims as out of time.
12. The claim forms give no idea of the way the holiday pay claim was calculated. I asked Mr Ahmed. He said that it went right back to the start of his employment in 2014 (or 2015). He said that he should have had a month off each year, but that had only happened in one year. I asked what holiday he had taken in 2020. He said it was about one week.
13. This claim was made in time, as it was about holiday pay due at the end of employment. Whether that was 31 December 2020, 01 January 2021 or 12 March 2021 is immaterial. There are, however, a number of issues with this claim.
14. First, much of it is too far back to claim, as it is more than 2 years, and there is also a “use it or lose it” difficulty with any claim for 2019 or before.
15. Secondly, the claim is very vague – there is no sum claimed, nor any analysis of what days might have been due to Mr Ahmed at the end of his employment.
16. Thirdly, the order of 26 August 2021 clearly ordered Mr Ahmed to file such clarification. I asked Mr Ahmed why he had not done so. He replied only that he must have missed doing so.
17. It is not possible for the Respondent to contest such a vague claim. It is not possible for me to decide a claim for holiday pay put so very vaguely. There was no possibility of Mr Ahmed making his claim clear in oral evidence, because he was not able to express it other than in general terms.
18. In these circumstances I strike out the claim for holiday pay for failure to comply with the Order of the Tribunal of 26 August 2021.
19. If the holiday pay claim had not been struck out for this reason, I would have dismissed it on the merits, for there could have been no evidence sufficient to prove it on the balance of probabilities. There would only have been vague oral evidence. In addition, much of the claim would inevitably have failed because it related to claims going back many years, too far back to be recoverable.
20. In relation to the “handyman” claim, that had no reasonable prospect of success. Whatever the facts, Mr Ahmed was not going to succeed in claiming the wages of someone else who he said should have worked alongside him, but did not do so. It would have been dismissed on the merits (or lack of them).

21. The claim for extra days worked went back years, and even if it had made been in time could not have gone back beyond 2019.
22. For the avoidance of doubt, Mr Ahmed was absolutely definite in saying that he was not claiming unfair dismissal, two other claims were out of time and could have been made within time, and the only claim that was in time was the holiday pay claim, which was unparticularised, undocumented and Mr Ahmed had not complied with a clear direction to set out exactly what that claim was.
23. The hearing was by cvp and there were some issues with the Claimant's participation. He joined using his mobile phone, and could not get the sound to work. This was solved by using his phone as a telephone at the same time as the cvp link for picture. Mr Rahman was able to hear Mr Ahmed, and vice versa, through the telephone I used, on loudspeak. Mr Ahmed had no difficulty with picture. Mr Rahman and I had only a thumbnail size picture of Mr Ahmed, but this was not an issue.

Employment Judge Housego

Date 11 February 2022