



EMPLOYMENT TRIBUNALS

Claimant: Mr M Patel

Respondent: Shree Maruti Courier (UK) Limited

Heard at: Midlands East Tribunal via Cloud Video Platform

On: 24 March 2022

Before: Employment Judge Brewer

Representation

Claimant: In person

Respondent: Mr N Patel, Company Director

JUDGMENT

The judgment of the Tribunal is as follows:

1. The claimant's claim for breach of contract fails and is dismissed.
2. The claimant's claim for unauthorised deductions fails and is dismissed.
3. The claimant's claim for unpaid Holiday pay fails and is dismissed.

REASONS

Introduction

1. By a claim form presented on 20 August 2020 the claimant brought claims for breach of contract, unauthorised deductions from wages, unpaid annual leave, a redundancy payment and sex discrimination. At a case management preliminary hearing on 6 December 2021 the claim for a redundancy payment was struck out on the basis that the claimant did not have sufficient qualifying

services to make that claim and the claim for sex discrimination was dismissed on withdrawal. The remaining claims were listed before me for a final hearing.

2. At the hearing the claimant himself and the respondent was represented by the company director Mr N Patel. There was a bundle of documents running to 51 pages.

Issues

3. The claimant says he was employed from 10 October 2019 until 31 January 2020 undertaking administrative and accounting duties for the respondent. However, the claimant did not commence early conciliation until 13 August 2020 and he presented his claim on 20 August 2020. The normal date for submitting any of the three extant claims expired on 30 April 2020 and the claimant was advised at the preliminary hearing that time limits would be an issue to be dealt with at the final hearing.

4. The issues therefore were as follows:

Employment status

- a. Was the claimant an employee of the respondent?

Time limits

- b. Were the unauthorised deductions and breach of contract complaints made within the time limits in section 23 of the Employment Rights Act 1996, regulation 30 of the Working Time Regulations 1998 and regulation 7 of the Employment Tribunals Extension of Jurisdiction Order 1994? The Tribunal will decide:
 - i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of / date of payment of the wages from which the deduction was made etc]?
 - ii. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - iii. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Holiday pay (Working Time Regulations 1998)

- c. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

Unauthorised deductions

- d. Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

Breach of Contract

- e. Did this claim arise or was it outstanding when the claimant's employment ended?
- f. Did the respondent do the following:
 - i. Employ the claimant,
 - ii. Fail to pay the claimant,
 - iii. Fail to pay the claimant notice pay,
 - iv. Fail to pay the claimant holiday pay?
- g. Was that a breach of contract?
- h. How much should the claimant be awarded as damages?

Law

- 5. For the reasons which will become clear below I have limited this section to the law related to time limits and contracts of employment.

Time limits

- 6. Section 23(2)(b) ERA (and its equivalents in other applicable legislation) should be given a 'liberal construction in favour of the employee' (**Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53, CA).
- 7. The onus of proving that presentation in time was not reasonably practicable rests on the claimant. '*That imposes a duty upon him to show precisely why it was that he did not present his complaint*' (**Porter v Bandridge Ltd** 1978 ICR 943, CA). Accordingly, if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal will find that it was reasonably practicable (**Sterling v United Learning Trust** EAT 0439/14).
- 8. Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented 'within such further period as the tribunal considers reasonable' (see below).
- 9. in **Palmer and anor v Southend-on-Sea Borough Council** 1984 ICR 372, CA, the Court of Appeal conducted a general review of the authorities and concluded that 'reasonably practicable' does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'. Lady Smith in **Asda Stores Ltd v Kauser** EAT 0165/07 explained it in the following words: '*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*'.

10. A claimant's complete ignorance of his or her right to claim unfair dismissal may make it not reasonably practicable to present a claim in time, but the claimant's ignorance must itself be reasonable. As Lord Scarman commented in **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53, CA, where a claimant pleads ignorance as to his or her rights, the tribunal must ask further questions: *'What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?'*
11. In **Porter v Bandridge Ltd** 1978 ICR 943, CA, the majority of the Court of Appeal, having referred to Lord Scarman's comments in *Dedman*, ruled that the correct test is not whether the claimant knew of his or her rights but whether he or she *ought to have known of them*.
12. Where the claimant is generally aware of his or her rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on inquiry as to the time limit. Indeed, in **Trevelyan's (Birmingham) Ltd v Norton** 1991 ICR 488, EAT, Mr Justice Wood said that, when a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim.

Contracts

13. A contract is a promise, or set of promises, that the law will enforce. In the context of an employment contract, for example, the employee usually promises to perform certain tasks for the employer, who in turn promises to pay the employee wages or a salary. There will also usually be a range of promises made by the employer covering matters such as holiday, sick pay and working conditions. The employee may also make promises relating to subsidiary matters, such as not working for other employers. These promises are enforceable in the sense that, if one party to the contract breaks a promise, the other party will be entitled to seek damages for that breach.
14. For a contract to exist, several conditions must be satisfied. There must be an agreement (usually consisting of an offer which is then accepted) made between two or more people, the agreement must be made with the intention of creating legal relations and the agreement must be supported by consideration — i.e. something of benefit must pass from each of the parties to the other. Note also that the individual terms of a contract must be sufficiently certain for the courts to be able to give them meaning.
15. An offer is an indication of a willingness to be bound by a contract. It need not be in writing, but it must be made with the intention of being legally bound as soon as the offer is accepted. The offer must be capable of immediate acceptance. In other words, it must be sufficiently clear and unequivocal to enable the person to whom it has been made to accept it without further negotiation.
16. The individual terms of a contract must be sufficiently clear and certain for the courts to be able to give them meaning. The Court of Appeal in **Stack v Ajar-**

Tec Ltd 2015 IRLR 474, CA, held that the absence of express agreement as to the amount of remuneration due to a company director did not preclude the existence of a contract. Certainty is not compromised simply because it is not possible to pinpoint the exact date on which agreement was reached (see **Whitney v Monster Worldwide Ltd** 2010 EWCA Civ 1312, CA).

Findings of fact

17. I make the following findings of fact.
18. The claimant's significant contact with the respondent started on 10 October 2019 which is the day he says he became employed by the respondent.
19. The claimant attended the respondent's office on six or seven occasions during which time he had access to and used the computer belonging to Mr N Patel.
20. The claimant says that during the period 10 October 2019 until 31 January 2020 he undertook administrative tasks for the respondent on around 44 or 45 occasions (see the claimant's schedule of loss).
21. The last time the claimant says that he did any work for the respondent was 31 January 2020.
22. Prior to 10 October 2019 the claimant met Mr N Patel which he says was around 8 October 2019 and during that meeting the claimant says that there was a discussion around him doing some work for Mr N Patel's companies of which there are three, the respondent being one of them.
23. The claimant says there was no discussion about pay, hours of work, holidays, pensions, sick pay or indeed any other of the usual terms of employment. There was no written documentation.
24. Those are the necessarily brief findings of fact.

Discussion and conclusion

25. The claimant's evidence was that he last worked for the respondent on 31 January 2020. He says he took the decision not to bring a claim because he wanted to resolve the issue and that he trusted Mr N Patel to pay him. The claimant said that it was only on 8 August 2020 that he realised that he would not be paid after which he sent a further message to Mr N Patel, failed to get a response and then contacted ACAS on 13 August 2020 to commence early conciliation. He says that he was told by ACAS that his claim was out of time.
26. The claimant did not say that he was ignorant of the time limits applicable to his claims, he did not aver that he had received incorrect advice or information, he simply says that he did not bring a claim because he decided to wait. That being the case I find that it was reasonably practicable for the claims to have been brought within the normal time limit, there being no impediment to that having been the case, and for that reason alone all of the claims fail.

27. Furthermore, as I explained to the claimant, even if I was to find that he did work for the respondent it did not follow that he was employed or that he should be paid. It would have been perfectly possible for him to have undertaken work as a worker, on a self-employed basis or as an agency worker, indeed he could have done it entirely voluntarily. The claimant took me to a number of documents in the bundle which amount to essentially lists of activity but with no evidence that any activity was in fact undertaken by him for the respondent and even if there was some limited peripheral evidence of activity, that was in relation to a company which was not the respondent in these proceedings – Dhanpal Trading Limited - see for example pages 15, 16 and 17 of the bundle and also pages 18 – 21.
28. Although the law does allow the formation of a contract in circumstances where there is some uncertainty, in this case there is complete uncertainty. There is no evidence that Mr N Patel offered the claimant a job to put it colloquially, there is no evidence of any discussion about the terms of employment however vague, there is no evidence of any commitment by Mr N Patel to pay the claimant and it was very much the claimant's evidence that he presumed that he would be paid something.
29. I find therefore that even if the claimant did undertake some work there is no evidence that he worked for the respondent and no evidence that he had either an employment contract or a workers' contract and for those reasons the claims would fail in any event.

Employment Judge Brewer

Date. 24 March 2022

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