



EMPLOYMENT TRIBUNALS

Claimant: Mr Harry Piper

Respondent: The Recruitment Crowd Group

Heard at: Watford Employment Tribunal Hearing Centre

On: 4 May 2022

Before: Employment Judge Hoyle (sitting alone)

Appearances

Claimant: Did not attend

Respondent: Ashley Vaines, Director

This has been a remote hearing which has been agreed to by the parties. The form of remote hearing was by video hearing through HMCTS Cloud Video Platform (in which all participants except the judge were remote). A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

The Judgment of the Tribunal is that the claim, having been presented outside the time limit in section 23(2) Employment Rights Act 1996, the Tribunal does not have jurisdiction to consider this complaint. Accordingly, the claim is dismissed.

REASONS

Introduction

1. The claimant, Mr Piper, was employed as a warehouse operative by the respondent from 24 November 2020 until 29 November 2020. The respondent submitted a Claim Form ("ET1"), which was received by the Employment Tribunal on 19 April 2021, claiming arrears of pay because he was not paid for his last shift. He claimed 11.5 hours' pay at

£9.77 an hour.

2. ACAS received notification of the claim on 28 February 2021 and issued a certificate on 11 Apr 2021. This raised a jurisdictional issue which was not raised by either party.

3. A Response Form (“ET3”) was posted by the respondent on 3 June 2021 but was not stamped with the received date; it was subsequently accepted by another employment judge.

4. I had made available to me, electronically, a Bundle of Documents which included the ET1 and ET3 forms, a wage slip for the claimant, and email correspondence from the respondent to the Tribunal explaining the missing wages were paid to the claimant on 4 June 2021.

Preliminary issues

Proceeding in absence

5. The claimant did not attend the hearing. About an hour before the hearing on 4 May 2022, the administrative staff at the employment tribunal made contact with the claimant asking if he was going to withdraw his claim and that if he were minded to do so, to confirm the withdrawal by email. No email was received.

6. The Tribunal clerk tried to call the Claimant again just before the start of the hearing to ask if he was going to send an email and at 13:19 the telephone rang but was not answered; she tried again at 13:29 and the telephone went to voicemail. An email was also sent to the claimant by the administrative staff at 13:32 but no response was received.

7. I waited until 14:05 but the claimant had still not attended.

8. There was no application to adjourn and I could not see any purpose in adjourning this hearing. The respondent requested that I proceed with the hearing in any event. I therefore concluded, pursuant to rule 47 of The Employment Tribunals Rules of Procedure 2013, that it would be fair, just and proportionate to proceed in the claimant's absence and avoid delay, notwithstanding that the purpose of today's hearing was to consider a jurisdictional issue which might have required the claimant to give reasons as to any delay in his notification of his claim to ACAS.

The issue

9. Having decided to proceed in the claimant's absence, the issue I had to determine, which was not raised by the parties, was whether the claimant had notified ACAS of his claim in time and if not, whether it was not reasonably practicable for the complaint to be presented on time. In the hearing, I considered, on the evidence before me, whether the claimant had suffered an unlawful deduction of wages which had subsequently been paid by the respondent, which would only have been relevant if I had concluded there was a basis for exercising my limited discretion on the jurisdictional point.

The hearing

10. Mr Vaines, a director for the respondent, explained the respondent was told by the claimant he was not paid for a shift he attended on either 4 or 5 December 2020. The

respondent investigated the claimant's missing pay query using CCTV images of the claimant's workplace on 4 and 5 December 2020 and found the claimant did not attend work on either date, so concluded no pay was due.

11. However, the claimant's ET1 form stated he did not attend work on either 27 or 28 November, not the dates the respondent says it was initially told. Having received correspondence from the employment tribunal, including a copy of the ET1, the respondent re-investigated the claim using CCTV images recorded on 27 and 28 November 2020 and found that the claimant had indeed turned up for work on the relevant day. The respondent presented a wage slip showing it subsequently paid the claimant his wage from that day, processing a payment for £80.80 net income on 4 June 2021, which consisted of basic pay and holiday pay. The respondent considered the matter settled.

12. Shortly after the hearing, I was made aware by the Tribunal clerk that an email had been sent to the Tribunal by the claimant at 14:22 which stated "*I thought this case was closed months ago. I apologise for the inconvenience caused and wasted time for everybody involved with the case*".

Fact finding

Jurisdiction

13. The ET1 and ET3 forms indicated the claimant stopped working for the respondent on 29 November 2020. The claimant's last shift for the respondent was on either 27 or 28 November 2020 but given his last day of work was 29 November 2020, I find this is the date on which his wages would have been paid and therefore the date on which any deductions took place.

14. Correspondence from ACAS shows ACAS received notification of the claim on 28 February 2021 and issued a certificate on 11 Apr 2021.

Deduction of wages

15. The claimant attended work on either 27 or 28 November 2020, worked a shift but did not receive payment for the shift at the time. The claimant complained to the respondent but gave the wrong dates for his shift, instead stating he worked on 4 or 5 December 2020. The respondent investigated these incorrect dates and came to the correct conclusion the claimant had not worked on 4 or 5 December 2020, so did not pay the claimant any wages for those dates.

16. However, having subsequently received the correct dates from the claimant in the ET1 form, the respondent re-investigated using CCTV images and found the claimant had indeed worked on either 27 or 28 November 2020, for which he had not been paid.

17. The respondent therefore paid the claimant for the unpaid shift a sum of £80.80, on 4 June 2021, a sum which was accepted by the claimant.

The law

18. In a claim for the deduction of wages by an employer, the complaint must be presented to the Tribunal before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made, in accordance with section 23(2)(a) of the Employment Rights Act ("ERA") 1996. Section 18A Employment

Tribunal Act 1996 extends this time limit for the purposes of ACAS Early Conciliation. Section 23(4) ERA 1996 provides a Tribunal may consider a complaint in this sort of case where it is satisfied it was not reasonably practicable for the complaint to be presented on time. It is for the claimant to discharge the burden of proof in establishing the Tribunal's jurisdiction.

19. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of a deduction.

20. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to section 23 ERA 1996. Where a tribunal finds a complaint under section 23 ERA 1996 is well founded, it shall make a declaration to that effect but section 25 ERA 1996 provides that an employer shall not be ordered by a tribunal to pay or repay a worker any amount in respect of a deduction or payment in so far as it appears to the tribunal that the he has already paid or repaid any such amount to the worker.

Conclusions

21. During the hearing, I did not address the jurisdictional issue which I now turn to. I find the claimant notified ACAS of his claim on 28 February 2021 which was one day late: it should have been received by 27 February 2021. There was no information or evidence presented to me to determine that it was not reasonably practicable for the claimant not to comply with this time limit. Accordingly, I determine that there was sufficient time for the claim to have been presented within time.

22. For the avoidance of doubt, had I determined it was not reasonably practicable for the claimant to have brought the claim on time, I would have made a declaration that the respondent made an unauthorised deduction of wages from the claimant that has subsequently been repaid.

Date:26 May 2022
Employment Judge Hoyle

JUDGMENT SENT TO THE PARTIES ON

30 May 2022

FOR THE TRIBUNAL OFFICE

Note

Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.