EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals
"This has been a remote hearing not objected to by the parties. The form of remote hearing was V – video by CVP. A face to face hearing was not held because it was not practicable and no-one requested the same."

Claimant: **Mr D Grace**

Respondent: **The Snow Goose Pub**

Heard by CVP in Reading **On: 23 March 2022**

Before: **Employment Judge George**

Representation

Claimant: **In person**
Respondent: **Miss Ahari of Counsel**

JUDGMENT

1. The claim of unfair dismissal is not well founded and is dismissed.
2. The remaining claims are dismissed because the Employment Tribunal does not have jurisdiction to consider them, since the claims were not presented within the applicable time limits.
    a. Breach of contract in respect of failure to pay notice pay,
    b. Unauthorised deduction from wages and
    c. Failure to pay holiday pay accrued but not taken on termination of employment.

REASONS

1. The claimant was employed by the respondent as a sous chef between 10 July 2019 and 10 October 2019. He presented a claim form by which he complained of unfair dismissal, failure to pay notice pay, failure to pay holiday

pay and unauthorised deduction from wages. The last of those complaints related to his allegation that he was underpaid and should have been paid at the rate of £12 an hour when the respondent contends that he should have been paid at the rate of £10 an hour.

2. It can be seen that he had a short period of notice and he now accepts that that means he did not have sufficient qualifying service to claim unfair dismissal and that claim is dismissed because of that lack of qualifying service.

3. The remaining claims are either brought under s.23 of the Employment Rights Act 1996 (hereafter referred to as the ERA) or under Art.3 of the Employment Tribunals (England & Wales) Extension of Jurisdiction Order as a breach of contract claim. Both provisions require claims to be presented within three months of the act complained of, subject to any applicable extension of that period by reason of early conciliation. I set out the wording of s.23(1) ERA although that in the Extension of Jurisdiction Order is in materially identical terms:

   > "the employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal
   > (a) before the end of the period of three months beginning with the effective date of termination, or
   > (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaints to be presented before the end of that period of three months."

4. The wording makes clear that this is a jurisdictional issue; if it was reasonably practicable for a complaint to be presented within the appropriate time limit (taking account of any effects of early conciliation) then the Tribunal <u>shall not consider</u> the complaint. In effect, it has no jurisdiction to do so.

5. As is well known, it is a requirement on litigants before they present a claim that they contact ACAS in order to attempt early conciliation. The only obligation on the litigants is that they contact ACAS and when that contact has been made, at the end of the conciliation period a certificate is issued certifying that conciliation has been attempted. The act of contacting ACAS causes the time period within which claims need to be presented to be stopped and the exact consequences to the time limits are set out in the regulations.

6. The start of the period within which the complaints needed to be presented in respect of all these claims was the end of the employment; 10 October 2019.

7. The claim form was first received by the Tribunal on 21 January 2020. It names the respondent as "the snow goose pub". The early conciliation certificate number that is referred to in that claim form was in the name of ELP Catering Limited and showed that conciliation had taken place between 9 and 17 January 2020. The name of the actual employer of the claimant is ELP Katering Limited. There is a second early conciliation certificate that Mr Grace has forwarded to me and to the respondent's counsel today in the name of ELP Katering (i.e. with no Limited) which shows conciliation between 19 and 26 February 2020.

8. The exact dates on which the following chronology took place are not available because neither Mr Grace nor myself have details of the exact dates of the correspondence. But it appears that the claim that was received on 21 January 2020 was rejected under Rules 10 or 12 of the Employment Tribunal Rules of Procedure 2013 because the name on the early conciliation certificate that was referred to was not the same as the name of the respondent.
9. On basis that the claim form the name of the respondent is stated to be “the snow goose pub” and the EC certificate named ELP Catering Ltd that is an unsurprising decision. That is the only claim form that I have seen. The exact details of communications between Mr Grace and the Tribunal and Mr Grace and ACAS are not clear but as I said there must have been some further contact with ACAS which led to the second early conciliation certificate being issued on 26 February 2020. Mr Grace has told this hearing that he sent a corrected claim form in which included the name of a limited company as the respondent. However that has not been shown to the Tribunal by Mr Grace, who apparently did not retain a copy, and the paper file does not include any such claim form.
10. Had a claim form been presented to the Tribunal by 17 February 2020 in the name of ELP Catering Limited (the name on the first EC certificate) then that would have been within the one month extension granted to litigants from the date of issue of that conciliation certificate. However none has been shown to me. It is apparent from the electronic file that the claim was in fact accepted by the Tribunal and therefore the defect in the claim form or as between the claim form and the certificate where one had the name of the limited company and one had the name of the address at which the claimant worked was treated as having been rectified on 20 May 2021. This would put it more than 16 months late.
11. Where a claim has been presented out of time the Tribunal has to consider whether it was reasonably practicable for the claimant to have been presented in time and if so go on to consider whether it was in fact presented within a reasonable further period.
12. The significance of 20 May 2021 is that on that date the claimant emailed the Tribunal following a period of correspondence with one of the administrators over the previous few days, attaching another certificate which showed the prospective respondent as the Snow Goose Public House and a period of conciliation taking place on 20 May 2021. I therefore conclude that it was on the basis of receipt of that certificate that the Tribunal considered that the defect had been rectified as at that date and that’s when the claim form was accepted. Since giving oral judgment in this case, before the written reasons were prepared, a decision of the EAT in Pryce v Baxterstorey Ltd [2022] EAT 61 has come to my attention. In this, the EAT held that, in such circumstances, a replacement ET1 form including the new certificate needs to be presented. I have considered whether I need to refer the parties to this authority and ask for their submissions on it. However, I do not think that there is any reasonable prospect of it causing me to reach a different decision in the present case and have therefore decided against doing so.
13. I concluded that it was reasonably practicable for the claim to be presented in time and that it was not in fact presented within the applicable time limit. The

reason that I have come to that conclusion is that it is clear from the name of the respondent or prospective respondent on the certificate which is referred to in the body of the claim form that as at 21 January 2020 when the claimant presented his claim form he knew that the name of his employer was in fact a limited company of ELP Catering Limited and did not put that name down as being the name of his employer on the claim form. I have not seen anything to suggest that this defect was rectified sooner than 20 May which was when the claim form was been accepted by the Tribunal.

14. I have considerable sympathy with a litigant in person navigating unfamiliar waters of the Tribunal system. Mr Grace has referred to there being delays in responses from the Tribunal and from ACAS because of the body of work that they have to undertake and also, from March 2020, due to the effect on public services of the coronavirus pandemic. I can accept in broad terms that what he says was true. It is also unsatisfactory that the full file is not available to me but the claimant frankly said that he could not say that the defect had been rectified before 17 February 2020. That would potentially have made a difference but it seems to me that there is no good reason why the first claim form did not included the correct name of the respondent and therefore it was reasonably practicable for the claim to be presented in time. For that reason I have decided that the claims must be dismissed.

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Employment Judge George

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Date: 13 June 2022

JUDGMENT & REASONS SENT TO

THE PARTIES ON

14 June 2022

FOR EMPLOYMENT TRIBUNALS

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