



EMPLOYMENT TRIBUNALS

Claimant: Mr M J Miah

Respondent: Uber London Limited

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

Heard at: East London Tribunal

On: 15 March 2022

Before: Employment Judge Russell

Representation:

For the Claimant: Mr M D Faisal (Cousin)

For the Respondent: Ms K Davis (Counsel)

JUDGMENT

JUDGMENT having been sent to the parties on 23 March 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1. By claim form presented to the Employment Tribunal on 22 October 2021, the Claimant brought claims for unfair dismissal and for holiday pay either under the Working Time Regulations or as an unauthorised deduction from pay.

2. The Claimant worked as a driver for the Respondent, a well-known company, licenced to offer taxi services through a mobile phone application, from November 2015. As set out in the claim form, he ceased to provide driving services for the Respondent on 20 September 2020. This was following a customer complaint, although the Claimant strongly denies wrongdoing and no decision on the merits of the complaint has been issued. As the Claimant stopped driving for the Respondent and terminated his status on the app required to obtain work on 20 September 2020, that is the effective date of termination and the last date for any payment in respect of holiday. For the purposes of ACAS early conciliation and presenting a claim to the Tribunal, the three-month time limit began from 20 September 2020.

3. As is well known, a number of Uber drivers pursued claims for holiday pay arguing that they had worker status through the Employment Tribunal, the EAT, Court of Appeal and ultimately the Supreme Court. The judgment of the Supreme Court in Aslam was given on 19 February 2021 and it ruled in favour of the drivers, saying that they did have worker status and therefore would be entitled to the consequential rights including holiday.

4. Following the Supreme Court judgment, the Respondent set up a voluntary scheme whereby drivers could apply for compensation for unpaid holiday through an online portal. The scheme was open to drivers who were not parties to the litigation. The scheme does not operate as a mediation or arbitration and is, as Ms Davis submits, an attempt to settle claims without requiring Tribunal proceedings and analogous to an internal appeal process.

5. The Claimant applied for holiday pay on the portal, but his claim was rejected in July 2021 as he was ineligible. No further reason was given. The Claimant went to ACAS on 20 October 2021. The early conciliation certificate was issued on 21 October 2021. The claim form was presented to the Tribunal on 22 October 2021.

6. The Claimant was not here to give evidence in person. His wife is pregnant and due to give birth and he is currently in India. He provided a witness statement only today, this was not in compliance with the Tribunal's Orders. By a letter sent on 14 March 2021, I directed that the Claimant would not be allowed to rely on any evidence without the leave of the Tribunal. As the Claimant's statement was only two pages long, essentially clarified the points set out within the claim form and the contents were largely not in dispute. I decided that it would be in the interests of justice to admit the witness statement. I gave Ms Davis a short adjournment to read the statement and take instructions.

7. On the Claimant's own case in his statement, his work with Uber stopped in October 2020. He went to ACAS within three months of the portal decision rejecting his application. The Claimant's evidence is that he was unaware of his ability to claim holiday pay or unfair dismissal before the decision of the Supreme Court in Aslam; it was only after the portal scheme opened that he became aware of his rights.

Law

8. The time limit prescribed by the Employment Rights Act 1996 and the Working Time Regulations for these claims is three months from the date of the last deduction from wages or such further period as the Tribunal shall consider reasonable where it is satisfied that it was not reasonably practical to submit the claim within time. The three-month time limit is extended by operation of the ACAS Early Conciliation scheme provided that ACAS were contacted within the primary three-month time limit.

9. In deciding whether it was "not reasonably practicable" for the claim to be presented, the Tribunal must consider whether there is just cause for not presenting the claim. The words "reasonably practicable" do not require the Tribunal to be satisfied that presentation was not physically possible in the sense of physical or mental bar. This should be read as being more a question of whether presentation within time was reasonably feasible, see Palmer & Saunders v Southend On Sea Borough Council [1984] IRLR 119 Court of Appeal.

10. It is generally reasonably practicable for a Claimant to present a claim to the Tribunal even when an internal appeal is pending (see Palmer). Regard should be had as to what, if anything, the Claimant knew about the right to complain to the Tribunal and the time limit for making such a complaint. Ignorance of either does not necessarily render it "not reasonably practicable" to bring the complaint in time. The Tribunal should also have regard to what knowledge the Claimant should have had if he had acted reasonably, John Lewis Plc v Charman UKEAT/0079/11/ZT.

Conclusions

11. I am satisfied that the date upon which time started to run was 20 September 2020 when the Claimant's Uber app was deactivated, the right to payment in lieu of accrued holiday arose on termination. Even accepting the Claimant's evidence today, it would have been no later than October 2020. It follows that the ACAS conciliation was commenced and the Tribunal claim presented over 9 months late.

12. The sole reason advanced by the Claimant to say that it was not reasonably practicable for him to have presented the claim in time is that he was ignorant of his rights before the opening of the portal scheme. I do not accept that it was reasonable for him to have been in ignorance of his rights until July 2021. The Supreme Court handed down judgment in **Aslam** on 19 February 2021 and it received a considerable amount of publicity in local, national and specialist media as well as on-line platforms such as Twitter and Facebook. It was one of the more high profile "gig economy" cases and it is simply not credible that the Claimant would not have been aware of the outcome given that publicity or, perhaps more pertinently, could not reasonably be aware of it in or around February 2021.

13. In any event, the Claimant did not issue the claim as soon as he became aware of his right to bring a claim for holiday pay. He chose instead to apply to the Respondent's voluntary scheme on the portal. The existence of the portal scheme did not stop time running to present a claim and, as made clear in **Palmer**, the decision to await the outcome of an internal appeal will not normally render it not reasonably practical to have submitted the claim sooner. Furthermore, even after the Claimant's portal application was rejected in July 2021 he waited a further three months to present his claim. Knowing that he had last worked for Uber in September 2020, it was incumbent upon the Claimant to act without further delay.

14. It was suggested that the Claimant may mistakenly have believed that the three months ran from the date of the portal decision. Again, I am satisfied that that any such mistake or ignorance is not something which is reasonable. A very quick online search will provide the information required about time limits and the presentation of a Tribunal claim. Furthermore, as Ms Davis submitted, there was no shortage of claims handling firms and solicitors advertising their readiness to act on behalf of Uber drivers.

15. For all of these reasons I am satisfied that the claim was presented out of time, it was reasonably practicable to have presented it within time and even if it were not, the claim was not presented within a reasonable time thereafter.

16. I would like to thank both Mr Faisal and Ms Davis for their helpful submissions and their patience given the technical problems encountered by the Tribunal this morning which meant that this hearing started late and has only just finished now at 14:30pm.

Employment Judge Russell
Dated: 27 June 2022