



EMPLOYMENT TRIBUNALS

Claimant: Miss Wanda Zurawski

Respondent: 1st Class Uniforms & Workwear Ltd

Heard at: Llandudno
Magistrates Court

On: 3rd October 2022

Before: Employment Judge H V Dieu
(sitting alone)

Representation:

Claimant: Ms Whiteley

Respondent: Ms Asch-D'Souza

JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's claim unpaid accrued holiday pay pursuant to the Working Time Regulations 1998 is brought within time limits in accordance with Employments Rights Act 1996, s.23(2);
2. The Claimant's claim for unlawful deduction from wages is brought within time limits pursuant to Employments Rights Act 1996, s.23(2);
3. The Claimant's claim for breach of contract is brought within time limits pursuant to Employments Rights Act 1996, s.23(2);
4. The Claimant's claim for detriment under reg. 4. Transfer of Undertakings (protection of employment) regulations 2006 (TUPE) (as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014) is brought within time limits pursuant to Employments Rights Act 1996, s.23(2);

5. The Claimant's claim for failure to provide written statement of employment particulars in accordance with s.38, Employment Act 2002 is brought within time limits pursuant to Employments Rights Act 1996, s.23(2).
6. The Claimant's claim for failure to inform and consult under Transfer of Undertakings (protection of employment) regulations 2006 (TUPE) is dismissed upon withdrawal;
7. The Claimant's claim for loss of pension rights pursuant to s.123 Employment Rights Act 1996 is dismissed upon withdrawal.

REASONS

Law & Principle

1. Employment Rights Act 1996 s.23(2) provides that claims must ordinarily be presented within 3 months of dismissal or of the last act of which the employee is complaining. Subsection 4 allows for scope where that time limit has not been adhered to but the claim could not have been made within a reasonably practicable time period and was made within a reasonable time period thereafter.
2. In Taylorplan Services Limited v Jackson (1996) IRLR 184 the EAT gave guidance on the questions on timeliness:
 - a. Is the complaint relating to one deduction or a series of deductions?;
 - b. If a series, what was the date of the last deduction?;
 - c. Was the relevant date within the period of three months prior to the presentation of the complaint?

Findings

3. This is a claim made by the claimant, Wanda Zurawski against 1st Class Uniforms & workwear Ltd. I had before me an agreed joint hearing bundle. On the 29th July 2022 this preliminary hearing was listed to deal with the issue of time limit, and if appropriate the substantive issues. I indicated at the outset of the hearing that due to the number of issues and witnesses I will only be dealing with the narrow issue of jurisdiction today. I heard evidence from the Claimant, her daughter Abigail Zurawski and Mr Paul Raven, Director on behalf of the Respondent. Each witness adopted their respective statements. A note of their evidence is recorded within the record of proceedings and so I do not rehearse it here. Likewise I heard closing submissions on behalf of both sides which I had full regard.

4. There is some history to the claimant's employment which I will briefly summarise:
5. On the 19th December 2014 the claimant was employed by First Class Clothes. She worked 4 days per week. In November 2020 she was placed on furlough.
6. On the 1st March 2021 the company went through a TUPE transfer which resulted in the Respondent taking over.
7. On the 4th February 2021 the claimant was sent a letter setting out the changes to the terms and conditions of her employment. This included changes to her pay date, work location and hours. The claimant was not happy about those changes and in consequence, a meeting was held on the 11th February 2021 for those matters to be discussed. At the meeting the claimant maintained her discontent.
8. A further meeting was then held on the day of the transfer, 1st March 2021. On this occasion the claimant was told that she was being given six weeks notice before her hours are reduced. The claimant requested for those proposals to be put in writing. The respondent obliged by way of letter dated 4th March 2021. That letter elaborates on a number of matters but it essentially conveyed to the claimant that if she accepted those terms her employment would continue. There is dispute about whether that letter was also saying that her previous employment would be terminated or not.
9. The claimant accepted those terms by signing the amended contract on the 18th March 2021. I note that that contract states that the commencement date of the claimant's employment is the 19th December 2014.
10. On the 30th September 2021 the Coronavirus job retention scheme ended but the claimant did not return to work. The claimant submitted a grievance and that process was gone through. The claimant continued to be paid up until Feb 2022.
11. On the 21st February 2022 the claimant submitted a claim to the ET.
12. Ms Whiteley confirmed that the claimant withdraws the complaints of:
 1. Failure to inform and consult under TUPE, and
 2. Loss of pension rights.
13. I therefore treat those matters as withdrawn and deal with them no further.
14. There is a narrow issue for my determination today. The respondent submits that the claimant's claim has been made out of time and that further

there is no good reason why the claim could not have been brought within a reasonably practicable time period thereafter. The claimant however submits that the claim is within time because there has been a series of continuing acts and because liability had been passed onto the Respondent, unbroken, by virtue of TUPE.

15. I have considered the bundle of evidence and I have heard evidence and submissions today. In short, I find that the claimant's claim is within time.

16. I find that the claimant's employment had not been broken and then re-engaged. The terms of the letter of the 4th March stated what the options and consequences are. The claimant chose to accept the changes on the understanding that her employment continued unbroken. The claimant submits that that intention and belief is reflected in the written particulars of employment. The commencement date of the 19th December 2014 I find is consistent with that and so is the absence of a P45 and any paid accrued holiday pay at that point. I am not persuaded by the evidence from Mr Raven that these were simple errors. I find that the evidence suggests that it was the respondent's intention, and understood by the claimant, that her employment continued rather than broken.

17. Turning to the individual heads of claim:

Holiday pay

18. There is no contention that the claimant was not entitled to holiday pay as part of her employment. I have found that the claimant's continuous period of employment had not been broken. I accept that the Working Time (Coronavirus) Amendment Regs 2020 allow for the carrying over of untaken leave for up to two years. Her claim is that the default by the Respondent continued up until she left in Feb 2022. Time runs from the last act (Employment Rights Act 1996 s.23(3)). I find therefore that her purported claim is brought within time limits.

Failure to provide written statement of particulars of employment

19. I find that the purported failure by the Claimant's original employer, First Class Clothes, would have automatically transferred to the Respondent on the 1st March 2021. Regulation 4, TUPE, is clear on this. Once the failure is made, there is no need for 'repeated acts'. The liability stays with the Respondent until the termination of the contract. I find that this head of claim is brought within time limits.

Detriment from TUPE unlawful deduction from wages), reg. 4. Transfer of Undertakings (protection of employment) regulations 2006 (TUPE) (as

amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014)

20. The rationale given by the respondent from reducing the claimant's hours by half were for economic and financial reasons. I do not accept that that was the position at the time. It was put to Mr Raven that the claimant was already being paid her 80% wages through furlough and so there was no financial loss to the company at that time. The claimant was also being paid 80% of her wages at the time. Mr Raven eventually agreed with that but he was essentially thinking about the overall health of the company and longer term projections. I find however on the balance of probabilities that there was no financial justification at that time and the change followed immediately upon transfer. I find that the claimant makes an arguable case on detriment and such detriment if proved would have continued up until Feb 2022. The claimant therefore has a claim for detriment (unlawful deduction of wages) and her claim is brought within time limits.

Breach of Contract – implied term of trust and confidence

21. I see no reason why this cannot be said to be applicable up until Feb 2022 because it relates to pay dates running right up to it. The claimant contends that she was paid on different dates each month. This head of claim is brought within time limits.
22. As such I find that the Employment Tribunal does have jurisdiction to hear the claimant's claims.

Employment Judge HV Dieu
Dated: 14th October 2022

JUDGMENT SENT TO THE PARTIES ON 18 October 2022

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS