



EMPLOYMENT TRIBUNALS

Claimant: Mr B Rodd

Respondent: Virtus Leisure Management Ltd

Heard at: Watford by Hybrid **On:** 19 January 2023

Before: Employment Judge Skehan

Appearances

For the claimant: In Person

For the respondent: Mrs L Moor, HR Consultant.

Reserved Judgment

1. The claimant's claims are struck out in their entirety as the Employment Tribunal does not have jurisdiction to consider them.

Reasons

1. The claimant attended the tribunal in person. Mrs Moor attended by CVP. The agenda for the hearing was to consider whether the claimant's claims were brought within the statutory limitation period and deal with case management issues.
2. At the beginning of the hearing, we spent some time in identifying the relevant documentation. The respondent had prepared a 4-page bundle. The claimant had prepared a separate unpaginated bundle. Alongside the pleadings, it was agreed that this was the relevant documentation for the tribunal to consider.
3. We also spent time identifying the claims and issues. The litigation arises from the respondent's dealing with the Covid 19 furlough scheme. The claimant was placed on furlough leave in March 2020 and was paid 80% of his normal wages. The claimant says that there was no agreement allowing the respondent to reduce his wages to 80%. I could identify the following claims from the claimant's form ET1:
 - 3.1 Unauthorised deduction from wages (S13 Employment Rights Act 1996) or in the alternative breach of contract relating to the shortfall in wages from March 2020 as set out in the ET1; and

- 3.2 The claimant says that he was not provided with payslips and/or not provided with payslips including sufficient detail as required by S8 Employment Rights Act 1996.
4. The issues to be decided were:
- 4.1 was the unauthorised deductions and S8 claim made within the time limit in section 11 & 23 of the Employment Rights Act 1996? Was the breach of contract claim presented within the time limit set out in article 7(a) Extension of Jurisdiction Order 1994. All these claims use the 'reasonably practicable' test in respect of extensions of time. The Tribunal will decide:
- 4.1.1 were the claims made to the Tribunal within three months (plus early conciliation extension) of the date of the payment of the wages from which the deduction was made etc or three months (plus early conciliation extension) of the effective date of termination of the employment contract?
- 4.1.2 For the unauthorised deduction claim, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
- 4.1.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- 4.1.4 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?
- 4.2 Where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that time, whether the claim was brought within such further period as the tribunal considers reasonable.
5. The claimant gave evidence by reference to his witness statement and was cross examined. The claimant's evidence was difficult to understand in parts. I acknowledge that the claimant made reference to various other claims that were not referenced within the ET1. The claimant's submissions in this regard were difficult to follow and I was unable to identify any application for an amendment to the ET1 that was capable of determination during the hearing. There was no application to amend the ET1 in writing before me.
6. I sought to agree the relevant dates with the parties. The respondent's documentation stated the claimant's final day of employment was 20 May 2021 and the final payment date was 27 May 2021. This was not agreed by the claimant who said that his employment did not end in May 2021 but continued until 31 October 2021 due to the continued existence of the government furlough scheme. The claimant's evidence on this point was difficult to follow. I noted that the claimant:
- 6.1 had not previously stated that his employment continued to 31 October 2021 & his ET1 said that employment ended on 21 May 2021.
- 6.2 The claimant claims no unpaid wages past May 2021 within his ET1.
- 6.3 All of the documentation indicated that the claimant's final day of employment was in May 2021.
7. The claimant said that he decided to bring this Employment Tribunal claim when he received his P45 in June 2021. The claimant said that he could not access the ET1 form online. The claimant, born in 1938, is 84 years old. The claimant does

not have access to the internet at home. He has a sister and friends. He is a member of the local tennis club and regularly plays tennis. He did not ask for assistance accessing the internet because he does not wish to share private matters with others. I noted that the claimant was using his smart phone to access his diary during the hearing and the claimant told me that he did not have wifi access and used free wifi at the library. He said that from May-Oct 2021 that all public libraries and internet shops in his area were closed.

8. The claimant said that he went to citizen's advice for assistance on an unspecified date, but it was closed. The claimant said he went Slough and Reading courts on unspecified dates to try to obtain a copy of the form ET1 to make his claim. He referred to speaking to the security staff. He could not remember the dates when he tried to visit the courts.
9. The claimant was familiar with the Employment Tribunal having brought a previous claim dealt with by Reading Employment Tribunal in around 2017. The claimant said that he had the Employment Tribunal telephone number from his previous claim. He said that it was difficult to phone as the call took a long time and he was transferred to different people until 'an angel' listened to his request and agreed to post him an ET1 form. He could not remember when this was, but it was probably in September 2021. He thereafter realised that he needed to contact ACAS and did so on 1 October 2021. His claim form was received by the Employment Tribunal on 12 October 2021.
10. The claimant told me that he did not know and does not now know what the relevant statutory limitation periods are.

Determination

11. I concluded on the balance of probability that the effective date of termination is 21 May 2021. The alleged deductions from salary payments from March 2020 – May 2021 constitute a series of alleged deductions and the final salary payment date is 27 May 2021. The primary limitation period for the breach of contract claim expired on 20 August 2021. The primary limitation period for the unauthorised deduction & S8 claims expired on 26 August 2021.
12. I consider whether it was 'reasonably practicable' for the claimant to bring his claims to the tribunal within this primary time limit. The claimant told me that he decided to bring a claim against his employer in the Employment Tribunal in June 2021 when he received his P45. I conclude that the claimant was aware of the fact that he had a potential claim by at least June 2021, within the primary limitation period. The claimant was also aware of the existence and jurisdiction of the Employment Tribunals.
13. I acknowledge that older people may have greater difficulty in accessing internet based forms and obtaining the ET1 form online. I note the claimant's particular difficulty relating to internet access and accessing the ET1 form online. I acknowledge his stated trips to Slough & Reading courts. There is no explanation as to why the claimant did not seek assistance from family or friends to access wifi (rather than provide direct assistance with the detail of the matter) on his smart phone. There is no explanation as to why the claimant could not access the relevant information or access free wifi within a café for example. In any event, I

consider the claimant's internet access problems to be secondary, as the claimant had the Employment Tribunal's telephone number. He obtained the ET1 form by phoning the tribunal. He could have telephoned the tribunal earlier, requesting a claim form. No explanation is provided as to why the claimant delayed in making this call.

14. I note the claimant's ignorance of the limitation periods. I acknowledge the claimant's age however there was no evidence of or suggestion within the evidence before the tribunal relating to ill health or learning difficulty on the claimant's part. In Trevelyan (Birmingham) Ltd v Norton 1991 ICR 488, EAT, Mr Justice Wood said that, when a claimant knows of his or her right to complainis 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.'. I consider that as the claimant was aware of his rights he was under an obligation to investigate time limits. I consider it likely that the claimant's ignorance of the time limit's played a significant part in the claimant's delay.
15. Taking the entirety of the evidence into account I consider that it was reasonably practicable for the claimant to bring these claims to the attention of the tribunal in accordance with the statutory limitation period. The Employment Tribunal does not have jurisdiction to consider these claims further. In light of this determination, I do not proceed further.
16. In light of my findings, the date listed for final hearing is vacated. Further, I acknowledge that the provisional case management orders discussed at the hearing now fall away as they are not required.

Employment Judge Skehan

Date: 23 January 2023

Sent to the parties on:

3 February 23

For the Tribunal Office: