



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr W Purcell

**Respondent:** Screen Ink and Solvent Supplies Limited

**HELD AT:** Manchester (by Cloud Video Platform)      **ON:** 27 September 2022

**BEFORE:** Employment Judge Fearon (sitting alone)

## REPRESENTATION:

**Claimant:** Mr W Purcell (In person)

**Respondent:** Mr P Chong (Managing Director of the Respondent)

# JUDGMENT

The judgment of the Tribunal is that:

It was reasonably practicable for the employer's contract claim to have been brought within the required time period and as it was not brought within the required time period the employer's claim is dismissed.

# REASONS

## Introduction

1. The claimant was employed by the respondent until 31 July 2021 as an Area Sales Manager. He was on furlough from 27 March 2020 until his dismissal by reason of redundancy.

2. The claimant brought a claim for holiday pay under the Working Time Regulations 1998 and/or as an unlawful deduction from wages.
3. The claimant also brought a claim in respect of pension contributions and notice pay, both being claims for breach of contract.
4. On 24 April 2022 on submitting an amended ET3 Response form the respondent brought a claim for sums totalling £28,775.10 in respect of the following:
  - 4.1 repayment of £1,423.30 paid to the claimant on or around 26 August 2021 as it was paid in error, mistakenly paid for holiday pay for 2021.
  - 4.2 repayment of notice pay of £6,013 and repayment of redundancy pay totalling £14,416 on the basis that these payments were made on the grounds of mistake or alternatively the claimant's failure to inform the respondent of his gross misconduct in taking an extra four days holiday every year since 2005 was a breach of his fiduciary duties entitling the respondent to damages for any loss suffered as a result.
  - 4.3 £6,922.80 in respect of holidays taken in the period from 2005 to 2019 as the claimant took each year an extra four days holiday over the Christmas shutdown period in addition to his holiday entitlement instead of taking those 4 days out of his holiday entitlement. This was a breach of contract claim.
5. Unfortunately, the employer's contract claim was not properly processed by the Tribunal's administrative staff, and no response from the claimant had been required in accordance with rules 24 and 25, nor had it been allocated a separate case number. No one had identified the potential time limit issue prior to the hearing date.

## **Evidence**

6. I heard evidence from the claimant and Mr Chong during the hearing as to the issue of whether the counterclaims had been presented in time.

## **Law**

7. The Industrial Tribunals Extension of Jurisdiction (England and Wales) Order 1994 Section 8 provides:

An industrial tribunal shall not entertain a complaint in respect of an employer's contract claim unless—

- (a) it is presented at a time when there is before the tribunal a complaint in respect of a contract claim of a particular employee which has not been settled or withdrawn;
- (b) it arises out of a contract with that employee; and
- (c) it is presented—
  - (i) within the period of six weeks beginning with the day, or if more than one the last of the days, on which the employer (or other person who is the respondent party to

the employee's contract claim) received from the tribunal a copy of an originating application in respect of a contract claim of that employee; or

(ii) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

8. Something is "reasonably practicable" if it is "reasonably feasible" (Palmer v Southend-on-Sea Borough Council [1984] ICR 372, Court of Appeal).
9. An employee aware of the right to bring a claim can reasonably be expected to make enquiries about time limits: Trevelyan (Birmingham) Ltd v Norton [1991] ICR 488 Employment Appeal Tribunal ("EAT").

### **Discussion and conclusions**

10. The claimant submitted his claim, by claim form dated 24 November 2021. The notice of claim was sent to the respondent by letter dated 2 December 2021. The letter was sent addressed to Mr Chong at the respondent's address and that letter would have been received by Monday 6 December 2021.
11. Any counterclaim should have been made by 17 January 2022, further to section 8 (c) of The Industrial Tribunals Extension of Jurisdiction (England and Wales) Order 1994, which date is the end of the six week period beginning with the day on which the employer received the originating application in respect of the contract claim, in this case receipt of the claim form.
12. The respondent submitted a response to the claim dealing with jurisdictional issues and making an application to dismiss the claimant's claim for non-compliance with rule 12 of the Employment Tribunal rules of procedure.
13. Those preliminary issues were heard on 14 April 2022. The Tribunal ruled that the claimant named Mr Chong in his claim form in error at section 2.1 of the form having had technical difficulties when he was completing the form and the tribunal decided it would not dismiss the claim. At the hearing the respondent's name was clarified and agreed by the parties to be Screen Ink and Solvent Supplies Limited.
14. Mr Chong says that initially the claim was made only against him so he did not respond to the substantive claim and the respondent did not make any counterclaim at that time. He says the respondent made a counterclaim within a reasonable time after the order was made at the hearing on 14 April 2022.
15. I find that the employer's contract claim should have been brought by 17 January 2022 and is therefore out of time. I find it was reasonably practicable for the respondent to have brought the claim within time as the respondent had the relevant information available to it to be able to respond to the substantive issues in the claim and set out the substantive claims within the required time period. The Respondent has not identified anything that prevented it claiming in January 2022 what it later claimed in April 2022.

16. I find it was reasonably practicable for the employer's claim to have been brought within the required time period and as it was not brought within the required time period the counter claim is dismissed.

Employment Judge Fearon

Dated 12 February 2023

JUDGMENT SENT TO PARTIES ON

7 March 2023

FOR THE TRIBUNAL OFFICE