



EMPLOYMENT TRIBUNALS

Claimant Miss J Lela
Represented by In person

Respondent Nakanojo UK Ltd
Represented by Mr J Ahmet, Director

Employment Judge Ms A Stewart (sitting alone)

Held at: London Central by CVP **on:** 24 March 2023

JUDGEMENT

1 The Tribunal does not have jurisdiction to entertain the Claimant's wages act complaint because it was presented out of time and the Tribunal is not satisfied that it was not reasonably practicable for the complaint to be presented in time and the further delay in presenting the complaint is not a reasonable period (section 111(2) Employment Rights Act 1996).

2 The Tribunal does not have jurisdiction to consider the Claimant's complaint of race discrimination because it was not presented to the Tribunal within the requisite time limit and the Tribunal is not satisfied that it is just and equitable to extend time so as to allow the complaint to proceed (section 123(1) Equality Act 2010).

3 Accordingly, all of the Claimant's claims are struck out.

REASONS

1 The Claimant was employed by the Respondent from 19 October until 19 December 2021. She approached ACAS on 1 November 2022, obtained a Certificate on 10 November and presented her ET1 on 12 November 2022. She makes claims for unpaid wages in the sum of £915.71, due to be paid on

7 December 2021, and complains of 2 acts of race discrimination which happened during November 2021.

2 The time limits for approaching ACAS for these 2 claims are therefore 6 March 2022 and 28 February 2022, respectively. On the face of it, these claims were presented to the Tribunal about 8 months out of time.

3 In relation to the wages act claim; Mr Ahmet admitted this morning that he had just spotted on the Respondent's bank statement that the Claimant's wages had bounced back into the company account, as the Claimant has long insisted, because her own account was closed on 15 December 2021 due to identity fraud. Mr Ahmet apologised for the error and undertook this morning, as a matter of honour, that the Claimant would be paid the sum due in 28 days time, from his own pocket.

4 Had it been necessary to determine the time extension test in relation to the wages act claim, the Tribunal would have concluded that the Claimant had not shown that it was not reasonably practicable for her to have presented her complaint in time and, in any event, such further period as she required a time extension for was not reasonable in all the circumstances. It is therefore struck out.

5 As to the race discrimination complaints: the Claimant gave evidence of her situation during the time limit period, as follows: Of Italian nationality, she had been denied entry to the UK on 25 November 2021 and had not returned to the UK until mid-August 2022; that she had suffered financial stress due to not payment of her wages and had had medical treatment for a while. In general, it had been a difficult period for the Claimant.

6 However, she accepted at today's hearing that she had been unaware of the 3 month time limit for presenting claims; had had access to the internet whilst in Italy and could have checked, contacted ACAS and presented her claims from there, online. The reasons why she did not, she stated, was because she thought the time limit for presenting claims was 2 years, as in Italy, and because she had naively believed a family member in Italy who told her that if she approached ACAS and then could not prove her case, she would be subject to a fine, which she could not afford. However, she did not check this.

7 The Respondent told the Tribunal that it would be severely prejudiced if a claim for race discrimination was permitted to proceed so late because the restaurant had closed down on 16 January 2023 and was now in liquidation with large debts. The Staff are long gone, the alleged perpetrator is probably abroad and it would not be possible to get witnesses evidence now in respect of the claim.

8 The Tribunal concluded as follows:

- (i) Ignorance of the law and Tribunal procedure is insufficient as an excuse. It was open to the Claimant to check the facts online at any time, from Italy.
- (ii) Even if the Claimant was too stressed to take action for the first 2 months in Italy, she was able to check the reality online during the 7 to 8 months of 2022 and had not been able to show any reason why she had not done so. She only discovered the time limit on 1 November 2022, when she finally approached ACAS.
- (iii) The balance of prejudice in allowing or not allowing the claim to proceed at this stage very much favours the Respondent, which is not longer in a position to obtain the evidence to defend any claim.

9 Accordingly, the Tribunal concluded, in all the circumstances, that the Claimant had failed to show that it was just and equitable to extend time to allow her race discrimination complaints and the Tribunal therefore has no jurisdiction to hear them. They are therefore struck out.

Signed: Employment Judge A Stewart

Employment Judge

Date 24 March 2023

Judgment sent to the parties on

24/03/2023

FOR THE TRIBUNAL OFFICE