



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Race

Respondent: Mr Andrew Hooper trading as Teesdale Restaurant and Coffee Shop

UPON a reconsideration of the judgment dated 21 March 2023 on the Tribunal's own initiative under rule 73 of the Employment Tribunal Rules of Procedure 2013, and without a hearing,

JUDGMENT ON RECONSIDERATION

The Judgment of the Tribunal is that:

1. The Judgment made on 21 March 2023 that the Claimant's claim is dismissed pursuant to rule 47 is revoked.
2. The Claimant's claim for redundancy pay succeeds. The Claimant's claims for unfair dismissal, notice pay and holiday pay are dismissed as they were not presented within the applicable time limits. The Tribunal was not satisfied that it was not reasonably practicable to lodge these claims in time and has no jurisdiction to hear the complaint.
3. The Claimant was dismissed on 7 July 2022. The reason for dismissal was redundancy. She is therefore entitled to a statutory redundancy payment in the amount of **£6,728**.

REASONS

1. The Claimant attended the hearing held by CVP on 21 March 2023. The Respondent also attended. Neither was represented. The hearing commenced at 9.53 am. There were no witness statements or other evidence. The Claimant had not considered her claim form recently. The Claimant was using her mobile phone to join the hearing and that was her only method of reviewing documents. Shortly after 10 am we adjourned the hearing for ten minutes to allow the Claimant to review the claim form on her mobile phone. The Claimant did not re-join the hearing at 10.15am, which was the time the parties were asked to return by. Mr Hopper did re-join the hearing. Numerous attempts were made to contact the Claimant by telephone, she did not answer the telephone. By

email the Claimant was informed that if she did not re-join the hearing by 10.45am a decision would be made in her absence. She did not re-join the hearing or contact the Tribunal. The hearing resumed at 11am with only Mr Hooper present.

2. Oral judgment was given that the Claimant's claim would be dismissed due to the non-attendance of the Claimant, Rule 47 of the Employment Tribunal Rules of Procedure.
3. Of my own initiative, I have reconsidered that judgment. I have determined that the Claimant's claims can be determined on the papers. The Claim Form sets out that her employment commenced on 7 April 2008 and ended on 7 July 2022. Her claim was received on 25 November 2022. At the date of dismissal, her gross weekly pay was £464 per week. The Claimant claims unfair dismissal, holiday pay, notice pay and that she is entitled to redundancy payment.
4. Early conciliation took place from 27 September 2022 until 14 October 2022. The Claim form was received on 25 November 2022. The claims of unfair dismissal, holiday pay and notice pay were not brought within the primary time limit of three months from the relevant date (as amended by ACAS early conciliation). The claim for redundancy pay was brought within the primary time limit of six months.
5. The Response Form confirmed the dates of employment given by the Claimant were correct, as were the earnings details. It records in box 6.1 that "She will have a claim as I did close the business without notice".

The Law – Time limits

6. The applicable law as to time limits in respect of the claims is as follows:

Unfair Dismissal

7. Section 111 Employment Rights Act 1996 (ERA), the relevant provisions of which provide that:

111 Complaint to employment tribunal

- (1) A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.
- (2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal-
 - (a) for the end of the period of three months beginning with the effective date of termination, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Breach of contract – failure to pay notice pay

8. Article 7 of The Employment Tribunals Extension of Jurisdiction (England Wales) Order 1994, the relevant provisions of which provide that

7 Time within which proceedings may be brought

An Employment Tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented -

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

Failure to pay holiday pay

9. Regulation 30 of the Working Time Regulations 1998, the relevant provisions of which provide that

30 Remedies

(1) A worker may present a complaint to an employment tribunal that his employer—

(b) has failed to pay him the whole or any part of any amount due to him under regulation 14 [pay in lieu of untaken holiday due on termination]

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months beginning with the date on which the payment should have been made;

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Statutory redundancy pay

10. Section 164 ERA, the relevant provisions of which provide that:

164 Claims for redundancy payment

(1) An employee does not have any right to redundancy payment unless, before the end of the period of six months beginning with the relevant date -

(c) a question as to the employee's right to, or amount of, the payment has been referred to employment tribunal.

11. Section 145 ERA, the relevant provisions of which provide that:

145 The relevant date

(2) Subject to the following provisions of this section, "*the relevant date*" —

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect.

Extension of time for ACAS conciliation

12. Section 207B ERA, the relevant provisions of which provide that:

207B Extension of time limits to facilitate conciliation before institution of proceedings

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection 1 of 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

The law – Entitlement to statutory redundancy pay

13. The applicable law as to the entitlement to statutory redundancy pay is as follows:

14. Section 135 ERA, the relevant provisions of which provide that:

135 The right

(1) An employer shall pay a redundancy payment to any employee of his if the employee

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(a) is dismissed by the employer by reason of redundancy

15. Section 139 ERA, the relevant provisions of which provide that:

139 Redundancy

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(ii) to carry on that business in the place where the employee was so employed.

16. Section 162 ERA, the relevant provisions of which provide that:

162 Amount of a redundancy payment.

(1) The amount of a redundancy payment shall be calculated by—

- (a) determining the period, ending with the relevant date, during which the employee has been continuously employed,
 - (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
 - (c) allowing the appropriate amount for each of those years of employment.
- (2) In subsection (1)(c) "*the appropriate amount*" means—
- (a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,
 - (b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and
 - (c) half a week's pay for each year of employment not within paragraph (a) or (b).

Conclusion

Unfair dismissal, notice pay and holiday pay

17. In respect of the unfair dismissal, notice pay and holiday pay claims, I have to determine if the claims were presented within time and if they were not whether it was not reasonably practicable for the claim to be presented within time. I have to apply the statutory tests. Reasonable practicability is a question of fact.
18. The Claimant's employment ended on 7 July 2022. The primary time limit to bring her claims of unfair dismissal and notice pay would have been 6 October 2022. I note that the Claimant inserted weekly pay figures in the Claim Form. In the absence of evidence, I find that it is probable that the Claimant was paid weekly, likely in arrears. Therefore, she would have expected payment on 8 July 2022 for her last day of her work. The primary time limit to bring her claim for holiday pay would have been 7 October 2022.
19. Early conciliation took place from 27 September 2022 (Day A) until 14 October 2022 (Day B). The Claim form was received on 25 November 2022.
20. In accordance with s207B(4) ERA the last date by which the Claimant could present the claims for unfair dismissal, notice pay and holiday pay in time was 14 November 2022, namely one month after Day B.
21. I find that these claims were not brought within the requisite time limit. The Claimant did not provide any information or evidence about why her claims were not submitted in time. I was not satisfied that it was not reasonably practicable for the claims to be presented within the normal time limit, I noted that the Claimant was able to undertake ACAS early conciliation during that period. The judgment of the Employment Tribunal is that the Tribunal does not have jurisdiction to consider the claims for unfair dismissal, notice pay and holiday pay and these claims are dismissed. For the avoidance of doubt, even if the claims for notice pay and holiday pay were presented within time the Claimant has provided insufficient information about her entitlement and therefore no award could be made.

Redundancy payment

22. The claim for redundancy payment is within time, as the primary time limit is six months from the date of dismissal. I find that, as the Respondent closed the Claimant's place of

work, this is a dismissal by reason of redundancy within the meaning of s.139 ERA. She has not received a redundancy payment following the termination of her employment from the Respondent. I calculated the Claimant's entitled to statutory redundancy pay in accordance with s.162 ERA. The claimant was 42 at the date of termination of employment. She had 14 years of continuous employment. She earned a gross weekly salary of £464. I find that she is entitled to a statutory redundancy payment in the amount of £6,728.

Employment Judge Fitzpatrick

Date: 30 March 2023