



EMPLOYMENT TRIBUNALS

Claimant: Ms K Reaney

Respondent: NV Projects Ltd

Heard: via Cloud Video Platform in the North East Region

On: 12 May 2023

Before: Employment Judge Ayre (sitting alone)

Appearances

For the claimant: In person

For the respondent: Did not attend and was not represented

JUDGMENT AT PRELIMINARY HEARING

1. The name of the respondent is amended to NV Projects Limited.
2. The claim is out of time and the Tribunal does not have jurisdiction to hear it.

REASONS

Background

1. On 1 November 2022, following a period of early conciliation that started on 14 October 2022 and ended on 17 October 2022, and which named as the potential respondent 'Nv Projects Ltd So Famous', the claimant issued a claim in the Employment Tribunal. She named the respondent as 'Nabeel, So Famous' and wrote on the claim form that "*I worked for so famous for a couple of month they have not paid me.*"

2. The claim was served on 'So Famous' at an address on Glossop Road in Sheffield by letter dated 29 November 2022. The deadline for filing a response was 27 December 2022. No response has been received.
3. On 12 January 2023 a letter was sent to the claimant informing her that no response had been received and asking her to provide information about the amount she was claiming and how she had calculated that sum, as well as information about the legal entity that employed her. The claimant was asked to respond to the letter within seven days. She did not do so.
4. The claim was listed for a hearing on 7 February 2023. The claimant did not attend that hearing. On 7 February 2023 Employment Judge K Armstrong issued an Unless Order with a response date of 28 February 2023.
5. In compliance with the Unless Order the claimant wrote to the Tribunal on 27 February providing the information requested. This included information about the days and hours she worked for the respondent and the amount claimed. She listed the 'payee' as 'NV Projects Ltd' and the days and hours worked as between 16th February and 31st March. She also set out the amount she was claiming as £628.32.
6. There is a restaurant trading as 'So Famous' whose address is 264 Glossop Road, Sheffield, S10 2HS. A search of the Companies House website however reveals no limited company with the name 'So Famous'. There is however, on Companies House, a company by the name of NV Projects Limited whose registered office is 266 Glossop Road, Sheffield, S10 2HS. The nature of the business is stated to be '*Unlicensed restaurants and cafes*' and the company is recorded as being '*Active – Active proposal to strike off*'.
7. The Companies House website contains a First Gazette Notice published on 7 March 2023 and stating as follows:

"The Registrar of Companies gives notice that, unless cause is shown to the contrary, the Company will be struck off the register and dissolved not less than 2 months from the date shown above.

Upon the Company's dissolution, all property and rights vested in, or held in trust for, the Company are deemed to be bona vacantia, and will belong to the Crown."
8. On 22 March 2023 a further notice appears to have been published on the Companies House website, headed "*Striking off action suspended*" and stating that "*Action under Section 1000 of the Companies Act 2006 has been temporarily suspended as an objection to the striking off has been received by the Registrar.*"

The issues

9. The issues that fell to be considered today were:

- 9.1 Whether it was not reasonably practicable for the claimant to start ACAS early conciliation within three months and submit her claim form within the Tribunal's normal time limits; and
- 9.2 If so, within what further period it would have been reasonably practicable for the claimant to submit her claim.

The proceedings

10. The claimant gave evidence under oath. There were no documents before me other than the Tribunal file.
11. At the start of the hearing we discussed the name of the respondent. The claimant said that she worked for 'So Famous'. She was paid once, and the payslip named NV Projects Ltd as the payer.
12. 'So Famous' does not appear to be a legal entity, but rather a trading name for the café where the claimant worked. The correct name of the legal entity that employed the claimant is in my view NV Projects Ltd.
13. I therefore order that the name of the respondent is changed to NV Projects Ltd.

Findings of fact

14. The claimant was employed by the respondent from 11 February 2022 until 31 March 2022. In early April she received a phone call from her manager, Ben, telling her that her contract had been ended and that she would be paid within the next week.
15. The claimant was not paid. She contacted Ben repeatedly to ask when she would be paid. She contacted him by telephone or via WhatsApp message on the following dates: 6 April, 12 April, 19 April, 26 April, 29 April, 1 May, 4 May, 6 May, 15 May, 29 May, 14 June and 15 July 2022. She was repeatedly told by Ben that she would be paid at the end of the week or the end of the month.
16. When she contacted Ben in June and July however, Ben told her that he didn't work for the respondent any more and that there had been a work group set up to deal with unpaid wages. The claimant was added to that group.
17. The claimant believed for a period of time (she could not recall precise dates) that other members of staff were issuing a group claim against the respondent and that they would be claiming on her behalf. At the end of September however she found out that they were not bringing a claim on her behalf.
18. The claimant contacted ACAS on 14 October 2022 to begin early conciliation and the certificate was issued on 17 October. She issued proceedings on 1 November 2022.

19. When asked why she had not put her claim in sooner the claimant said that it was because she thought that her claim was included in the group claim, that she was 16 years old at the time and did not know what to do. She took her GCSEs in May / June last year and was understandably stressed about the exams.
20. The claimant was not aware of the existing of time limits for bringing Tribunal claims, although she was aware of the right to bring a claim. She could not remember when she became aware of that right.

The Law

21. Section 13 of the Employment Rights Act 1996 provides that:

“(1) An employer shall not make a deduction from wages of a worker employed by him unless –

- (a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or*
- (b) The worker has previously signified in writing his agreement or consent to the making of the deduction...*

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”

22. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deductions from wages to the Employment Tribunal. The time limit for bringing such complaints is set out in sections 23(2), (3) and (4) which state as follows:

“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

- (a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made....*

(3) Where a complaint is brought under this section in respect of –

- (a) a series of deductions or payments...*

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end

of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”

23. Time limits for presenting claims are a jurisdictional issue (**Rodgers v Bodfari (Transport) Ltd 1973 325 NIRC**) and if a claim is out of time, the Tribunal must not hear it. The parties cannot agree to waive a time limit, so even if a respondent does not seek to argue that a claim is out of time, the Tribunal still has no jurisdiction to hear the claim if it is in fact out of time. The Court of Appeal in **Radakovits v Abbey National plc [2010] IRLR 307** confirmed that time limits go to jurisdiction and that jurisdiction cannot be conferred on the Tribunal by agreement or waiver, so that an employer’s decision not to raise a time point will not bind the Tribunal.
24. The principle that a Tribunal cannot hear a claim that is out of time applies even if the claim has merit. In **Bewick v SGA Forecourts Ltd ET Case No.2501693/2014** the respondent admitted that it owed holiday pay to the claimant. The claimant presented her claim nine days’ late, however. The Tribunal concluded that it was reasonably practicable for her to have presented her claim in time, and that it therefore did not have jurisdiction to hear the claim.
25. In cases, such as this one, in which a question arises as to whether it was reasonably practicable for the claimant to present his claim on time, there are three general principles that fall to be considered –
 - 25.1 The question of reasonable practicability should be interpreted liberally in favour of the claimant;
 - 25.2 It is a question of fact as to whether it was reasonably practicable for the claimant to present his claim on time; and
 - 25.3 It is for the claimant to prove that it was not reasonably practicable for him to present his claim on time.
26. In **Palmer and another v Southend-on-Sea Borough Council [1984] ICR 372**, the Court of Appeal concluded that ‘reasonably practicable’ does not mean ‘reasonable’ or ‘physically possible’, but rather ‘reasonably feasible’.

Conclusions

27. The claim was presented approximately four months late. The claimant last worked for the respondent on 31 March 2022 and should have been paid on or around that date. The primary time limit therefore expired at the end of June or early July. The claimant did not start early conciliation until 14 October, more than three months late, so does not get the benefit of any extension of time for early conciliation.
28. The claimant knew that she had not been paid from early April 2022 and took steps to try and get paid, through repeatedly calling and messaging her manager. The facts upon which her claim is based were therefore known to her from early April.

29. The claimant knew of the right to bring a claim for unpaid wages from the date upon which she was invited to join the unpaid wages group – the date of which she could not recall, but which, based on her evidence, is likely to have been sometime between speaking to Ben in June and July and the end of September when she became aware that she was not part of any group action.
30. I accept that between April and the end of June the claimant was aged just 16 and was going through her GCSEs, which would understandably have been her priority. I accept that she was not aware of her rights or of the existence of time limits. I also find that she was repeatedly told by the respondent during that time that she would be paid shortly, and it was reasonable of her to rely upon the repeated assurances that were being made, particularly given her age.
31. I therefore find that it was not reasonably practicable for the claimant to present her claim within the three month primary time limit.
32. I have then gone on to consider whether she presented it as soon thereafter as was reasonable. She was, by September at the latest, aware of the right to bring a claim and by late September she knew that no other claim was being brought on her behalf. She then waited until 14 October to contact ACAS, and from 17 October (when the ACAS certificate was issued) to 1 November before presenting her claim. She has not provided good reason for this delay.
33. There is no presumption that time limits should be extended and there must be good reason for doing so. Information about time limits is easily available through a simple google or other online search, or through a quick telephone call to ACAS. The burden of persuading a Tribunal that she presented her claim as soon as was reasonable following the expiry of the primary time limit falls on the claimant. She has not discharged that burden.
34. The claimant did not present her claim within a reasonable time period following the expiry of the primary time limit. The claim is therefore out of time and the Tribunal does not have jurisdiction to hear it.

12 May 2023

Sent to the parties on:

18 May 2023

For the Tribunal Office:

