



EMPLOYMENT TRIBUNALS

Claimants

- (1) Mr Z. Aslam
- (2) Mr M. Shakeel

Respondent

MQH Ltd t/a Oodles Chinese

Heard at: Reading

On: 15 September 2023

Before: Employment Judge McNeill KC

Appearances

For the Claimant: The first claimant attended part of the hearing; the second claimant did not attend and was not represented.

For the Respondent: Ms S-J Wood, Solicitor

JUDGMENT

1. The respondent having been given permission to amend its response to contend that the claimants' claims were brought out of time, the claims of both the first and second claimants are dismissed because they were brought outside the three-month time limits in sections 23(4) of the Employment Rights Act 1996 and regulation 30(2)(b) of the Working Time Regulations 1998.
2. The tribunal was not satisfied that it was not reasonably practicable to bring the claims within the three-month time limit and did not therefore extend time.
3. The claims will proceed no further.

REASONS

- (1) The claimants brought claims against the respondent for unpaid holiday pay. The claim form was presented by the first claimant, Mr

Aslam, and the second claimant, Mr Shakeel was named in the claim form as an additional claimant.

- (2) Mr Shakeel has played no part in the proceedings at all. He has not attended either of the two hearings, submitted any documents or entered into any correspondence with the respondent or the tribunal.
- (3) The claims should have been determined at a hearing before Employment Judge Quill on 21 April 2023 but, on that occasion, the respondent had technical problems and was unable to join the hearing. The hearing was therefore postponed until 10 am today with EJ Quill giving very clear directions to the parties as to how they needed to prepare for this hearing.
- (4) None of the parties complied with the directions.
- (5) On 7 September 2023, the respondent sent an email to the tribunal, copying in Mr Aslam, stating that the claims were manifestly out of time and requesting that the email be treated as an application to strike out the claims.
- (6) On 12 September 2023, Mr Aslam asked to join the hearing, which was listed for 10 am today, by video link. Permission was granted and he was sent a video link today at 09.51. He did not join the hearing until 11.30. The clerk attempted to contact him by phone and email shortly after 10 am but there was no reply. The hearing commenced at 10.30 and I had started giving judgment when he attended.
- (7) At the very last minute, the respondent did provide a bundle for the hearing and a witness statement and the claimant provided a witness statement and some payslips.
- (8) I considered that it was appropriate to deal with the time limit point first. The fact that the claim was brought outside the relevant primary time limits was so clear that I considered it was in the interests of justice (taking into account the interests of both parties) to allow the respondent to amend its response to pursue this point, which had been flagged up in the letter of 7 September 2023. I granted this amendment before Mr Aslam attended but gave him an opportunity to comment on it when he attended. He did not object to this point being pursued.
- (9) The evidence showed that Mr Aslam's last period of employment with the respondent terminated on 11 February 2022 (this was the date on the response and supported by a P45). Mr Shakeel's last period of employment terminated on 26 December 2021.
- (10) Mr Aslam notified Acas of the matter on 1 October 2022, well outside the three-month time limit in section 23(4) of the Employment Rights Act 1996 and regulation 30(2)(b) of the Working Time Regulations 1998. The Acas certificate was dated 7 October 2022.

- (11) The claim form was presented on 17 October 2022.
- (12) I asked Mr Aslam why he had not brought his claim sooner. His response was that he did not know the law until someone mentioned to him that he might have a claim for holiday pay. This was not sufficient to meet the requirement that it was not “reasonably practicable” (or reasonably feasible) to bring his claim in time. I had no explanation from Mr Shakeel at all in relation to the delay.
- (13) As the claims were not brought within the statutory time limits and the grounds on which I could exercise discretion to extend time were not made out, the claims are dismissed.

Employment Judge McNeill KC

Date: 15 September 2023

Sent to the parties on: 20/9/2023

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For the Tribunal

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