



EMPLOYMENT TRIBUNALS

Claimant: Mr B Downes

Respondent: Ready2Go Film, TV and Event Services Limited

Heard at: Liverpool (by video hearing)

On: 7 November 2023

Before: Employment Judge Buzzard (sitting alone)

REPRESENTATION:

Claimant: In Person

Respondent: Miss Wright (Employment Consultant)

JUDGMENT having been sent to the parties on 10 November 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Issues

1. The issues to be determined at this hearing were:
 - 1.1. Was the claimant's claim presented in time; if not
 - 1.2. Was the relevant criteria met to allow an extension of time; if it was
 - 1.3. Should an extension of time be granted.

The Law

2. The claimant has made a single claim of unlawful deduction from wages.

3. The time limit for presenting such a claim is set by s23(2) of the Employment Rights Act 1996 (“ERA”). This states:

s23(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,

4. Accordingly, the time limit for the presentation of a complaint that there has been an unlawful deduction from wages is three months from the date that the deduction occurred. There are provisions that pause the counting of time towards the three months whilst ACAS Early Conciliation is occurring, however there were not relevant in this case.

5. There is an exception, under subsection 4, which states:

s23(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.

6. This means that there can only be an extension to the time limit where the claimant can show that it was not reasonably practicable to present the claim in time. The onus is on the claimant to show that this criteria is met.
7. There is guidance from the higher courts regarding what “*not reasonably practicable*” means. In **Trevelyan (Birmingham) Ltd v Norton** 1991 ICR 488 EAT, Mr Justice Wood stated that where a claimant knows of their rights to make a claim they are under an obligation to seek information and advice about how to enforce that right. It is for the claimant to show that any failure to obtain such information was reasonable.

Agreed Facts & Evidence

8. There was no material factual dispute in this hearing. The key dates were agreed by the parties and expressly confirmed at the outset of the hearing as being:

8.1. The claimant’s employment ended on 1 October 2022;

8.2. The alleged deduction from pay occurred, at the latest, on or around 4 November 2022;

8.3. The claimant approached ACAS to commence early conciliation on 17 April 2023;

- 8.4. The conciliation period ended on 24 April 2023 and the claimant presented his claim the same day.
9. On this basis there was a period of around 5½ months from the date of the alleged deduction to the start of early conciliation. This is well in excess of the three-month time limit.
10. The claimant gave evidence. In that evidence the claimant explained that within the time limit he had sought legal advice; because he was aware that he had a claim. He had not been able to secure such advice because, as he put it, he was told that the value of the claim was “*too low*”. The claimant stated that he had “*tried to bring his case earlier*” but that legal representation would have cost more than the value of the claim. The claimant stated that trying to seek advice from more than one source had delayed him making his claim.
11. The claimant also stated that he was too ill to present his claim, referring to mental health issues. When asked about this the claimant stated that there were days when he was not able to do anything, and other days when he “*felt ok*”. The claimant stated that he had not produced either before or at this hearing any medical evidence regarding his health because he had not thought it would be relevant.
12. It was put to the claimant in cross examination that, when he first sought to explain why his claim had been presented late, he had made no reference to his mental health as in away a reason. The claimant accepted that this was correct, he had not previously mentioned his mental health at all as a reason for presenting his claim late.

Findings

13. There is no dispute that the claimant presented his claim outside the normal time limit. He commenced conciliation after around 5 ½ months, that is around 2 ½ months after the end of the three-month time limit.
14. The claimant accepts he was fully aware of his right to claim from the outset. The claimant has confirmed he was actively seeking advice and assistance to bring his claim when if brought a claim would have been in time. Taking the most favourable possible view of the claimant’s evidence about his health, i.e. accepting his account without any supporting evidence, the claimant concedes that in that time period there were days when he ‘*felt ok*’. There were certainly days when he felt well enough to seek legal advice and assistance.
15. The claimant stated that he was not aware of the time limit for making a claim. There was, however, no credible contention that he could not reasonably have checked if there was a time limit, at the very least on one of the days when he ‘*felt ok*’.

16. On balance the claimant has not established that it was not reasonably practicable for him to have presented his claim in time.
17. Even if he had, the further delay was significant, in that conciliation was started after approaching twice the time limit had elapsed. There is no explanation of why, on one of the days the claimant '*felt ok*' just after the time limit had elapsed, the claimant could not have commenced his claim. Accordingly, even if it had not been reasonably practicable to present the claim in time, the claimant has not presented evidence that could support a finding that the extent of the further delay was reasonable.

Conclusion

18. For these reasons the claimant's claim is found to have been presented outside the time limit for presenting the claim in circumstances where it was reasonably practicable for the claim to have been presented in time. Accordingly, the claimant's claim is dismissed.

Employment Judge Buzzard

30 November 2023

Judgment sent to the parties on:

5 December 2023

For the Tribunal:

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