



EMPLOYMENT TRIBUNALS

Claimant: Mr L Stephens

Respondent: Rapid Response Telecoms Ltd

JUDGMENT

The claimant's application dated 4 December 2023 for reconsideration of the judgment sent to the parties on 3 November 2023 is refused.

REASONS

1. The claimant's application for a reconsideration was made more than 14 days after the judgment was sent to the parties and it is not in the interests of justice to extend time. The claimant initially requested a reconsideration in time, but did not copy the respondent into his application.
2. I have therefore given some consideration to the merits of the claimant's application and have concluded that even if it had been made in time, there would have been no reasonable prospect of the original decision being varied or revoked.
3. The claimant's application concerns my decision that the tribunal had no jurisdiction to consider his complaint of unauthorised deductions from wages in November 2022 because the deduction did not form part of a series of deductions, the complaint was not made within 3 months of the deduction and it was reasonably practicable for the complaint to have been brought in time.
4. As I recorded in my judgment, I did not hear evidence or representations explicitly about the time point, but I concluded on the evidence I had heard that on the balance of probabilities it was reasonably practicable for the claim to have been brought in time. In those circumstances, it may well be appropriate to reconsider a judgment on the provisions of new evidence and appropriate to extend time to allow the claimant to make the application for a reconsideration.
5. I have therefore considered the substance of the claimant's application and conclude that the fact that there is no reasonable prospects of the decision being varied or revoked also means that it is not in the interests of justice to extend time for the application.

6. The claimant makes four broad points in his application.
7. Firstly, he says that he had been trying to resolve the underpayment in the November 2022 pay date since January 2023, not just since the end of his employment as I had recorded in the judgment. I agree, that is clear from the emails he refers to in his application. I conclude, however, that this in fact supports my conclusion that the claimant was aware of the underpayment at all material times and was taking steps to resolve it. In fact, he was continuing to do so into June 2023. The fact that he was able to explain clearly and repeatedly to his employer that he had been underpaid suggests that it would have been reasonably practicable for him to make an Employment Tribunal complaint around that time.
8. These messages also indicate that there was no sense of animosity from the respondent – they continued to seek to resolve it – so that there was no obvious risk to the claimant in seeking to assert his rights in the Employment Tribunal.
9. Secondly, the claimant says that the respondent was aware of the underpayment and they were, in his view, deliberately withholding the money or a response. He says that once the three month period was up, the respondent stopped responding to his messages.
10. Again, this does not support the claimant. If anything, it would tend to suggest a stronger reason to seek redress outside the employer and if they stopped responding soon after 29 February 2023 as the claimant asserts, it is likely that it would have been reasonable for the claimant to start formal proceedings sooner rather than waiting until June 2023.
11. Thirdly, the claimant states that he had a pressing need for the money so he trusted the respondent. He says that his inclination was to trust the employer rather than looking into aggressive ways to recover it. This tends to suggest that the claimant had not researched the possibility of taking action, nor taken advice. Although he may have decided to wait and hope, had he researched the law, the claimant would have become aware of the strict time limit. A claimant is expected to make reasonable enquiries into their rights but the claimant failed to do so.
12. Finally, the claimant says that he was not aware of his rights or the time limits. This may well be correct, but as stated above a claimant is expected to take reasonable steps to find out what those rights are.
13. A claimant must make a claim to the employment tribunal within three months of the date of the deduction. A tribunal may extend time where it was not reasonably practicable for the claim to be brought in time and the tribunal is satisfied that the complaint was brought within a further reasonable period.
14. The additional evidence that the claimant seeks to rely on suggests that it was reasonably practicable for the claim to be brought in time but, in any event, the claim was not brought in a reasonable period after the expiry of time because he says the respondent stopped responding shortly after the expiry of the time. This would suggest it was reasonable to make the claim very soon after the expiry of the time limit – as soon as the respondent stopped replying. Instead, the claimant did not raise the issue until June 2023 (when he contacted ACAS).
15. For these reasons, therefore, there is no reasonable prospect of the decision being varied or revoked on the information provided by the claimant and consequently, it is also not in the interests of justice to extend time for the claimant to present his application for a reconsideration.

Employment Judge Miller

Date 3 January 2024