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EMPLOYMENT TRIBUNALS

Claimant: India Mustafa

Respondent: Hicking Financial Services Ltd

Heard at: East London Hearing Centre **On:** 09 January 2024

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Appearance not entered, but Daniel Hicking, managing director of the Respondent, was in attendance (and I permitted him to participate)

JUDGMENT

1. The claims for unpaid wages (S13 of the Employment Rights Act 1996) and for holiday pay are dismissed on withdrawal.
2. The Respondent dismissed the Claimant by reason of redundancy.
3. The Respondent is ordered to pay to the Claimant a redundancy payment of £2,284.

REASONS

1. Ms Mustafa was the personal assistant to Daniel Hicking who ran a financial consulting business through a limited company, the Respondent.
2. The Claimant started work for the Respondent on 01 March 2018.
3. Mr Hicking had some personal difficulties, which I do not set out in this publicly accessible document as they are not relevant to the decision. As a result of those difficulties Mr Hicking's company (the Respondent) had to leave the network through which it conducted its business, and so had to cease trading.
4. Ms Mustafa did not know the date this happened. I asked Mr Hicking, who told me that this occurred on 13 December 2022. I accept that this was the case.

5. Ms Mustafa gave her effective date of termination as 31 December 2022 because that was the date the Respondent's accountants told her that her employment ended. I find as a fact that this was the date her employment ended.
6. The time limit for claiming unpaid wages (S13 Employment Rights Act 1996) and unpaid holiday pay is 3 months from the effective date of termination. That expired on 30 March 2023 and so those claims are more than 3 months out of time. I explained that time can only be extended for these claims if it was not reasonably practicable for the claims to be presented within 3 months of the effective date of termination and if so that they were presented in such further period as I consider reasonable. Ms Mustafa accepted that it was reasonably practicable for her to have presented the claims for unpaid wages and for holiday pay within 3 months of 31 December 2022, and so withdrew those claims which I dismissed for that reason.
7. Ms Mustafa said that sometime before 31 December 2022 (a Saturday) she was told by Mr Hicking that her employment would end (on 31 December 2022) by reason of redundancy.
8. The Respondent ceased trading, and Ms Mustafa was personal assistant to the managing director. I find that the reason for dismissal was redundancy.
9. Ms Mustafa had worked for the Respondent for 4 full years and by reason of S86 of the Employment Rights Act 1996 was entitled to 4 weeks' notice.
10. Those 4 weeks would expire on 09 January 2023. The time for Ms Mustafa to claim a redundancy payment in the Employment Tribunal is extended to the date when that notice would have expired (S145(5) Employment Rights Act 1996).
11. Ms Mustafa started the early conciliation process with Acas on 11 July 2023 and her certificate was issued on 13 July 2023. The claim was issued on 20 July 2023.
12. It follows that the claim for a redundancy payment is outside the 6 month period from the effective date of termination, even extended by S145(5) of the Employment Rights Act 1996, because that period expired on 09 July 2023, 2 days before Ms Mustafa contacted Acas on 11 July 2023.
13. The reason Ms Mustafa did not contact Acas earlier was because she and Mr Hicking had a good personal relationship and there was contact between them such as to lead Ms Mustafa to hope that Mr Hicking would be able to pay her the redundancy payment. I find as a fact that Mr Hicking genuinely hoped to be able to do so.
14. I bear in mind the discretion conferred by S164(2)(c) of the Employment Rights Act 1996 to extend time for up to a further 6 months. I take full account of S164(3) of the Employment Rights Act 1996:

“(3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to—

(a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and

(b) all the other relevant circumstances.”

15. I decide that it is just and equitable for Ms Mustafa to receive a redundancy payment in these circumstances. Mr Hicking has always agreed that Ms Mustafa is entitled to a redundancy payment and was hoping to pay it. Ms Mustafa has not delayed for no good reason – she had good reason. There was no reason for her to issue Employment Tribunal proceedings when she rightly thought that her employer was hoping to pay the redundancy payment.
16. Ms Mustafa was paid a salary of £30,000 a year. That is £576.92 a week. The maximum weekly wage for the calculation of a redundancy payment (at the date of the dismissal) was £571. Ms Mustafa had worked 4 full years, for all of which she was over 21. The calculation is therefore $4 \times £571 = £2,284$.
17. Companies House shows that the Respondent is still on the register of companies. The relevant entries are:

“HICKING FINANCIAL SERVICES LIMITED

Company number 08763841

Registered office address

Global House, 1 Ashley Avenue, Epsom, Surrey, KT18 5FL

Company status

Active — Active proposal to strike off

Accounts overdue

Next accounts made up to 30 November 2021 due by 31 August 2022

Last accounts made up to 30 November 2020

Confirmation statement overdue

Next statement date 6 November 2022 due by 20 November 2022

Last statement dated 6 November 2021”

18. Mr Hicking indicated that he does not intend to oppose the striking off of the Respondent from the register of companies, because he has ceased to trade. Accordingly, once the Respondent is struck off the register (or perhaps beforehand) Ms Mustafa is likely to apply for the government to make the payment (the website link is <https://www.gov.uk/claim-redundancy>).

Employment Judge Housego

09 January 2024