



EMPLOYMENT TRIBUNALS

Claimant: Mr TK Chau
Respondent: International Aid for The Protection and Welfare of Animals
On: 4 August 2023
Before: Employment Judge Ahmed (sitting alone)
At: Leicester (via CVP)

Representation

Claimant: In person
Respondent: Ms Nicky Stevens (Founder and CEO)

JUDGMENT

The decision of the Tribunal is that:

The Claimant's claim for an unlawful deduction of wages in respect of unpaid holiday pay has been presented out of time. It was reasonably practicable to bring the claim in time. The Claim is therefore dismissed.

REASONS

1. In these proceedings the claimant brings a complaint of an unlawful deduction of wages, namely unpaid holiday pay.
2. Mr Chau was employed by the Respondent as a Fundraising Officer from 4 April 2022 to 15 July 2022. He gave notice to resign from his employment on 11 July 2022. The required period of notice was one week and his employment ended on 15 July 2022 after he had worked out his notice. His final pay was paid on 25 July 2022. That is the date on which any outstanding payments, including any accrued holiday pay, should have been paid. By my calculations he had accrued 8 days of holiday pay. He had not taken any leave during his employment.
3. The Respondent did not pay unused holiday entitlement in the final wages but instead treated his notice period as a period of leave. It did so without any notice under [Regulation 15 of the Working Time Regulations 1998](#). Mr Chau had not said he wanted to use up his annual leave during notice. He was simply told that this is

what would happen. There is no contractual authority to entitle the Respondent to do this.

4. The Claimant began ACAS early conciliation on 9 April 2023. The ACAS early conciliation certificate was issued on 11 April 2023. The Claim Form was presented on 18 April 2023. Mr Chau had not addressed the out of time issue in his witness statement so he was asked at this hearing to set out the reasons for the delay.

5. Mr Chau came to the UK from Hong Kong for the purposes of this role. He is unsurprisingly unfamiliar with UK employment law. He tells me that in Hong Kong workers are not entitled to holiday pay whilst in probation. He only discovered the position was different when he got another job and found he was entitled to holiday pay from the start of employment.

6. I explained to the Respondent today that they had no legal right to insist on the Claimant taking his annual leave whilst working out his notice in these circumstances. There are limited instances when an employer can do so but they do not apply to this case.

7. Claims for an unlawful deduction of wages must be brought within 3 months of the unlawful deduction either under the [Working Time Regulations 1998](#) or under section 13 of the [Employment Rights Act 1996](#). Time can be extended under [section 23\(4\)](#) of the Act if it was not reasonably practicable to bring the claim in time.

8. The reason for the delay was that Mr Chau was ignorant of his legal position. Mr Chau's ignorance of UK law at the time of the events does not of itself make it 'not reasonably practicable'. He must have appreciated that coming from another country that the law in the UK might or would be different. He made no enquiries on the internet, with any advice organisation or with ACAS whom he did contact for early conciliation but not after a long delay. There is no satisfactory explanation for the delay. There was no physical or medical impediment preventing him from bringing proceedings earlier. His ignorance of the legal position was not reasonable as he is expected to make some effort or enquiry as to what his legal rights might be. He is an intelligent and articulate individual. A quick google search would have put him on notice as to where he might get advice, such as ACAS or a Citizens Advice Bureau.

9. I therefore find that the claim has been presented out of time. It was reasonably practicable to bring the Claim in time. The Claim must therefore be dismissed.

Employment Judge Ahmed

Date: 4 August 2023

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.