



EMPLOYMENT TRIBUNALS

Claimant

Mrs Shui Yan Ng

Respondent

Jaylin Limited
t/a Subway

v

Heard at: Norwich (by CVP)

On: 3 May 2024

Before: Employment Judge Postle

Appearances

For the Claimant: Mr Ng

For the Respondent: Mr Sarju Patel, General Manager

Interpreter: Ms Haslam, Cantonese speaking

JUDGMENT on PUBLIC PRELIMINARY HEARING

It was reasonably practical to have issued the Claim for payment in lieu of holiday pay on termination of Employment within three months of 13 March 2022, pursuant to Regulation 30(2) of the Working Time Regulations.

REASONS

Background

1. This is a Preliminary Hearing to determine whether it was reasonably practical to have issued the Claim within three months of the date of the Claimant's termination of employment in respect of accrued holiday pay, pursuant to Regulation 30(2) of the Working Time Regulations.
2. In this Hearing we have heard evidence from the Claimant and from her husband.
3. The Claimant's husband had previously written to the Court a seven page, and it has to be said erudite, letter in English setting out the reasons why it was not possible to have issued the Claim within three months.

4. In summary these were that they had moved to the UK the previous year, that they both started new jobs and needed to spend plenty of time learning new skills in their new jobs and taking care of their two children.
5. It has to be said, in evidence Mr and Mrs Ng at times back tracked when they perhaps realised the answers they were giving were not helping.
6. Mrs Ng said at the outset of her evidence that she wanted her husband's statement referred to above to stand as evidence. She told the Tribunal she had realised that her holiday pay, after her final pay was received on 13 March 2022, was short. That they did have a laptop at home and that she asked her husband to look into the matter soon after her final pay on 13 March 2022.
7. The Claimant said that as they had started a new job the matter was put off because they were busy with other things. She said on one occasion that Mr Ng having made enquiries knew there was a time limit and they were aware that time had passed. The Claimant later in her evidence said they found out about Employment Tribunals three months after her final pay. Mrs Ng accepted that she did ask her husband to Google reference to missing holiday pay soon after her employment terminated.
8. Mr Ng, giving evidence, admitted he wrote the letter of 19 December 2022, the seven page letter opposing any Strike Out and the reasons for late submission. He accepted the letter was written in good English, albeit he worked very hard on it. He says that he Googled Employment Tribunals around August and accepts they were aware after the final pay in March that the holiday pay was not correct and then indicated it took him until August to work out the calculation. Some time around maybe June, July or August he started to look for Employment Tribunals on Google, although he cannot remember the exact date.

The Law

9. There are strict time limits involved in Employment Rights, in this case the right to payment in lieu of holiday on termination of employment is governed by Regulation 30(2) of the Working Time Regulations which makes it clear any such claims to an Employment Tribunal must be made three months from the date the payment should be made, in this case from 13 March.
10. When a Claimant tries to excuse late presentation of his or her claim on the ground that it was not reasonably practical to present the claim within the time limit, three general rules apply:
 - 10.1. The three month rule is a high hurdle to overcome.
 - 10.2. What is reasonably practical is a question of fact and thus a matter for the Tribunal to decide. The test is empirical and involves no

legal context. Practical common sense is the key and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province.

- 10.3. The onus of proving that presentation in time was not reasonably practical rests on the Claimant. That imposes a duty on her to show precisely why it was that she did not present her complaint. If the Claimant fails to argue that it was not reasonably practical to present the claim in time the Tribunal will find that it was reasonably practical.
11. Furthermore, even if a Claimant satisfies a Tribunal that presentation was not reasonably practical, that does not automatically decide the issue in her favour.
12. The Tribunal must then go on to decide whether the claim was presented within such further period as the Tribunal considers reasonable. Thus while it may not have been reasonably practical to present the claim within the three month time limit, if the Claimant delays a further three months a Tribunal is likely to find the additional delay unreasonable and decide that it has no jurisdiction to hear the claim.
13. As to the meaning of reasonably practical, it does not mean reasonable which would be to favour employees and does not mean physically possible which would be to favour employers, but means something like reasonably feasible. The relevant test is not simply a matter of looking at what was possible, but to ask whether on the facts of the case as found, it was reasonable to expect that which was possible to have been done.

Conclusions

14. It is clear that if the Claimant and her husband, who is clearly an intelligent man and from the teaching profession, were aware there was an alleged shortfall in holiday pay. That occurred shortly after 13 March 2022. However, there seems to have been little effort to enquire as to how to recover those sums in the following months. These days if you Google holiday rights and employment rights you will inevitably be directed to the Employment Tribunals and fairly quickly you will be made aware of statutory time limits of three months.
15. Very brief research would have informed the Claimant via her husband that a claim needs to be issued within the three month period. In fact nothing was done for over six months.
16. Various other reasons were given, that they were concentrating on their new jobs and getting their children to settle into life in the UK, but it would not have taken long to complete the ET1 Form within a three month period saying there was a shortfall in holiday pay.

17. For those reasons the Tribunal is satisfied that it was feasible and reasonably practical to have issued the claim within the three month period and to delay for over six months is not reasonable at all.
18. For those reasons the claim is therefore dismissed.

Employment Judge Postle

Date: ...28 May 2024.....

Sent to the parties on: 14 June 2024

For the Tribunal Office.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>