



EMPLOYMENT TRIBUNALS

Claimant: Miss V Vasudevamurthy

Respondent: Alpha Technology Partners Limited

Heard: by Cloud Video Platform

On: 23 October 2024

Before: Employment Judge Ayre

Representation

Claimant: In person

Respondent: Nick Mehat, director

JUDGMENT

1. The name of the respondent is changed to Alpha Technology Partners Limited.
2. The claim is out of time and the Tribunal does not have jurisdiction to hear it.

REASONS

Background

1. On 25 February 2024 the claimant tried to issue a claim in the Employment Tribunal following a period of early conciliation that started on 14 December 2023 and ended on 19 January 2024. The claim form includes claims for notice pay, holiday pay and unauthorised deductions from wages.

2. In the claim form the claimant named Nick Mehat as the respondent to the claim. The ACAS Early Conciliation Certificate however identifies the prospective respondent as Alpha Technology Partners Limited. By letter dated 12 April 2024 the claimant was informed that her claim had been rejected because the name of the prospective respondent in the ACAS Early Conciliation Certificate was different to the name of the respondent on the claim form.
3. On 17 April 2024 the claimant applied for reconsideration of the decision to reject her claim. The application for reconsideration was successful and the claim was accepted on 17 April 2024.
4. This claim was therefore presented to the Tribunal on 17 April 2024.
5. On 29 June 2024 the respondent filed a response to the claim. The respondent admitted owing the claimant £1,675 final salary but stated that it was unable to pay the final salary.
6. On 12 September 2024 the Tribunal wrote to the parties proposing to change the name of the respondent to Alpha Technology Partners. The parties were given 7 days to object to the change, but neither party did.

The hearing

7. The claimant gave evidence at the hearing and referred to an email that she sent to the Tribunal on 23 June 2024. Attached to that email was a copy of a payslip dated 31 October 2023 and an email from the claimant to the respondent on 9 December 2023 chasing payment of the monies owed to her. There was no other documentary evidence.
8. Both parties made oral submissions.
9. At the start of the hearing the claimant told me that the amount she was claiming was £1,675.11 which is the net sum referred to in her October payslip. In closing submissions the claimant said that she also wanted to claim for notice pay.
10. After I had adjourned to make my decision, and before I delivered the decision, the claimant told me that she wanted to change her evidence about the date on which she should have received payment for the monies listed in the October payslip. During evidence she said that she should have received payment on 30 November, but later she said 14 November. This change in evidence makes no difference to my decision and indeed makes the claim even more out of time than I found using the 30 November date.

Issues

11. The first issue that fell to be decided today was time limits and whether the Tribunal has jurisdiction to hear the claim. In light of my conclusions on that issue, it has not been necessary for me to consider any other issues.

Findings of fact

- 12.** The claimant was employed by the respondent as a Business Analyst from 22 August 2022 until 16 October 2023 when she was dismissed.
- 13.** On 31 October 2023 she was provided with a payslip setting out her pay for the month ending 31 October 2023. The total net pay due to the claimant according to the payslip was £1,675.11 which, according to the payslip, was paid on 5 November 2023. It was however not paid, and the claimant's evidence initially was that she was expecting payment at the end of November.
- 14.** I find, on the evidence before me at the time I made my decision, that the sum of £1,675.11 should have been paid to the claimant on 30 November 2023.
- 15.** After I had adjourned the hearing and made my decision the claimant said that she should in fact have been paid two weeks after the end of October, namely 14 November 2023. That new evidence makes no material difference to my decision.
- 16.** The claimant knew of the facts giving rise to this claim from 30 November at the latest and took steps initially to obtain payment from the respondent, by sending an email on 9 December chasing for payment.
- 17.** The claimant contacted ACAS on 14 December 2023 and started the early conciliation process. She named the correct respondent in the ACAS early conciliation process, namely Alpha Technology Partners Limited.
- 18.** The claimant knew from the point at which she contacted ACAS, of the right to bring an Employment Tribunal claim and of the three month time limit for presenting her claim.
- 19.** The ACAS early conciliation certificate was issued on 19 January 2025. The claimant first tried to present her claim some five weeks later on 25 February 2024. She named the wrong respondent on the form and it was rejected. In response to the question as to why she put the wrong respondent on the claim form she told the Tribunal that it had 'slipped her mind' that she had named Alpha Technology Partners Limited to ACAS, and that she had put Mr Mehat down because he is a director of the respondent.
- 20.** On 12 April 2024 the Tribunal wrote to the claimant by email informing her that her claim had been rejected and of the reasons why. The claimant did not reply to that email until 5 days later, on 17 April. When asked why she had waited 5 days to reply, the claimant said that she wanted to contact someone from ACAS to make sure that she could resubmit the form.
- 21.** The claimant did not have any legal assistance in completing the claim form.

The law

22. The time limit for presenting claims for holiday pay under the Working Time Regulations 1998 (“**the WTR**”) is set out in Regulation 30(2) which provides as follows:

“Subject to regulation 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented –

- (a) Before the end of the period of three months...beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;*
- (b) Within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three...months”.*

23. The time limit for presenting claims for breach of contract (notice pay) in the Employment Tribunal is contained within Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“**the Order**”) which states that:

“Subject to article 8B, an employment tribunal shall not entertain a complaint in respect of an employee’s contract claim unless it is presented –

- (a) Within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or*
- (b) Where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or*
- (c) Where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.”*

24. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deduction from wages to the Employment Tribunal. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4) which provide as follows:

“(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....*

(3) Where a complaint is brought under this section in respect of –
(a) a series of deductions or payments...

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(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.”

25. Time limits are extended to allow for ACAS Early Conciliation. In summary, the period beginning with the day after Early Conciliation starts and lasting until the day upon which ACAS issues the Early Conciliation Certificate does not count for the purposes of time limits, so that the clock does not run during that period.
26. Time limits for presenting claims are a jurisdictional issue (***Rodgers v Bodfari (Transport) Ltd 1973 325 NIRC***) and if a claim is out of time, the Tribunal must not hear it. The parties cannot agree to waive a time limit, so even if a respondent does not seek to argue that a claim is out of time, the Tribunal still has no jurisdiction to hear the claim if it is in fact out of time. The Court of Appeal in ***Radakovits v Abbey National plc [2010] IRLR 307*** confirmed that time limits go to jurisdiction and that jurisdiction cannot be conferred on the Tribunal by agreement or waiver, so that an employer’s decision not to raise a time point will not bind the Tribunal.
27. The principle that a Tribunal cannot hear a claim that is out of time applies even where the respondent admits that the claim has merit. In ***Bewick v SGA Forecourts Ltd ET Case No.2501693/2014*** the respondent admitted that it owed holiday pay to the claimant. The claimant presented her claim nine days’ late, however. The Tribunal concluded that it was reasonably practicable for her to have presented her claim in time, and that it therefore did not have jurisdiction to hear the claim.
28. In cases, such as this one, in which a question arises as to whether it was reasonably practicable for the claimant to present his claim on time, there are three general principles that fall to be considered –
1. The question of reasonable practicability should be interpreted liberally in favour of the claimant;
 2. It is a question of fact as to whether it was reasonably practicable for the claimant to present her claim on time; and
 3. It is for the claimant to prove that it was not reasonably practicable for her to present his claim on time.
29. In ***Software Box Ltd v Gannon [2016] ICR 148***, the EAT held that the fact that a claim was made in time and then rejected did not and should not prevent the Tribunal considering whether it had jurisdiction to hear a second claim about

similar issues. The EAT applied *Wall's Meat Co Ltd v Khan [1979] ICR 52* in which the Court of Appeal found that the question of whether it was reasonably practicable for a claim to be presented in time is essentially one of fact for the Tribunal. The focus should be on what was reasonably understood by the claimant and whether, on the basis of that understanding, it was not reasonably practicable for her to bring her second claim in time.

30. In *Adams v British Telecommunications plc [2017] ICR 382* the claimant presented her claim on time but it was rejected due to an incorrect early conciliation number. The EAT held that Tribunal should, when deciding whether it was reasonably practicable for the claimant to have presented the claim on time, taken account of the fact that the claimant made a genuine mistake which led her to believe that she had correctly presented her claim.
31. More recently, in *Alao v Oxleas NHS Foundation Trust [2022] EAT 135*, the EAT rejected the suggestion that there is some duty on the Tribunal to notify a potential claimant that their claim has not been properly presented and found that it is for a claimant to lodge her or his claim in the prescribed manner and in time. Where a potential claimant fails to do so, the claimant has not presented the claim, irrespective of whether the Tribunal has informed the claimant of this.
32. Rule 13(4) of the Employment Tribunal Rules of Procedure 2013 provides that where a claim is rejected, and the claimant applies for reconsideration of the rejection "*If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.*" This is to be contrasted with the provisions of Rule 13(1) whereby, if on an application for reconsideration, the Judge decides that the decision to reject the claim was wrong, the claim will be treated as accepted by the Tribunal on the date when it was originally presented (*Leicester City Council V Patel [2022] EAT 109*).

Conclusions

33. I find that in this case the claim form was presented on 17 April 2024, following a period of early conciliation that started on 14 December 2023 and ended on 19 January 2024. The date upon which the claimant's employment terminated was 16 October 2023. That is the date from which time to present a potential claim for breach of contract would run.
34. The date upon which the payment of holiday pay and wages should have been made to the claimant was 30 November 2023. Time therefore runs from that date in relation to claims for holiday pay under the Working Time Regulations 1996 and for unauthorised deduction from wages under the Employment Rights Act 1996.
35. The primary three month time limit for presenting claims for holiday pay and unauthorised deductions from wages expired on 29 February 2024. For breach of contract claims it expired even earlier, on 15 January 2024.

36. To those dates must be added the period of early conciliation, which ran from 14 December to 19 January. The period of time beginning on the day after early conciliation started (15 December in this case) through to the date of issue of the early conciliation certificate (19 January) is 'added on' because the clock was effectively stopped during this period. 15 December to 19 January is 36 days and that is the period that must be added on to the three months to identify the date upon which the claim should have been presented.
37. 36 days after 29 February is 5 April 2024. 36 days after 15 January is 20 February 2024. The time limit for presenting claims for holiday pay and unauthorised deduction from wages to the Tribunal therefore expired on 5 April 2024 (assuming the 30 November as the payment date) and the time limit for presenting the claim for notice pay expired on 20 February 2024.
38. The claimant first tried to file her claim on 25 February, which was in time for the holiday pay and wages claims but already out of time for any breach of contract claim. The claim was rejected because the claimant put the wrong respondent on the claim form. The claimant was notified of the rejection on 12 April, and the issue of the correct name of the respondent was resolved on 17 April 2024 when the claimant wrote to the Tribunal explaining the error and applying for reconsideration of the decision to reject the claim. The 'defect' in the claim form was remedied on 17 April and that is the date upon which the claim was presented.
39. The claim for notice pay / breach of contract was presented 55 days late and the claims for holiday pay and wages were presented 12 days late.
40. I have considered whether it was reasonably practicable for the claimant to present her claims in time. The claimant was aware of the facts giving rise to the claim from early December 2023 at the latest, as on 9 December she wrote to the respondent asking for payment.
41. The claimant was also aware of the identity of the correct respondent, and on 14 December she began early conciliation against the correct respondent. She was aware of her right to bring a Tribunal claim, and of the time limit by January at the latest. On 25 February 2024 she tried to present a claim but made a mistake in the claim form and named the wrong respondent, a respondent against whom she had not been through early conciliation.
42. It would, in my view, have been reasonably practicable for the claimant to name the correct respondent in the claim form. Whilst I accept that she made a genuine mistake with the name of the respondent, that mistake was about a fundamental part of her claim, the identity of her employer. Given the claimant's understanding of the situation, her knowledge of the identity of the employer and her knowledge of her legal rights and of time limits, I find that it would have been reasonably practicable for the claimant to present her claim on time.
43. I recognise that the claimant may have believed, between 25 February and 12 April,

that she had presented a valid claim, but the fact is that she had not done so and, as the EAT found in *Alao v Oxleas NHS Foundation Trust*, the claim was not validly presented, notwithstanding the fact that the Tribunal had not informed the claimant of the rejection of her claim during that period.

44. I also find that the claimant did not present her claim within a reasonable period following the expiry of the time limit. The claim for breach of contract was 55 days late, the other claims were 12 days later. This is not a case in which the claims were presented a few days later, the period of delay was not insignificant. Moreover, when the claimant was informed by the Tribunal that her claim had been rejected, she took 5 days to apply for a reconsideration of the decision.
45. For the above reasons I find that the claims were presented out of time and that the Tribunal does not have jurisdiction to hear them.

Employment Judge Ayre

Date: 23 October 2024

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