



EMPLOYMENT TRIBUNALS

Claimant: Mr T Brown

Respondent: Syft Online Limited

London Central: dealt with on the papers without a hearing

On: 9 January 2025

Before: Employment Judge Heath

JUDGMENT

Upon reconsideration of the judgment sent to the parties on 5 August 2022, the said judgment is confirmed. The claimant's case remains dismissed in its entirety.

REASONS

Introduction and procedure

1. There is a regrettably complex history to this matter, which has been delayed for a number of reasons. The fact that I no longer sit in the region has contributed to some administrative difficulties which has contributed to the delay, and for which I apologise.
2. This judgment is to be read in conjunction with the Record of a Reconsideration Hearing sent to the parties on 17 November 2023. I will not repeat myself needlessly. In brief, the claimant did not attend the reconsideration hearing on 17 November 2023 as he appeared to be in hospital, and I decided that he should be given an opportunity to set out his arguments in writing by 15 December 2023 as to whether he had the requisite two years' service to bring an unfair dismissal claim, and why he did not bring his claim within the time limit. I made orders for him to provide medical evidence, and for the respondent to respond in writing to any representations the claimant made by 5 January 2024.
3. The claimant did not meet the deadline to provide representations. However, on 1 February 2024 he emailed the tribunal as follows:

I write in respect to the email below and attached medical evidence to prove that I have been hospitalised since 25/11/2023 and I have only come out of hospital today.

I can confirm that I do not object to my unfair dismissal claim only be struck out. I can confirm that I had been unwell at the time of my claim to have been able to submit it earlier.

4. He attached a hospital discharge letter which appeared to show he had been an inpatient in hospital between 25 November 2023 and 1 February 2024. Unfortunately the claimant did not cc this email to the respondent. This email was referred to me on 5 March 2024 and on 8 March 2024 I instructed a letter to be sent to the parties.
5. For reasons not known to me, this letter was not sent to the parties until perhaps the end of October 2024. The letter varied the time for the claimant's compliance with the order to provide written representations to 1 February 2024 and gave the respondent 14 days thereafter in which to respond.
6. The respondent responded to this letter (and the claimant's representations of 1 February 2024) by email dated 30 October 2024. In short, the respondent submitted:
 - a. The claimant did not have two years' service to bring an unfair dismissal claim, he did not object to this claim being struck out and it was out of time and no medical evidence had been advanced to support his ill health being a reason for his not putting his claim in on time.
 - b. Breach of contract – the claimant was not an employee of the respondent, the claim was out of time.
 - c. Unlawful deduction from wages – the claim was out of time.
 - d. Modern slavery/human exploitation – these claim are not known or within the jurisdiction of the tribunal.

The law

7. I will not set out any law in respect of unfair dismissal, as the claimant takes no issue with this claim being struck out.
8. Section 23 Employment Rights Act 1996 ("ERA") provides:
 - (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, or*
 - (b) *in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*
 - (3) *Where a complaint is brought under this section in respect of—*
 - (a) *a series of deductions or payments, or*

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

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.

(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

(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.

9. The time limit and test for extension of time is the same for breach of contract claims under Art 7 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Time starts to run from the effective date of termination. Such claims are only available to employees.
10. The test of practicability means what could have been done not what would have been reasonable. Reasonably practicable does not mean “reasonable” or “physically possible” but is analagous to “reasonably feasible” (see *Palmer and Or v Southend-on-Sea BC* 1984 ICR 372, CA). The burden of proof is on the claimant to show that it was not reasonably practicable to present the claim in time *Consignia v Sealy* [2002] IRLR 624.
11. In *Walls Meat Co v Khan* [1978] IRLR 499 it was stated “The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant [...]”.
12. Where medical impediment is cited then medical evidence will usually be required to prove this. The tribunal will still look at what the claimant could do during the period.

Conclusions

Unfair dismissal

13. The claimant does not take issue with this claim being struck out. I therefore confirm my earlier judgment insofar as it relates to unfair dismissal.

Unlawful deduction from wages

14. The claim relates to alleged deductions up to 20 December 2021. The claim form was presented on 11 May 2022. The time limit (having regard to the ACAS early conciliation provisions) was 6 April 2022. The claim was presented over a month out of time. There is nothing beyond the briefest assertion by the claimant that his health was an impediment to him having presented his claim on time. It is for him to establish that it was not reasonably practicable for him to have presented his claim on time, and he has failed to do that.

15. This complaint remains dismissed.

Breach of contract

16. The time limit and extension provisions for breach of contract claims is the same as unlawful deduction from wages claims. The same considerations apply. The claimant asserted his "employment" ended on 20 December 2021 in his claim form and this is the date from which time runs. This complaint is out of time with insufficient evidence to grant an extension. I have not considered the claimant's employment status and have insufficient information on which to make a decision in that regard.

17. This complaint remains dismissed.

Modern slavery/human exploitation

18. The tribunal does not have jurisdiction to consider these claims.

19. These complaints remain dismissed.

Overall conclusion

20. For the reasons given above all claims remain dismissed. The judgment sent to the parties on 5 August 2022 dismissing the claimant's claims in their entirety is confirmed.

Employment Judge **Heath**

Date 9 January 2025 _____

JUDGMENT SENT TO THE PARTIES ON

16 January 2025

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FOR THE TRIBUNAL OFFICE