



EMPLOYMENT TRIBUNALS

Claimant: Mr S Harvey

Respondents: Ethica Care Services Limited (1)
Maxipay Limited (2)
Mr A Kleanthous (3)
Mr S Bailey (4)

Heard at: London Central (by video)

On: 26 March, 2-4 April, 8 May, 10 & 14-17 October 2024, 9 January 2025

In chambers: 7-8 January 2025

Before: Employment Judge Khan
Mr P Alleyne
Mr F Benson

Representation

For the claimant: Representing himself

For R1 and R3: Mr K Chaudhuri, employment consultant

For R2 and R4: Mr R Crabtree, employment consultant

JUDGMENT

The unanimous judgment of the tribunal is that:

- (1) The claimant was a worker of the first respondent at all material times (sections 43K and 230(3)(b) of the Employment Rights Act 1996 ("ERA")).
- (2) The claimant was not an employee of the first respondent (section 230(3)(a) ERA).
- (3) The claimant was neither a worker nor an employee of the second respondent.
- (4) The first and / or third respondents subjected the claimant to detriments on the ground that he made protected disclosures, contrary to section 47B ERA (issues 3.1.1, 3.1.2, 3.1.3).
- (5) The first respondent breached the claimant's rights to daily rest and weekly rest under regulations 10 and 11 of the Working Time Regulations 1998 (WTR) (issues 5.1.1, 5.1.2).
- (6) The complaint that the fourth respondent subjected the claimant to a detriment by telling the claimant that he was not entitled to bring a grievance is dismissed upon the claimant's withdrawal (issue 3.1.6).

- (7) The complaint that the claimant suffered a detriment for raising health and safety concerns, contrary to section 44(1)(c) ERA, is dismissed.
- (8) All other complaints against the first and third respondents are dismissed.
- (9) All the complaints against the second and fourth respondents are dismissed.

In respect of the complaints of whistleblowing detriment:

- (1) The claimant made protected disclosures to the first and third respondents (issues 2.1.1.1, 2.1.1.2, 2.1.1.5.1 and 2.1.1.5.2).
- (2) The first and / or third respondent subjected the claimant to the following detriments on the ground that he made protected disclosures:
 - a. The claimant was made to take leave from 3 February 2023 (issue 3.1.1). We find that this decision was made by the third respondent.
 - b. On 9 February 2023, the third respondent: asked the claimant whose side he was on and stated or clearly inferred that if the claimant was on the first respondent's side the third respondent would have his back. We find that this treatment contributed to the claimant feeling intimidated (issue 3.1.2).
 - c. The first respondent failed to provide the claimant with work between 3 and 23 February 2023 (issue 3.1.3).
- (3) The fourth respondent was not an agent of the first respondent for the purposes of section 47(1A)(b) ERA 1996 (issue 3.1.6).

In respect of the complaints brought under the WTR:

- (1) The first respondent breached the claimant's rights to daily rest of not less than 11 consecutive hours in each 24-hour period of work on the following dates: 7-10, 13, 16, 21-31 October, 1-12, 17, 26-30 November, 1-10, 19-25 December 2022.
- (2) The first respondent breached the claimant's right to weekly rest to one uninterrupted rest period of not less than 24 hours in each period of 7 days, or two uninterrupted rest periods of not less than 24 hours / one uninterrupted rest period of not less than 48 hours in each period of 14 days (Monday to Sunday) in respect of the following periods: 21 October – 13 November 2022 and 26 November – 11 December 2022.
- (3) We find that it was not reasonably practicable for the claimant to have brought these complaints within the primary limitation period and that the claimant brought these complaints within a reasonable period thereafter (regulation 30(2)(b), WTR). Accordingly, we deem these complaints to have been brought in time.

Employment Judge Khan

10.01.2025

JUDGMENT SENT TO THE PARTIES ON

31 January 2025

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