



Case Number 1301869/2017

EMPLOYMENT TRIBUNALS

Claimant: Muhammad Sajjad

Respondent: Prime Care Services UK Limited

Heard at: Birmingham On: 21 November 2017

Before: Employment Judge Self (Sitting Alone)

Representation

Claimant: Ms Z Aktar - Solicitor

Respondent: Mr. Shah – Accounts Assistant

JUDGMENT

Upon the Tribunal finding that the unlawful deduction of wages Claim had been lodged outside of the statutory time limit as detailed at section 23(2) of the Employment Rights Act 1996 and also finding that it would have been reasonably practicable for the Claim to be lodged in time, this Claim is dismissed.

REASONS

1. This matter is listed today to consider whether or not the Employment Tribunal has jurisdiction to determine this claim for unpaid wages.
2. The Claimant lodged a claim at the Tribunal on 7 August 2017. He stated that he had worked for the Respondent since 25 January 2016 as a Care Assistant and there was no indication on the form that his employment had come to an end. The Claim was lodged on his behalf by UNISON. His claim was simply stated as follows:

“Mr Sajjad is employed on a zero hours contract working on average 60 hours per week. For the period of December 2016 to February 2017 Mr Sajjad was paid for 80 hours per month despite working considerably more as evidenced by his time sheets. Mr Sajjad is owed pay for approximately 600 hours worked”

3. As the last deduction was said to be in February 2017 and the Claim was not brought until August 2017 the Tribunal of its own motion decided to list the matter for a preliminary hearing at which any issues of whether the claim had been brought in time could be dealt with.
4. The Claim is brought under section 13 of the Employment Rights Act 1996 (ERA) as an unlawful deduction of wages. Section 23 (2) ERA states that an Employment Tribunal shall not consider such a complaint unless it is presented within the end of the period of three months beginning with the date of payment of wages from which the deduction was made or, if a series of deductions, the last of that series. That time can be extended and the Claim allowed to proceed if the Tribunal determines that it was not reasonably practicable for the Claim to be brought within that time limit and it was then brought within a reasonable period thereafter (s.23(4)). Time limits can be extended on account of ACAS Early Conciliation if it is entered into within the relevant three months.
5. The Notice of Preliminary Hearing was sent out on 14 August to both parties as detailed on the Claim Form.
6. No Response was lodged and the normal enquiries were made. Upon an enquiry to Companies House it was revealed that Prime Care Services (UK) Limited had changed its name to Careworld Services Limited as of 13 July 2017 following a written resolution of the sole director on 30 June 2017. Also from 21 June 2017 there was a new address for the Company and it appeared that some form of sale had taken place between March 2017 and June 2017.
7. On 17 October 2017 the Tribunal re-served the Claim Form on the new business at the new address and a Response was then due in on or before 14 November 2017.
8. On 25 October 2017 Sania Shah a director of Careworld Services Limited wrote to the Tribunal pointing out that previous documents had been sent to the wrong address and stating that ACAS had never been in touch with them during the EC period. They pointed out that the alleged liability had accrued prior to them purchasing the Company. They asked for a postponement of this hearing so that they would have time to prepare their defence.

- 9.** On 11 November 2017 the Tribunal wrote to the Respondent indicating that the primary need was for there to be a Response lodged. On 20 November at 1325 the Respondent asked for a further postponement. At that point in time no Response had been lodged and so pursuant to Rule 21 the Respondent was not entitled to take part in the proceedings save for receiving notice of hearings and decisions. That application was rejected.
- 10.** At 1634 yesterday a letter was sent in from Thompsons on behalf of the Claimant also requesting a postponement on the basis that they had only been instructed that day. I considered that application and rejected it pointing out that the hearing had been listed for over three months and there had been ample time to prepare.
- 11.** The parties attended this morning although Ms Shah of the Respondent did send a letter in to say she was ill and that she was sending Mr Shah in her stead.
- 12.** The Claimant was late attending and Ms Aktar asked for some time to take some instructions. Taking into account the circumstances I considered that to be reasonable and the hearing started at 1042. The Respondent had handed to the clerk a completed ET3. I asked the Respondent as to whether he was making an application for an extension of time to lodge the Response and he indicated that he was. The Respondent's participation at this hearing was nominal on the basis that it was clear from the Response filed that the Respondent could add nothing to the time limit issue and so I deferred consideration of whether or not the Response should be accepted late until after I had considered the time limit point. The Respondent did not object to that course when it was put to him.
- 13.** Ms Aktar initially asked for a postponement so she could take instructions from her Trade Union client. I indicated that I would provide her with more time to take instructions from her client about the relevant matters at issue on the preliminary hearing and additional time to contact those who had been involved in the matter at UNISON. I indicated that at the end of the day we would either have dealt with the preliminary hearing or would have directions setting the matter onto a proper course depending on the progress she made. I did indicate that in my view there had been ample time to prepare for the hearing and that the preference was very much to deal with the matter today and that every effort needed to be made to take the relevant instructions to allow that to hearing. I adjourned matters for a further 45 minutes to allow for instructions to be taken.

- 14.** When the parties returned there was no renewal of the application to postpone and it appeared that Ms Aktar had taken the instructions she needed. The Claimant had given instructions that in actual fact the last deduction was on 11 March 2017 and Ms Aktar applied to amend the proceedings so that was the last date of deduction. I acceded to that application as I was satisfied with the explanation given that the payment for that date was for monies earned in February which was consistent with the Claim Form.
- 15.** The Claim had still, however, not been lodged in time. The primary limitation date would have been 10 June. No ACAS EC was entered into within that period and the ACAS certificate runs from 15 June to 10 July. Accordingly when the Claim was lodged on 8 August the Claim was 59 days late.
- 16.** The Claimant told me that he had contacted his Trade Union in March and had originally contacted London and then had spoken to people in Birmingham and had a UNISON representative assigned. He told me that he sent in such documents as he had in May and then nobody contacted him. He told me that he had some difficulty in getting documents from his employer who he had left at the end of April.
- 17.** Ms Aktar told me that her information was that UNISON had struggled to get documentation from the Claimant and so there was a difference in view it seemed to me as to where the delays lay.
- 18.** In any event the Claimant was represented by his Trade Union from March. I am satisfied that they would have known that there were time limits to be adhered to and how to utilise the ACAS EC process. Whilst ideally they would have been able to put in a detailed claim which specified down to the last penny what the Claimant was owed in the real world that is not always possible and so the Claim needs to go in with the view that disclosure will take place in the proceedings. In order to initiate the Claim a broad brush allegation of under payment would have sufficed and indeed that was what was finally pleaded in any event.
- 19.** I have heard nothing that would suggest that it was not practicable to get this claim in time. Indeed everything indicates that there was no reason at all why a Claim could not have been lodged within the time period. It is not for me to ascribe blame but ultimately a Claimant who was represented by his Trade Union failed to get his claim in time and there has been no real reason proffered as to why there was that failure. The Tribunal does not have jurisdiction and this claim must be dismissed.

20. It should be said that no criticism should fall upon Ms Aktar who picked this matter up at the last minute and did all that could be done for the Claimant today.

Employment Judge **Self**

Date 22/11/2017

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....22/11/2017

FOR THE TRIBUNAL OFFICE