



EMPLOYMENT TRIBUNALS

Claimant: Mr I Hughes

Respondent: Mr J Mayhew & Mrs H Mayhew (trading as Jock's Taxis)

On: 26 June 2024

Before: Employment Judge S Jenkins

JUDGMENT

1. The Claimant's claims, for payment in respect of accrued but untaken holiday and of breach of contract relating to his notice period, were not brought within the period of three months beginning with the date of payment or the date of termination of his employment, and it had been reasonably practicable for the claims to have been brought within those periods. Those claims are therefore dismissed.
2. The Claimant's claim for a redundancy payment is unaffected and will continue.

REASONS

Background

1. At a preliminary hearing before Employment Judge Povey on 2 May 2024, it was identified that the Claimant's claims in respect of notice pay and holiday pay had been brought outside the stipulated three-month time limit. The Claimant's other claim, for a redundancy payment, where a longer, six-month time limit applies, had been brought in time.
2. Judge Povey directed the Claimant to make an application to extend time to pursue his notice pay and holiday pay claims, providing all relevant evidence. He also directed the Claimant to confirm if he wanted the application to be dealt with at a hearing or on the basis of what he sent in without a hearing. The Claimant submitted his application on 14 May 2024, and confirmed that he was happy for his application to be decided without a hearing. It therefore fell to be considered by me.

Law

3. The legislation in respect of the time limits for submitting claims in respect

of unpaid pay (under which the claim for holiday pay falls), section 23 of the Employment Rights Act 1996, provides that an Employment Tribunal should not consider a complaint unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which any deduction was made, or 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 have been presented before the end of that three month period.

4. The legislation relating to breach of contract claims, under which the Claimant's claim for notice pay falls, the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, provides for a very similar time limit of three months, but calculated by reference to the effective date of termination of employment, and not by reference to the date on which the final wages would have been paid.
5. The three month period is to be extended by virtue of any time spent pursuing early conciliation with ACAS, which essentially means that a claimant must make contact with ACAS for the purposes of early conciliation during that three months.
6. There has been a considerable amount of case law on this point over the years, and one point that has been made clear is that it is a strict test. It is for a claimant to justify the conclusion that the claim was not able to be reasonably practicably brought within time, and that then it was brought within a reasonable time thereafter.
7. The appellate courts have made clear that a number of reasons for delay can arise in assessing the reasonable practicability question, including whether the claimant was aware of the right to pursue matters before the Tribunal, and the fact that a claimant may have been unaware of factual matters which might justify a claim.
8. The issue of reasonable practicability includes an assessment of the Claimant's ignorance of rights, but any ignorance must be reasonable. Scarman LJ (as he then was), in ***Dedman -v- British Building Engineering Appliances Limited* [1974] 1 WLR 171**, noted that a Tribunal must ask the questions of, "*What were [the claimant's] opportunities for finding out that [they] had rights? Did [they] take them? If not, why not?*"
9. I also noted that the Court of Appeal, in ***Porter -v- Bandridge Limited* [1978] ICR 943**, noted that the test was not whether the Claimant knew of his or her rights, but whether he or she ought to have known of them.
10. The appellate courts have also made clear that where a claimant is generally aware of their rights, ignorance of a time limit will rarely be acceptable as a reason for delay.

Background Circumstances

11. No evidence was produced to me, so no formal findings of fact could be made. However, the background to the case appears to be a notification given to the Claimant on 23 July 2023 by Mrs Mayhew, one of the partners

in the Respondent partnership, that his role as a taxi driver for the Respondent was coming to an end, as the business was closing.

12. I proceeded on the basis that 23 July 2023 was the effective date of termination of the Claimant's employment. I further proceeded on the basis that the Claimant's final wages, which would have included payment in respect of accrued but untaken holiday, would have fallen due by, at the latest, 31 July 2023.
13. That would have meant that contact should have been made with ACAS for the purposes of early conciliation by 22 October 2023 in relation to the notice claim, and by 30 October 2023 in relation to the holiday pay claim. However, the Claimant only made contact with ACAS on 18 December 2023, with the early conciliation certificate being issued on 22 December 2023. He then submitted his claim form on 6 January 2024.
14. In his application to extend time, the Claimant noted that the reason his application was late was "*due to the fact that I didn't think I needed to apply to the Tribunal as I had been promised a redundancy payment. As soon as I realised that this was not going to happen, I contacted ACAS for their advice.*" He also referred to uncertainty over the Respondent's status, it seemingly being the case that Mr and Mrs Mayhew have separated, both as husband and wife and as business partners. He concluded by saying, "*What has prevented me from meeting deadlines, however, has been the belief that I would be paid what I was due, and that everything was in hand.*"
15. The Claimant made no reference to his knowledge, or lack of knowledge, of Tribunal time limits or procedure, or to any other matter that might have had a bearing on his failure to submit his claim in time.

Conclusions

16. As noted by the Court of Appeal in ***Dedman***, ignorance of the right to bring a claim to an Employment Tribunal, and, by extension, of the time limits for doing so, must be reasonable. The Claimant did not make any contention that he was, in any way, unclear or uncertain of his rights and of how to enforce them. Indeed, he certainly had knowledge of what to do by December 2023, as he contacted ACAS and then submitted his claim form in early January 2024.
17. In my view, the fact that the Claimant was waiting for the Respondent to make the anticipated payments to him, does not act as a compelling excuse for his delay in enforcing those rights.
18. To the extent that the Claimant may have been unaware of the particular time limit, as he appears to have been focused on the redundancy payment where the time limit is longer, I did not consider that any lack of awareness was reasonable. Information about Employment Tribunal claims, and the time limits within which they must be brought, is now extremely broadly available from a range of sources, and the Claimant did not put forward any contention that he would have had any difficulty in searching for that information.

19. Overall, I concluded that it had been reasonably practicable for the Claimant to have brought his holiday pay and notice pay claims in time. As they had not been brought in time, they therefore fell to be dismissed. His other claim, for a redundancy payment, can continue.

Employment Judge S Jenkins

Date: 26 June 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON 27 June 2024

FOR THE TRIBUNAL OFFICE Mr N Roche