



EMPLOYMENT TRIBUNALS

Claimant: Dr I Zakria

Respondent: Tameside and Glossop Integrated Care NHS Foundation Trust

Heard at: Manchester

On: 30 July 2019

Before: Employment Judge Sherratt

REPRESENTATION:

Claimant: Written representations

Respondent: Mr C Baker, Solicitor

JUDGMENT AT PRELIMINARY HEARING

The judgment of the Tribunal is that the claimant's claim was presented out of time and is dismissed.

REASONS

1. The claimant was employed by the respondent as a Consultant in Emergency Medicine from 7 January 2013 until his employment ended by resignation with notice on 31 October 2017.
2. The claimant was in dispute with the respondent in connection with the payment of a particular allowance. Grievance proceedings were ongoing at the time his employment ended.
3. The claimant gave early conciliation notice to ACAS on 19 October 2017 and the ACAS Early Conciliation Certificate was issued to him by email on 25 October 2017.
4. The claimant's last payslip for the period ended 31 October 2017 showed a payment date of 27 October 2017.
5. The claimant commenced proceedings in the Employment Tribunal and his claim form was received on 30 January 2018.

6. The claimant at section 8 of the claim form has ticked boxes to state that he is owed arrears of pay and other payments.

7. The claim is therefore brought under Part II of the Employment Rights Act 1996 dealing with the protection of wages. Section 23 provides that:

- “(1) A worker may present a complaint to an Employment Tribunal –
 - (a) that his employer has made a deduction from his wages in contravention of section 13 ...
- (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 made 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 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...”

8. The claimant was working abroad and unable to take time off to attend today's preliminary hearing. He has submitted written representations in the form of a witness statement.

9. The respondent attended through a solicitor who had prepared written submissions and produced a bundle of documents.

10. In its response on form ET3 the respondent contends that the Employment Tribunal may not have jurisdiction to hear any claims referred to in the claim form because the matters referred to occurred more than three months (less one day) from the date the claimant presented his claim to the Employment Tribunal. The last payment which might have included the disputed payment was made by the respondent on 27 October 2017 for the period from 1-31 October 2017. The respondent submits that the final date of any alleged deduction (which is denied) would have occurred on 27 October 2017. Applying the above three months (less one day) time limit to the alleged deduction on 27 October 2017, the claimant should have presented his claim to the Employment Tribunal on or before 26 January 2018.

11. At the hearing today, the respondent confirms this primary submission and also makes reference to the ACAS early conciliation period, submitting that the

conciliation period has no impact to extend the limitation date which remained 26 January 2018, thus confirming the claim form was submitted four days late.

12. In the alternative the respondent submits that if the last deduction relied upon by the claimant was 27 December 2017 the primary limitation date was 26 December 2017 and the ACAS certificate would extend the limitation period by six days to 1 January 2018. In respect of the September payment the claimant's claim was therefore submitted some 29 days after the limitation date.

13. They refer to various cases including **Poulter v Bandrige Ltd [1978] IRLR 271**, a decision of the Court of Appeal holding the onus of proving that it was not reasonably practicable to present the complaint within a period of three months is upon the claimant. This imposes a duty on the claimant to show precisely why he did not present his complaint. He has to satisfy the Tribunal that he did not know of his rights during the whole of the period in question and that there was no reason why he should have made enquiries or should have known of his rights during that period.

14. The respondent submits that the fact that the claimant approached ACAS in relation to early conciliation meant that he had knowledge of the Employment Tribunal process, including the right to enter into early conciliation before bringing a claim. They submit that it was reasonably practicable for the claimant to have presented his claim within the correct time limit and that the claimant has not indicated that there was any incapacity or illness which prevented him from so doing.

15. In his written submission the claimant explains that he had been raising the dispute which is the subject of his Employment Tribunal claim repeatedly to his employer during the course of his employment, and a formal grievance process was initiated whilst he was in employment but only completed well after his departure. He filed for ACAS mediation and after receiving the certificate applied to the Employment Tribunal within the limit of three months from his last paid day of employment to secure his right for this hearing while pending the outcome of the grievance process.

16. The claimant's last paid day of employment was 31 October 2017 which is confirmed by the payslip in the bundle of documents. Whilst pay days can vary during the year the duration for which payment has been made-the month- remains unaltered thus being the more consistent entity the claimant submits that this should be used as a reference point rather than the date of payment.

17. In the submission of the claimant there was considerable time lapse (two years approximately) before the formal negotiations, grievance and appeal outcome beyond claimant's control, but it should not affect the eligibility and hearing of the case to award the dues to him for the relevant duration:

“Even if there was to be any doubt about the timeframe of case’s timeline, I plead to the Tribunal to process the case as per its privileges to relax any such time limit, in the general interest of all employees in England as a unique case, to deter any future malpractice of any employer to retrospectively change unilaterally any working terms and conditions including earnings, thus disadvantaging employees, unfairly depriving from their rights including due monies.”

Conclusion

18. Had this been a claim a claim of unfair dismissal where the end date of the employment is the relevant date for calculating the time limit for bringing the proceedings, the claimant's claim would have been in time.

19. Under Part II of the Employment Rights Act 1996 the time limit in an unlawful deductions claim runs from “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”, which in this case was 27 October 2017, meaning that the limitation date for this claim was 26 January 2018. There is no extension as early conciliation was concluded before the date of payment.

20. In his written submissions the claimant has not provided any information that would enable me to be satisfied that it was not reasonably practicable for the complaint to have been presented within time, and so I conclude that this claim is out of time and it is dismissed.

Employment Judge Sherratt

30 July 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

6 August 2019

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