EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Uzorka	**v**	(1) Mr A Ben-Haim
		(2) Cloudtag Inc

PRELIMINARY HEARING

Heard at: **London Central Employment Tribunal** **On: 22 January 2018**

Before: **Employment Judge Wade**

Appearances
For the Claimant: In person
For the Respondent: Ms K Mankau, Counsel

JUDGMENT

1. The Tribunal has jurisdiction to hear the claim under Employment Rights Act section 111.

2. CT Technology Services Ltd is joined as the third respondent.

REASONS

1. The claimant signed consultancy agreements with CT Technology Services Ltd on 24 October 2016 and 24 January 2017. There is a debate as to whether or not he was a worker or an employee, but that is for another day. It certainly very possible that he was a worker and thus protected by the wages provisions of the Employment Rights Act, but this is not a judgement to that effect.

2. There is also a question as to who is the correct respondent which is why CT Technology Services Ltd have been joined.

3. Whilst the consultancy agreement was with the third respondent, the claimant's place of work was to be at Cloudtag at their address in High Wycombe and all of the emails and the website show the claimant working as part of the Cloudtag

team under its the chief executive Mr Armit Bell-Haim. Cloudtag Inc is registered in the Cayman Islands and its corporate identity in England is not clear.

4. The claimant's invoices were paid each month although he says that the company rarely, if ever, honoured the contractual obligation to pay within 5 days. He was generally paid between a month and a month and a half after the invoice date. He was not paid for his last two invoices of 31st March for £5,175 and 28 April for £4,050, a total of £9,225. He stopped working for the company on 28 April 2017.

5. The claimant chased the payment and received reassurances from the company that they were doing their best to pay. When he emailed he copied in the citizens advice bureau and law centre but explains that he was mainly trying to frighten the respondents into paying and that he received very little, if any, detailed advice from. He was not told about the time limit.

6. On the face of it the primary time limit expired on 2 August 2017 but I appreciate that the exact date on which payment was due was very possibly not the date set out in the contract so it may be that the time limit expired a little bit later than that, the time limit running from the date the payment was due.

7. As a result of his chasing the respondent the claimant received email from the Mr Ben-Haim on 1 August and saying "your payment has been processed and will be with you shortly". This turned out not to be true

8. The claimant was encouraged by this email. He emphasised to the Tribunal that he is a trusting person and as he was always been paid by this company in the past he had every expectation that he would be paid for the work that he had done. He is also wisely one who does not want to take legal action if he can possibly avoid it. This characteristic explains why he felt hopeful that he would get paid for most of August only to realise in early September that he would not. He realised at this point that he was definitely not going to get paid because his colleagues had been paid for March and April and he realised that now he was no longer working for the company they were not going to prioritise him.

9. At this point the claimant spoke to ACAS and found out from them that there was at a time limit. Perhaps surprisingly, but I have no reason to doubt him, they told him that he should write a registered post a letter before action to the company. They did not advise him that he should start a tribunal claim as soon as possible. He followed their advice and wrote a letter before action giving the company 21 days. This was sent out on 12 September (although an email being sent out earlier on 4 September).

10. A chasing email elicited a response from the respondent on 18 September saying "we will try and do our best". Again, this came to nothing.

11. So after waiting the 21 days the claimant started early conciliation on 4 October. This ran until 24 October and the respondent declined to engage. Once early conciliation was finished the claimant immediately started his tribunal claim on 24 October.

12. The test for whether a claim under the employment rights act is out of time is a strict one; the question is whether or not it was reasonably practicable to bring the claim within time. If is was not reasonably practicable, the question is then whether it was brought within a further reasonable period. It is not for me to decide what is just and fair but whether it was reasonably practicable to bring the claim in time.

13. From the information provided by the claimant, who is a litigant in person with very little experience of the world of law, I accept that he did not know that he could bring a claim until early September. Therefore, it was not reasonably practicable for him to bring a claim until then. It is not a question of being misadvised because he had not until then acquired that level of advice. He was focused on getting paid and he expected that he would be paid right up until September, indeed he was assured at the beginning of August that the payment was on its way and so he was simply not in a mindset to start looking at litigation.

14. Once the claimant found out about the time limit he moved to issue the claim within such further period as was reasonable. He had received advice from ACAS to try a letter before action with a 21-day reply period before starting the claim. Therefore, he moved within with reasonable speed, first allowing that 21 day period to expire, to start the early conciliation period and then immediately after that to launch his claim.

15. It may be that, as the claimant said to me, ACAS realised that there was a time limit issue and thought that the best thing was to try to get the money from the employer by persuasion before waiting to see whether the tribunal considered that the claim was outwith section 111. Ultimately is not my role to speculate of course.

16. My alternative view is that the claimant am actually filed his claim in time in that the assurance that "the cheque was in the post" of 1 August reactivated the time limit and that when the claimant filed his ET1 on 24 October this was a in time.

ORDERS

1. All three respondents are to file substantive defences to the claim by **23 February.** This should include:
   a. Who is the correct respondent and why.
   b. Any arguments as to why there is no jurisdiction under Part II of the Employment Rights Act 1996 on the basis of the claimant's employee/ workers status.
   c. Whether the £9,225 is payable, and if not why not.

2. Disclosure of any more relevant documents is to take place **by 2 March.**

3. The parties are to exchange witness statements **by 12 March.** They are to bring two copies of their statements to the hearing. The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

4. The respondent is to provide a copy of a paginated trial bundle to the claimant **by 12 March.** It is to bring two copies to the hearing.

5. **The final hearing is listed for one day on 22 March 2018.** The respondent may apply within seven days if this date is not possible.

Employment Judge Wade on 22 January 2018