



EMPLOYMENT TRIBUNALS

Claimant: Mr A Atkinson

Respondent: Castle Environmental Services Ltd

HELD at Leeds by CVP

ON: 15 May 2024

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Did not put in a response, did not appear and was not represented.

JUDGMENT

1. The claimant did not, before the end of the period of three months, taking into account early conciliation, make his complaint to the Tribunal in time, the three month period running from the date the payment he alleges was due to him having been made, the Tribunal having considered whether it was reasonably practicable for the complaint to be presented before the end of the three month period, as it was, and the claimant's claim is, therefore, dismissed.

REASONS

1. Claim

The claimant claimed holiday pay.

2. Issues

The issue in this case was, firstly, whether the claimant lodged his claim in time and, secondly, whether time ought to be extended because it was not reasonably practicable for him to present his claim in time.

3. The Law

The provisions relevant to time limits relating to claims for annual leave (or holiday) are contained in Regulation 30(2) of the Working Time Regulations 1998. They provide that, taking into account early conciliation, an Employment Tribunal shall not consider a complaint unless it is presented before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted or as the case may be the payment should have been made. That three month period may be extended by 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 be presented before the end of the period of three months.

4. Facts

The Tribunal having carefully reviewed all the evidence (which was all oral from the claimant) before it finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed as a contracts manager from 3 January 2021 until the effective date of termination, which was 16 June 2023.
- 4.2. The claimant alleges that he did not receive some holiday pay accrued due and presented a claim to the Employment Tribunal on 20 December 2023.
- 4.3. The claimant did not enter early conciliation until after the three month time limit expired, on 18 October 2023 and the certificate was issued on 22 November 2023.
- 4.4. The period of early conciliation was five weeks and one day and the period from the effective date of termination was six months and 19 days, so the time that the claimant took to make his claim, excluding early conciliation, was well in excess of three months.
- 4.5. The claimant informed the Tribunal that he dealt with his claim under the guidance of a Mr Colin Todd of the GMB Union. The claimant was a member of the union in a personal capacity. The respondent itself did not recognise the GMB Union.
- 4.6. The claimant did not contact Mr Todd until eight weeks after he left the employment of the respondent, informing him that he had waited six to seven weeks for his holiday pay.
- 4.7. Mr Todd told the claimant that he the claimant had three months to put in his claim. If the claimant had put in his claim then he would still have been in time but the claimant did not.
- 4.8. As we have said in fact the claimant did not enter early conciliation until 18 October 2023 which was already outside the three month period and received his certificate on 22 November 2023.

4.9. Even then the claimant did not present his claim until 20 December 2023 and his explanation for that was that he had got a new job on 30 November 2023, eight days after the certificate was granted, and this apparently distracted him from issuing his claim earlier.

5. **Termination of the Issues (after listening to the factual submissions made on behalf of the claimant):**

- 5.1. The claimant presented his claim to the Tribunal clearly more than three months after the date that holiday pay should allegedly have been paid and that is when the employment of the claimant ceased.
- 5.2. The Tribunal has to consider whether it is reasonable in a case where it was satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.
- 5.3. The claimant was left in no doubt by his union representative, Mr Todd, that he was subject to a three month period to present his claim.
- 5.4. He was told that by Mr Todd when he still had time to present his claim.
- 5.5. However there was no reasonable explanation as to why the claimant delayed thereafter, before entering early conciliation, and indeed there was no explanation at all for the eight week delay when advice was given to the claimant and the entering of early conciliation.
- 5.6. The explanation which the claimant gave for not presenting his claim between 22 November 2023 and the date when he did present it, namely, that he had a new job is not a reasonable one. He knew then about the three month time limit and had done nothing before entering early conciliation and he could immediately have presented his claim on coming out of early conciliation.
- 5.7. In all the circumstances not only was the claimant out of time but it would have been reasonably practicable for him to have presented his claim in time and in all the circumstances his claim is dismissed.

Employment Judge Shulman

Date: 20 May 2024

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Sent to the parties on:

...22 May 2024.....

For the Tribunal:

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