

EMPLOYMENT TRIBUNALS

Claimant: Mr G Toward

Respondent: Eco HVAC

Heard at: Newcastle **On:** Monday 18th November 2024

Before: Employment Judge Legard (Sitting Alone)

Representation:

Claimant: Mr G Toward - In Person

Respondent: Did not attend

JUDGMENT

1. The claim is struck out on the basis that it is out of time and the Tribunal has no jurisdiction to hear it.

REASONS

1. Background

- 1.1 This matter was set down for a Preliminary Hearing in order to determine whether the claim should be dismissed under Rule 37(1)(a) on the grounds that the Claimant is not entitled to bring the claim because the same appears to be out of time.
- 1.2 By a claim form received by the Tribunal 16th July 2024 the Claimant brings a complaint for unlawful deductions under s.13 ERA. The claim is for approximately £4,500 representing unpaid wages owed by his former employer.

- 1.3 The Claimant was employed as an air conditioning engineer 6th March 2023 until his resignation which took effect on 20th October 2023. He was last paid on or about mid September 2023.
- 1.4 The single issue before me today therefore is whether the Tribunal lacks jurisdiction to hear this claim on the grounds that it was presented outside the statutory 3 month time limit and it is to that issue that I turn my mind.
- 1.5 The Claimant contacted ACAS on 24th October 2023 and an early conciliation certificate issued on 26th October 2023. The claim to this Tribunal was therefore presented approximately 6 months outside the primary time limit of three months.

2. Evidence

- 2.1 I have heard oral evidence from the Claimant. The Respondent did not attend and was not represented. It appears that the respondent company is presently in voluntary liquidation.
- 2.2 The Claimant did not bring with him any evidence in documentary form. At the outset of the hearing I explained to him that the Tribunal could only hear and therefore adjudicate upon a claim provided it had been presented within the relevant time limits laid down by Parliament and I further explained to him what the relevant time limit was in his case and that it was for him to persuade me that it was not reasonably practicable for him to have brought the claim within that time period. I gave him the opportunity to explain to me the circumstances whereby he came to present his claim form some 6 months or so after the primary time limit had expired.
- 2.3 The Claimant presented his case with dignity and clarity and I found him to be a truthful witness. Quite candidly he told me that the reason why he had not presented his claim earlier was because he wanted to give his former employer (Tony Madden) every chance to make good on his earlier promise that he would pay the claimant the outstanding wages that he was due. There had been some form of text communication between himself and Mr

Madden in the weeks following his resignation in which Mr Madden had said that he would pay the Claimant what we was owed. However, in or about November 2023, Mr Madden ceased all forms of communication and nothing was heard of him since.

- 2.4 The Claimant was and remains a member of the GMB but did not think of contacting them for support or advice in respect of this matter. He was unaware of the Tribunal time limits but did not look online for information or seek advice from, for example, a citizen's advice bureau. His focus was on his new job which takes him away from home and it follows that this claim was something of an afterthought. He does not suffer from any disability and was unable to provide any other explanation for the delay in presenting his claim.

3. Law

Unfair dismissal

- 3.1 By Section 23(2) of the 1996 Act, an Employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal:
- (a) before the end of the period of 3 months beginning with the date that the deduction was made; or
 - (b) within such 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 that period of 3 months.
- 3.2 There are essentially two limbs to this 'escape' clause. First the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this test rests firmly on the Claimant - see Porter -v- Bainbridge [1978] IRLR 271. Second if he succeeds in doing so the Tribunal must be further satisfied that the time within which the claim was in fact presented was reasonable. 'Reasonably practicable' can be equated to 'reasonably feasible' - see May LJ in the case of Palmer & Saunders -v-

Southend on Sea Borough Council [1984] IRLR 119. The question of reasonable practicability must be addressed by reference to all the surrounding circumstances, see Schultz -v- Esso Petroleum and ignorance as to either the right to claim or the time limit is not to be treated as conclusive - see Avon County Council -v- Haywood-Hicks.

- 3.3 Essentially it is for the Tribunal to concentrate on the effective cause for the failure to present the claim form within the specified time limit. For example, a physical impediment or medical condition might suffice (as would deliberate misrepresentation on the part of the Respondent). Knowledge of rights can, in certain circumstances, also be relevant. The mere ignorance of the time limit will not of itself amount to 'reasonable impracticability' save perhaps when the employee does not discover the existence of his right until a short time of his expiry of the time limit (see Walls Meat and also Riley v Tesco Stores.)

4. Conclusions

- 4.1 Despite sympathy for the Claimant's predicament, I nevertheless find that it was reasonably practicable for him to have presented a claim form prior to the expiry of the primary time limit.
- 5.2 The Claimant was aware of his rights and he had all the necessary information necessary for bringing a claim. Notwithstanding his ignorance of time limits, he could and should have sought advice from his Union which would have immediately made him appreciate that time limits were "in play." Alternatively he could have looked for information online or sought advice from a local CAB. He was not incapacitated to the extent of it not being 'reasonably feasible' to present a claim. The only reason for not bringing his claim any sooner was in order to give his employer a chance to make good on an earlier promise. The Claimant would have been well aware that, once communication ceased in November 2023, that his employer had no intention of paying him what he was owed and it was therefore incumbent upon the Claimant to act. There was no

deliberate misrepresentation on the part of the Respondent. Accordingly I find, on balance, that this complaint was presented out of time and the Tribunal lacks the jurisdiction to hear it. For those reasons I order that the claim be struck out.

Employment Judge Legard

Date : 18th November 2024