

THE INDUSTRIAL TRIBUNALS

CASE REF: 1887/19

CLAIMANT: Tony Mooney

RESPONDENT: Home and Retail Deliveries Ireland Ltd

DECISION

The decision of the tribunal is as follows: -

The claimant is entitled to the sum of £3,710.00 in respect of redundancy pay;

The claim in so far as it relates to notice pay is dismissed.

Constitution of Tribunal:

Employment Judge (sitting alone): Employment Judge Wilson

Appearances:

The claimant appeared in person.

There was no appearance by or on behalf of the respondent.

ISSUES

1. The issues to be determined are:-

- (i) Is the claimant's claim to an Industrial Tribunal in so far as it relates to redundancy pay, in time or if not, is it just and equitable to extend time?
- (ii) If the claimant's claim is accepted as being in time is he entitled to a redundancy payment?
- (iii) If he is entitled to a redundancy payment, the amount of that payment;
- (iv) Is the claimant's claim for notice pay in time?
- (v) If the claim for notice pay is in time what notice pay (if any) is the claimant entitled to?

2. The claimant lodged a claim to an Industrial Tribunal on 6 January 2019 claiming redundancy payment and notice pay.
3. No response was received to the proceedings and in accordance with Rule 9 of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 the respondent is not entitled to take part in the proceedings coming before me today.

Redundancy Entitlement

4. The claimant alleges that he was dismissed by the respondent on 1 May 2018 by reason of redundancy.
5. In circumstances where his claim is dated 6 January 2019, these proceedings are out of time by reason of Article 199 of the Employment Rights (Northern Ireland) Order 1996 (the Order). In accordance with Article 199(2) the claim may however be accepted if it appears to be just and equitable for the claimant to receive a redundancy payment.
6. In considering whether it would be just and equitable to consider this claim I have considered the claimant's evidence as to the reasons why the claim was not presented in time and evidence of all other relevant circumstances.
7. The claimant's evidence is that, following dismissal, he was "led astray" by Mr T Hobbs who was a Managing Director of the respondent company. Mr Hobbs made a series of promises to the claimant by text message, to the effect that his redundancy entitlement would be paid. When payment did not materialise, plausible excuses and assurances were given by Mr Hobbs. I am satisfied that Mr Hobbs, as Managing Director of the respondent company, was in a position of authority and was acting on behalf of the respondent. I am further satisfied that the claimant trusted Mr Hobbs implicitly.
8. I considered a series of text messages exchanged between the claimant and Mr Hobbs in the months following dismissal (copies of which were furnished to me) and I accept the claimant's evidence, that, by reason of these texts and his trust in Mr Hobbs, he did not lodge a claim to the tribunal in a timely manner. I accept his evidence that, based upon the assurances given by Mr Hobbs, he genuinely believed that he would receive his redundancy entitlement and for this reason did not believe that proceedings were necessary.
9. In August 2018, the claimant's wife suffered a broken back in a car accident and at that time the claimant's focus shifted to caring for his wife and being the main carer for his children. His evidence is that he was fully occupied with caring responsibilities and continued to rely on the assurances given by Mr Hobbs relative to redundancy pay.
10. I am satisfied that in these circumstances it is just and equitable to accept this claim in so far as it relates to redundancy. The claimant will be severely financially disadvantaged if his claim is not accepted. He had seven years continuous employment with the respondent and an expectation that redundancy entitlement would be paid. I am satisfied that his (the claimant's) interests in receiving his redundancy pay is outweighed by any detriment to the respondent and particularly

so in circumstances where the delay in lodging proceedings is attributable to the assurances given by Mr. Hobbs. I am satisfied that, were it not for those assurances this claim would, in all likelihood have been made on time. The claimant is robust in his evidence on this point.

11. I am satisfied that the claimant's dismissal was by reason of redundancy within the meaning of Article 174 of the Order. His evidence is that the Northern Ireland based part of the respondent's business closed following the loss of a series of contracts to include contracts with House of Fraser, British Home Stores and Debenhams. Although there has been no response by the respondent, I accept the claimant's evidence in this regard and his evidence relative to redundancy is corroborated by the text messages he produced.
12. The claimant was employed continuously by the respondent for a period of seven years notwithstanding the fact that the respondent's name changed from time to time. I accept the claimant's evidence that there was continuity of employment, no change to terms and conditions and apart from the name changes the status quo was maintained at all material times.
13. The claimant was aged 41 at the time of dismissal and was earning £2,500.00 gross monthly amounting to £576.92 gross pay weekly.
14. He is entitled to redundancy pay calculated as follows:

7 x £530.00

(the maximum weekly pay for calculation of redundancy entitlement is £530.00 in accordance with the Employment Rights (Increase of Limits) (No. 2) Order (Northern Ireland) 2018 which was the relevant Order at the date of dismissal.

TOTAL AWARD: 7 x 530 = £3,710.00

Notice Pay

15. The claimant was given three weeks' notice of the termination of his employment in circumstances where he was entitled to seven weeks' notice in accordance with Article 118 of the Employment Rights (Northern Ireland) Order 1996.
16. In accordance with the Industrial Tribunals (Extension of Jurisdiction) Order (Northern Ireland) 1994 ("the 1994 Order") a claim for notice pay arising out of the termination of the claimant's contract of employment must be taken within three months of the effective date of termination (the primary time limit). If it is not taken within that time period it may be considered by the tribunal if the tribunal is satisfied that it was not reasonably practicable to lodge the proceedings within that time limit, but it was lodged within such further period as the tribunal considers reasonable.
17. The claimant made his claim on 6 January 2019. He was dismissed from his employment on 1 May 2018. His claim should have been lodged by 1 August 2018 at the latest. It is accordingly eight months out of time.

18. The claimant advances two reasons for his failure to lodge proceedings in time. It is his case (which is accepted by the tribunal) that he relied upon assurances given by Mr Hobbs in relation to his redundancy entitlement. He had confidence in Mr Hobbs and so did not believe that it was necessary to lodge a claim. A secondary consideration was that from August 2018 onwards, he was occupied in caring for his wife and young family in the circumstances described at paragraph 9 above.
19. I have considered the text exchange between the claimant and Mr Hobbs and I am satisfied that the messages relate solely to redundancy entitlement. There is no mention whatsoever of notice pay. For that reason, I cannot be satisfied that on the balance of probabilities, the delay in lodging a claim for notice pay was due to the assurances given relative to redundancy pay. I am satisfied that had redundancy payment been made, the likelihood is that notice pay would not have been claimed. I base this finding on the claimant's oral testimony.
20. The claimant's wife suffered a back injury in August 2018. The claim in so far as it related to notice pay should have been lodged on or before 1 August 2018. Therefore, I cannot be satisfied that the delay in lodging proceedings for notice pay was due to the injury sustained by the claimant's wife.
21. I have no evidence of any other circumstances explaining the lateness of the claim insofar as it relates to notice pay.
22. I considered Article 3 of the 1994 Order. The "reasonably practicable" test must be distinguished from the "just and equitable test" which I have applied to the claim in so far as it relates to redundancy entitlement.
23. I considered the direction given by the Court of Appeal in **Palmer and Saunders (appellants) v Southend-on-Sea Borough Council (respondents)** in the following terms:-

"The meaning of the words "reasonably practicable" from a review of the relevant authorities, lies somewhere between reasonable on the one hand and reasonably capable physically of being done on the other. To construe the words as the equivalent of "reasonable" would be to take a view too favourable to the employee. But to limit the meaning of "reasonably practicable" to that which is reasonably capable physically of being done would be too restrictive a construction. The best approach is to read "practicable" as the equivalent of "feasible" and to ask, "was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months".
24. Having considered all the relevant evidence and applied the relevant case law, I cannot be satisfied that it was not reasonably practicable i.e. feasible for the claimant to present his claim for notice pay within the prescribed primary time limit. I therefore have not considered whether it was presented in a reasonable time thereafter.

25. I dismiss the claim in so far as it relates to notice pay.
26. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 28 April 2019, Belfast.

Date decision recorded in register and issued to parties: