



EMPLOYMENT TRIBUNALS

Claimant: Mr S Patel

Respondent: Manchester Airport PLC

Heard at: Manchester

On: 4 October 2018

Before: Employment Judge Ross

REPRESENTATION:

Claimant: In person

Respondent: Ms C Themistocleous, Solicitor

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unlawful deduction from wages for 110 unpaid hours was presented to the Tribunal out of time. The Tribunal finds it was not reasonably practicable for the claimant to present his claim until 23 March 2018, given the inaccurate advice he received from ACAS (in particular see email from ACAS dated 23 March 2018).

2. However, the claimant did not present his claim within such further time as was reasonable. The claim was not presented until 6 May 2018. In these circumstances the claim is out of time and the Tribunal does not have jurisdiction to hear it.

REASONS

1. The claimant was employed by Manchester Airport. He left on 1 October 2017. He agreed that he generally received his wages by Bank Transfer on the 15th

of each month. The payslip within the bundle records, and he agrees, that his final pay slip was issued on 15 October 2017. He agrees the wages were paid into his bank on the same day. The claimant believes that payment was approximately 100 hours short even allowing for the fact there was a deduction in relation to holiday pay.

2. Accordingly, the normal limitation for bringing a claim to the Employment Tribunal would expire on 14 January 2018. The claimant went to ACAS within the limitation period. He contacted ACAS on 19 December 2017 and a certificate was issued on 11 January 2018. Under the early conciliation time limit provisions found in S18A and S18B Employment Tribunals Act 1996 and s 207B(3) and (4) ERA 1996 and the Early Conciliation Rules of Procedure Regulations 2014, the claimant has the benefit of both the “stop the clock” provision and the provision granting the claimant an extra month from the date of the certificate because he went to ACAS within 1 month of the limitation period expiring.

3. Therefore the claimant had an additional month from the original limitation period to 14 February 2018 to present his claim,

4. However, the claimant continued to engage with ACAS and ACAS very surprisingly said it was continuing to deal with the matter. By email dated 29 January 2018, after the certificate had expired, ACAS said it was awaiting a response from the airport. When the claimant chased the matter again he received an email from ACAS on 23 March 2018 which only then said: “The certificate will now be issued on the above matter and the early conciliation notification has been closed”. The Tribunal finds this was a confusing email. The reference number R221014/17 was not a new early conciliation number, it was the same number as on the original certificate issued 11 Jan 2018. No second certificate was issued. Therefore the ACAS conciliator was inaccurate when she stated the certificate would “now be issued”.

5. The certificate had been issued on 11 January 2018 and sent to the claimant at that time. The email went on to advise the next automatic step is the Employment Tribunal and stated:

“Please note there is a limited time to lodge your claim once the certificate has been issued. This may be a minimum of one month but there may be additional time. You will need to obtain legal advice to ascertain the precise time remaining.”

6. The Tribunal has considerable sympathy with the claimant who was working as a driver at the time of his employment with the respondent and is now working as a bus driver. He understood that ACAS were experienced and understandably relied on the fact they were dealing with his case as the reason why he did not bring a claim in the Tribunal. It is for this reason I find it was not reasonably practicable for the claimant to present his claim until 23 March 2018, which is the date of the final email from ACAS. The fact that ACAS were continuing to deal with the matter on his behalf caused the claimant not to present his claim.

7. I must now turn to the second part of the test: did the claim present his claim to the Employment Tribunal within such further time as is reasonable? I find that he did not. The claimant did not present his claim until 6 May 2018. Although I entirely accept the claimant's evidence, as he was a clear and credible witness, that he is a busy man because he is a bus driver working shifts and has a young family (a baby daughter who has been ill for periods of time), I am not satisfied that that is sufficient to prevent the claimant presenting his claim. The claimant agreed in evidence it took him about 30 minutes to complete the relevant form. I find a delay of a further six weeks from 23 March to 6 May 2018 means the claimant did not present his claim within such further time as was reasonable.

8. The claimant said part of the reason for the further delay was that he had not checked his emails regularly and so was unsure when he actually saw the advice from ACAS. I am not satisfied that that is a reason upon which the claimant can fairly rely. In the modern age people communicate by email. The claimant has a smartphone. Even if he was busy it was reasonable to check his emails regularly.

9. For these reasons the claim has been presented out of time and the Tribunal does not have jurisdiction to hear it.

Employment Judge Ross

Date 16 October 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

29th October 2018

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