



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case No: 4101707/2019

Held at Dundee on 10 May 2019

Employment Judge: W A Meiklejohn

10

Mrs Marion Smith

**Claimant
In person**

15

20

Mr Amit Patni

**Respondent
No appearance and
no representation**

25

30

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35

The Judgment of the Employment Tribunal is that the Claimant's claims are not time-barred and the Respondent is ordered to pay to the Claimant the following sums –

- (i) FIVE HUNDRED AND SEVENTY POUNDS AND SIX PENCE (£570.06) in respect of unlawful deduction of wages, and
- (ii) TWO HUNDRED AND EIGHTY FIVE POUNDS AND THREE PENCE (£285.03) in respect of holiday pay.

40

REASONS

Introduction

- 5 1. This case came before me for a Final Hearing in Dundee on 10 May 2019. The Claimant appeared in person. The Respondent had not submitted an ET3 response form and was not present or represented at the Hearing.
- 10 2. The Claimant was pursuing claims of unlawful deduction of wages and entitlement to holiday pay.

Preliminary issue – time bar

- 15 3. When the Claimant's ET1 claim form was submitted to the Employment Tribunal, it was noted that it appeared to have been presented outwith the period within which claims of this type should normally be brought. The Claimant was advised of this in the Tribunal's letter of 8 February 2019.
- 20 4. The relevant dates were as follows –
- (a) 18 August 2018 – date of termination of employment.
 - (b) 10 November 2018 – date of receipt by ACAS of the Claimant's Early Conciliation ("EC") notification.
 - (c) 10 December 2018 – date of issue by ACAS of the Claimant's EC certificate.
 - (d) 9 January 2019 – statutory time limit for submission of Claimant's claims to Employment Tribunal.
 - (e) 5 February 2019 – date of submission of Claimant's claims to Employment Tribunal.
- 30 5. The statutory time limits are provided for in the applicable legislation as follows –
- (a) Unlawful deduction of wages – sections 23(2) and (4) of the
- 35 Employment Rights Act 1996 ("ERA")

“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

5 (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made ...

10 (4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”

(b) Holiday pay – paragraph 30(2) of the Working Time Regulations 1998 (“WTR”):

15 “(2) an employment tribunal shall not consider a complaint under this regulation unless it is presented –

20 (a) 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 permittedor, as the case may be, the payment should have been made;

(b) within 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 that period”

25

6. The Claimant had resigned from the Respondent’s employment on Saturday 18 August 2018. She was normally paid on a Sunday but when she spoke to the Respondent on Sunday 19 August 2018 he said that he did not have to pay her. The Claimant made efforts to secure payment –
30 she sent a recorded delivery letter to the Respondent on 14 September 2018 but the Respondent refused to accept this. She emailed the Respondent on 26 September 2018 but received no reply.

7. The Claimant had retained keys and tablecloths belonging to the Respondent when she resigned and the Respondent had told her that he would not pay her until she returned these. The Claimant, having taken advice from the Citizens Advice Bureau in Leven ("CAB"), returned these items but the Respondent still did not pay her.
8. There was a dialogue between the Claimant and the Respondent following her resignation in the course of which the Claimant provided the Respondent with her bank account details. In the course of this, the Respondent asked the Claimant to return to work and the Claimant said she was not willing to consider this unless the sums due to her were paid.
9. The Claimant consulted the CAB and was advised to contact ACAS. She did so on 10 November 2018. The Claimant understands that the Respondent did not engage with ACAS and the EC certificate was sent to the Claimant by email on 10 December 2018. During the Claimant's interaction with ACAS there had been no reference to time limits.
10. At this point the Claimant was aware in general terms of the existence of Employment Tribunals and that their function was to resolve disputes between employees and employers. However, she had no knowledge about time limits.
11. The Claimant continued to exchange text messages with the Respondent. On 5 December 2018 the Respondent sent a text to the Claimant indicating that he wanted to see her and that he wanted her to go back to work, but was not willing to give her the wages due to her "up front".
12. On 2 January 2019 the Respondent sent a text message to the Claimant wishing her a happy new year and again asked if she was willing to come back. The Claimant replied saying they could talk about that after the Respondent paid what he owed her. The Respondent then sent a message back saying that he would sort the money for her over the next couple of weeks.

13. The Claimant then waited for this to happen, but heard nothing further from the Respondent. She did not seek further advice from the CAB or elsewhere and so remained in ignorance of the existence of any time limit to pursue a claim before the tribunal in respect of the monies owed to her.

5

14. Eventually the Claimant came to the view that the Respondent was not going to pay her and decided to submit a claim form to the Tribunal. She did this on 5 February 2019 which was 25 days after the expiry of the time limit to do so.

10

15. I was satisfied that the Claimant's evidence about this course of events was entirely credible. She had not been aware of the existence of the time limits until she was alerted to these by the Tribunal's letter of 8 February 2019.

15

16. Given her ignorance of the existence of the time limits and the absence of any reference to these in her exchanges with the CAB and ACAS, I came to the view that (a) it had not been reasonably practicable for the Claimant to present her complaints within the applicable time limits and (b) she had done so within a reasonable time after their expiry.

20

17. Accordingly, the Claimant's claims of unlawful deduction of wages and in respect of holiday pay were not time-barred and could proceed.

Facts

25

18. The Claimant was paid by the Respondent two weeks in arrears. Accordingly, when the Claimant left her employment with the Respondent on 18 August 2018 she was entitled to two weeks' pay.

30

19. According to the Claimant, the holiday year which was used within the Respondent's business ran from 1 April to 31 March. The Claimant had received a contract of employment but did not have this available. While this meant that the position could not be verified, it appeared more likely than not that the Claimant's understanding of the holiday year was correct.

35

20. The Respondent had acknowledged to the Claimant that her entitlement was to two weeks' holiday pay, but this was incorrect. The relevant holiday year began on 1 April 2018 and the Claimant had accrued a *pro rata* entitlement to holidays (the contractual position being that the statutory minimum entitlement of 5.6 weeks, or 28 days in the case of an employee such as the Claimant who worked 5 days per week) of 11 days as at 18 August 2018. She had actually taken 6 days' holiday by that date so her remaining entitlement was 5 days.
21. The Claimant's weekly rate of pay as at 18 August 2018 was £330.00 gross and £285.03 net.

Disposal

22. The Claimant was entitled to be paid two weeks' wages when she left the Respondent's employment on 18 August 2018. The Respondent had failed to make payment.
23. The Claimant was therefore entitled to be paid the sum of £660.00 gross under the usual deductions of income tax and National Insurance contributions leaving a net figure of £570.06.
24. The Claimant was also entitled to be paid in respect of accrued but untaken holidays as at 18 August 2018. She had been employed for some 20 weeks in the holiday year running from 1 April 2018. Taken as a proportion of 52 weeks, this equated to holiday entitlement of 11 days (rounded up from 10.77 days in terms of regulations 14(3)(b) and 15A(3) WTR).
25. The Claimant was therefore entitled to be paid the sum of £330.00 gross (being 5 days' pay) under the usual deductions of income tax and National Insurance contributions leaving a net figure of £285.03.
26. The Claimant is accordingly awarded the net sums of £570.06 in respect of unlawful deduction of wages and £285.03 in respect of holiday pay. It is the

Respondent's responsibility to account to HM Revenue & Customs for the relevant amounts of income tax and National Insurance contributions.

5

10

15

20

25

30

35

40

**Employment Judge:
Date of Judgment:
Entered in register:
and copied to parties**

**Alexander Meiklejohn
15 May 2019
16 May 2019**