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EMPLOYMENT TRIBUNALS

Claimant: Mr S Gasson

Respondent: Mind National Association for Mental Health

Heard at: East London Hearing Centre

On: 27 January 2020

Before: Employment Judge Burgher

Representation

Claimant: Did not attend

Respondent: Mr M Gregson (Solicitor)

STRIKE OUT JUDGMENT

The Tribunal does not have jurisdiction to consider the Claimant's claims that have been presented out of time. His claims are therefore struck out.

REASONS

1 The matter was listed for consideration as to whether the Claimant's claims for unlawful deduction of wages and other payments have been presented within the relevant time limit and if not whether the Claimant has presented his claims within such a reasonable period thereafter.

2 The relevant law is as follows:

“Section 23 Employment Rights Act 1996

Complaints to employment tribunals.

(1) A worker may present a complaint to an employment tribunal—

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- (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
 - (b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),
 - (c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or
 - (d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).
- (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—
- (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, or
 - (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.
- (3) Where a complaint is brought under this section in respect of—
- (a) a series of deductions or payments, or
 - (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.
- (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.
- (4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

(4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).

(5) No complaint shall be presented under this section in respect of any deduction made in contravention of section 86 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deduction of political fund contribution where certificate of exemption or objection has been given).

3 Article 7 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the 1994 Order) sets out a time limit in similar terms for claims of breach of contract following termination of employment.”

4 In relation to the Employment Rights Act time provisions, the issue is whether it was reasonably practicable to have presented the claim in time.

5 I consider the guidance in the case of Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, CA per May LJ at paragraph 35 in respect of the test of reasonable practicability. This is also construed as assessing what is reasonably feasible or what is reasonably capable of being done. I am aware that there are numerous factors that a Tribunal can properly consider when determining whether it is reasonably feasible.

6 When considering whether it is reasonably feasible to have been done, modern methods of obtaining information and communication mean ignorance of the law is no excuse.

Relevant facts

7 The Claimant has presented two identical claims on 3 October 2019 and 21 October 2019. These claims have been combined for the purposes of the application. The Claimant makes reference to a County Court claim in Croydon, in respect of the same sums in his claims. The Respondent maintains that it has not been served with any County Court claim.

8 The Claimant did not attend the hearing. However, he contacted the Tribunal at 2.00pm and informed the clerk that was feeling ill and would be late. He did not say he was not going to be attending. At 2.50pm the Tribunal clerk contacted the Claimant by telephone but there was no response. The Tribunal decided to proceed with the hearing at that time.

9 The Claimant claims arrears of pay and other payments arising from his contract with the Respondent.

10 The Claimant ended his employment with the Respondent on 31 March 2014. His ET1's state that he commenced employment with a different employer 1 April 2014. As mentioned above presented his claims over 5 ½ years later in October 2019.

11 The Claimant was not before the Tribunal to give any evidence as to whether it was reasonably practicable to extend time. Mr Gregson referred me to correspondence from the Claimant dated 28 October 2019 requesting that the hearing be moved to London South as his severe chronic fatigue/ME meant that it would be extremely difficult for him to

get to the venue. On 22 November 2019 the Respondent objected to the application made to transfer on the basis that it did not wish to lose the preliminary hearing date.

12 I proceeded with the hearing in the full knowledge that the Claimant's health may be a reason for him not presenting his complaint to the Tribunal within the three month time limit. However, the Claimant indicated that he commenced employment at a different organisation on 1 April 2014 which does not point to the Claimant being incapacitated following termination.

13 The Claimant was not in attendance at the Tribunal to give evidence. However, the relevant time limit is strictly enforced and there would have had to have been clear and compelling evidence relating to reasons why the Claimant presented his complaint 5 years and three months outside of the relevant time. Ignorance of the law is not considered a reason, unless that ignorance is considered to be reasonable. It is difficult to envisage the circumstances where the Claimant would be able to establish this.

14 I also note that section 23(4)(A) ERA precludes any award for deductions more than 2 years prior to the presentation of the claim.

15 I therefore conclude that the Claimant has therefore failed to present his complaints within the period of 3 months from termination of employment with the Respondent and there is no basis to suggest that it was not reasonably practicable for him to do so.

16 His claims are therefore struck out due to the lack of the Tribunal to consider them. I do not dismiss the claims in view of the indication that the Claimant may pursue the claims in the County Court, where there is a 6 year time limit to bring such claims.

Employment Judge Burgher
Date: 29 January 2020