



EMPLOYMENT TRIBUNALS

Claimant: Zinnia Care Ltd

Respondent: The Commissioners for His Majesty's Revenue and Customs

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Watford Employment Tribunal

On: 9 December 2024

Before: Employment Judge Alliott

Appearances

For the claimant: Did not attend

For the respondent: Mr Simon Chambers (litigator)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's notice of appeal is rejected as it is out of time.

REASONS

The claimant's absence

1. Notice of this public preliminary hearing was sent to the claimant's representatives, Wortley Legal Consultants, on 13 November 2024.
2. On 18 November 2024, the respondent sent an email to Watford Employment Tribunal which contained the following:-

“However, as you will be aware the appellant has since requested that the hearing be rearranged to a date after 5 January 2025 due to the fact that they will be out of the country and unable to attend the hearing.”

3. The file was referred to me on Thursday 5 December 2024. There was no application from the claimant for a postponement of the hearing on the file and I caused the administration to search to see if one was on the system. I was informed there was not. Bearing in mind Rule 30A Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, that no application appeared on the file for a postponement and that as far as the tribunal was

concerned the claimant was represented, I decided that today's hearing should go ahead.

4. Mr Chambers informed me that an email dated 18 November 2024 from Nkechi Enweremadu, Director/Care Manager of the claimant to the respondent was copied in to Watford Employment Tribunal but without the case number in the subject line. This states:-

“Just to confirm, I have sent the copy of my travelling itinerary as I will be unable to attend the hearing on 9 December 2024, as I am out of the country between 27 November 2024 to 5 January 2025, and I would kindly request that the hearing to be held any other day after 5 January 2024.

Also, I would like to confirm that I am not instructing Wortley Legal Consultants in this matter anymore, and all the correspondence should be sent directly to myself.”

5. Enquiries were made by the tribunal as to whether the claimant would be attending today and I was told by Mr Chambers that the respondent had received a reply to Watford Employment Tribunal indicating that the claimant would not be able to attend the hearing and reiterating that it would like the hearing rescheduled to after 5 January 2025. That email could not be traced on the tribunal's system.
6. Notwithstanding the claimant's position, I decided to go ahead with this hearing but to make plain that the claimant could apply for reconsideration if necessary. Any such application for reconsideration would have to set out the basis upon which the claimant seeks to argue that the notice of appeal can be accepted.

The facts

7. On 28 March 2024, the respondent served a notice of underpayment (section 19 of the National Minimum Wage Act 1998) on the claimant.
8. On 11 July 2024, the claimant lodged a notice of appeal with the First-Tier Tribunal (Tax Chamber). The notice contains the following:-

“Appeal deadline

Is the appeal in time? No.

Reason for late appeal. From the moment I received the review ruling, I disagreed with it but was convinced by the case officer that I could appeal after paying the employees. He gave me a deadline date of 16 April to pay the employees but our payroll period was for 19 April so I called was not possible.

I am appealing this decision late because I had a verbal agreement with the case officer that after I had paid the notice of underpayment as determined by himself, to the employees, that I can return to him and we will negotiate the penalty payment.

So I proceeded to pay the affected employees and called him back to discuss the penalty. At this point he told me that his manager had the last say on the matter but was away on holiday. I called back after I received a closure of review email from him on May 20th 2024. During this call he told me it was too late to negotiate the penalty payment because the deadline had expired. I reminded him of his promise to review the

issue when his manager returns but both he and his manager are denying the conversation and I told them I would like to appeal against the entire process if they could send me the correct link for this. I finally received this link on 7 July 2024 and am hereby making the appeal.”

9. On 11 September 2024 Judge Bailey transferred the appeal to the Employment Tribunal.
10. Upon initial consideration I caused the following to be sent to the claimant:-

“Employment Judge Alliott has directed I write as follows:

“You are making a statutory appeal under section 19C of the National Minimum Wage Act 1998. Section 19C(3) states that an appeal must be made before the end of the 28 day period. Section 19(8) states that the 28 day period means the period of 28 days beginning with the date of service of the notice of underpayment. The notice of underpayment is dated 28th March 2024 and service is deemed two working days from the date of issue of the notice, ie 2nd April 2024.

The 28 day period for appeal therefore expired on 30 April 2024. The notice of appeal you filed is dated 11th July 2024 and accepts that the appeal has not been made in time. The notice of appeal was also served on the wrong tribunal. The appeal was transferred to Watford Employment Tribunal on 11 September 2024 upon the direction of Judge Bailey. In *Vardy v Commissioners for HM Revenue and Customs* Employment Tribunal case number 2602181/17 an Employment Tribunal observed that it appeared that Parliament intended the time limit to be an absolute one and that there should be no power to accept a late appeal. Furthermore, as an employment tribunal’s jurisdiction is entirely statutory, there was no question of the tribunal having an inherent common law jurisdiction to extend time for lodging an appeal.

EJ Alliott is considering rejecting the appeal on the grounds that the tribunal has no jurisdiction to hear the appeal.

If you wish to object to this proposal you should give your reasons in writing or a request for a hearing at which you can make them by 4pm, 6 November 2024.”

11. On 28 October 2024, the claimant requested a hearing.
12. At this hearing Mr Chambers drew to my attention the case of *Bajracharaya t/a Newari Handicraft v The Commissioners for His Majesty’s Revenue and Customs* UK EAT TPA/0796/17/BA whereby Swift J confirmed that there was no discretion to extend the time limit. Further, on 3 February 2020 Simler LJ refused permission to appeal *Bajracharaya* on the basis that there was no discretion to extend the time limit.
13. In my judgment, the claimant’s appeal is out of time and I have no discretion to extend time. Consequently, there is no jurisdiction to hear this appeal and it must be rejected.

Reconsideration

14. Since this decision has been made in the absence of the claimant and the claimant appears to be not legally represented, I set out that the claimant may apply for reconsideration of this judgment under Rule 70 of the Employment

Tribunals (Constitution and Rules of Procedure) Regulations 2013. Any such application for reconsideration must be presented in writing (and copied to all the other parties) within 14 days of the date on which the judgment was sent to the parties and must set out why reconsideration of the original decision is necessary. The application must set out the basis upon which the claimant asserts the employment tribunal may accept a notice of appeal that is out of time.

Employment Judge Alliott

Date: 18 December 2024

Sent to the parties on:

7 January 2025

For the Tribunal:

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>