



EMPLOYMENT TRIBUNALS

Claimant: Mr S. Deane

Respondent: Pegasus Grab Hire

Heard at: Birmingham

On: 16 January 2018

Before: Employment Judge V. Jones

Representation

Claimant: No appearance

Respondent: Mr D. Morris, Solicitor

JUDGMENT

1. The Tribunal has no jurisdiction to hear the Claimant's claims as they were presented to the tribunal after expiry of the time limits specified in sections 23 and 111(2)(a) Employment Rights Act 1996, regulation 30 Working Time Regulations 1998 and Article 7 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, in circumstances where it was reasonably practicable for them to have been presented within that period.
2. The Respondent's counterclaim is dismissed upon withdrawal.

REASONS

Background

1. By his ET1 presented on 31 August 2018, the Claimant claimed: unfair dismissal in relation to the termination of his employment on 27 November 2017; damages for breach of contract (notice pay); compensation for unlawful deductions from wages and pay in lieu of annual leave accrued but untaken at the date of termination of his employment.
2. The claim was accepted by the Tribunal Office on 5 September 2018 after the Claimant provided a copy of his early conciliation certificate from ACAS. The claim was then listed for this preliminary hearing to

consider whether it had been lodged within the normal time limit specified in section 111(2)(a) Employment Rights Act 1996 and if not, whether there were grounds for extending that time limit under section 111(2)(b).

3. By a letter dated 24 November 2018, Employment Judge Algazy directed the Claimant to provide comments, by 3 December 2018, as to why his unfair dismissal claim should not be struck out as he did not appear to have sufficient qualifying service. The Claimant did not reply.

The law

4. Section 111(2)(a) of the Employment Rights Act 1996 (ERA) provides that an Employment Tribunal shall consider a complaint of unfair dismissal if it is presented to the Tribunal before the end of the period of three months, beginning with the effective date of termination. Section 111(2)(b) provides that a Tribunal shall consider a claim presented after that period of 3 months if it is presented within such period as the Tribunal considers reasonable in a case where it is satisfied it was not reasonably practicable to have presented the claim within 3 months.
5. Section 207B ERA provides for the initial 3-month period to be extended to facilitate ACAS conciliation.
6. Section 23 ERA, regulation 23 Working Time Regulations 1998 and Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 contain corresponding provisions in relation to claims of unpaid wages, holiday pay and breach of contract respectively.

Conclusions

7. The effective date of termination of the claimant's employment was 27 November 2017. Under section 111(2)(a) ERA the normal time limit for lodging his unfair claim would have expired on 26 February 2018. Section 207B ERA extended that period by one month (the period of ACAS conciliation) to 26 March 2018. The claimant's unfair dismissal claim was thus presented more than five months after expiry of the normal time limit.
8. The same time limits applied to the claimant's claims of unpaid wages, holiday pay and breach of contract by virtue of Section 23 ERA, regulation 23 Working Time Regulations 1998 and Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Those claims should also have been presented by 26 March 2018.
9. In his claim form, the Claimant said his claims had been delayed due to the illness, and subsequent death, of his mother.

10. The Claimant did not attend today's hearing and did not provide an explanation for his absence. He has provided no further evidence about his circumstances between 27 November 2017 and 26 March 2018 to show why it was not reasonably practicable for him to have presented his claim at any time during that period.
11. The statement in the claimant's claim form referred to at paragraph 7 above is insufficient for me to be satisfied that it was not reasonably practicable for the claimant to have presented his claims by 26 March 2018. Nor has he shown that, even if it was not reasonably practicable, he presented them within a reasonable period after that date.
12. Accordingly, I find the claimant's claims were all presented out of time and the Tribunal does not have jurisdiction to hear them.
13. I would add, for completeness, that the claimant's unfair dismissal claim is outside the Tribunal's jurisdiction in any event. This is because he was employed by the respondent between 4 September 2017 and 27 November 2017 which is less than the minimum period of two years required by section 108(1) ERA to bring such a claim.
14. Mr Morris withdrew the Respondent's counterclaim at the hearing. That is accordingly dismissed.

Employment Judge V. Jones
Date: 24/01/19