



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106275/2022

Held via Cloud Video Platform (CVP) on 1 February 2023

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Employment Judge L Wiseman

Mr F A Iddon

**Claimant
In person**

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Worq Group

**Respondent
Represented by:
Mr A Drummond -
Company Secretary**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal decided to dismiss the claim because (i) the claim was presented late (it having been reasonably practicable to present the claim in time) and a Tribunal does not have jurisdiction to determine the claim and (ii) the claim was brought
20 against a company which did not employ the claimant.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 21 November 2022 complaining that he had not been paid two weeks' wages and holiday pay.
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2. The respondent entered a response in which it defended the claim on the basis the claim had been brought late and against the wrong employer. The respondent asserted the claimant had been employed by Chedstow Ltd and not by Worq Group.
- 30 3. I heard evidence from the claimant and Mr Drummond. I was also referred to a number of productions. I, on the basis of the evidence before me, made the following material findings of fact.

Findings of fact

4. The respondent is in the business of supplying food/meals to hotels accommodating asylum seekers. The respondent does not employ any employees. Staff are provided to carry out work for the respondent by
5 Chedstow Ltd and RQ Recruitment.
5. Chedstow Ltd employ over 230 employees whom they provide to the respondent to carry out work.
6. Mr Ibrahim Sharrif is a Director of the respondent and RQ Recruitment. Mr Jonathon Doherty is a Director of Chedstow Ltd.
- 10 7. The claimant responded to an advert on a recruitment website to do work for the respondent. He commenced employment on the 1 January 2021.
8. The claimant met Mr Jonathon Doherty and Mr Ibrahim Sharrif when he commenced employment. The claimant was managed on a day-to-day basis by Mr Sharrif.
- 15 9. The claimant earned £450 gross per week, giving a net weekly take home pay of £375.20.
10. The claimant was paid weekly and his pay slips were produced for the tribunal. The pay slips each contained the name Chedstow Ltd on them.
11. The claimant was not paid wages for the weeks of 22nd and 29th August
20 2021.
12. The claimant's work email address was @worqgroup.co.uk.
13. The claimant felt he was being managed out of the business and so he decided to resign. The claimant gave one week's notice of termination of employment, and his employment ended on the 1 September 2021.
- 25 14. The claimant agreed with Mr Sharrif that as he would not be required to work the period of notice, he would not seek payment for it.

15. The claimant confirmed to Mr Sharrif that he wanted to be paid for the two weeks in August and also to be paid holiday pay. The claimant had not taken any holidays during the period of his employment. The claimant understood he was entitled to 21 days holiday plus 8 bank holidays in the holiday year.
- 5 16. No payment was made to the claimant in respect of the wages and holiday pay. The claimant and Mr Sharrif exchanged a number of Whatsapp messages about the payment. Mr Sharrif assured the claimant payment would be made, and the claimant took him at his word and allowed time for payment.
- 10 17. The claimant received a P45. The name of the employer on the P45 was Chedstow Ltd.
18. The claimant was admitted to hospital for 3 days in February 2022. He was hospitalised again at the end of March 2022 for a period of 7 days due to an infection. The claimant spent 5 days in hospital in June 2022 due to a secondary infection, and then spent 7 days in hospital due to Covid. The claimant was hospitalised again in July and had surgery in August 2022. The claimant spent 4 weeks recovering from the surgery.
- 15 19. The claimant contacted ACAS on the 29 April 2022. An ACAS early conciliation certificate was issued on the 9 June 2022.
20. The claimant presented a claim to the Employment Tribunal on the 21 November 2022.
- 20 21. The claimant presented a claim because he had met someone who had made a late claim to the Employment Tribunal and had it accepted.
22. The parties agreed that two weeks wages amounted to £750.40 net and 19 days holiday (14 days holiday and 4 bank holidays) amounted to £1425.76 net.
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Notes on the evidence

23. There were no issues of credibility in this case. The claimant believed he had been employed by the respondent and he had not understood the reference to Chedstow Ltd on the payslip to be a reference to the employer. The

claimant had thought Chedstow Ltd was an HR company. The claimant maintained he had not known of the time limit for presenting a claim to the Employment Tribunal. He had trusted Mr Sharrif to make payment and when this did not happen, concerns about his health meant making a claim had not been a priority.

Claimant's submissions

24. Mr Iddon submitted he had believed he was employed by the respondent. He had only met Mr Doherty on three occasions (two of which were social). Mr Iddon thought it was right to allow time for payment to be made, particularly when Mr Sharrif promised payment would be made. Mr Iddon accepted the claim had been presented late but this had been because he had been concerned and worried about his illness and making a claim had been the last thing on his mind.

Respondent's submissions

25. Mr Drummond submitted the reasons why the claim had been presented late were not good enough to allow the tribunal to exercise its discretion to allow the claim to proceed late. Time limits were to be strictly enforced unless there was very good reason not to do so. Mr Drummond submitted the claimant's health problems did not explain what had been a very lengthy delay in this case. The claimant had been late in contacting ACAS and then took 5 months to present the claim after he had obtained the early conciliation certificate from ACAS. Mr Drummond submitted the claim was late and should not be allowed to proceed.

26. Mr Drummond submitted the documents demonstrated that Chedstow Ltd was the employer of the claimant. This name was on the weekly pay slips provided to the claimant. Mr Doherty had been present when the claimant started work and had explained to the claimant that although employed by Chedstow Ltd, he would be supplied to work with the respondent. The P45 confirmed Chedstow Ltd was the employer. Mr Drummond submitted the claimant had brought the claim against the wrong party.

27. Mr Drummond accepted that if the claim was allowed to proceed, the sums as set out above were agreed.

Discussion and Decision

Timebar

- 5 28. The Tribunal had regard to the statutory provisions set out in section 23 of the Employment Rights Act which provide that 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 the date of payment of the wages from which the deduction was made. However, where the employment
10 tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the period of three months, the Tribunal may consider the complaint if it is presented within such further period as the Tribunal considers reasonable.
- 15 29. The Tribunal noted there was no dispute regarding the fact the claim related to wages for the weeks of 22nd and 29th August 2021, which had not been paid, and to holiday pay accrued and not taken as at the termination of employment on the 1 September 2021. These are the dates from which time started to run.
- 20 30. The claim to the Employment Tribunal ought to have been presented on or before the 30 November 2021, albeit this date would be extended by the time taken for the early conciliation process.
31. The claimant contacted ACAS on the 29 April 2022. This was almost 8 months after his employment had ended and well outside the time limit for doing so.
- 25 32. The ACAS early conciliation certificate was issued on the 9 June 2022. The claim form was not presented until the 21 November 2022. This was 5 months after the certificate had been issued and, again, well outside the time limit.
33. The claim was presented late. The Tribunal must decide whether it was reasonably practicable for the claim to be presented on time. The claimant, in explaining the reasons for the claim being late, advanced a number of points:

5 firstly, he told the tribunal that he took Mr Sharrif at his word when he said payment would be made, and he allowed time for this to happen. The claimant did not say how much time he allowed. Second, the claimant told the Tribunal that he had been hospitalised on several occasions and although this had not prevented him from making a claim, it had not been at the forefront of his mind. Third, the claimant told the Tribunal he had not known of the time limits for making a claim. Fourth, the claimant told the Tribunal that he had met someone who told him they had made a late claim and had it accepted. The claimant, upon learning this, thought he would do likewise.

10 34. The Tribunal accepted it was not unreasonable for the claimant to allow time for the employer to pay outstanding wages and holiday pay. The Tribunal did, however, consider it unreasonable to wait for an open-ended and unspecified period of time. The claimant appeared to know he had to contact ACAS as a first step in making a claim, and he did so on the 29 April 2021, but there was
15 really no explanation why he did not do so in the period between 1 September 2021 and February 2022 when the first period of hospitalisation occurred.

35. The Tribunal noted the claimant's position that he did not know of the time limits for presenting a claim, however, it is for the claimant to take reasonable steps to find out these matters.

20 36. The claimant very candidly told the Tribunal about the periods and reasons for hospitalisation and the Tribunal accepted this would be a worrying time. The claimant was, however, unable to explain why, if he had been sufficiently fit to contact ACAS in April to start the early conciliation process, he had not been fit to present a claim.

25 37. The Tribunal concluded, having considered the above points, that the catalyst for making the claim appeared to be hearing from someone that they had had a late claim accepted. The claimant accepted the periods of hospitalisation had not prevented him from making a claim. Accordingly, there did not appear to be any good reason to explain why the claimant had not acted sooner to
30 present the claim.

38. The Tribunal decided it had been reasonably practicable for the claim to have been presented in time. The claim was presented late and a Tribunal does not have jurisdiction (that is, authority) to determine the claim.

Correct employer

5 39. The Tribunal accepted Mr Drummond's evidence that Chedstow Ltd is in the business of providing employees to carry out work for the respondent: approximately 230 employees are employed by Chedstow Ltd and provided to the respondent. This was the arrangement under which the claimant worked.

10 40. The Tribunal acknowledged the claimant had an email address that was @worqgroup.co.uk but that, of itself, is not indicative of anything other than the fact the claimant was associated with and carried out work for that company.

15 41. The claimant referred to others having the same email address and carrying out work for the respondent. It appeared this would be correct in circumstances where all of Chedstow Ltd's employees were provided to carry out work for the respondent.

20 42. The claimant accepted Mr Doherty had been present when he commenced employment, and although the claimant denied being told he was employed by Chedstow Ltd and provided to work for the respondent, the tribunal considered there could be no other reason why Mr Doherty would be present, other than to tell the claimant of the working arrangement and ensure he understood that on a day to day basis he would take instructions from Mr Sharraf.

25 43. The Tribunal attached weight to the pay slips and the P45 which named Chedstow Ltd as the employer. The Tribunal acknowledged the claimant may have believed he worked for the respondent, but this did not undermine the weight to be attached to the documentation.

44. The Tribunal considered it unfortunate that a contract of employment had not been provided to the claimant by Chedstow Ltd as this could have avoided the confusion in this case.

45. The Tribunal concluded the claimant was employed by Chedstow Ltd.

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Decision

46. The Tribunal decided the claim brought by the claimant was presented late and a tribunal does not have jurisdiction to determine the claim. Further, the claim was brought against Worq Group who were not the claimant's employer.

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The tribunal decided to dismiss the claim for these reasons.

15 **Employment Judge: L Wiseman**
Date of Judgment: 2 February 2023
Entered in register: 6 February 2023
and copied to parties