



Case Number: 2302725/2016

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## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mr B Pevy

and

**Respondent**

Deal and Walmer Community  
Association Limited

Held at Ashford on 2 February 2017

**Representation**

**Claimant:**

Mrs R Mathams

**Respondent:**

Mr P Tapsell, Counsel

**Employment Judge** Kurrein

## JUDGMENT

There is no jurisdiction to hear the Claimant's claim for a redundancy payment and it is struck out as having no reasonable prospect of success.

## REASONS

- 1 This matter came before me at an open preliminary hearing to decide a time issue. I heard the submissions on behalf of each of the parties, and considered the documents to which I was referred. I make the following findings of fact.
- 2 The claimant was born on 13 June 1954 and started his employment on 1 July 2004.
- 3 There is considerable dispute as to who the claimant's employer was. I was unable to determine that issue on the basis of the evidence presented to me today. However, it appeared to me that there was some force in the submissions made on behalf of the respondent that it had not in fact been the employer of the claimant, but that he had been employed by an associated unincorporated association known as the Landmark Club. Support for that is given by the fact that the claimant accepted that he worked in what was known as the Landmark Club and that he was provided with statements of terms and conditions which identified his employer as Deal and Walmer Community Association/Landmark Club.
- 4 I also thought it of note that the Respondent, which had formerly run this bar:-
  - 4.1 had been advised that as a Charity it should not do so;
  - 4.2 it had granted the Landmark Club a licesne to occupy the premises;
  - 4.3 it had received notice of an intention to vacate the premises from the Club, which brought the Claimant's employment to an end.

- 5 The claimant's last day of work was 22 September 2014. He was not paid any redundancy payment.
- 6 On 21 January 2015 he wrote to the respondent claiming a redundancy payment as well as notice and other monies. That letter was not responded to. On 5 February 2015 the claimant sent a second letter to the respondent claiming redundancy pay. It was again not responded to.
- 7 On 1 March 2015 the claimant gained new employment at a higher rate than that he had been earning in his previous employment.
- 8 However, it was not until 8 September 2015 that the respondent alleges it sent a letter to the claimant denying that he had been its employee.
- 9 In March 2016 the claimant instigated a claim in the small claims court of the County Court for the notice pay and other wage payments owed to him. The respondent does not appear to have appeared at the relevant hearing and the claimant was given judgement in his favour on 6 October 2016
- 10 In the interim, on the 20 June 2016, the claimant obtained a copy of the judgement obtained by one of his former colleagues against the respondent for sums due following the termination of his employment.
- 11 On 1 November 2016 the claimant sent a letter before action, drafted with the assistance of the citizens advice bureau, to the respondent. He started early conciliation on the 23 November 2016, which was completed the same day, and issued his claim in the tribunal 25 November 2016.
- 12 On 15 December 2016 the claimant complied with a direction to provide his schedule of loss in the sum of £4,830.
- 13 On 29 December 2016 the respondent presented a response in which it asserted the claimant's claims were out of time and that it had never been his employer.
- 14 It was not in dispute that the claimant's claim was out of time. His representative was under the misapprehension that I had a wide discretion to extend time in his favour. That is not the case, the provisions concerning the presentation of a claim to an employment tribunal or redundancy payment are set out in section 164 Employment Rights Act 1996.

164 Claims for redundancy payment

(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—

- (a) the payment has been agreed and paid,
- (b) the employee has made a claim for the payment by notice in writing given to the employer,
- (c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or
- (d) a complaint relating to his dismissal has been presented by the employee under section 111.

(2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—

- (a) makes a claim for the payment by notice in writing given to the employer,

(b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or

(c) presents a complaint relating to his dismissal under section 111, and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

(3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to—

(a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and

(b) all the other relevant circumstances.

(4) Subsections (1)(c) and (2) are subject to section 207A (extension because of mediation in certain European cross-border disputes).

(5) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1)(c) and (2).

- 15 I took the view that the claimant's letter claiming a redundancy payment on 21 January 2015 was made within six months of his effective date of termination so that it fell within S.164(1)(b) of the above provision. However, the consequence of the above sections are that an employee has a maximum period of one year from his effective date of termination within which to present a claim to the tribunal.
- 16 Bearing in mind the extension of time granted to the claimant by virtue of his having availed himself of early conciliation. It appeared to me that the last date on which the claimant might have presented a valid claim to the tribunal would have been 21 October 2015. His claim was therefore over one year out of time. Put another way, in light of the date on which he started early conciliation his effective date of termination would have to have been on or after 24 November 2015 for his claim to be in time.
- 17 Assuming in his favour that it would have been just and equitable to determine the claimant was entitled to a redundancy payment a claim presented within that time limit was likely to have succeeded. However, based on the requirement of S.164(2)(c) that the claim be presented under S.111 of the Act, the time limit for presenting a claim can only be extended by me in it was "not reasonably practicable" for the claimant to have presented his claim within the one year period that he might have been allowed, and he has presented his claim within a reasonable period after the expiry of that period.
- 18 The only explanations advanced by the claimant for his failure to make claim at an earlier stage were
- 18.1 His uncertainty as to the identity of his employer, and
- 18.2 His reluctance to pay a fee in light of that uncertainty.
- 19 I having had regard to the relevant case law, including:-

Wall's Meat Co Ltd v Khan [1978] IRLR 499, Lord Denning, quoting himself in *Dedman*,

'It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time?'

Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, the matters to be considered include:-

The substantial cause of the claimant's failure to comply with the time limit;  
Whether there was any physical impediment preventing compliance, such as illness, or a postal strike;  
Whether, and if so when, the claimant knew of his rights;  
Whether the employer had misrepresented any relevant matter to the employee;  
Whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

- 20 in the circumstances of this case the claimant had failed to discharge the onus on him of showing, on the balance of probabilities, that it was not reasonably practicable for him to have presented his claim within the relevant time limit. It appears he had no reluctance to instigate his small, claim although he did not at that time have a copy of the judgement, and he would have incurred fees at that time. In addition, he does not appear to have had regard to the fact that he might be entitled to remission in respect of fees in the Tribunal. depending on his financial circumstances. Bearing in mind that he was unemployed for almost six months between his effective date of termination and gaining new employment, it appears likely to me that he might well have been entitled, subject to any savings, to full remission. If he did in fact have such savings as to disentitle him to any remission it appears to me that he could have afforded to risk the fee of £160 to commence his claim bearing in mind that the compensation to which he was potentially entitled was nearly £5000.
- 21 In the above circumstances I have also found that the claimant has failed to establish that he has presented his claim within a reasonable time after the expiry of the original time limit. It appears to me that the claimant has not actively taken steps pursue this claim within a reasonable period, and as such the tribunal has no jurisdiction to hear it, and it must be dismissed

**Employment Judge Kurrein**

8 February 2017