



EMPLOYMENT TRIBUNALS

Claimant: Mr Ahmady t/a Madison Hand Car Wash

Respondent: The Commissioner for Revenue & Customs

HELD AT: Liverpool

ON: 14 December 2017

BEFORE: Employment Judge Robinson
(sitting alone)

REPRESENTATION:

Appellant: In person assisted by Mr Simpson, Friend

Respondent: Mr T Sadiq, Counsel

JUDGMENT

The judgment of the Tribunal is that the Employment Tribunal does not have jurisdiction to hear the claimant's notice of appeal. It was submitted out of time and it is therefore dismissed for want of jurisdiction.

The application for costs by the Commissioner on the grounds that the appeal had no reasonable grounds of success is refused.

REASONS

1. I have read all the documentation in the file and the documents that I was given this morning and I have heard evidence from the appellant
2. I have to adjudicate on one thing: and that is whether the Tribunal has jurisdiction to deal with Mr Ahmady's appeal from a notice of underpayment of National Minimum Wage relating to some of his workers sent to Mr Ahmady on 1 August 2017. That is the date the notice was sent.
3. HMRC was investigating the claimant's business during July 2017 with regard to failure to pay the minimum wage and statements were taken from the appellant's workers. There was some communication, either by telephone or email, between Mr Ahmady and the compliance officer, Mr Hilton, from HMRC, before 1 August 2017.

4. The notice, which the claimant accepts he received, shows the amount payable by Mr Ahmady by 16 August 2017, as the smaller sum of £895.60. He was also told that if he did not pay by that date he has to pay, by 30 August 2017, the higher sum of £1,791.20. It is clearly set out in the notice that if Mr Ahmady wants to appeal he has to appeal to the Employment Tribunal by no later than 30 August 2017.

5. Mr Ahmady accepts that his appeal was forwarded to the Employment Tribunal late. It was received by the Tribunal on 1 September 2017. That is two days out of time. The time limit is absolute and I have no discretion.

6. The claimant tells me that he is not sure whether he received the document NWFS3, which is the form which sets out the guidance notes and is attached to the notice of underpayment. Mr Ahmady, once he got the notice, waited for a friend to come back from abroad to seek advice. He also says he needed time to trace two of his workers named in the claim who no longer worked for him.

7. The claimant did not need to wait. He knew that time was running against him. What the claimant now says to me, at this hearing, does not square with the documents that I have in front of me that Mr Ahmady received. Firstly, Mr Ahmady in his email of 18 October 2017 accepts that he received the guidance notes. There may have been an information pamphlet missing but he accepts in that document that he received the guidance notes. I equate that phrase "the guidance notes" with the form NWFS3.

8. Secondly, the claimant's accountant was sent a copy of the formal notice on 31 July 2017. The accountant has received that document.

9. Thirdly, Mr Ahmady himself corresponded with Mr Hilton on 8 August 2017, before the time limit for the smaller sum to be paid, where he disputes some of Mr Hilton's figures. In that letter Mr Ahmady refers to the correspondence and, and I emphasise this, "the attachments" supplied to him.

10. I am satisfied that Mr Ahmady knew the issues with which he had to deal. He knew, or should have known, the strict time limit applicable here. I concluded that I have no jurisdiction to determine the claimant's appeal as the appeal was made out of time. Section 19C of the National Minimum Wages Act 1998 (the Act) provides a right of appeal to an appellant but that right of appeal must be exercised within 28 days of receipt of the notice of underpayment. I have no discretion to extend time (Section 19C(3)). The time limit expired on 30 August. The appellant accepts his claim was made 2 days out of time.

11. I need to deal with one other issue. The appellant urges me to consider that the time limit is incompatible with his human rights. He argues that his right to a fair trial have been compromised by the time limit in the Act – the opportunity to have a fair trial under Article 6. I accept that that right is engaged. I find that the time limit of 28 days has not, in any way, affected the claimant's right to appeal nor prevented him from doing so. As I have set out in the facts above, the claimant had every opportunity to exercise his right of appeal, he knew the time limits and had an accountant who could assist him. The claimant has, either consciously or by his own negligence, failed to have exercised that right. Consequently the claimant himself is

the only one to blame for not putting his appeal in in time. Therefore in all the circumstances of this case the claimant's appeal is dismissed for want of jurisdiction.

12. I then considered the application for costs by Mr Sadiq. I refused it on the basis that the matter was listed for a hearing by the Tribunal. It was right and proper that I heard the full application so that I could consider Mr Ahmady's position with regard to the appeal. I accept that, once the appellant saw there was a date for a hearing, he might, not unreasonably, assume he could put forward to the Employment Tribunal his reasons for appealing late. It is not appropriate to order costs against him in these specific circumstances.

14-12-17

Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON

18 December 2017

FOR THE TRIBUNAL OFFICE