



EMPLOYMENT TRIBUNALS

Claimant

Mr G Singh

Respondent

v Gurdwara Sri Guru Singh Sabha Southall

PRELIMINARY HEARING

Heard at: Watford

On: 9 June 2017

Before: Employment Judge R Lewis

Appearances:

For the Claimant:

In person

For the Respondents:

Mr T Kirk, Counsel

Interpreter:

Mr S Q Hasan

JUDGMENT

This claim is struck out as it was presented outside the statutory time limit and in circumstances in which it was reasonably practicable for it to have been presented within time.

REASONS

1. These reasons are given in the interests of justice, no formal request having been made by either side in accordance with Rule 62.
2. By a claim received on 13 January 2017 the claimant claimed various arrears of pay. He was represented by Southall Rights, who withdrew shortly before this hearing.
3. By its response, the respondent denied all claims, and asserted that the claims were presented out of time.
4. The tribunal converted the listed hearing to a preliminary hearing to determine the time issue. Notice to that effect was given by letter dated 13 March for a hearing on 19 April.
5. The claimant appeared in person. He spoke entirely through the Punjabi language interpreter, Mr Hasan, to whom I record my gratitude. He agreed that

he had received the bundle in good time before the hearing. He had the day before the hearing received a respondent's statement from Mr G S Athwal, and a skeleton argument from Counsel. The bundle contained little that was new to him. The latter two items contained content which was in the main already before the claimant, but not in the format of its presentation.

6. I was concerned to balance fairness and not to prejudice the claimant by reliance on English documents which he had not had the opportunity to be advised upon. I was also concerned that what appeared a relatively straightforward matter should not be adjourned.
7. I therefore proceeded by hearing first the claimant's evidence and asking him questions. Mr Kirk did not seek to cross examine.
8. I then permitted Mr Athwal to be called, to answer questions limited to the contents of the relevant paragraphs of the response form. I did not permit Mr Athwal to deal with any other matter. That brought the proceedings to a conclusion.
9. I now set out my findings and conclusions.
10. The claimant joined the employment of the respondent in 2015. The respondent is the well known Sikh Temple and Community Centre in Southall. The claimant was employed as a Security Officer. Mr Athwal mentioned the importance of a security presence. As part of his employment, the claimant was provided with accommodation in a room in a property owned by the Gurdwara management.
11. The claimant took a long holiday in March 2016.
12. The bundle contained a letter dated 26 March, signed and dated by Mr Athwal which stated:

“As you are aware that you are taking contractual/extended holidays and your position needs to be filled. When you are coming back we will let you know if we have a vacancy available and will consider your application accordingly.” (46).
13. Mr Athwal said that he had a meeting with the claimant at which he handed him this letter, signed and dated it in his presence, to tell the claimant that while he was at liberty to take extended holiday in India, his job as Security Officer was essential and would be filled in his absence, and would not be available to him on his return. The conversation was in Punjabi but the correspondence language of the Gurdwara is English.
14. The claimant replied that the conversation did not take place; there was no such meeting; and the document was a forgery.
15. I prefer Mr Athwal's evidence. I find that the meeting which he described took place and that he gave the claimant the above letter. I do not find that the letter was sufficiently unambiguous to constitute dismissal and termination of the employment relationship, as Mr Kirk argued.

16. It was common ground that the claimant received his final payment from the respondent on 30 April.
17. The claimant returned from India in the third week in May and there was then dialogue as to his possible return. He still had use of the Gurdwara accommodation.
18. As the position remained in doubt, at least in the claimant's mind, Mr Athwal gave evidence that he wrote a letter (51) which he then took to the accommodation, and pushed under the door of the room inhabited by the claimant. He said that this procedure was followed as it had been difficult to arrange a personal meeting.
19. The letter stated as follows:

“As you have received your P45.. as you are not employed by [the respondent] anymore. So, I would like to confirm my conversation with you a few days ago in writing in reference to vacate the room as well. I'm giving you a notice to vacate our accommodation as soon as practicable within next 28 days. We need to allocate this accommodation to other member of staff.”
20. The claimant gave evidence that there had been no meeting or conversation and that he had not received any such letter. He asserted that the document was a forgery.
21. I accept the evidence of Mr Athwal. It was particularly compelling in relation to circumstantial matters: ie the need for security staff, the need to provide them with accommodation, the necessity to reclaim the accommodation, and his account of the difficulty in tracking down the claimant and therefore taking the expedient of pushing the letter under the door. I accept that the letter was delivered to the claimant, at the latest, on 27 May.
22. The language of the letter made unambiguously clear that the claimant was dismissed. Although it did not give notice I interpreted it in the claimant's favour as giving notice of termination. The claimant was entitled by both statute and contract to one weeks notice and I therefore find that this document gave one weeks notice, and that the effective date of termination of the claimant's employment was 3 June 2016.
23. The claimant had instructed Southall Rights by 19 July, and there was then correspondence, much of which did not assist. One matter of note in the correspondence is that the respondent's then solicitors wrote to Southall Rights on 9 September to indicate that they considered that the claimant had been dismissed. The claimant and Southall Rights took that as the first notification of termination of employment, and argued that the effective date of termination was 12 September. For reasons already stated, I disagree.
24. Southall Rights then dealt with the matter entirely on the claimant's behalf, and Day A was 11 October and Day B was 10 November.
25. What then appeared to happen was that Southall Rights attempted to present the claim by writing to the Leicester Tribunal Centre on 30 November, but failed to

put enough postage on the letter. The letter was not returned to the sender, or delivered, or called for. This was not discovered until January, when Southall Rights followed up the tribunal's apparent failure to acknowledge the claim. The claim was successfully submitted to the Leicester office on 11 January 2017.

26. My conclusions can be shortly stated. The claimant's claims were all claims for arrears of pay and/or notice. In arrears of pay, he included claims for holiday pay. If they were advanced as claims of unlawful deduction then under s.23(2) Employment Rights Act 1996, time ran from 3 April 2016, the date of last payment. If they were advanced as claims of breach of contract, they ran from the effective date of termination which was 3 June.
27. In either event, early conciliation began outside the limitation period and the claimant did not have the benefit of any stop-the-clock procedure. Time was not extended beyond at the latest 2 September 2016.
28. If there was default in presenting the claim, it appears to lie at the door of Southall Rights. I say if because I have not heard their version of events, and I cannot place reliance on the claimant's account, given the nature of his allegations against Southall Rights, who he said had been 'paid off' by the respondent.
29. I find that it was reasonably practicable for the claim to have been presented within time, in circumstances in which experienced professional advisers were instructed a matter of weeks after the effective date of termination.
30. The claim is therefore struck out.

Employment Judge R Lewis

Dated 7 August 2017

Sent to the parties on:

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For the Tribunal:

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