



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs J Griffiths-Crawford

v

1. Asma Ola

2. King Edwards Post Office

3. Yusuf Ola

PRELIMINARY HEARING

Heard at: Leeds On: 12 June 2019

Before: Employment Judge Wedderspoon

Representation:

Claimant: In person

Respondents: Mr A Hart

JUDGMENT

1. The claimant was employed by Mrs Ola, the first respondent.
2. The claimant's complaints of holiday pay and unfair dismissal are out of time.
3. The claimant's complaint for a redundancy payment is in time.

REASONS

1. The preliminary hearing listed today was to determine effectively, who was the claimant's employer at the time of her termination date on 27 October 2018 and also consider whether the claimant's complaints of unfair dismissal and holiday pay are within time.
2. The facts of this case are that the claimant was employed by a written contract by Mr Yusuf Ola who was the sub-postmaster of the post office in the shop from 20 August 2016 of 20 hours per week at £10 per hour. She was employed as a Manager and within the contract of employment it is stated that the claimant's duties included opening of store, sorting out the home delivery routes and paper boys, checking and removing out of date newspapers and magazines. The claimant was required to attend work between the hours of 5:30am – 6:00am

assisting with this role and then thereafter sometimes assisting in the shop for about 8:00 – 8:30am.

It was decided that due to Mr Ola's health reasons that he ought to step down and retire from the business and it had been confirmed to the claimant that that business was sold to Mrs Ola for approximately £1.

3. It is accepted by Mr Hart, who is the business partner of Asma Ola that at the time of the dismissal on 27 October 2018 that Mrs Ola was the claimant's employer.
4. On 8 October 2018 a letter was provided to the claimant indicating that at the end of October the paper round was to be handed over to a professional distributor and that the business was only stocking newspapers and magazines on shelves at the earliest possible date the shop would then open from about 8:00am Monday to Saturday. The letter stated "unfortunately with great personal regrets means that your job will come to an end at the same time". It goes on to say "however, we are aware of someone who could well be interested in offering you a similar role at the appropriate hours and good rates of pay, we can arrange a meeting to talk further about this if you are interested".
5. The claimant was paid directly into her bank account on most occasions. She did not always receive pay slips for the period September to end of October she did not receive any wage slips. At the end of October she was paid in cash by Mrs Ola.
6. The claimant became self-employed for a business called Harrogate Distribution Services however, the job was quite different from the work that she had previously done and she is no longer working for them.
7. The claimant sought a redundancy payment in about mid December 2018, Mr Hart appeared to imply the claimant may be implicated in a fraud with Mr Ola about payment of maternity pay because the claimant appears to have been paid maternity pay for a period of about 5 weeks when she returned to work early from that leave. The claimant interpreted this as a threat. She sought advice from ACAS who made her aware that she could take proceedings but was told that she had to lodge a grievance and provide some time to the employer before she could proceed with litigation.
8. The claimant in fact served a grievance on 12 January 2019 on Mrs Ola, allowed time to receive an answer, did not receive a satisfactory answer as far as she is concerned. She says returned to ACAS, gave notice on 15 March 2019 and the ACAS certificate was issued on 18 March 2019. In the meantime the claimant received a P45 and P60 in the name of Mr Ola, heard from Mr Hart that Mr Ola seems to be seeking a return of the business back to himself.

Relevant Law

9. In determining who the respective employer is this is a matter of fact within the Employment Tribunal, in determining whether a claim of unfair dismissal or holiday pay has been issued within time the Tribunal need to consider the test of reasonable practicability, that was determined and interpreted in the case of **Dedman & British Building and Engineering Appliances Ltd [1973] IRLR 379** as meaning what is reasonably feasible in the circumstances.

Conclusion

10. There is no dispute having heard the evidence of the claimant and Mr Hart who is the commercial partner of Mrs Ola, that the claimant was indeed employed by Mrs Ola at the time of her termination on 27 October 2018. The claimant's claims for unfair dismissal and holiday pay are out of time. Those claims expired on 26 January 2019 but the claim was not pursued until 29 March 2019. On the basis the claimant has told the Tribunal that she was aware of her right to pursue claims as far back as Mid-December I find that it was reasonably feasible and therefore reasonably practicable for her to have made claims back in December 2018. She has effectively waited too long for a response. In those circumstances. I find that it was reasonably practicable for her to have lodged her complaint in time and those claims are out of time. The only live claim therefore going forward is that of redundancy pay in the sum of £400. Whether the claimant is able to successfully obtain that award depends whether her situation falls within the meaning of redundancy under the Employment Rights Act 1996.

Employment Judge Wedderspoon

Sent to the parties on:

Dated : 1 July 2019

For the Tribunal:

Dated : 1 July 2019

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