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EMPLOYMENT TRIBUNALS

Claimant ***Respondent***

Mr L Strickfuss **AND** **Veolia Environmental Services (UK) PLC**

HELD AT: **London Central** **ON:** **25 October 2019**

BEFORE: Employment Judge Glennie (Sitting alone)

Representation:

For Claimant: Mr N Shah, Solicitor
For Respondent: Mr B Williams, Counsel

JUDGMENT ON PRELIMINARY HEARING

The Judgment of the Tribunal is as follows:

1. **The claim in respect of all deductions prior to 26 February 2015 is out of time and the Tribunal does not have jurisdiction to hear it. The claims made by the first and all subsequent amendments to the claim are within time and the Tribunal does have jurisdiction to hear these.**

2. **The parties have permission to apply to the Tribunal regarding any matters of dates or calculation arising from the above decision.**

REASONS

1. This preliminary hearing raises what is apparently a novel point and that is a purely technical question as I see it, which is what is the effect of an in-time amendment to an out of time claim. There is a separate aspect which I will also deal with briefly at the end of the Reasons which is the familiar one of the question of an extension of time where a claim is out of time.

2. The relevant chronology here is that the last deduction in Mr Strickfuss's case was made on 19 September 2014. The three-month limitation period

therefore expired on the last day within that when the claim could have been brought, which was 18 December 2014. The ACAS conciliation period commenced after that on 15 January 2015 and the ET1 was presented on 26 February 2015. It follows therefore that the claim was presented out of time, and Mr Shah concedes that. There were then subsequent deductions from April 2015 onwards and there were amendment applications in respect of those. Mr Williams has said it should be assumed that the amendment applications were consented to. I think that must be right because what was happening in this multiple case, without distinction between the individual Claimants, was that they made repeated amendments to keep up to date with deductions of being complained of. Mr Strickfuss was among those in respect of whom the amendments were sought and allowed by the Tribunal.

3. The time point was pleaded by the Respondent in a generic form in each of the cases to say that, if out of time, that point would be taken. In Mr Strickfuss's case it has now emerged as a live issue given the chronology. As I have said, Mr Shah has conceded that the original claim was presented out of time, but he seeks to preserve the claims that were brought in subsequently by way of amendment. Mr Williams argues that it is not possible for the claim to proceed in that way, and Mr says that it is not possible to "piggy back" a claim by amendment where there was no jurisdiction in respect of the original claim. Mr Shah contends that, to the contrary, it is possible to do that.

4. There seems to be no authority directly on the point and the nearest that either party has been able to bring me to by way of decided case is that of **Prakash v Wolverhampton City Council** in the Employment Appeal Tribunal UK EAT 0140/2006. The facts there were different: this was a complaint of unfair dismissal, not a wages claim or holiday pay claim such as I am concerned with. In that case the ET1 was presented on 15 January 2004. The Employment Tribunal ultimately held that the effective date of termination was 31 October 2004, which meant that the claim had been presented prematurely and so one might say in that sense out of time.

5. The Tribunal then went on to hold that it could not consider an amendment application which sought an order to rely on different potential effective dates of termination because there was no valid claim to which that application could be attached. Both points came before the Employment Appeal Tribunal. On the first point the EAT held that the effective date of termination had been correctly decided by the Tribunal, so that stood as being 31 October 2004, and the Tribunal's decision that the claim had been presented prematurely also stood. The EAT then held that the Tribunal had jurisdiction to consider the amendment application. I have noted the limited ambit of that decision. The EAT did not make a decision about the amendment application: it simply decided that in those circumstances the Tribunal had jurisdiction to consider the application, and that application was remitted to the Tribunal (the ultimate outcome being unknown).

6. In the present case it seems to me that the situation is that the Employment Tribunal has considered the Claimants' applications to amend the proceedings and has allowed them, by consent. It is common ground that

those applications were made within the applicable time limit for the subject matter of the complaints which they seek to raise. In my judgment the situation that now arises in the light of that is that there is a claim before the Tribunal in respect of which some elements are out of time (i.e. the original claim as presented) and some are not. I find, in short, that this is no reason why the latter complaints which are in time should fall with the former. I am strengthened in that finding by the observations by the EAT in **Prakash** that amendment is a form of presentation of a claim to the Tribunal. Therefore I find that the claims that were brought by amendment were presented within time and the Tribunal does have jurisdiction to hear them, in contrast to the admittedly out of time original claim.

7. I should deal briefly with the second point that has arisen in case I am wrong about the first. That is the question of an extension of time, the test for which is whether it was not reasonably practicable for the claims to be presented within time. In short, if I am wrong about what I have called the technical point and the claims by amendment cannot stand in the existing proceedings, then I would have refused an extension of time on the grounds that it clearly was reasonably practicable to bring those claims in time. It was reasonably feasible to present fresh claims, or indeed one single fresh claim after February 2015 that would have been in time, and then the same process could have been followed in relation to all the subsequent amendments in relation to the in-time claim, and all of them would have been within time.

Employment Judge Glennie

Dated: 16th Nov 2019

Judgment and Reasons sent to the parties on:

19/11/2019

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For the Tribunal Office