



EMPLOYMENT TRIBUNALS

Claimant: Mr M Bellaz

Respondent: Manchester Airport Groups plc

PRELIMINARY HEARING

Heard at: Manchester

On: 10 November 2020

Before: Judge Brian Doyle (sitting alone)

Representatives

For the claimant: In person

For the respondent: Ms E Elmerhebi, solicitor

JUDGMENT

The claim is dismissed on the ground that it has not been presented in time in accordance with section 23 of the Employment Rights Act 1996.

REASONS

1. The claim contains a single complaint of a breach of section 13 of the Employment Rights Act 1996 (the right not to suffer unauthorised deductions from or non-payment of wages). The complaint concerns unpaid wages for a two months period of time relating to non-payment on 15 September 2018 and 15 October 2018. This was a period in which the respondent required the claimant to take unpaid leave while the renewal of his work permit was pursued.
2. This is a preliminary hearing conducted using the Cloud-based Video Platform (CVP). After some initial difficulties with connecting the respondent solicitor, the hearing proceeded without further difficulty.

3. The preliminary issue to be decided at this preliminary hearing is whether the claimant's complaint has been presented to the employment tribunal in accordance with section 23 of the Employment Rights Act 1996.
4. An employment tribunal shall not consider a complaint under section 23 unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction (or non-payment) was made. Where a complaint is brought under the section in respect of a series of deductions the reference to the deduction is a reference to the last deduction in the series. Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under section 23 to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.
5. I had before me an agreed bundle of documents and a witness statement prepared by the claimant. The claimant gave evidence and answered questions put to him by me and on behalf of the respondent. Both the claimant and the respondent briefly summed up their respective positions in respect of the preliminary question.
6. It is not in dispute that the relevant date for the purposes of section 23 of the Employment Rights Act 1996 is 15 October 2018, being the last of the two dates on which non-payment of wages occurred. The claimant gave notice under the Acas early conciliation scheme on 28 June 2020. An early conciliation certificate was issued on 15 July 2020. The claimant then presented his claim on form ET1 to the tribunal on 22 July 2020. On the face of it, therefore, the claim has been presented more than 18 months out of time. Subject to any extension for early conciliation that might have arisen from an otherwise timely presentation, the claim should have been presented by 14 January 2019.
7. The thrust of the claimant's evidence is that he was concerned almost immediately about being placed on unpaid leave. He began to research the position and to make inquiries about it. When he returned to work on 16 October 2018 he spoke to his colleagues and to his managers, who led him to believe that the matter was being pursued to the respondent's HR Department. Although the claimant's evidence on this next point is rather vague, it seems also likely that sometime before December 2019 he had researched the position online and had sought legal advice from one or more sources. He was led to believe as a result that he should not have been placed on unpaid leave in circumstances that would have been recognised as exceptional by the relevant immigration rules.
8. However, he had no knowledge of his ability to bring an employment tribunal claim in respect of the non-payment of wages in September 2018 and October 2018. His evidence is very vague as to whether the legal advice that he received drew his attention to his ability to bring a claim in the employment tribunal at any time and, if so, what time limits or other requirements might apply to such a claim. It is clear from his evidence, however, that he did not seek formal advice from his trade union representative until December 2019. It was not until June 2020 that his trade union representative advised him to pursue the matter at an employment tribunal. It is also the case that he did not present a formal grievance to his employer concerning

the unpaid wages until 6 May 2020 (responded to on 13 July 2020), having met with HR in January 2020.

9. In the circumstances, it is not difficult to feel some sympathy for the claimant's position. He had suffered two months unpaid leave during which he was not receiving wages from his employer. It seems possible that his employer may have been wrong about his immigration status at that time and about the need to suspend him from work without pay. It seems also that when he raised the matter verbally and informally with his managers and with the HR Department over a number of months during late 2018, throughout 2019 and into 2020 the respondent employer did not act with speed and with decisiveness to deal with what was an obvious grievance on the part of the claimant. He told the tribunal that he trusted his employer to deal with his concerns appropriately and that he wanted to deal with the matter informally if at all possible.
10. Nevertheless, the complaint to the employment tribunal has been made over 18 months out of time. I am satisfied that it was reasonably practicable for a complaint to have been presented to the employment tribunal before the end of the relevant period of three months: that is, by the middle of January 2019 or shortly thereafter. I am satisfied that he had sufficient grounds to make inquiries about the legal position and, indeed, he did make inquiries of at least one employment lawyer at an unspecified date sometime in late 2018 or during the course of 2019. He also had the benefit of being a member of a trade union, although he did not avail himself of trade union representation or advice until late 2019. Even then, well into the first half of 2020, he continued to pursue the matter informally and without considering whether he should take legal steps to enforce his right to payment of wages, if that right existed.
11. In all of those circumstances, I am satisfied that it was reasonably practicable for him to have presented a complaint to the employment tribunal in time. While I accept that he acted with some speed in June and July 2020, and did so reasonably at that time, that does not serve to excuse the prior delay in taking steps towards bringing an employment tribunal claim during the last quarter of 2018, the whole of 2019 and the first half of 2020. Nothing that the claimant has said in his witness evidence or presented by way of documentary evidence falls within any of the recognised categories of case in which it might be possible to conclude that it was not reasonably practicable for him to have presented his claim to the tribunal in time.
12. Accordingly, the tribunal does not have jurisdiction to consider the complaint brought under section 13 of the Employment Rights Act 1996 because the claimant has not complied with the requirements of section 23 of that Act. In those circumstances the complaint is dismissed.

Judge Brian Doyle

DATE 10 November 2020

JUDGMENT
SENT TO THE PARTIES ON
13 November 2020

FOR THE TRIBUNAL OFFICE