

IN THE INDUSTRIAL TRIBUNAL

BETWEEN:

Ind Tri 21/2009

GARETH BALBUENA

Complainant

-and-

KNIGHTSFIELD HOLDINGS LIMITED

Respondent

REASONS FOR DECISION

No appearance by Complainant

Samantha Grimes for Respondent

At an adjourned hearing held on 16th November 2009, I made orders dismissing the Complainant's complaints of Unfair Dismissal and under the Working Time Act. These are reasons for doing so:

1. At the first hearing of this matter on 25th August 2009, I informed the Complainant that the Tribunal could not entertain his Unfair Dismissal Complaint, as he had been employed by the Respondent for less than 1 year and therefore had no standing to bring such a Complaint under the Employment Act, Section 60(1)(a) of which precludes persons employed for less than 52 consecutive weeks from claiming Unfair Dismissal.
2. The Complainant replied that he was not complaining about Unfair Dismissal, but about the fact that during his employment, he had not been given the break or rest periods required by law.

3. Having reminded him that the Complaint before the Tribunal was one of Unfair Dismissal, I nevertheless informed him but that the Tribunal would adjourn his case so that he could clarify exactly what his complaint was. He was not legally represented and, despite my recommendation that he engage a lawyer, replied that he did not intend to do so. I then suggested that he seek advice from some other experienced person or body such as the Citizens' Advice Bureau before the adjourned date, namely, 15th September 2009.
4. AT the hearing of 15th September, the Complainant informed the Tribunal that he had been to the Citizens' Advice Bureau and had also met with the Minister of Justice and Mr Montegriffo of the Social Services Agency. With, it seems, Mr Montegriffo's assistance, the Complainant had filed a fresh Originating Application, claiming a breach of the Working Time Act.
5. Having informed the Complainant that his complaint of Unfair Dismissal would have to be dismissed for the reasons given at Paragraph 1 above, I pointed out to him that his newly formulated claim under the Working Time Act was well outside the time limit contained in Section 20(2) of that Act, which provides as follows:

"(2) The industrial tribunal shall not consider a complaint under this section unless it is presented-

(a) before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period extending over more than one day, the date on which it should have been permitted to begin)

or, as the case may be, the payment should have been made;

(b) within such other period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

6. As can be seen, Section 20(2)(b) of the Act gives the Tribunal a discretion to extend time for a reasonable period if it satisfied that it was not reasonably practicable for the complaint to have been made within 3 months from the date when the grounds for complaint first arose.
7. At the 15th September hearing, I directed that the question whether an extension of time should be granted be determined as a preliminary point at a directions hearing. I also directed the Complainant to provide a written statement giving the background to his complaint by 30th September. I fixed that deadline upon his confirmation that it gave him sufficient time to provide such a statement. I also asked him whether he had any witnesses who could also give a statement on his behalf and he replied that Mrs Ros Astengo of GBC was his only witness. I urged him to contact her with a view to obtaining a statement from her as well, and he said he would try to do so.
8. Miss Grimes for the Respondent, on the other hand, requested that rather than put in its own Witness Statements for the preliminary hearing, the Respondent should be allowed to file a Skeleton Argument on whether an extension should be granted. The Tribunal had no objection to this and directed that it be filed by 9th November 2009.

9. The Tribunal fixed the preliminary hearing for Monday 16th November at 10 a.m.
10. The Secretary of the Tribunal has informed me and the Respondent's solicitors (and confirmed this at the preliminary hearing on 16th November) that in October, the Complainant contacted her by telephone and stated that he would not be providing witness statements nor any other documentation to continue his claim and did not intend to attend the hearing on 16th November. I am informed by the Secretary that during that conversation she warned the Complainant that if he did not appear, his complaint could be dismissed. On 12th November, the Complainant again called the Secretary to confirm that he did not intend to attend the hearing.
11. The Complainant did not appear at the hearing on 16th November. The Respondent appeared, having filed detailed Skeleton Arguments contending why an extension should not be granted.
12. Under Rule 12(3) of the Industrial Appeal Rules, if a party does not appear at the hearing, the Tribunal may dispose of the application in the absence of that party or may adjourn the hearing, provided that before disposing of an application in the absence of a party, the Tribunal is required to consider any representations submitted by that party in pursuance of Rule 12(3). Rule 12(3) provides that the contents of a party's Originating Application may be treated by the Tribunal as representations in writing.
13. Paragraph 4 of the Originating Application stated the Grounds on which a breach of the Working Time Act is claimed as being that:

"1) No breaks were given i.e. 20 mins after every 6 hours.

2) I was made to work extraordinary long hours on one particular day (8.30 a.m. to 1 a.m. the next day)."

14. Paragraph 13 of the Originating Application states the following as being the date on which the action complained of took place or first came to the Complainant's knowledge:

"The day after I was made to work 17 hours on the occasion of Stagestruck productions (Ros Astengo)."

15. Not only did the Claimant not appear at the hearing of 16th November but he has not provided any statement or other material concerning the circumstances of his case beyond his Originating Application, which, as can be seen above, merely made unspecified assertions that he was not given proper breaks during working hours and that he was made to work extraordinarily long hours (17 hours) on a particular day, which allegations the Respondent denies in its Notice of Appearance.
16. On the basis of such scant information and the Complainant's refusal to appear or provide a written statement containing all the background to this complaint and an explanation for the delay in filing it, the Tribunal cannot reasonably be expected to extend the time for the filing of the Complaint under the Working Time Act, which cannot therefore proceed and is hereby dismissed.
17. For the avoidance of doubt, the original complaint for Unfair Dismissal is also dismissed, for the reasons given at Paragraph 1 above.

18. It is regrettable, to say the least, for the Complaint to have wasted the Tribunal's time and resources by not appearing and abandoning his Complaint in this way, especially where the Tribunal has given him ample opportunity to clarify and set out the basis of his complaint and the reasons why he did not make his claim under the Working Time Act within the statutory period.



Lewis Baglietto

Chairman

19th November 2009