Neutral Citation No [2019] NICA 74 | *Ref:* **MOR11140**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **18/12/2019**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

LUKA GRZINCIC

Appellant;

-and-

MPA RECRUITMENT LTD

Respondents.

Before: Morgan LCJ and Stephens LJ

MORGAN LCJ (delivering the judgment of the court)

[1] This is an appeal against the decision of an industrial tribunal that the appellant's claim in respect of unfair dismissal was outside the statutory time limit of three months contained in Article 145(2) of the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order"). The appellant also failed to satisfy the tribunal that it was not practicable to lodge the relevant claim within the three-month time limit. Accordingly the claim was dismissed.

Background

[2] The claim was received in the Office of Industrial Tribunals and Fair Employment Tribunal on 3 December 2018. The appellant made a claim as a worker providing services that the respondent had unfairly ended his employment on 10 August 2018. The respondent filed a response which denied that the appellant was dismissed. The respondent contended that the appellant brought his contract to an end by informing the respondent that he would not be available for future shifts and requested all holiday pay owing to him. The respondent paid all monies owed to the appellant on 10 August 2018 and issued a P45 to the appellant on 13 August 2018. The last shift worked by the appellant was the weekend ending 29 July 2018.

[3] The respondent is an employment business which supplies individuals to work temporarily for and under the supervision and direction of hirers. The appellant was registered with the respondent as a Temporary Agency Worker (Healthcare). It was agreed that there was no obligation on the respondent to offer or on the appellant to accept work shifts. The appellant was entitled to 28 days annual leave and it was further provided that when a temporary worker was leaving the respondent and claimed their P45, holiday pay would be paid into the worker's nominated bank or building society account on the day that the P45 issued.

[4] In July 2018 the appellant decided to seek additional or lengthier working hours with another agency. At the same time he made a unilateral decision to cease to accept shifts from the respondent while seeking this employment. The tribunal found that he gave different versions of what he told the respondent when he visited Kerry Anderson of the respondent company in August 2018. By email of 9 January 2019 the appellant denied to his trade union representative that he told Kerry Anderson that he was leaving the respondent but accepted that he told her that he did not have enough hours and would seek work elsewhere. There was no dispute that he did request all outstanding holiday pay. Kerry Anderson requested payroll staff on 5 August 2018 to issue a P45 and all holiday pay.

[5] Although the appellant continued to be notified of available shift work with the respondent for some time thereafter he did not respond or apply for any of those shifts. There was evidence of his repeated contact with the other agency. The appellant claimed that he was unable to recollect when he received the P45 issued on 13 August 2018. His suggestion that it might have been late August 2018 was not found credible by the tribunal. The tribunal was satisfied that he received a P45 before 17 August 2018. He did not complete a claim form or submit same to the Employment Tribunal until 3 December 2018.

The tribunal's consideration

[6] Article 145 (2) of the 1996 Order provides that an Industrial Tribunal shall not consider a complaint unless it is submitted to the tribunal before the end of the period of three months beginning with the effective date of termination or within such further 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.

[7] The tribunal carefully examined the relevant case law. No complaint is made in relation to that. In its consideration the tribunal gave weight to the fact that the appellant had previous experience of receiving a P45 when he resigned from an earlier employment of the same type. The tribunal accepted the respondent's evidence that the appellant was a valued worker and they would not have unilaterally chosen to end his employment. An offer to re-employ him had been made to his trade union representative when the respondent was contacted

regarding his request for a replacement P45. The tribunal was satisfied on the balance of probabilities that the appellant indicated to Kerry Anderson that he was unhappy with the level of hours being offered by the respondent and that he intended to seek work with the other agency and did not intend to work for the respondent while he sought that work.

[8] The tribunal concluded that the verbal communication between the appellant and Kerry Anderson in early August was a resignation without notice to the respondent. The effective date of termination was 10 August 2018. The appellant raised no issue with the respondent about the P45 until 19 November 2018. There was no enquiry between 17 August 2018 and 19 November 2018 regarding his rights in respect of the P45 even though he was a member of a trade union. The three month time period would have expired by 15 November 2018.

[9] The tribunal then considered whether it was reasonably practicable or feasible for the appellant to have submitted his claim by 9 November 2018. The burden rested on him. The tribunal was not made aware of any reason why the appellant did not challenge the P45 when he received it in August 2018. It concluded that the primary reason the claim was in fact not submitted within the three month period was because the appellant had no intention of challenging the P45 until he was advised on 16 November 2018 that his new agency required any notice of termination to be in writing. The tribunal was not satisfied on the evidence presented that it was not reasonably practicable for the appellant to present his claim within the prescribed time.

The appeal

[10] By virtue of Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996 a party to proceedings before an industrial tribunal who is dissatisfied in point of law with a decision of the tribunal may appeal to the Court of Appeal. The appellant supplemented his notice of appeal with a skeleton setting out a chronology of events which essentially took issue with whether he resigned in August 2018 and the weight attributed by the tribunal to his experience of receiving a P45 in earlier employment. He claimed that the breaches of law arising in the case arose from the Fraud Act 2006.

[11] It was evident from the skeleton argument that his complaint was about the findings of fact and no sustainable point of law was raised by him. The court pointed this out to him in a review of his case on 26 November 2019 and provided him with the opportunity to lodge a document indicating the error of law upon which he relied in this appeal. He provided a further submission on 6 December 2019 in which he effectively repeats his contentions in respect of the findings of fact.

Conclusion

[12] Having provided the appellant with the opportunity to identify a point of law in this case he has failed to do so. In those circumstances there is no basis for the pursuit of his appeal which must be dismissed.