



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Griffiths

**Respondent** Anderson Brecon (UK) Ltd

**Heard at:** Cardiff **On:** 24 March 2017

**Before:** Employment Judge P Cadney

**Members:**

**Representation:**

Claimant: In Person

Respondent: Mr D Sheppard (Solicitor)

## JUDGMENT

The Judgment of the Tribunal is:

- i) The claimant's claim of harassment pursuant to s26 Equality Act 2010 is dismissed on withdrawal;
- ii) The claimant's claims of breach of contract in the failure to pay notice pay and/or commission are dismissed as the tribunal has no jurisdiction to hear them.
- iii) The respondent's application for costs is dismissed.

## **REASONS**

1. By a claim form submitted on 10 November 2016 the Claimant brought claims of harassment and breach of contract.
2. Dealing first with the claim of harassment the matter came before the Tribunal on 19 January of this year and Employment Judge Davies gave advice to the Claimant and instructions to complete a Scott Schedule. The Claimant having completed the Scott Schedule subsequently took advice and accepts that his claim of harassment is broadly speaking an allegation of mistreatment by the Respondent but it is not an allegation of mistreatment by the Respondent on the basis of any protected characteristic and therefore he accepts that he doesn't fall within the protection of the Equality Act and has withdrawn the claim which will therefore be dismissed.
3. That leaves the claim for breach of contract. There are two elements to the claim to breach of contract. The first is for the failure to pay notice pay and the second is for the failure to pay a bonus. As to the merits of those claims the Respondent defends both the notice pay claim on the basis that it was entitled to summarily dismiss the Claimant for gross misconduct in which event if they are correct about that no notice pay is due; and similarly they defend the bonus claim on the basis that in order to be eligible for a bonus an employee has to be in post on 31 August of any given year. The Claimant in this case was dismissed on 20 July and therefore the claim is defended on the basis that no bonus is owing to him.
4. The claim comes before me this morning in respect of a jurisdictional issue which is that it is said by the Respondent that the claim is out of time and that time should not be extended on the basis that it was reasonably practicable for the claim to have been submitted in time. The relevant dates are that the Claimant was dismissed on the 20 July of 2016. The Claimant accepts that he was informed orally at a disciplinary meeting that day that he was being dismissed. He states that in fact the letter which confirms that was not received until some time later, but on the basis that he was informed orally at the meeting it appears to me that that is clearly the effective date of termination of his employment.
5. It follows from that that the Respondent is correct that the ordinary time limit would expire on 19 October. In this case the claim form was submitted on the 10 November. The question thus arises whether the Claimant received the benefit of the extension of time provisions under the ACAS Early Conciliation Procedure. In this case that procedure occurred between 13 August which is date (a) and 22 August which is date (b). The consequence of that is that the Claimant does get the benefit of the clock stopping provisions but not any further extension of time. Thus a further 9

days must be added to the ordinary time limit of 19 October taking it to 28 October. The claim form being submitted on 10 November is therefore on the face of it out of time; and it follows that the question for me is whether time should be extended on the basis it was not reasonably practicable to have submitted it within time.

6. The Claimant's explanation as to why the claim is submitted out of time is that he had contacted ACAS in order to start the early conciliation procedure and once that procedure was completed was given advice by them on completing the claim form. In addition he says he took advice from Bristol Law On Line on completing the claim form but that when it was completed he could not find an address to which to send the completed claim form and accordingly sent it to the only address he had which was the address of Cardiff ACAS as opposed to sending it to the Employment Tribunal. The original claim form although I have no specific date from the Claimant was he tells me sent to Cardiff ACAS within the original time limit. He subsequently heard no more and eventually contacted the Birmingham Employment Tribunal Office and was advised to re-submit a claim. He filled in a new claim form and re-submitted the claim on 10 November. The Claimant's case therefore is that he simply did not know where to send the form and that he made an error in sending it to the wrong address.
7. Arising out of that is the question then of whether it was or wasn't reasonably practicable for the claim form to have been sent in time. In one sense it clearly was reasonably practicable because on the Claimant's own evidence he did send a claim form in time albeit to the wrong address. The question is therefore whether the Claimant's failure to discover the correct address to which to send the claim form itself means that it was not reasonably practicable to do so. The Claimant's explanation is it must be said slightly puzzling in that if one looks at the ACAS website it has an A-Z which includes the Employment Tribunal which if one accesses it links directly to the government website which gives specific advice as to how to make a claim both on line and by post. Equally if one simply googles Employment Tribunal that takes one to links to the government website and to the Citizens' Advice Bureau website and to various other websites. Put simply whilst I have some sympathy with the Claimant the fact is that I have to determine whether it was or was not reasonably practicable and it seems to me that given that the claimant says that he looked online and that the information is so readily available online it is inevitable that in this case I am bound to conclude that it was reasonably practicable to have submitted the claim form in time. In addition or alternatively the claimant could simply have asked ACAS or Bristol Law Online, with both of whom he had been in contact. The claimant therefore had access to specific sources of employment law advice prior to the time limit expiring; and for that reason as well it is in my

view impossible to conclude that it was not reasonably practicable to have submitted the claim form to the correct address in time.

8. It follows that as the claim form was submitted out of time, and as there is no basis on which to extend time, that the Claimant's breach of contract claims also have to be dismissed on the basis the Tribunal has no jurisdiction to hear them.

### Costs

9. Following my earlier decision the Respondent has made an application for its costs from 14 February, which was the date a costs warning was sent to the Claimant on the basis that the claim was clearly out of time and any application for an extension of time had no reasonable prospect of success.
10. It appears to me therefore the question is whether it was unreasonable of the Claimant to continue to pursue the claim from 14 February and to come effectively therefore to come before the Tribunal this morning to seek to persuade me that it was not reasonably practicable to have presented the claim on time. Having heard the Claimant and whilst I have concluded that it was not reasonably practicable it doesn't appear to me that it was unreasonable of him to pursue the claim and so in principle it doesn't appear to me that the threshold for making an Order for costs has been crossed.
11. Even if I had concluded that it had been, in exercising my discretion I have heard from the Claimant that effectively he at present has no income and is awaiting an adjudication on whether he is to receive job seekers allowance. He has no assets other than a car which is valued at some hundreds of pounds and effectively therefore is without any means to pay any order for costs. Even if I had concluded that the costs threshold had been met in those circumstances I would not have exercised my discretion to order the Claimant to pay any costs in this case.

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Employment Judge P Cadney  
Dated: 10 April 2017

JUDGMENT SENT TO THE PARTIES ON

24 April 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

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**NOTE:**

This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.