



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

ELM Alliance Limited

AND

Vocare Limited

PUBLIC PRELIMINARY HEARING

Heard at: Teesside

On: 11 December 2017

Before: Employment Judge A M Buchanan

Appearances

For the Claimant:

Mr D Bunting of Counsel

For the Respondent:

Mr J Van Zyl - Solicitor

JUDGMENT

It is the judgment of the Tribunal that:

1. It was not reasonably practicable for this claim advanced pursuant to Regulation 12 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") to have been filed before the end of the period of three months beginning with the date of the relevant transfer.
2. The claim was not filed within such further period as the Tribunal considers reasonable.
3. As a result the Tribunal does not have jurisdiction to entertain this claim which is accordingly dismissed.

REASONS

1. There comes before me this afternoon by way of a preliminary hearing the question of whether or not a claim filed by ELM Alliance Limited against Vocare Limited on 26 October 2017 has been filed within the appropriate time limit.

2. I refer to Regulations 12(1) and (2) of the TUPE which state:-

(1) On or after a relevant transfer, the transferee may present a complaint to an employment tribunal if the transferor has failed to comply with any provision of Regulation 11.

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented-

(a) before the end of the period of three months beginning with the date of the relevant transfer

(b) 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 the period of three months.

3. The chronology of relevant events in this matter is that the relevant transfer or service provision change occurred on 1 April 2017 and the first question for my consideration is whether it was reasonably practicable for the claimant to make the claim against the respondent within the primary time limitation period. That period expired on 30 June 2017. I am satisfied that when that period of limitation expired, the claimant did not have knowledge of the claims which were being advanced against it which in turn would have led it to consider this application under regulations 11 and 12 of TUPE against the respondent.

4. I am satisfied that the claims against the claimant only came to the attention of the claimant in August 2017. As a result when the claimant received copies of the claims filed by Thomas Alan Reeder (2500660/2017) and Adrian Anton (2500679/2017) it filed a timely response to those claims on 22 September 2017.

5. In that response the claimant set out its defence to the matters which were raised by Messrs Reeder and Anton and in addition it sought to advance a claim against the respondent pursuant to regulation 12 of TUPE and did so in the same form of response as that filed in respect of the claims of Reeder and Anton. The detailed and full response was filed on 22 September 2017 just within the 28 day period permitted for its timely response.

6. A private preliminary hearing took place in the matter of Messrs Anton and Reed (and others) on 29 September 2017 and the orders resulting from that hearing were sent to the parties on 25 October 2017 and it was made clear to the claimant at note 21 of those orders that if this claim was to be pursued then a claim form needed to be presented to the Tribunal as is required by Regulation 12(1) of TUPE. On 26 October 2017 the claim form in this matter was presented and the respondent filed its response on 29 November 2017 in which it was asserted that the claim had been filed out of time.

7. There is clear authority from the Employment Appeal Tribunal and in particular the decision in **Nolan –v- Balfour Beatty Engineering Services EAT 0109/2011** that the tests I have to apply are two distinct tests. The first question is whether it was or was not reasonably practicable for the claim to have been filed in time. I am satisfied that it was not reasonably practicable for that to have been done because when that

time limit expired the claimant had no knowledge of the proceedings against it. In point of fact the proceedings of Messrs Anton and Reeder had not at that time been instituted. Thus the crucial question for me is whether, by bringing a claim to the Tribunal as it does on 26 October 2017, claimant has filed its claim within such further period as was reasonable.

8. So far as this second time question is concerned, I am to put aside questions of practicability and concentrate purely on the question of reasonableness. In so doing I am to objectively consider all the factors which caused the delay and what period should reasonably be allowed, in the circumstances, for these proceedings to be instituted - having regard to the strong public interest in claims being brought promptly and within the primary period of limitation.

9. I have considered this matter carefully. It seems to me that the claimant knew the details of the claim it wished to advance against the respondent and it set out those matters in detail in its form of response filed on 22 September 2017. That was a period of 28 days from the date of service on it of the claims of Messrs Reeder and Anton which give rise to the Regulation 11 and 12 claim itself. The claims of Reeder and Anton were served on the claimant by the Tribunal on 25 August 2017. In including those details in that form of response, the claimant made a mistake in failing at that time to present a complaint as regulation 12 of TUPE makes clear is required. I conclude that a reasonable period in which to have filed the claim in this case was until 22 September 2017 when in fact the claim was lodged in an erroneous form by the claimant. That would effectively have been almost three months since the primary limitation period had expired but more importantly 28 days since the claimant had become aware of the proceedings. Given that the primary limitation period had expired it seems to me that that was a reasonable period in which to have filed a timely claim under regulations 11 and 12.

10. In fact this claim came to the Tribunal some 34 days after 22 September 2017 and thus it was not filed within such further period from the end of the primary limitation period as I consider reasonable.

11. Accordingly the Tribunal does not have jurisdiction to hear the claim advanced by the claimant in this matter and it is dismissed.

**Employment Judge A M Buchanan
Date: 3 January 2018**