# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Margetts

**Respondent:** Studio Retail Limited

**Heard at:** Manchester **On:** 12 March 2018

**Before:** Employment Judge Sherratt

**REPRESENTATION:**

**Claimant:** Litigant in person
**Respondent:** Ms C Leyland, Solicitor

**JUDGMENT** having been sent to the parties on 14 March 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

1. This case was before the Tribunal on 21 November 2018 when I found against the claimant in respect of a time limit point and did not allow his claim to proceed. Judgment was sent to the parties on 28 November 2018 and written reasons were sent to the parties on 12 December 2018.

2. Since the case was heard the respondent company has changed its name to Studio Retail Limited. The company number is the same so it seems to me that regardless of anything else the respondent's name should now be changed to Studio Retail Limited.

3. The claimant has applied to have the Judgment reconsidered and he has also appealed to the Employment Appeal Tribunal.

4. In his application for reconsideration the claimant set out three points:

   (1) That he was not able to be on an equal footing with the respondent in accordance with the overriding objective of the Employment Tribunal

Rules and therefore the Employment Tribunal is not able to deal with his claim fairly and justly;

(2) He claimed there was an error in the proceedings since the Tribunal did not address his claim as set out on his ET1 form which led the Tribunal to ignore the ECJ ruling in **King v The Sash Window Workshop Limited EU:C:2017:914**, suggesting that this European Court of Justice decision binds UK Tribunals when deciding similar cases; and

(3) That the logic applied by the Employment Tribunal resulting in the judgment that the claim was not presented in time was flawed.

5. The application did not include any new law or facts, but it went on to set out in more detail why the claimant believed those three points were valid points in support of his application to have the judgment reconsidered.

6. The respondent responded in writing on 25 January 2019 asserting that the claimant was on an equal footing with the respondent in the proceedings, that the Tribunal did deal with the claim as set out in the ET1 form and that the logic of the Tribunal was not flawed given the way in which the case was dealt with.

7. At the original hearing I read the claimant's document entitled 'oral argument' and listened to his oral submissions. I also heard from the respondent. In my judgment the parties were on an equal footing.

8. As to the claimant's arguments on 'worker' status I made it clear that I intended to assume for the purposes of the hearing that the claimant was at all material times a worker before he became formally an employee of the respondent. It seems to me that making that assumption, but without making any formal findings, in relation to the claimant's status allowed the claimant to develop his argument based on **King** that he was entitled to be paid holiday pay as a worker.

9. As to whether or not the Tribunal's decision was flawed this will be for determination by the Employment Appeal Tribunal in due course.

10. The main point that the claimant makes today is that the Tribunal did not address his claim on the basis of the **King v Sash Window Workshop Limited** decision made by the European Court of Justice following a referral by the UK Court of Appeal.

11. I understand that after the ECJ decision in **King** the parties reached an agreement as to what should be paid to Mr King for holiday pay, and so we do not have the benefit of the ruling of the Court of Appeal in respect of how the European Court of Justice's ruling in **King v Sash Windows** should be applied in the United Kingdom.

12. However, there is a factual difference between the claimant and Mr King in that Mr King remained as a worker and did not take up a formal employed role with the Sash Window Workshop before he ended his relationship with them. In this case my judgment sets out the facts as to how the claimant may have been a worker for a number of years before changing his relationship or status with the respondent to that of an employee. I am not aware of any guidance given by the Employment

Appeal Tribunal or indeed any higher authority as to how the question of time limits in the Working Time Regulations should be dealt with in a situation like that of the claimant as opposed to the situation of Mr King.

13. On this basis, it seems to me that my original judgment should stand and that the Employment Appeal Tribunal should be allowed to give guidance on how the time limit set out in regulation 30 of the Working Time Regulations should be applied in situations such as the claimant's where the legal relationship changed and there was arguably a point at which he should have applied for holiday pay and did not, leaving it potentially too late.

14. Having reconsidered I confirm the judgment that I made in November 2018.

Employment Judge Sherratt

19 March 2019

REASONS SENT TO THE PARTIES ON

22 March 2019

FOR THE TRIBUNAL OFFICE

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